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THE INFLUENCE OF POLITICAL, ECONOMIC AND PASSENGER
MARKET FACTORS ON INTERNATIONAL CIVIL AVIATION

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SUMMARY

Civil aviation plays an essential role in maintaining international communications. Many extraneous factors influence the daily operations of the air transport industry.

This thesis begins by investigating the major categories of so-called "external interests" in civil aviation. These are shown to have played a significant part in ensuring the need for international agreement over the adoption of regulating principles. The combination and interaction of the various influences has produced a particular type of regulatory environment in which all commercial air services have to operate.

The need for such regulation and the extreme difficulty experienced in trying to define universally acceptable methods of supervision is discussed. It is shown how opportunity for the development of non-scheduled air services was created by default on the part of the European Governments. The concept of so-called "scheduled" and "non-scheduled sectors" is considered and it is suggested that growth of the inclusive tour industry resulted from inappropriate categorisation of the air services involved.

The means by which development opportunities were created for inclusive tour operations is considered and the work then investigates the importance of British air transport policy in their exploitation.

The politics of British civil aviation in the post-war years is the subject of detailed examination and the process by which Independent airlines were encouraged to develop inclusive tours, is identified. This theme is expanded to demonstrate the vital contribution of British air transport policy in the restructuring of the international industry. The subsequent involvement of the United States is shown to have been directed specifically towards the satisfaction of domestic issues. British objectives, however, are considered to have been more generally concerned with improving the tariff structure. The unique opportunities for British experimentation with international fares are seen to have major influence in forcing the pace of tariff rationalisation.

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CHAPTER 1. AN INTRODUCTION TO THE WORK

1.1 Introduction

During the decade of the 1960's the international civil aviation industry underwent a fundamental structural change. Major expansion took place in a travel market which was little interested in the traditional characteristics of scheduled international air travel. Though this is not intended to imply that existing standards were completely eroded and replaced by a new order, it does suggest that a reappraisal of the role of the air transport system took place and was contributed to by many diverse interests. The result of this reassessment was that the industry increasingly took on a new role of promoting cheap air travel for the non-business market.

The contrasts between the requirements of the new "mass-travel" market and those of the existing one were extreme. Previously international air travel had been orientated towards a type of passenger who was principally interested in high service level. The services offered, therefore, were characterised by certain essential features such as regularity, high frequency and minimum advance - booking requirements. In addition the peculiarities of the regulating framework were such that price competition had been virtually eliminated. Consequently scheduled operators were forced to compete over standards of

passenger service. The new market, however, proved to be more interested in price than quality of service and was generally content to trade flexible travel arrangements for a much reduced fare. The emergence of a major air travel market which did not respond to the traditional airline product generated extraordinary strains within the industry.

This thesis is concerned with the mechanisms which produced such a development. In particular the intention is to determine the evolutionary process and to demonstrate that it has been principally influenced by deliberate and specific acts of Government. Furthermore, the argument is extended to show the central importance of British air transport policy in creating and exploiting the opportunities for low-cost international air travel.

1.2 The Scope of the Work

The period of change considered is from 1944 to 1973. The earlier date has been chosen because it marks the clear beginning of a new approach to international regulation of the industry. Operations prior to this date are hardly recognisable as international air services in the sense that is understood today. The later date is less easily explained. The author has selected it because in his opinion it too marks the start of a new phase in the development of the industry. The major

changes which are the subject of this work were all completed by 1973.

A subject such as this is necessarily wide ranging. The international nature of the industry forces the recognition of numerous diverse influences which must be considered. Despite the undoubted international nature of the problem, however, this thesis utilises the development of British air transport policy as the basis for other investigations. Consequently the work is orientated towards the British role in influencing the change of an international industry.

1.3 The Structure of the Work

There are two parts to the work, the content of which is described below.

1.31 Part 1. The Evolution of the Regulatory Framework of International Civil Aviation

This section considers the regulated nature of the industry, how those regulations developed and, in particular, their influence on the creation of opportunities for an alternative air transport sector.

Despite the fact that two sectors may be clearly determined in the international civil aviation industry - the so-called "scheduled" and "non-scheduled" - they may be seen to be constrained by common factors. Chapter 2 establishes these and indicates their origins. Chapter 3 deals with the interaction of the factors and the subsequent creation of the post-Second World War regulatory environment. Chapter 4 develops the analysis of various philosophies of economic regulation of the industry. In particular it is shown that the difficulties experienced in attempting to define a universally acceptable method of economic supervision for the "scheduled" airline industry led directly to the creation of "non-scheduled" opportunity within Europe. From this developed the subsequent restructuring of the entire industry.

It is immediately apparent that the concepts of "scheduled" and "non-scheduled" air services are vitally important to the development of this analysis. Unfortunately, when used in the context of international air travel the two terms convey considerable meaning whilst being impossible to define accurately. Chapter 5 examines this difficulty but despite this extensive later discussion it is essential to make some broad distinction between the two at this point.

In general "scheduled" services are those which take place in accordance with the constraints of a published timetable. Licences to operate scheduled services invariably carry an

obligation to maintain the published timetable regardless of the profitability of individual flights. The operation of a scheduled service airline system, therefore, inevitably requires there to be extensive cross-subsidation between the individual commercial flights in it.

Part 2. The Restructuring of the Industry (in the period 1945 to 1975).

The essential characteristics of scheduled service operations are: regular and reliable operation to a published timetable. In addition, every flight must be open to the public and substantial cross-subsidy must occur to ensure the viability of the system.

"Non-scheduled" services are in their simplest form the exact opposite of scheduled. They need not operate to published timetables but react instead to public demand for large-scale rapid movement between any two points. The rates charged are directly related to the profitability of any individual flight. Non-scheduled operations, therefore, respond solely to demand. A consequence is that such services usually attract very high passenger load factors which are reflected in relatively low fares for the individual passenger.

The serious economic constraints of scheduled service operation are amply emphasised by the tariff structure of this sector of the industry. Chapter 6 is concerned with the authority directly responsible for that structure, the International Air Transport Association (IATA). In discussing its role this chapter

establishes the limits of its powers in order to determine the degree of opportunity for continued Government direction of policy in defining the status of the privately-owned or "Independent" airlines. Chapter 3 examines the manner in which external interests⁽¹⁾ persuaded the British Government to

1.32 Part 2. The Restructuring of the Industry in the Period 1945 to 1973.

The object of this second part is to investigate the processes which resulted in the redirection of air travel development.

The analyses of Part 1 established the highly regulated nature of the industry. A corollary must be that such redirection as has occurred has been deliberate and in response to specific Government action.

The movement towards low cost air travel undoubtedly has its roots in the emergence of the European inclusive tour (IT) holiday industry. British air transport policy has been vital in directing the growth of that industry. An understanding of the evolution of such policy is, therefore, essential to a balanced view of the character change of international air transport.

In the chapters comprising this part, two particular aspects of the changed nature of the civil aviation industry are considered. First, the interaction between the British Government and private airline operators in the UK which directly

encouraged the development of the European IT industry. Chapter 7 determines the early effect of British air transport policy in defining the status of the privately-owned or "Independent" airlines. Chapter 8 examines the manner in which external interests⁽ⁱ⁾ persuaded the British Government to encourage movement into the IT business by the Independents. Chapter 9 discusses the reaction of the various interested parties to that initiative. The second aspect is concerned with the wider implication. Whereas British policies may be treated in isolation throughout the 1950's after this date it becomes necessary to consider their interaction with the other constituents of the international regulatory structure. Chapter 10 and Chapter 11 deal with the international aspects of British air transport policy in the 1960's. Following this, Chapter 12 considers the response of the United States to European developments. Chapter 13 investigates the vital roles of IATA and the European Governments acting in response to British and American initiatives. The final Chapter, 14, presents an analysis of the final consolidation of many independent forces of change into a single movement towards the complete restructuring of the industry.

(i) "External Interests" is a term used throughout this thesis to describe interests which affect the air transport industry but which do not emanate directly from it.

CHAPTER 2. EXTERNAL INTEREST IN THE INTERNATIONAL AIR TRANSPORT INDUSTRY

2.1 Introduction

That civil aviation and political interest are inevitably related at all levels has become one of the foundations of the operating philosophy of the international air transport industry. In many quarters this belief is extended so that political control of the industry is regarded as an essential feature of successful air transport operations. It is interesting to contrast this approach with the concept of "The Freedom of the Seas" and to compare normal international sea trade practice with the jealous and rigid control of the entry of foreign commercial aircraft into national airspace and national airports. (1) (2)

This chapter is an introduction to the regulated nature of the industry and illustrates the complexity of the non-aviation interests which seek to control the operation of commercial airlines. It is sometimes difficult to draw clear boundaries between specific categories of interest, particularly when the analysis is not meant to be exhaustive. In this chapter some attempt has been made to present them in a logical manner but even so there is some over-lapping between the various sections. The chapter starts, in section 2.2, with the

single most important consideration which has influenced all Governments since the beginnings of air travel - the question of "Sovereignty of Airspace". This is the right which any State has, to prevent the entry of aircraft belonging to any other State into the airspace above its territory.

Closely related are military interests, dealt with in section 2.3, and these in turn are linked to aircraft manufacturing interests in section 2.4.

A less clearly defined aspect of this external influence which may be brought to bear is the political one. In section 2.5 the use of air transport as an instrument of foreign policy is discussed and the following section, 2.6 deals with the importance of air travel for efficient international transport. A further political interest which has had a direct and important bearing on the industry's growth has been that of balance of trade considerations. This is considered in section 2.7 and the final section, 2.8 deals generally with the question of satisfaction of the public interest.

2.2 Sovereignty of Airspace

Since 1919 all major agreements between States for the control of international air travel have contained a clause which grants each contracting party the right to control and possibly prevent the entry of foreign aircraft into the airspace above

its territory. Such a right is commonly referred to as the Principle of Sovereignty of Airspace. Its effect on air transport operations has been fundamental. Although it is difficult to conceive a situation in which States would not claim sovereignty over their airspace, for some years prior to 1919 a "Great Debate" raged among the world's international lawyers as to whether or not they were entitled to do so. The principle exponent of the greatest possible degree of internationalisation of airspace was the French lawyer Fauchille. (3)

Bleriot's historic first flight across the Channel in 1909 made some practical solutions to the problem, instead of academic discussion, an urgent necessity. The proven ability of the aeroplane to cross geographic and political barriers caused widespread concern among the world's Governments and directly resulted in the first international aviation conference. This was called by the French Government in 1910 in Paris and although it was meant to be mainly technical in scope, discussions did eventually take place on the question of airspace sovereignty. The conference failed to reach any concrete conclusions on this point and was dissolved with the intention of re-convening at a later date. In fact this never took place and, in the

absence of any international agreement, the British Government made a unilateral declaration of sovereignty over its airspace. The Aerial Navigation Acts of 1911⁽⁴⁾ and 1913⁽⁵⁾ effectively enshrined the Principle of Sovereignty of Airspace into the British attitude to international civil aviation.

The advent of the First World War ensured that the realities of air power would force all Governments to assume control over their territorial airspace. During this war the British Government set up the Civil Aerial Transport Committee whose brief was to produce a report on:

"The steps which should be taken with a view to the development and regulation after the War of aviation for civil and commercial purposes from a domestic and imperial and international viewpoint". (6)

The great difficulty which this committee faced was to reconcile two opposing and equally important aspects of air travel for Britain in the conduct of her foreign and home affairs. On the one hand there was the need to ensure the integrity of British airspace and this inevitably implied restricted access for foreign aircraft. On the other hand was the need for widespread freedom to cross foreign territory at will in order to link up with the Empire. Quite clearly it was impossible to satisfy both objectives and, in presenting the final report, the committee was at pains to point out the two aspects of the problem. The majority viewpoint, however, was that

sovereignty of airspace should be considered to be of greatest importance. (6.1)

In 1919, the Paris Peace Conference decided that international agreement on the conduct of air transport was essential if there was to be any prospect of lasting peace. Under the auspices of the Aeronautical Commission a conference was called to fulfill the task of drafting an international air transport convention. Very full descriptions of the arguments and discussions which took place are given by Cooper (2.1) and Thomas (7) and it suffices to point out that theoretical consideration of what might have been the best solution was inevitably submerged beneath nationalistic feelings strengthened by the effects of war. The final Convention recognised in its opening clause:

"The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the airspace above its territory". (8)

Later clauses advocated the free passage of civil aircraft across the territory of Contracting States. One clause in particular - clause 15 - was ambiguous. Liberal interpretation gave the impression that once a Contracting State had opened an airport it automatically became an "open port" to the aircraft of all other Contracting States. Had this principle been accepted it might well have resulted in the "Freedom of the Skies" but, in fact, the liberal interpretation was not widely accepted and aircraft continued to operate into foreign territory as

2.1 a privilege and not as a right.

The confusion stemming from clause 15 eventually led to the conference being re-convened in Paris in 1929 where it was hoped to agree on one interpretation and also where important new States were to be admitted to the Convention, particularly the United States and Germany. The outcome of the 1929 Paris conference was not encouraging for those who advocated the "Freedom of the Skies". The liberal interpretation was not accepted and in addition the conference would not accept a British motion that the privilege of establishing commercial international air services should not be unreasonably withheld.

As a result:

"Each nation was thereby left with full authority to admit or to refuse the entry of commercial air operations into its territory on any basis or for any reason it saw fit. Straight political bargaining was accepted as the rule to be followed". (9)

The 1919 and 1929 Paris conferences are thus seen to be of crucial importance to the subsequent development of international civil aviation. At these two conferences the principle of "Sovereignty of Airspace" was firmly established in international law; every major Agreement or Convention since then has embodied it.

2.3 Military Interest in Civil Aviation

The military advantage of a strong reserve fleet of civil transport aircraft and the trained crews to fly them is clear. This role of civil aviation was recognised at a very early date:

"Germany seems to have recognised the fundamental truth that the country which is furthest advanced in the development of Civil Aviation will have the strongest reserve air force in time of war". (10)

One of the earliest exponents of the military value of a strong national civil aviation industry was Lissitzyn. (11)

In an extensive review of published literature and official statements of policy he argued that it was not the ability of civil aircraft to be converted to bombers which was the principle concern of the Governments of the world. It was rather the ability of the civil air transport fleet to carry troops and munitions in time of emergency. In addition civil aviation had a secondary role of training crews in the techniques of long distance flight and navigation and of developing the technical infrastructure along strategic routes. Finally, Civil Aviation had an important role in maintaining good internal communication and links with other friendly States in time of war or national emergency. Lissitzyn made his observations in 1944 at a time when the Second World War was drawing to a close and although much of what he said remains true today, post-war experience has shown that the military potential of the civil air

transport industry is more subtle than was thought. Since the end of the Second World War experience has shown that the potential of the civil scheduled airlines for providing crews and aircraft in time of national emergency is less than had been believed. This is because the provision of civil aircraft and crews from scheduled services to increase the military airlift ability inevitably leads to a disruption of the national air communication system. The transfer of civil aircraft and crews to military duties is likely to be disruptive if there is not a latent excess of capacity in the domestic air transport industry.

The provision of excess civilian capacity to satisfy military interests is a well known phenomenon and is sometimes referred to as "The Redundancy Provision". In some bilateral agreements this results from one of the parties refusing to accept frequency or capacity limitations. In other circumstances some States promote so-called "social services" to bolster the size of the civil aircraft fleet. This can then be used for military purposes if necessary with little resultant disruption of trunk-route scheduled services.

Redundancy in normal scheduled airline services is a difficult feature to accommodate satisfactorily since it invariably leads to high commercial fare levels or subsidy payments. For this reason some Governments have encouraged the growth of a non-scheduled sector in the domestic air transport industry.

Though there has been reluctance to support excess capacity in the scheduled sector, the attitude has been different where non-scheduled operations were concerned. In recognition of this fact one author (12) has put forward the view that the basic purpose of the non-scheduled sector must be, eventually, to provide this military reserve airlift capacity. It is certainly true that much of the US carriage of men and supplies to the Vietnam War was only made possible by military use of civilian non-scheduled airlines.

This aspect of external interest in the industry's affairs had been of particular importance in the UK where the demands of the 1949 Berlin Airlift were instrumental in persuading the British Government to review its restrictionist policies towards the private, non-scheduled sector. Military interests, therefore, have greatly affected the fortunes of the UK Independent airlines.

2.4 Aircraft Manufacturing Interests

One of the more harmful influences which might be brought to bear on an airline is the insistence that it directs its aircraft purchasing policy towards supporting one or other national aircraft manufacturing industry. Very few airlines have managed to avoid completely such pressures and the State-owned airlines have been particularly susceptible. In the White Paper setting out its ideas on post-war development of British

civil aviation, the Labour Government said:

"It will be the general policy of His Majesty's Government to require the Corporations to use British Aircraft types". (13)

In practice this requirement was never written into the 1946 Civil Aviation Act and neither were the Corporations ever issued with formal instruction to adhere to such a policy. This does not alter the fact that the State airlines consistently followed a policy of purchasing British aircraft and indeed, felt they were obliged to do so, (14) whether or not a formal directive was ever issued to that effect.

On occasion the State airlines have decided that successful operation of their routes depended upon their being allowed to purchase American aircraft. In 1968 BEA sought permission to purchase Boeing 727 and 737 aircraft for its European network, having reluctantly come to the conclusion that the equivalent British aircraft were inferior and would be uneconomic. The British Government was unable to accept this point of view and after a long debate decided to provide an operating subsidy to BEA in return for the airline's purchase of British aircraft. BOAC had a similar experience with the VC-10 and subsequently sought clarification of its position from the Government. The airline requested that, whenever possible, it should be allowed to purchase aircraft which satisfied its needs in the most economical way. Where this

policy conflicted with the Government desire to support the British aircraft industry, BOAC requested that the Government should issue it with a formal request to waive normal commercial operating objectives. (15)

Though the British State airlines appear to be peculiarly subject to Government interference in their purchasing policies (16) this feature can be recognised throughout the air transport industry to a greater or lesser extent. Even in the United States, where all airlines are privately owned, there have been occasions when pressures have been brought to bear in order to prevent the purchase of a foreign aircraft. Capital Airlines, for example, was only able to purchase the British Viscount after resisting considerable public pressure to buy a less advanced American machine. (17)

The reason for this reluctance on the part of Governments to allow their national airlines to have an entirely free hand in their aircraft purchasing policies is largely economic although, in certain instances, political intrigue may well be primarily responsible. Aircraft manufacture is a complicated process and in some respects represents the forefront of technology. For this reason Governments are generally reluctant to allow the national aircraft industry to fall into decay because of a decline in home airline orders. It is, therefore, entirely reasonable to expect State owned airlines to suffer some degree of Government control over their purchasing policies. (16.1)

As aircraft manufacture becomes more complex and particularly as the launching cost of new airliner projects becomes too great for any one company or airline to support, so the pressures on airlines to modify their purchasing policies becomes greater. The trend towards multi-national manufacturing efforts extends the area of political interest from the domestic to the international. Nations which do not have the capability to manufacture entire aircraft may produce sections of an aircraft, Concorde and the European Airbus being two prime examples of this technique. In some cases the diversification of the manufacturing effort is spread between ten or more different countries each producing quite small components such as undercarriage or tail fin. However small the contribution might be it is clear that any such manufacturing involvement will introduce additional considerations into the problem of aircraft purchasing policy for the national airlines.

There are other cases in which airlines have had little choice in their purchase of equipment, (i) even when no manufacturing involvement exists. Straight political pressures have been exerted in the past to ensure that, for example, the East European countries operated Russian aircraft almost exclusively.

- (i) In Australia there is a Government requirement that the two airlines, ANA and TAA, should operate similar if not identical aircraft on routes where they compete with each other directly.

Many emergent countries have had their purchasing policies influenced by attractive finance terms from one or other of the major powers. Ghana Airways purchase of Russian Ilyushin Il-18 airliners (now no longer in service) was an example of this technique. Pan American's extraordinary rights of privilege in return for that airline's acceptance of the role of the American national flag carrier. In accepting this role,

2.5 Civil Aviation as an Instrument of Foreign Policy

The national interests which might conflict with an airline's freedom of action, discussed in the previous sections, have been largely tangible in nature. A less tangible and, to some extent, more important aspect of the industry is its ability to give strength to any nation's position when engaged in international negotiations. Governments generally have recognised that an extensive and strong network of air routes operated by their national airlines greatly extends the power and area of the nation's influence.

One of the earliest uses of the airlines as an instrument of foreign policy took place just before the Second World War when the German Government attempted to strengthen its influence in Central and South America through the activities of Lufthansa, the German national airline. So great did German involvement in the continent become, that the American Government became seriously worried and eventually forced the closure of Lufthansa operations in the area. (2.2) It is interesting to

note that the American airline, Pan American, was equally involved with foreign policy as was Lufthansa. In the 1930's the American Government introduced the so-called 'Chosen Instrument' policy under which the American Government made a tacit agreement to grant Pan American extraordinary rights of privilege in return for that airline's acceptance of the role of the American national flag carrier. In accepting this role, the airline undertook to operate services throughout the world for the benefit of the American Government. The airline realised that this might require them to operate on a non-commercial basis at times when the Government sought the opening of a new service for purely political reasons. It gladly accepted this obligation in return for the extensive protection and promotion which the Government offered. (18) From time to time the European airlines have been equally involved in the foreign policy negotiations of their Governments and, indeed, because most of these airlines are partly or wholly State-owned their route and service structures have frequently evolved in direct response to national interests. (16.2)

In recent years a change in attitude has been noticeable particularly among the more highly developed nations, and this reflects the changes which have occurred both in world politics and in airline operating economics. The use of a national airline as the "Chosen Instrument" is an expensive and unreliable method of influencing world affairs. Most countries now are not prepared to regard the air transport industry as

anything more than a convenient form of communication which must stand or fall on its own merits.

accepting that this is likely to give offence to the country

On 10th April 1972, Mr. Tam Dalyell tabled a Parliamentary question in the House of Commons. He asked, "Would the Government consider subsidies for BOAC so they could operate the Peking route?". The Minister answered that although services to Peking were desirable they would have to be operated without subsidy and on the basis of normal commercial operations. In March 1972 the chairman of the Australian national airline, QANTAS, stated that North Atlantic operations were no longer profitable for the airline and that considerations of national prestige would not force it to maintain services on the route. A request for subsidy of services between Scotland and Europe in July 1971 brought the following refusal from the Minister of Trade within the Department of Trade and Industry, "This was a matter for the commercial judgment of the airlines".

Though the highly developed nations have become less enthusiastic about subsidising the operations of the State airline, "In the national interest", the same is not true of many of the less well-developed countries. Where they continue to use civil aviation in order to promote the national image abroad, the developing countries are only emulating European and American behaviour. Unfortunately, the results of such a policy are, today, more complex and far reaching than they were twenty years ago. Most developing nations have little trouble in negotiating

for traffic rights into the industrialised countries of the world. Few Governments will refuse these traffic rights without accepting that this is likely to give offence to the country making application. Should such a refusal be made the repercussions are likely to be extensive and, at their most extreme, might lead to withdrawal of diplomatic relations or trade sanctions. Since sovereignty of airspace is an accepted principle of operation in the air transport industry, it is clear that many developing nations are in a very powerful position in so far as their ability to close certain air routes is concerned. (i)

The most serious effects of the entry of newly emerged nations into the international air transport market tend to be more economic in nature. The countries themselves have little traffic generating potential and for this reason seek entry to the more lucrative air routes in order to ensure some measure of revenue earning potential. The result of this action is that those airlines already established on the route suffer a dilution of their percentage of the total market.

- (i) Black African states' dislike of the South African Government's policies had led directly to the closure of large areas of African airspace to South African Airways operations. As a result the London to Johannesburg route now is a mainly overwater route which skirts around the West coast of the continent.

2.6 Government Interest in Efficient International Travel

The ability of the airliner to travel great distances at high speed and with little regard for political or geographical barriers has placed it in an almost unique position of supremacy as a means of international communication. This aspect alone encourages Governments to maintain a continuing interest in the activities of the international air transport industry.

Most of the European "Flag-carrying" airlines were promoted by their Government's desire to strengthen links with the colonial territories. The European empires were probably the strongest promotional institutions the air transport industry has ever had. The route networks of Great Britain, France, Holland, Belgium and Italy in the immediate pre-war era were all geared to the national requirement for communications with their colonies. (11.1) The dangers of this development policy are clear: (19) it encourages Governments to assume an excessive interest in the activities of the airlines, it ensures that route networks will be developed for completely non-commercial reasons and, perhaps most importantly, it encourages airlines to regard themselves as essential to the national well-being and, therefore, entitled to State protection and special treatment.

Present day conditions are somewhat changed, if only because the European empires are now dissolved, and the airline route structures

today are more commercially orientated than has been the case in the past. This is not to say that the desire to maintain airline services to former colonies or to new areas of trade potential is any less marked, but it would appear that increasingly the modus operandi is based on commercial reality. In this respect it is noteworthy that the British Government accepted BOAC's decision to withdraw from South American services in 1964 because they were uneconomic. This was despite great pressure brought to bear by the British commercial world for the continued operation of the route. British businessmen, commenting at the time, made it clear that a withdrawal by the State airline BOAC would reflect badly on Britain's interest in trade with South America. It implied that Britain did not think South America, "was important enough to justify full scheduled services". (20)

In the more general sense however, it is inconceivable that any government would allow a serious decline in its airline's route network. Air travel has become so much a part of modern life that the world economic, commercial and political development is intrinsically dependent on the international air transport industry.

2.7 International Balance of Trade Considerations.

Balance of trade considerations are an important cause of interest in the air transport industry's activities. The operation of an

international airline is liable to involve large-scale foreign expenditure in two ways; firstly for purchase of foreign aircraft, and fuel and secondly as a result of large-scale movement of its nationals to foreign destinations.

Very few countries are in the fortunate position of being able to produce for themselves all the aircraft they require for their airlines. The United States and Russia are probably the only two countries which could pursue such a policy and even America has been deficient at times and has had to purchase foreign aircraft to fill the gaps in its own manufacturing programmes.⁽ⁱ⁾ For the majority of States, therefore, the purchase of foreign aircraft is inevitable if the national airline is to operate international services. The sums of money involved are very large and since about 90%⁽²¹⁾ of the international air transport industry's aircraft are purchased from the United States it is not surprising that this gives that country a very large surplus on its balance of payments account for airliner purchases. The extent of foreign payments likely to be incurred by purchasing foreign equipment is one of the more important aspects of the desire by Governments to safeguard the national aircraft industry.

- (i) It is noticeable that the only large scale intrusions by foreign airliners into the American market have been by those aircraft which did not have an equivalent in production by an American manufacture. The Viscount, Caravelle, One-Eleven and Friendship all made their initial breakthrough into the American market in the absence of competitive home-produced aircraft.

If the majority of the world's nations suffer a drain on their finances as a result of need to purchase foreign aircraft, it is some consolation for them that they invariably make a healthy surplus on the actual airline operations. Airlines flying to the United States receive far more from American passengers' fares than they pay out for American manufactured aircraft.⁽ⁱ⁾ In 1964 the United States' chronic balance of payments problem was severely aggravated by the so-called "travel gap". To quote from a Civil Aeronautics Board report on the problem;

"The US Aircraft industry earns a big export surplus. This is in large part due to an expansion of air travel around the world and to the growth of capacity of foreign-flag airlines, who buy American aircraft and parts.

Total fares paid by US residents to foreign airlines are substantially greater than total air fares paid to our airlines by foreign residents. Accordingly we ran a deficit in the air transport balance of payments account, amounting to \$185 millions in 1964". (22)

The complexity of the problem of balancing import and export payments is summed up neatly in the next sentence;

"This deficit is mainly due to first, the large proportion of US citizens among international travellers, and second, the rapid growth of capacity of the foreign airlines. However, this growth of capacity also accounts for much of our large export sales and our export surplus of commercial aircraft". (22.1)

(i) Table 1

Table 1. *Value of US residents' expenditure on foreign carrier travel and aircraft export earnings.*

US. ticket expenditure and aircraft export earnings. one of the most perceptive comments on this is to be found in

Year	US residents' expenditure on foreign carrier travel (i)	Value of total exports of civil aircraft over 30000lb (2)
	US \$ m	US \$ m
1956	87	127.4
1957	131	164.8
1958	157	138.1
1959	205	103.6
1960	301	464.3
1961	291	251.3
1962	341	245.4
1963	390	172.8
1964	428	182.0
Total	2331	1849.7

Sources:

- (2) European Airlines Research Bureau, "Air Travel and Commerce" Brussels (1967), p16.
- (1) US Civil Aeronautics Board, "The impact on the balance of payments of the Air Transport and Aircraft Industries", Washington (1965), Table 2.

The report goes on to suggest that American residents should be encouraged to use American airlines wherever possible in a effort to reduce the balance of payments problem. Perhaps one of the most perceptive comments on this is to be found in "British Air Transport in the Seventies";

"It must be recognised that at least in current conditions the UK balance of payments situation is bound to be a major factor in determining civil aviation policy. The civil air transport industry, being largely international in character, is important both as a foreign exchange earner and spender. Every country is, of course keenly aware of this as we are. That fact plays a central role in the negotiation and exchange of traffic rights between countries and in procurement policy in and towards those countries that have aircraft industries". (16.3)

2.8 Satisfaction of the Public Interest.

It might be argued that since it is the ultimate aim of airline operations to transport the public it must be that public's interests and desires which have directly resulted in the route structure today. In practice, however, the regulatory environment of civil aviation is such that the airlines have been influenced only superficially by consumer demands. Government interest and, in the tariff field, disinterest, has combined with the protected status of many of the world's airlines to produce a situation in which the public's wishes have been largely ignored or frustrated.

The scheduled international airline industry would no doubt refute this argument by claiming that it offered the public what it wanted and that if it did otherwise it would not remain in business. "What the public wants," can be interpreted in many different ways and it could be argued that more often than not the public has been offered not "What it wants," but rather, "What the airlines think it should want".^(23) The very fact that the rapid growth of the charter airlines offering a new type of air travel led directly to serious financial difficulties for many of the world's scheduled airlines and to a re-appraisal of the role of air transport generally, tends to support this point of view.

In other, more practical ways, social pressures have been brought to bear on the airlines to reduce noise around airports and to modify schedules so as to produce the minimum social disturbance. Airport location, the introduction of new aircraft, rationalisation of timetables and restrictions on flight routings are all areas in which "The Public Interest" is being increasingly felt.

CHAPTER 3. THE DEVELOPMENT OF THE REGULATORY ENVIRONMENT OF AIR TRANSPORT INTERNATIONAL CIVIL AVIATION.

3.1 Introduction

In the previous chapter some of the more important aspects of external influence in the international air transport industry's conduct of its affairs were set out. Such a brief exposition can only give a brief insight into the problems but is sufficient to illustrate the scope for disagreement between Governments.

3.2

Recognising that air transport is a unique industry from which they may derive great benefit, the Governments of the world have sought to ensure that day to day operations of commercial flights take place within a strictly defined set of rules. It is these rules or "Conventions" which have such an important influence on civil aviation throughout the world. In this chapter the evolution of these Conventions is discussed. The chapter begins by investigating the purpose of the regulatory framework in section 3.2 and follows this in section 3.3 with a discussion of the need for regulation. The purpose is to compare what is required with what actually has evolved. After this, in section 3.4, the evolution of the regulatory framework up to, and including, the Chicago Conference of 1944, is described.

The central theme of the thesis is the changing nature of the air transport industry, so particular attention is paid to those aspects of the international operating Conventions which have influenced this change or which have been developed to cater for it.

3.2 The Purpose of Regulating International Air Transport

The two essential aims of the operating Conventions can be described as technical and economic regulation. Of the two it is the latter which has been most difficult to achieve. Technical regulation has been less contentious and there have rarely been major disputes concerning the need to regulate operating practices in order to achieve uniform levels of safety and reliability.

Economic regulation of the world's air services proved to be a more elusive goal and even when a Convention was adopted it was by no means entirely satisfactory in operation. The following sections will demonstrate how difficult it has been to derive some sort of multilateral agreement of lasting and universally acceptable nature. One reason why this question has been so difficult to resolve is that economic regulation of an international industry must transcend national interests and requirements. In doing so it inevitably conflicts with individual national aims which are likely to be exceedingly

diverse. One of the most serious blocks to progress in this field is that the "Sovereignty of Airspace" principle gives individual Governments very powerful rights of veto in international negotiations. It is unlikely that a Multilateral Agreement on scheduled commercial aircraft operating rights will be forthcoming until Governments agree to make national aims for civil aviation subservient to international ones.

3.21 Technical Regulation

There is little disagreement amongst the public, airlines and Governments that the establishment of a high safety standard is desirable. The airlines are well aware that a large number of their passengers are unwilling air travellers at the best of times and, although it is difficult to substantiate, it is reasonable to suggest that a lapse in the safety record of any one airline or of any one type of aircraft would almost certainly have very serious consequences for traffic figures. Airlines argue that the knowledge that a poor safety record will quickly affect traffic figures is sufficient to make them extremely safety-conscious. Any suggestion that airlines carry on their operations with anything less than total committal to safe operation is usually met by a barrage of angry retorts from the airline industry. (24) Despite this it is a fact that accidents do happen to the aircraft of some of the most safety-conscious airlines. External regulation of safety is

aimed at reducing the number of "preventable" accidents by ensuring there is an established procedure for international dissemination of information appertaining to incidents which occur. In addition, the safety measures are designed to promote uniform standards throughout the world. In so far as Government interest is concerned, the only motive must be the protection of the public, and it is significant that technical regulation is the one question about which international agreement has always been easily obtained. However there is another side to the implications of airline safety.

In many respects, safety is directly linked to the economics of airline operations.⁽²⁵⁾ The suggestion being that poor finances will inevitable mean that an airline might try to economise on such things as training and maintenance. To some extent, therefore, the technical regulation of the international airline industry is intrinsically bound up with its economic health. An airline's size need not necessarily affect its safety record but, by the same token, there are economies of scale in the airline industry which tend to make it easier for the larger airlines to cover the overheads resulting from maintenance and training. (16.4) (25.1) The knowledge of this is sufficient to ensure that the airlines' Governments will try to negotiate their entry into the world's more lucrative routes in order to increase earnings. The desire to gain entry to such routes as the North Atlantic has resulted in excess capacity being offered, serious dilution of load factors and resultant losses

for all carriers in some bad years. These conditions have direct relevance to the entry of non-scheduled carriers in the late 1960's.

3.22 Economic Regulation

It is possible to determine two quite distinct aims of economic regulation. One might be defined as, "Protection of the Public Interest". Perhaps it should not be possible to make such a distinction since, in the words of one authority:

"The object of Government in peace and in war is not the glory of rulers or of races, but the happiness of the common man". (26)

Laudible though this principle might be, however, it ignores the facts of life of the international air transport industry which have been described as follows:

"The great divide on aviation policy is between those who think that airlines are for airlines and the governments which sponsor them, and those who think that airlines are for customers." (27)

It may well be that this is an over-simplification of the problem. Indeed, since no airline will survive very long without attracting some fare paying passengers, it can be argued that the distinction between the two points of view

is unimportant. This author believes, however, that there is a distinction and even a cursory investigation of the air transport industry reveals that some airlines are less responsive than others to market pressure.

Looking at the question from the point of view of "Protection of the Public Interest", we may see that the international air transport industry is generally understood to have the status of a "Public Utility" - or perhaps more precisely a "Quasi-Public Utility".⁽²⁸⁾ The industry is clearly of public importance in so far as the provision of efficient international communications is concerned and, whilst in no way having a natural monopoly on the operation of passenger services on many routes, in fact faces little serious competition from other transport modes.

It is this realisation, by Governments, which is the basis of the desire to place some form of economic regulation on air transport operations. The rationale for such regulation would seem to stem from a fear that the operation or lack of operation of competitive market forces may well have adverse consequences for the public at large.⁽²⁹⁾ This is not to say that the purpose of regulation is simply to eradicate competition. On the contrary, the aim is to stimulate competition under a protective umbrella of rules which ensure that this does not lead to monopoly conditions arising from the principle of "Survival of the Strongest".

The public interest is thus believed to be best served by an air transport system which is governed by regulated competition. In such an environment different types of service should be able to co-exist and there should be no reason why market forces should not, to some extent, make themselves felt in the normal fashion.

At this point it is pertinent to ask, "What are the aims of regulated competition?". Certainly the overall aim is to protect the public interest but what precisely does this mean? For guidance it is necessary to look no further than the countless White Papers, Statements of Policy and Instructions to Regulating Bodies. Invariably one of the principle objectives of regulating air transport is defined as being:

"To meet the needs of the peoples of the world for plentiful, efficient and cheap air services". (30)

"..... to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles; and to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and ensuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries". (31)

"The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices". (32)

Clearly, the provision of regular, cheap, efficient and plentiful air

transport for the public is a generally accepted principle. Regular and efficient air transport is necessary if the public is to be able to plan journeys in the sure knowledge that the published airline timetables are reliable. Scheduled international air transport has become an essential feature of life today. Without it the political, commercial and industrial framework of the world might be entirely different. International relations today are set on a base of reliable international air services. It was the recognition of this fact which motivated the world's Governments to establish operating conventions principally aimed at maintaining the status quo in the industry. Serious disruption by free-ranging competitive forces was, and is, a state of affairs which no Government could tolerate.

Turning now to the question of "Protection of the Government Interest", the purpose of regulation is seen to be slightly different. The essential point here is that Governments have a vested interest in ensuring their national airline gains access to the world air transport market and, having gained that access, maintains its position without too much difficulty. The prestige and importance which Governments attach to airline operations has already been described and it seems reasonable to suppose that they believe a failure of the national airline will reflect on the nation's competency as a whole. On a more practical note, another reason why Governments are determined

to protect their airline's position stems from the foreign revenue earning capacity of that airline.

One result of the sovereignty of airspace principle and the subsequent granting of air traffic rights as a privilege and not as a right, has been that air traffic on any route is commonly regarded as "belonging" to those nations directly involved.⁽ⁱ⁾ Having laid claim to the traffic and being in a position to frustrate any other State's wish to participate in the market many Governments are able to ensure the operation of their national airline on a route when natural market forces of competition might, under different circumstances, force it out of business.

The regulatory structure of the air transport industry is largely based on the premise that air traffic on any given route belongs to two or three States who, subject to certain conditions are prepared to allow other countries not directly involved to operate services. The failure to arrive at any lasting settlement of a multilateral nature which would give all airlines free access to all air routes largely stems from the knowledge that airlines would immediately be subject to greater competitive forces. The removal of the protection which bilateral negotiation of traffic rights gives flag-carrying airlines could lead to the weaker airlines being forced off the route.

- (i) By their consistent refusal to grant full traffic rights to other nations, Britain and France have ensured that the London to Paris air route remains the 'property' of their national airlines.

The interests set out in chapter 2 have been seen to be principally concerned with the international air transport industry developing in a specific way and for specific purposes. The following sections show how attempts have been made to produce a common philosophy for such development.

3.3 The Need for Regulation

In the face of the regulatory environment which does, in fact, exist it might seem superfluous to consider to what extent it is necessary. However, it is important to determine whether or not the air transport industry would be markedly different today if free, as opposed to regulated, competition had been the modus operandi.

Some indication of the effects of unregulated competition may be gained from the early history of the European and the United States civil aviation industries. In America, prior to the passing of the Civil Aeronautics Act of 1938, the situation in the industry was generally agreed to be "chaotic". (29.1) This condition resulted from complete freedom of entry to any route with little or no requirement to conform to standards of service or economic performance. The excessive freedom with which companies could enter and leave the industry led to mergers, bankruptcy, wasteful competition, a decline in safety standards and a complete lack of any fundamental long term planning of the

industry's development. It was specifically to prevent this situation continuing that the Civil Aeronautics Act of 1938 was produced.

In Europe the conditions were, if anything, worse. European politics ensured that most airline services between the wars were carried out on the basis of substantial State subsidy and excessive national promotion of the airline's interest. The exception to this policy was Great Britain which decided at an early stage that:

"Civil aviation must fly by itself". (33)

As a result of the British Government's refusal to consider a subsidy for the early British airlines, in complete disregard of the subsidies being paid to every other national airline in Europe, the British civil aviation industry suffered total collapse in 1921. At this point it became clear that the national interest in air transport operations needed to be protected and, having recognised this, the British Government decided to provide subsidies. In Europe it was not so much commercial but, rather, political rivalry which caused much waste of effort. This was a new facet to the problem of unregulated competition which the United States, for obvious reasons, had not had to face.

More recently the airlines themselves (both scheduled and

non-scheduled) have been prominent advocates of further restriction on competition. Regulated competition is designed to maintain a balance between a "free for all" situation and one which one airline achieves a monopoly. To this end, particularly in the United States, the authorities have been at pains to promote a higher degree of competition than might occur under the influence of natural market forces. This policy has led to severe criticism from the airlines whose consensus of opinion appears to be (at least so far as American carriers are concerned) that:

"Competition has been enshrined as a goal in its own right. It has become so destructive that the needs of the industry are in serious jeopardy. The time has come to call a halt to practices and policies if this is not done, we can expect chaos in domestic services and crisis in international air transportation". (34)

From which statement it may be gathered that the management of at least one major airline feels that regulation directed towards ensuring the public is protected from potential monopoly can be equally as harmful as the entirely unregulated alternative. This view is confirmed by another United States airline president, who said:

"Highly excessive and wasteful competition can ultimately destroy the airlines as is has almost done the railroad and shipping industries".

(35)

He went on to say that Government efforts to promote regulated competition on routes which might otherwise only support one carrier were, "Short-sighted and irresponsible". Quite clearly there is a danger that supporters of regulated competition might become so preoccupied with the aim of preventing monopoly that they attempt to stimulate competition where no demand for this actually exists.

If the airlines are unhappy with the degree of regulation which is forced upon them, recent events in the UK have shown only too clearly the reverse effects of removing external control of the airlines' activities. In 1970, 1971 and 1972 the British Government removed "minimum rate" requirements from inclusive tours. As a result there was a steady decline in charter rates and the non-scheduled sector of the British air transport industry suffered severe losses. The most important point here is that in the absence of regulation the industry showed itself to be incapable of reacting to market pressures by any other means than "Suicidal price-cutting".⁽³⁶⁾ By July 1972 rates had fallen so low that:

"Carriers are thought to be making profits only from the on-board sale of duty free goods".⁽³⁷⁾

Without doubt there is a need for regulation, partly to protect the public and partly to protect the airlines. The

purpose of the regulatory framework should be to strike some equitable balance between the two. If too much emphasis is placed on either objective the public and thus, ultimately, the air transport industry, will suffer.

Civil Aerial Transport Committee

In 1919 the

practical difficulties of operating under such a

3.4 The Evolution of the Regulating Conventions of Civil Aviation

intra-European air services began to be widely developed.

Having established the reasons for and the purpose of regulation, it is important to understand how the operating Conventions evolved. The very earliest international discussions concerning civil aviation were exclusively concerned with whether or not States could claim sovereignty over the airspace above their territory. The 1919 Paris Peace Conference accepted the argument that they could and established this as an essential concept in international air law. The Convention agreed by the Conference's Aeronautical Commission opened with the words:

"The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air space above its territory". (8)

Later sections went on to advocate the automatic granting of the right of innocent passage across the territories of the contracting states for the aircraft of the other signatory parties.

Only as the air transport industry developed beyond the purely experimental stage did the limitations of the doctrine of airspace sovereignty make themselves apparent. These had, in fact, been recognised by the minority report of the British Civil Aerial Transport Committee (6.2) in 1918 but the practical difficulties of operating under such a Convention were not to be demonstrated until some years later when intra-European air services began to be widely developed. In particular, the member States found that the ambiguity of Clause 15 - mentioned earlier in chapter 2 - was a serious bar to the free development of services. In an effort to clear up this ambiguity and also to admit important new states to the Convention, the Paris Conference was re-convened in 1929. The result was simply to consolidate further the position of "Sovereignty of Airspace" as the basis of international air transport operations.

Two other important Conventions which came into effect in the years between the Wars, the Madrid Convention and the Havana Convention, both endorsed this principle. Because air traffic rights were only obtainable through direct Government-to-Government negotiations - the regulating Conventions did not make any concession to signatory States - numerous pioneering routes were seriously delayed for purely political reasons. The British Governments' refusal to grant traffic rights into Hong Kong delayed the trans-Pacific services of Pan American for some years.

By the end of the inter-war period, the world community was becoming aware that air transport was too heavily involved with politics. The activities of Lufthansa in South and Central America and the excessive nationalism present in air transport in Europe were only two examples of the malady which had fallen on the industry. A feeling began to grow that if air transport was to fulfil its potential it could only do so under a realistic umbrella of operating Agreements. The advent of the Second World War, though severely curtailing international civil aviation, clearly demonstrated the prowess of aircraft as a form of transport. During the war, as the activities of transport aircraft became more widespread and complicated, the Allied Governments recognised that the future well being of the air transport industry, and possibly of the world community as a result, depended on the evolution of sensible operating agreements between States.

3.41 The Chicago Conference.

International air transport operations before the Second World War were practically insignificant when compared with the post-war situation. The spectacular rise in importance and acceptance of the aeroplane as a normal means of transport may be traced directly to the Allied war effort. During the course of the war, aircraft increasingly undertook long-distance flights on a regular basis. By 1943 military transport aircraft were regularly crossing the North Atlantic, the Sahara Desert,

(1) The Chicago Conference, or simply "Chicago".

the Northern highlands of India into China and indeed any major geographical barrier to rapid surface travel. There is no doubt that it was in the light of these operations that the fundamental importance of international civil aviation was realised.⁽³⁸⁾ Furthermore, as a result of the proven ability of the airliner to travel great distances at high speed, and in full understanding of the part that air transport had played in attempting to infiltrate the South American countries with German influence before the war,⁽³⁹⁾ the Allied Governments were determined that post-war civil aviation should be built on a firm basis of peaceful regulation.

During the war years the various Commonwealth, British and American Governments had continuing discussions concerning the future nature of the industry. It became clear that widely divergent views were held and that only a formal conference could possibly settle some of the major differences between the interested parties. Accordingly the American Government called the International Civil Aviation Conference (i) to be held in Chicago in November and December 1944. The principle aims were to achieve agreement on a Multilateral Convention governing the operation of international civil aviation, and to set up machinery to promote the regulation of safety and technical details in the post-war industry. From the outset there were deep differences of opinion between the States which attended⁽ⁱⁱ⁾

(i) Hereafter referred to as "The Chicago Conference", or simply, "Chicago".

(ii) Table 2

3.40) Table 2. *The Attitude of the United States Government Towards to Post-War Developments of International Civil Aviation Prior to Chicago.*

States attending the Chicago Conference, 1944

At the 1929 Paris Conference the United States appeared to be

in favour of liberal entry to air services. This was frustrated

by the passage of its 1936 Air Commerce Act which generally

prohibited the entry of foreign aircraft into the United States

following the rejection by the Conference of this proposal.

The United States withdrew from the Convention in 1934.

The 1938 Civil Aeronautics Act confirmed the

isolationist retrenchment of the United States in the aviation field.

by the adoption of the Civil Aeronautics Act

the position that only after a suitable agreement had been made

with the United States Board that such

agreements were to be made public.

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3.411 The Attitude of the United States Government Towards to Post-War
Development of International Civil Aviation, Prior to Chicago.

International scheduled air service should be subject to

At the 1929 Paris Conference the United States appeared to be
in favour of liberal entry to air services. This was inconsistent
with the intent of its 1926 Air Commerce Act which severely
restricted the entry of foreign aircraft into the United States.
Following the rejection by the Conference of this liberal approach
the United States withdrew once again to its previous restrictive
position. The 1938 Civil Aeronautics Act confirmed this
restrictionist retrenchment and, as one authority puts it;

"By the adoption of the Civil Aeronautics Act
of 1938 the United States took the position that
thereafter every foreign commercial airline
preparing to enter the United States must apply
to the Civil Aeronautics Board and would be admitted
only after a public hearing had been held to
determine its fitness to fly into United States
territory and a finding by the Board that such
entry was in the Public Interest". (40)

There is no doubt that it was a very rigid, isolationist policy
totally inappropriate to the post-war needs of international
civil aviation. By the time the Chicago Conference was called,
however, the United States appears to have shifted its position
once again and strongly advocated "Freedom of the Air". It
took the view that national sovereignty of airspace should still
remain a fundamental principle but, whilst recognising this,
all other restrictions should be kept at a minimum. An
international body should be established to monitor and control

safety and technical matters but economic regulation should be achieved on a country-to-country basis. The operation of any international scheduled air service should be subject to bilateral negotiation between the two Governments involved.

This Bilateral Agreement would cover fares, capacities and routes.

In particular, the US was adamant that there should be no control by any international agency of rates, capacities or frequencies.

whether or not an international air service may take effect.

A further part of the United States submission concerned the

so-called "Five Freedoms". These are five privileges which

any Government may grant to a foreign airline and are of

crucial importance since without fifth freedom traffic rights

no airline may operate round-the-world or even on two-sector services.

The first two freedoms are essential to the operation of any

international air service. they are, for the aircraft of any

State A:

The first freedom - to operate non-stop through the airspace of State B.

The second freedom - to stop in the territory of State B for technical reasons only.

The last three freedoms are essential if profitable international scheduled air services are to be operated. They are once again

for the aircraft of State A:

The third freedom - to set down traffic originating

in State A, in the territory of State B.
The fourth freedom - to pick up traffic
originating in the territory of State B
destined for State A.

The fifth freedom - to pick up or set down
traffic in the territory of State B, which
has come from or is going to the territory
of State C.

Quite clearly the granting or the withholding of these freedoms,
whether singly or in total, is the determining factor in
whether or not an international air service may take place.

In its submission to the Chicago Conference the US urged the
automatic exchange of all five freedoms between nations
having Bilateral Agreements. In taking this stance it was
at variance with the other major powers and this is not at all
surprising if one considers the implications of such a policy.
At the end of the war the US was in a very strong position as
far as air transport was concerned. As a result of the Allied
policy in wartime the US has supplied the majority of the
transport aircraft and crews for the Allied War Effort. It
thus gained enormous experience in air transport operations.
By contrast other countries, such as France, the UK, Holland
and Denmark were very weak. Automatic fifth freedom rights would

inevitably have led to a situation in which American airlines might have been able to dominate such routes as London to Paris. This was clearly not acceptable to the majority of the Conference delegates. A further consideration for most of them was that the US was an area of great traffic generating power. The fear was that the knowledge of this would make the Americans aggressive in their conduct of bilateral negotiations. At Chicago the British were well aware of the fact that the Americans were in a position to impose strict control on entry of foreign aircraft into their national airspace.

3.412 The Attitude of the United Kingdom Government towards the Post-war Development of International Civil Aviation, Prior to Chicago.

In contrast to the Americans the British position on the question of the post-war regulation of civil aviation may best be described as cautious and ill defined. The British were fairly clear as to what they did not wish to see but considerably less rigid about what they did want and indeed the White Paper issued by the Government stating its views just before the Chicago Conference, concluded;

"Such in broad outline are the proposals which His Majesty's Government favour in present circumstances for the ordering of post-war international civil air transport. The proposals are of a provisional nature and may be modified in the light of views expressed by other countries". (30.1)

In discussing the British position it must be remembered that at that time the Government was faced with the reality of some hard and discouraging facts. First there was the sheer unassailable position of strength of the Americans. In many ways the situation was similar to that of 1919, when the British had had to moderate their desire for "Freedom of the Skies" - so necessary for the development of the Empire routes, because of the need to impose strict control on entry of foreign aircraft into the national airspace. At Chicago the British were well aware of their own need for easy access to air routes so as to maintain good communications with the Commonwealth, but, once again there was a need for caution. At Chicago the bitter truth was simply that adoption of the "Freedom of the Skies" principle would have enabled the US to dominate international air transport. In the previous section we noted that wartime policies had resulted in the Americans providing the bulk of the transport aircraft capability and, expedient though this might have been it also ensured that the British would be in no position to begin international airline flights after the war.

This was a very real threat to the British Government but it must be said that in seeking to prevent American domination of post-war international civil aviation, it was not acting entirely selfishly. It is clear that the Government believed it had a moral duty, at least, to protect the interest of other countries who would inevitably find themselves in the same position. The White Paper specifically made the point that the

objectives of international collaboration in post-war civil aviation should be;

"To ensure equitable participation by the various countries engaged in international air transport".
(30.2)

In the light of these considerations, the British Government

and to; ... should be fostered in a spirit of

collaboration. Specifically, routes should not be

"Provide for the elimination of uneconomic competition by the determination of frequencies (total services of all countries operating on any international route), the distribution of those frequencies between the countries concerned and the fixing of rates of carriage in relation to standards of speed and accommodation". (30.3)

that the first fact should be essentially

Significantly, though it moderated its views on many of its original proposals in the White Paper, the British Government adamantly refused to give way to the American demands for, "Freedom of the Skies". Eventually the Chicago Conference failed to conclude an agreement on economic regulation for this very reason.

... of the two

The second "Hard Fact" that the British had to face was that the period of expansion of civil aviation before the Second World War had been marked by political intrigue of the highest degree. The Government was in no mood to see post-war civil aviation again develop in such a way.

1413 the Attit... the heavy subsidisation of airlines which all too often were maintained at great cost for reasons mainly of national prestige or as a war potential; the bargaining for transit and commercial rights introduced extraneous considerations and gave rise to international jealousies and mistrust". (30.4)

In the light of these considerations, the British proposed that civil aviation should be fostered in a spirit of international collaboration. Specifically, routes alone were to be fixed by Bilateral Agreement; regulation of rates, frequencies and capacities as well as market split between countries was to be the job of an autonomous international body. In so far as the five freedoms were concerned the British proposal was that the first four should be automatically granted to all signatories to this Convention. Fifth freedom traffic rights, however, would be subject to negotiation between the two States involved.

Clearly the British position was far removed from that of the Americans but this is hardly surprising in the light of the entirely different circumstances of the two allies vis-à-vis air transport at the close of the war. In many ways the British and American positions represented the widest possible divergence of opinion on the question of regulation of international civil aviation. This was unfortunate since they were the principal air transport countries at that time and this inevitably meant that a compromise between them was unlikely.

3.413 the Attitudes of Other Nations Attending the Chicago Conference

Though the British and American points of view were vitally important, since it was their incompatibility which resulted in deadlock at Chicago, there were opinions of other countries which are worthy of note. Australia and New Zealand led the field by issuing a joint statement on their position.⁽⁴²⁾ They proposed that all long-haul international flights should be operated by what amounted to an extension of the United Nations. In this way political interest and "Chosen Instrument" policies could be removed from international operations. This idea was quickly forgotten and the two countries, recognising that their proposals would probably be rejected, decided to support the United Kingdom position.

Canada similarly was broadly in sympathy with the UK though this should not be taken to mean that it did not have an independent view. In fact the Canadian Government had worked out in some detail one of the most thorough approaches to the problem⁽⁴³⁾ Briefly, the Canadian proposal was for an international licensing body to be set up with powers to control the routes flown, the capacity offered, frequencies and rates. In many ways this was very similar to the British proposal, the differences being those of detail. The Canadians presented a very thorough exposition of their views whereas the British had obviously not thought out the full implications.

3.414 The discussions at Chicago.

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The opening discussions at Chicago made it clear that the complete internationalisation of air transport, as proposed in varying degrees by the British, Canadians and Australians, was so alien to American thinking that agreement would never be reached. Private negotiations between the British, Americans and Canadians resulted in their three individual proposals being withdrawn and instead they agreed to work towards the adoption of a Multilateral Agreement acceptable to all. The essence of this was to be that capacity offered on international air routes should be closely controlled by formulae based on historical operating records. The aim was to ensure that capacity should at all times be closely matched to traffic demand and that all nations should have equitable participation in international air transport. Formulae derived from traffic figures and used as the industry governor were also a useful means of satisfying the Americans' wish that there should be no supranational control of civil aviation.

The argument was eventually reduced to a direct confrontation between the American and British delegates who again found they were unable to reach a compromise. The Canadians took on the role of mediator and attempted to resolve the differences, but in vain. Eventually, in an effort to break the deadlock, the leaders of America and Britain became directly involved.^(38.1)

Though there was very nearly a settlement as a result, one

point remained on which neither party would compromise further. This was the question of fifth freedom traffic rights. As has been noted, the proposed Convention included formulae which would have governed the capacity offered by the airlines on any route. An increase in capacity could then only be offered if market demand was sufficient to justify it, and the level of sufficiency was again to be determined by formulae. It was this, the so-called "Escalator" clause which caused the eventual break down of negotiations. The British would accept the Escalator if it was used when third or fourth freedom traffic rose above an agreed load factor. The Americans, however, would only accept the Escalator if it was based on third, fourth and fifth freedom traffic. The implications of the two positions are not difficult to see. The British approach would have made it very difficult for American airlines to increase the capacity they were offering on routes beyond European gateways. The American approach would have enabled American airlines to provide capacity increases as a result of traffic demands on sectors not directly linked with the United States. The fear of American domination was too great for the British to accept this system.

In so far as this particular point was concerned, both sides gave up any attempt to agree on the Multilateral Convention and instead referred it to the Council of the newly formed Provision International Civil Aviation Organisation (PICA0)⁽ⁱ⁾

(i) This body existed from August 1945 to April 1947. After this date its activities were taken over by the permanent body, the International Civil Aviation Organisation (ICAO).

for further discussion in the hope that a satisfactory solution would eventually be forthcoming. Though there was a failure in one sense at the Chicago Conference in that a universally acceptable agreement was not produced, this does not mean that the Conference was entirely unproductive. In fact it achieved a great deal in the fields of non-economic regulation. It established without any great difficulty that ICAO should act as a United Nations agency responsible for the technical and legal regulation of the international airline industry. In addition, ICAO was to have a research function and was also to provide advice to Governments on economic aspects of air transport operations. In theory ICAO was to provide an advisory service for the world's Governments so that they could keep a watchful and informed eye on air transport economic and technical developments.

So far as this work is concerned the two most important clauses of the Chicago convention are:

Article 5. "Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services, shall have the right, subject to the observance of the terms of this Convention, to make flights into, or in transit, non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission,..... such aircraft, if engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services shall also, subject to the provisions of article 7, have the privilege of taking on or discharging passengers, cargo or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, or conditions or limitations as it may consider desirable".

Article 6. "No scheduled international air service may be operated over or into the territory of a contracting State except with the special permission or other authorisation of that State, and in accordance with the terms of such permission". (44)
(Authors emphasis).

The importance of these Articles is that they grant States the right to restrict the operation of scheduled air services into or through their airspace. Furthermore they make a distinction between the restrictions to be placed on scheduled and non-scheduled international air transport. The Convention recognises that the two types of service have very different characteristics and also that the approach to their regulation must be considered as two separate questions. Though those responsible for the drafting of the Convention must have realised that non-scheduled air transport could be effectively halted by Governments using a rigid interpretation of Article 5, they clearly wished for no overall international control of the non-scheduled sector and preferred to place the responsibility for this on the shoulders of individual Governments.

In addition to the Convention which was issued under the sponsorship of all the nations attending the Conference, two other Agreements were issued for such States who wished, to sign. One of these, "The International Air Services Transit Agreement".⁽ⁱ⁾ was accepted by most of the Governments who had indicated their

(i) This will be referred to hereafter as "The Transit Agreement". It is also known as the "The Two Freedoms Agreement".

intention to become members of ICAO. The very ease with which it was accepted suggests that it was hardly controversial and indeed, this was the case. The Transit Agreement simply granted all signatory States automatic First and Second Freedom traffic rights. The second Agreement which was opened for signatures was "The International Air Transport Agreement"⁽ⁱ⁾ The Transport Agreement was the direct result of the American Government's inability to agree with the British on the economic regulation of the industry. Having compromised to a very large extent in the negotiations and having failed to reach a solution, the Americans withdrew from their compromise position and instead sponsored an Agreement which proposed what they had always desired. It effectively granted all five freedoms to the States signing it. In fact few did sign the Transport Agreement and this meant it had little practical use.

In the absence of a generally accepted agreement on the multilateral grant of traffic rights the Chicago Conference advised its delegates to utilise bilateral negotiations as the basis of international regulation until such time as a Multilateral Agreement was forthcoming.

- (i) This will be referred to as "The Transport Agreement" and is also often called "The Five Freedoms Agreement".

CHAPTER 4. THE EMERGENCE OF SPECIAL REGULATIONS GOVERNING THE OPERATION OF NON-SCHEDULED INTERNATIONAL AIR TRANSPORT SERVICES.

4.1 Introduction

The Chicago Conference was an important turning point for the air transport industry. It marked a change from pre-war to post-war attitudes towards the role of air transport in the world community. Chicago had its limitations, however, and in this chapter it will be shown how the outstanding difficulties were later overcome. The subsequent completion of the extremely significant "Bermuda Agreement" between the United States and Great Britain is described in section 4.3 and the wider implications of it are considered sections 4.4. The next section 4.5 deals with the cessation of the search for a Multilateral Agreement covering scheduled services and the subsequent, and significant, emergence of the Multilateral Agreement on the Commercial Rights of Non-Scheduled Air Services in Europe, at Paris in 1956. The underlying philosophy is discussed to determine whether this concentration on non-scheduled services was deliberate or by default.

In the final section 4.6 the probable indefinite use of the Bilateral Agreement as the basis of scheduled international air services is discussed, as is the extension of this form of regulatory device into the non-scheduled sector of the industry.

4.2 The Regulatory Framework After Chicago.

In the absence of any Multilateral Agreement governing the exchange of traffic and transit rights in the pre-war years, the industry grew up in an atmosphere of unregulated bilateralism. Not only did this lead to discrimination by some States against others, it also meant that commercial airliners did not have automatic rights of passage over foreign territory. The Chicago Convention, whilst continuing to propose that bilateral negotiations should form the basis of air services between any two countries, ⁽⁴¹⁾ improved the situation by requiring these Bilateral Agreements to be published. ^(41.1) In this way discrimination, if it occurred, would be clear for all to see. The Standard Form of Agreement proposed by the Conference was intended to provide a guide so that even under a continuing system of bilateral negotiation there would be a trend towards standardisation. It made no mention of the principles of economic regulation, or of the traffic rights which it was felt should be granted - these were left in the hands of the two parties concerned. In itself this was only a small advance over existing procedure in the industry and would probably not have led to any great change vis-à-vis pre-war conditions. A significant advance over existing conditions did occur, however, as a result of the Conference's other work.

The Transit Agreement, (46) which eventually was signed by the majority of the attending nations, (45) automatically granted first and second freedom traffic rights to aircraft of all parties signatory to it.

present and although the bargaining was extremely difficult

"Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes". (46.1)

and, and other less important, the influence of

Although this Agreement made no grant of commercial rights to the signatory parties, it did make the operation of international services more simple since the parties were clearly not expected to unreasonably withhold the right of non-stop flight through their airspace. (46.2) In this respect, therefore, the Conference did result in a notable change in the operating environment of international air transport.

The partial failure of Chicago, particularly in the field of economic control, was unfortunate for the industry generally. It was extremely serious for Britain and America who were especially anxious to inaugurate air services between their respective territories. In order to resolve their differences so apparent at Chicago, the two convened a conference in Bermuda in January 1946 from which emerged the Bermuda Agreement and the highly significant so-called, "Bermuda Principles".

4.3 The Bermuda Agreement

The strictly bilateral nature of the discussions at Bermuda ensured that there was minimum dissention between the parties present and although the bargaining was extremely difficult a compromise was eventually reached. The bargaining was difficult for two reasons. First, both parties realised that some form of Agreement was urgently required. This inevitably meant that one of them might have to concede more than the other. Second, and perhaps no less important, the influence of extra-aviation interest was once again evident. At the time of the Bermuda Conference, the British Government was negotiating for a substantial loan from the United States in order to make good damage to the British economy resulting from the war. Several members of the US Senate argued that America should use this as a bargaining weapon in order to extract concession from the British. The compromise reached was practical, and realistic.

There were five fundamentals to the Bermuda Agreement and it was unique in air transport history to that date because rigid legal agreements and penalties were replaced by what can only be described as a "Gentleman's Agreement" to act in a reasonable manner. One of the best interpretations of the "Bermuda Principles" is given by O'Connor:

"The present writer would interpret the Bermuda concept as a sort of "gentlemen's agreement" not to do anything too unreasonable, or at least not to expect to go on doing it for any great length of time". (38.2)

Despite the fact that O'Connor implies a certain vagueness, the Principles were more flexible than imprecise. Indeed, it has been this flexibility of interpretation which has ultimately made them so widely acceptable. They cover the five essentials of the regulation of civil aviation; capacity, frequency, rates, routes and traffic rights. The first two are controlled by ex post facto Government review.

Capacity clause was followed by a final paragraph:

It was the regulation of rates which made Bermuda such a major advance. The necessary compromise reached was to utilise the Traffic Conference machinery of the airlines' own trade body, the International Air Transport Association (IATA). In order to avoid the charge that they were thereby establishing a legalised cartel the two Governments made the IATA proposals subject to formal ratification. Despite this theoretical check on the Association's powers, many Governments, with the notable exception of the United States, have practically made their approval of IATA tariff proposals automatic. This has conferred on the Association an extraordinary and unique international status.

This was perhaps the most contentious aspect of the Principles. The allocation of routes and airports was a straight-forward matter of negotiation between Governments and once this had been done, certain "designated airlines" were free to operate as they saw fit and without any further economic restrictions

on these routes. Finally, and this was a major British concession, fifth freedom traffic rights were to be granted without restriction on the understanding that if subsequent serious erosion of either party's third or fourth freedom traffic occurred, fifth freedom traffic rights could be rescinded. As if to underline the fact that the whole Agreement rested on a very tenuous basis of understanding between the two parties, the capacity clause was followed by a final paragraph:

"Services shall be provided.....in accordance with the general principles of orderly development to which both governments subscribe-and shall be subject to the general principles that capacity shall be related:

- (a) to traffic requirements between the country of origin and the countries of destination.
- (b) to the requirements of through airline operation.
- (c) to the traffic requirements of the area through which the airline passes, after taking due account of local and regional services". (31.1)

If the British made a major concession on the question of fifth freedom traffic rights, then equally, the American Government reduced its demands for free bargaining in the field of tariffs. It had always been fundamental to the Americans that these should be determined by market forces. In the Bermuda Agreement, the American Government diverged considerably from this point of view and allowed that tariffs might be fixed by conference between the airlines. (31.2) The fact that the Americans only approved this mechanism for one year indicates how alien it was to them. It was, however, a practical solution which recognised IATA's expertise and allowed the Association's

recommendations to be monitored in order to prevent abuses.

The United States Civil Aeronautics Board (CAB) was never happy with the decision to delegate rate-making to IATA, but, when faced with the practical difficulties of the situation had to concede that there was no alternative. In fact, it is clear that it was a peculiarity in the CAB constitution which made this sort of control inevitable. Under the provisions of its constitution the CAB had no power to control the rates charged by American airlines in foreign commerce. This was in contrast to its very definite powers of control in the domestic airline industry. Where the CAB did have power, however, was to approve or disapprove agreements between American airlines and foreign carriers. Since the CAB recognised the IATA rate-making machinery it could therefore control American airlines' acceptance of IATA rate decisions. In effect this meant the CAB could approve or disapprove the rates decided upon by the IATA meetings. In practice, and this became of great importance later, the ability to disapprove IATA rate recommendations was largely nullified by the pressures which could be brought to bear on the CAB by diplomatic and economic pressure from foreign Governments.

There was no equivalent of the CAB at that time in the United Kingdom. Control over the British airlines' rate-agreements was still within the powers of the British Government, if only because the British scheduled international airlines were State-owned. The power of the American CAB to control the actions of American

airlines within the IATA Conference machinery was, in practice, less strong than it appeared. The American airlines were all privately owned and, therefore, less vulnerable to direct Government interference than were State-owned airlines in Europe.

The Agreement to operate scheduled air services between the United States and Great Britain on the basis of the Bermuda Principles was of great importance for civil aviation as a whole. The two Governments made it clear⁽⁴⁷⁾ that, provided the arrangement was

successful, they intended to use the Bermuda Agreement as the basis of all other Bilateral Agreements which they entered into. In addition, both Governments continued to hope for a Multilateral Agreement which would eventually replace all the Bilateral Agreements in force.^(31:3) As if to emphasise that the Bermuda Principles were an experiment, the US continued to operate air services to other countries on the basis of the "Transport Agreement" it had opened for signature at Chicago.⁽⁴⁹⁾

Similarly the British Government continued to press for the so-called "International Ownership Airline".⁽⁴⁸⁾

4.4 Post-Bermuda Bilateral Agreements

Though Britain and America used the basic Bermuda-type Agreement in many of their later negotiations with other States, it would be a mistake to think that the individual Agreements did not vary considerably. In practice two main types emerged, the so-called

"Heavy Bermuda" and "Light Bermuda". The latter followed very closely the original principles and were in many instances little more than statements of intent. Heavy Bermuda Agreements were considerably more restrictive and often included pre-determinism clauses which allowed capacity and frequencies to be fixed by agreement between the two parties before any services had been operated. It will be remembered that the original Bermuda Principles specifically avoided this, only requiring;

"That the air transport facilities available to the travelling public should bear a close relationship to the requirements for the public for such transport.

That there shall be fair and equal opportunity for the air carriers of the two nations to operate any route between their respective territories (as defined in the Agreement) covered by the Agreement and its Annex." (31.4)

One of the principle aims of Chicago had been to evolve some form of acceptable "Multilateral Agreement for the operation of International Air Services". No such Agreement appeared, however, unless the Transit Agreement with its very limited grant of non-commercial rights can be regarded as such. Furthermore, the Transport Agreement sponsored by the United States, though it granted wide commercial traffic rights, failed to attract any large number of signatures from states other than from South and Central America. By July 1946 it had become clear that there was no future for the Transport Agreement and the United States itself signified its intention to withdraw. Furthermore, Bilateral Agreements

between States in lieu of any multilateral settlement, failed to adhere to a standard form except to follow broadly "Bermuda" or "Chicago Standard Form" guidelines.

Some advance over pre-war conditions had been made but movement towards a multilateral solution was hardly dramatic. Despite this, continued efforts were made by ICAO to develop an acceptable document. This culminated in the meeting in Geneva in 1947 of the ICAO member States, the purpose being to consider yet another proposal put forward by the ICAO Council. As in previous years the conference was unable to reach agreement and eventually broke up.

Failure at Geneva was a more serious blow than had been the case with the Chicago result. Three years of intense effort had failed to produce a solution and the feeling began to grow that the long-sought Multilateral Agreement would never become a reality. The realisation of this forced a re-appraisal of the problem and the result was that the concept of the Regional Multilateral Agreement emerged.

The call for a regional approach to the search for a Multilateral Air Transport Agreement came from the Council of Europe in 1953. The post-war movement in Western Europe towards political and economic unity gave an impetus to the development of better and more liberal international air transport relations. (50)

4.5 The "European Solution".

The call for a European Regional Multilateral Agreement came from the Committee of Ministers of the Council of Europe in March 1953. Later that year, in December, the Council of ICAO responded to the call and resolved to set up a conference to investigate the way in which this new approach might work. Accordingly, in April 1954, the "Conference on Co-Ordination of Air Transport in Europe" was convened in Strasbourg.

The results of this were, once again, largely negative being:

"13.....It was clear that there was great interest in Europe in achieving such an agreement, but there were divergent opinions as to the best type of agreement.

14 The chief points at issue related to capacity control, the avoidance of excessive competition and the assurance of air treatment for every carrier. At the present time these points are dealt with by provisions in bilateral agreements carefully phrased to fit the requirements of each state,..... it would be impossible to reach agreement at this conference on all the provisions that it would be necessary to include in a European multilateral agreement.

15 The Conference decided, therefore to (recommend)the study and development of a multilateral agreement for conclusion at some future time when all its implications would have been fully examined".(50.1).

It decided to establish a permanent body, the European Civil Aviation Conference (ECAC), which would be charged with:

- "3) The objects of the Conference (ie. ECAC) should be:
- a) To continue the work of this Conference, as set forth in its agenda and the records of its proceedings.
 - b) Generally to review the development of intra-European air transport with the object of promoting the co-ordination, the better utilisation, and the orderly development of such air transport.
 - c) To consider any special problem which may arise in this field" (50.2)

Recognising that the chances of ECAC being able to devise a multilateral Agreement for scheduled services were slim,⁽ⁱ⁾ the Conference also recommended that a more fruitful line of action might be for ECAC to consider a multilateral approach to non-scheduled services instead.^(50.3) Accordingly ECAC set about developing a Multilateral Agreement on Non-scheduled Operations in Europe. The first session of the Conference in November 1955, in Strasbourg, made some headway with this and the next meeting, the First Intermediate Session in Paris in April 1956, put the finishing touches to it. The final product, "The Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe", was eventually opened for signature by the Conference members on 30th April 1956.⁽ⁱⁱ⁾

Through ECAC convened every two years after this date and established standing committees to continue the search for a similar Agreement for scheduled services, no progress was made. The 1957 meeting of ECAC, in Madrid, concluded that a

(i) The UK attitude was typical; "On the question of non-scheduled operations, it was hoped that greater freedom of action could be achieved in Europe than had been possible on a world-wide basis". ICAO DOC 7575-CATE/1, ANNEX 3, MINUTES p48.

(ii) Table 3

Table 3

States signatory to the Paris Agreement 1956 (i)

Austria

Belgium

Denmark

Finland

France

Germany (Federal Republic)

Iceland

Ireland

Italy

Luxembourg

Netherlands

Norway

Portugal

Spain

Sweden

Switzerland

Turkey

United Kingdom

(i) Status on 1 January 1974.
Source: "Showcross and Beaumont on Air Law", Vol.2.

a multilateral approach to the regulation of scheduled services was not feasible, even on a regional basis.

"51. None of these proposals was found to be acceptable to a majority of the Conference. There was complete agreement that the achievement, as soon as possible, of a multilateral agreement to liberalise air transport in Europe remained in prime objective in this field, but it was recognised that the present divergence of views on the fundamental question of capacity control and allocation of routes rendered impossible the immediate adoption of a multilateral agreement as proposed by the Netherlands. This being the case, it was generally conceded that an attempt should be made to move towards the ultimate goal by gradual stages or partial solutions". (51)

At the 1959 meeting the United Kingdom went even further and called, officially, for the abandonment of further discussions aimed at evolving the elusive Agreement.

"We in the UK have examined closely the views expressed in successive meetings on the question of a multilateral for scheduled services. It appears to us that there has been no fundamental change in the views of individual governments since we first approached the subject in 1954. In some respects we are still as far from a multilateral of practical value to the airlines as ever.....We think the Conference should now frankly admit that they have for the time being exhausted this approach to the problem of scheduled services.....The UK therefore proposes that there should be established within ECAC, and inter-government committee with airline advisors.....to consider.....the practical problems of co-operation and liberalisation" (52)

The virtual abandonment of the search for an acceptable Multilateral Agreement for scheduled services at ECAC's 1959 meeting marked the end of any serious attempt to achieve this. In contrast, the 1956 Agreement on Non-Scheduled Services was relatively easily attained. This difference was a reflection of the importance which Governments attached to the two sectors. The ease with which agreement was reached on the regulation on non-scheduled services infers that these were generally regarded as being of little significance.

The history of the Multilateral Agreement on Non-Scheduled Services provides an important insight into Governmental attitudes towards this type of traffic. It also indicates how little they understood the true significance of it or its possible future role.

4.51 The Aims of the Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe.

The failure of Chicago to provide a practical basis for the liberalisation⁽ⁱ⁾ of non-scheduled air services was clear. In a sense, the effect of the Convention was to afford even fewer

(i) "Liberalisation" in the context of this work means: removal of the need to conduct bilateral negotiations prior to the operation of a service. A liberalised service is, therefore, one for which little or no prior authorisation is required over and above the constraints of a multilateral agreement.

automatic rights to the non-scheduled sector than to the scheduled. Scheduled flights were at least covered by Bilateral Agreements and in most cases the Transit Agreement. Non-scheduled flights on the other hand were both ill-defined and given little protection against the unilateral action of individual Governments. The final sentence of Chicago Convention Article 5 makes the award of traffic rights subject;

"...to the rights of any state where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable".

The restrictive attitude which most Governments took, in practice, regarding the interpretation of this Article effectively negated any liberalising influence it might have had. As a result non-scheduled operations were thrown back onto a basis of flight-by-flight negotiation for traffic rights.

Recognising this was neither desirable nor the intended effect of the Article, the ECAC Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe had as its prime aim the limitation of the restrictions which could be imposed under the terms of the Chicago Convention. The preamble to the ECAC Multilateral Agreement emphasised that the conditions applied to non-scheduled, non-commercial flights by the first part of Article 5 of the Chicago Convention were considered satisfactory and should be extended to some commercial non-scheduled flights.

"Considering that the treatment provided by the provisions of the first paragraph of Article 5 of the Convention on International Civil Aviation drawn up at Chicago on 7 December 1944 (hereinafter called "The Convention") - which applies to the international movement of private and commercial aircraft engaged in non-scheduled operations on flights into or in transit non-stop across the territories of the States party to the Convention and to stops therein for non-traffic purposes - is satisfactory, and

Desiring to arrive at further agreement as to the right of their respective commercial aircraft to take on and discharge passengers, cargo or mail on international flights for remuneration or hire on other than international scheduled services, as provided in the second paragraph of Article 5 of the Convention.

Have concluded this Agreement to that end." (53)

The Agreement continued that in respect of civil aircraft engaged in international flights for remuneration or hire, on other than scheduled air services;

"The Contracting States agree to admit the aircraft referred to in Article 1 of this Agreement freely to their respective territories for the purpose of taking on or discharging traffic without the imposition of the regulations, conditions or limitations provided for in the second paragraph of Article 5 of the Convention,...." (53.1)

Though both these statements would seem to indicate the Multilateral Agreement was about to confer startling new and liberal rights on non-scheduled commercial operations, the truth was very different. (54)

Unfortunately, for non-scheduled operations, the Multilateral Agreement had another aim which was clearly incompatible with that of granting non-scheduled flights wide commercial traffic rights. The opening paragraph of the preamble made it plain that the "other" aim of the Multilateral Agreement was considered to be of principle importance;

"The Undersigned Governments,

Considering that it is the policy of each of the States party to the Agreement that Aircraft engaged in non-scheduled commercial flights with Europe which do not harm their scheduled services may be freely admitted to their territories for the purpose of taking on, or discharging traffic...."

(Author's emphasis)

Clearly, the contracting States, whilst agreeing that some further liberalisation of non-scheduled commercial flights was necessary, had no intention of allowing such flights seriously to compete with the scheduled airlines.⁽⁵⁵⁾ This is confirmed by later provisions of the Agreement. Article 2 stated that the "regulations, conditions or limitations" imposed by the Chicago Convention, Article 5 on commercial, non-scheduled flights were to be removed.

It went on to make a clear definition of the types of non-scheduled commercial flights which were to benefit from the removal of these restrictions, the list being more notable for what it excluded rather than included. It defined two main groups of flights. The first, for which all restrictions and limitations

liable to be imposed under Chicago Convention Article 5 were to be removed, included humanitarian flights, taxi and small private charter flights, group charter flights where the hirer did not pass on the cost to the passengers carried, and single flights each month between the same two destinations. The second only had this freedom from restriction as a privilege rather than as a right. For this group, which included all-freight flights and regular passenger flights between regions which were not well connected by scheduled services, the Article allowed Governments to require;

".....the abandonment of the activities specified in this paragraph if it deem that these are harmful to the interest of its scheduled air services operating in the territories to which this Agreement applies- any Contracting State may require full information as to the nature and extent of any such activities that have been or are being conducted; and

further provided that, in respect of the activity referred to in sub-paragraph*, any Contracting State may determine freely the extent of the regions (including the airport or airport comprised) may modify such determination at any time, and may determine whether such regions have reasonably direct connections by scheduled air services."
(53.2)

*ie. passenger transport between regions having no reasonably direct connection by scheduled air services. (Author)

Finally, having effectively made only a minimal grant of traffic rights to specified types of non-scheduled commercial flight, the Agreement closed a final loophole. Article 3 stated:

"The Contracting States further agree that in cases, other than those covered by Article 2, where they require compliance with regulation, conditions or

limitations for the non-scheduled flights referred to in the second paragraph of Article 5 of the Convention*, the terms of such regulations, conditions or limitations will be laid down by each Contracting State in published regulations, which shall indicate:

- a) the time by which the required information (with a request for prior permission if one is required) must be submitted; this shall not be more than two full business days in the case of a single flight or of a series of not more than four flights; longer periods may be specified for more extensive series of flights;
- b) the aviation authority of the Contracting State to which such information (with the request if one is required) may be made direct, without passing through diplomatic channels;
- c) the information to be furnished, which, in the case of permission for a single flight or of a series of not more than four flights, shall not exceed:
 1. name of the operating company.
 2. type of aircraft and registration marks
 3. date and estimated time of arrival at and end departure from the territory of the Contracting State;
 4. the itinerary of the aircraft
 5. the purpose of the flight, the number of passengers and the nature and amount of freight to be taken on or put down". (53.3)

* Which are, "aircraft engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services". (Author's emphasis and note)

This effectively made all commercial, non-scheduled flights, not covered by the first two major grouping, subject to any restrictions which the contracting States wished to apply.

The important exclusions from the services which were specifically to be granted "liberalised status" later became the two most important types. Under Articles 2 and 3 of the Multilateral Agreement neither Inclusive Tour (IT) nor Affinity Group Charter flights were granted any automatic traffic rights. Both, therefore, had to base their early operations on flight-by-flight permits or on permits granted for a set series of flights. In the latter case there was no guarantee that a following series would be granted similar facilities.

The irony was that ICAO had originally specifically suggested to ECAC that non-scheduled commercial services were a likely subject for the broad grant of traffic rights. The Multilateral Agreement which finally emerged made little effective grant of such rights over and above those in the Chicago Convention. Additionally no effort was made to extend bilateral air services Agreements to these operations.

4.52 Reasons for ECAC's Concentration of Effort on Non-Scheduled Liberalisation.

The Multilateral Agreement sought to liberalise the non-scheduled sector at the same time as it was attempting to protect scheduled services. This merely explains what were the aims of the Agreement. It does not explain why ECAC, having been set up to continue discussions towards the formulation of an agreement

covering scheduled services, should in fact have directed its greatest initial effort towards non-scheduled operations.

Examination of the relevant documents suggests that this re-direction of effort was because it was recognised that little early progress was likely to be made with scheduled services. This being the case, non-scheduled services were an obvious alternative for ECAC's consideration. It has been noted that the Multilateral Agreement in its original form made no mention of the automatic traffic rights to be granted to either Inclusive Tours or Group Charters. This raises the question of whether or not such exclusion was deliberate.

Discussion within ICAO in 1947 concerning the distinction between scheduled and non-scheduled operations clearly indicated that the world's aviation authorities were to some extent aware of the potential of the non-scheduled sector. ⁽⁵⁶⁾ There was considerable difference of opinion concerning how this potential should be treated. A consistent agreement put forward was that "Common Carrier" passenger traffic (ie. passengers carried on flights open to the public) should be internationally restricted to scheduled services only. A supporter of this view was the United States;

"We decided that, insofar as the carriage of passengers was concerned, there was no place at the present time in the international field for an irregular operator unless he was a non-common carrier". ^(56.1)

In contrast, the UK emerged as a strong supporter of greater liberalisation for non-scheduled services of all kinds. This was, perhaps, not surprising since it was at that time caught up in a difficult domestic regulatory problem. The UK's domestic policies restricted the private sector to non-scheduled air services only. In order for it to survive, foreign Governments had to treat non-scheduled operations liberally when traffic rights were sought. There were other reasons why the British were anxious for an agreed international policy towards non-scheduled operations. First, they feared that if these were left in a limbo - outside the terms of Bilateral Agreements and not covered by their own Multilateral - there would be a real possibility of scheduled services being undermined. (56.2) Secondly, the British were determined to ensure that non-scheduled operators were given freedom to operate within their "legitimate field". In this respect it is interesting that even at this early date the British Government was seeking ways to protect the interests of IT operators, who were classed as non-scheduled operators under UK aviation law in 1947. (56.3)

The practical difficulty of reconciling different attitudes towards non-scheduled liberalisation was emphasised by the ICAO Council.

"One serious problem both for governments and for operators has been to know whether a particular operation or series of flights should be considered

in the scheduled or non-scheduled category.....
.....ICAO
has sought to simplify that problem and to promote
its more uniform treatment by providing the
Contracting States with a definition of a
scheduled international air service.....
..... whereas the line between
scheduled and non-scheduled service may be drawn,
States have had to consider how far (if at all)
they will subject non-scheduled flights to
regulations, conditions or limitations". (57)

Although there appears to have been a general recognition of the essential features of the "non-scheduled problem" it does not appear, from examination of the records, that the extraordinary growth potential of the non-scheduled sector was really understood. The 1954 Strasbourg meeting⁽ⁱ⁾ was dominated by the desire to see the greatest possible liberalisation of non-scheduled operations provided they in no way affected the fortunes of scheduled services. Any understanding of the likely effects of the former policy would surely have indicated that it was, if implemented to the full, incompatible with the aim of "protecting scheduled services".

The records of the first session of ECAC in Strasbourg in 1955^(55:1) make no mention of either Inclusive Tours or Group Charters - and this was at the time when the non-scheduled Multilateral Agreement was being drafted. The Conference could hardly claim ignorance of these types of service, since the UK Air Transport

(i) Conference on the Co-ordination of Air Transport in Europe, Strasbourg, April - May 1954.

Advisory Council (ATAC) noted at the time;

".....increased interest by Independent Companies for this type of service (ie. Inclusive Tours), a continuation of a trend which had become perceptible during the previous year". (58)

and later

"The traffic carried on Inclusive Tour Services in the Summer of 1955 was almost double that carried in the preceding Summer.....

.....It therefore appears that, seen in perspective, the development of these Inclusive Tour Services is bringing air travel within reach of a wider public without causing material diversion of traffic from the Corporation". (59)

To be fair to ECAC it must be acknowledged that the Second Session in 1957 noted that the deliberations and decisions of 1954/1955 which culminated in the Multilateral Agreement were made in an atmosphere of ignorance of the true size of the European non-scheduled industry. Indeed, the continuing theme of ICAO and ECAC meetings after 1956 was that a serious lack of information existed concerning the activities of the non-scheduled sector. In the absence of any accurate statistics concerning these, "How" the question was asked, "could regulations concerning the activities of this sector be realistically devised?" Not only was there a lack of information on the size of non-scheduled operations, there was also a great difference of opinion as to what actually constituted such a service. Only after the Multilateral Agreement had been completed and signed by most of the ECAC states (but not significantly,

the UK) did ICAO and ECAC begin serious discussion on the nature and potential of the non-scheduled sector. The content of these discussions forces the conclusion that the "Liberalisation of the non-scheduled sector in Europe", which was the declared aim of the Agreement, was in no way intended to promote non-scheduled operations on the scale and of the type which later actually occurred - if only because ECAC clearly had little idea of what these were likely to be. The lack of understanding on the part of ECAC and ICAO of the real strength of the non-scheduled sector is emphasised by the following extract from the Report of the second ECAC Session of 1957:

"The incompleteness of the picture of non-scheduled operations reflected by the regular reporting machinery was clearly disclosed.....
.....secondly, statistics are not required to be reported in respect of operators wholly engaged in non-scheduled operations. In this respect it is recalled that the information on which global figures were estimated in 1955 was anything but comprehensive and that the extent to which statistics of non-scheduled air transport are available today is still so deficient that assessment of the magnitude of such operations continues to rely largely on guesswork. It seems likely that the activities not reported to ICAO include substantial intra-European non-scheduled operations, and these may be of particular concern to certain countries, or of special significance at certain times of the year or on certain routes". (51.1)

The last sentence is clearly referring to seasonal traffic of specialised nature - that is to say, Inclusive Tour Services.

In conclusion, therefore, it would appear that ECAC's concentration on non-scheduled liberalisation was certainly not in order to promote the sector to the extent which actually occurred. The original Multilateral Agreement was aimed at the liberalisation of no more than a very few classes of service which were felt unlikely to achieve any great significance. The omission of Inclusive Tours was deliberate, if only because the majority of ECAC member were unsure how these should be classified and group charters were similarly omitted - principally because of ignorance concerning the extent of existing operations. The ECAC Multilateral Agreement was never intended to be a particularly revolutionary document. Indeed, the ease with which it was accepted indicated it granted very little in the way of traffic rights for non-scheduled services capable of significant commercial development.

4.6 The Current State of the International Regulatory Framework

Little further progress had been made towards the liberalisation of either scheduled or non-scheduled air services. In so far as scheduled services are concerned, the Chicago Convention remains the fundamental article of regulation in conjunction with the Transit Agreement and in some cases, the Transport Agreement. Bilateral Agreements between States, as recommended by the Chicago Convention, have become the basis of virtually every scheduled international service. Since

1957 ECAC has made no serious effort to devise an acceptable Multilateral Agreement for these services within Europe.

The United States maintained the goal of a Multilateral Agreement for a little longer but, by 1963 it was forced to conclude:

"The US will maintain the present framework of bilateral agreements by which air routes are exchanged among nations and the rights to carry traffic on them are determined according to certain broad principles. The substitution of a multilateral agreement seem less feasible or acceptable today, than when first attempted at the Chicago Conference of 1944". (60)

In that this reflects US policy, it adds support to the view of ECAC in 1957 that the liberalisation of scheduled air transport services under a Multilateral Agreement could only result from direct inter-Government action. ECAC was firmly of the opinion that its attempts to liberalise air travel could only bear fruit if the Governments of Europe wished it to happen. The unfortunate fact of life was, and still is, that although extensive liberalisation might be attractive to the air transport industry, there are far wider issues at stake. Modifications to the regulatory structure have to be viewed in this context and this is outside the scope of an air transport conference such as ECAC. (61) In this respect it should be noted that the only Multilateral Agreement on Scheduled Service Operations to be introduced was drawn up and signed by the Governments of East Germany, Hungary, Poland, Rumania, and Bulagaria. In June 1957 this Agreement replaced all existing bilateral arrangements between those states and the air services involved

were operated as a jointly planned and intergrated effort after that date.

One other limited Multilateral Agreement which is currently in force is the International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services. (62) This is commonly called "The Paris Agreement 1967", and sets out principles and procedures for the uniform establishment of scheduled airline tariffs through the IATA Conference machinery.

In conclusion it may be stated that the approach to liberalisation of air services of all kinds is effectively described by two words: "Provision" and "Protection".

Provision

Governments generally⁽ⁱ⁾ have taken the position that their airlines should have access to any international air route on which their nationals might wish to travel. This is a consequence of the widely held view that air traffic "belongs" to the country from which it originates. A most serious block to extensive liberalisation has been the fear that it might lead to "nationally owned" traffic being carried almost exclusively on the services

(i) See for example "Statement on International Air Transport Policy", Washington, The White House, April 1963. This defines the aims of US Air Transport Policy as being "To develop and maintain an expanding, economically and technologically efficient international air transport system best adapted to the growing needs of the free world and to assure air carriers of the United States a fair and equal opportunity to compete in world markets". (Author's emphasis)

of another State's airline. So long as the right to operate international air services rests on a basis of bilateral negotiation, the world's Governments may effectively control the carriage of "their own" traffic. Bilateralism is thus a most effective means of reinforcing the "right of provision" of air transport by the nationally-owned airline.

Protection

Having provided for the entry into international air services of their national airlines, Governments are then determined to protect those operations from "unfair competition". Much of the protection for the less efficient airlines has originated from within the Conference machinery of IATA. This will be dealt with in later chapters and it is sufficient here to point out only that unanimous agreement is a normal requirement before IATA tariff recommendation may take effect. The absence of a unanimous decision and possibly the unilateral adoption of a particular tariff policy by one airline, removes the protective barriers of the IATA Conference system and opens the industry to the mercy of market forces. Both efficient and inefficient airlines do not welcome this so-called "open-rate" situation. An excessive fall in tariffs as a result of the pressure of market forces may lead to the collapse of the smaller or less sufficient airlines, similarly large airlines are equally susceptible to heavily subsidised "loss-leader" operations by small, highly

nationalistic airlines.

Protection for the established airlines is also afforded by the provisions of many Bilateral Agreements. Whether or not capacity and frequency limitation clauses are inserted makes little difference to the practical power of individual Governments to protect the operations of their national airlines. The so-called "Heavy Bermuda" Bilateral Agreements which include such clauses offer no more protection than is in fact available under the terms of most "Light Bermuda" Bilaterals. (i)

The system of bilateral negotiation of traffic rights for scheduled services is clearly a powerful protectionist device. The length and complexity of some of the bilateral negotiations which have taken place in the past (ii) lends weight to the belief that no Multilateral Agreement will be devised. Support for this point of view - that Governments see bilateral negotiations as too useful to be replaced - comes from the fact that the rise in importance of the non-scheduled sector in recent years has led to increasing demands that these services should be controlled by Bilateral Agreements.

- (i) The original Bermuda Agreement between the UK and US, is quite capable of being used in a protectionist manner. In June 1972 the British Department of Trade and Industry ordered the American "designated" carrier, National Airlines, to cut capacity on the London to Miami route because it was felt that BOAC was being swamped by American Competition.
- (ii) There are numerous examples. The grant of traffic rights into Hong Kong for KLM, the Dutch carrier took 20 years to negotiate. (1951 - 71) and into the USA 12 years.

CHAPTER 5. THE DISTINCTION BETWEEN SCHEDULED AND NON-SCHEDULED AIR SERVICES

5.1 Introduction

In chapter 1 a brief exposition of the nature of the difference between the two types of air transport was presented. In the current chapter this is expanded to give a more full understanding of the nature of the problem.

5.2 Problems of Definition and Regulation

One of the most important features of the Chicago Convention is that it makes a clear distinction between the treatment to be afforded to scheduled and non-scheduled services. Although the difference between the two had hardly been apparent during the inter-war years, the delegates at Chicago clearly were aware that important differences did exist and would have to be catered for in future. It is unlikely that they were able to foresee accurately the extent to which the non-scheduled sector would develop in its own right, particularly in view of the over bearing importance attached at that time to scheduled flag-carrying airlines. In spite of this some effort was made to accomodate the different requirements of the two sectors as the Conference saw them.

The Chicago Convention makes no grant of traffic rights for scheduled services. Article 6 specifically states:

"Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorisation of that State, and in accordance with the terms of such permission or authorisation."

Only by signing the Transit or Transport Agreements does a State make any automatic traffic rights concession to the scheduled services of other States wishing to overfly its territory. In contrast, a less specific restriction is placed upon non-scheduled services. Article 5 states;

"Right of non-scheduled flight

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable."

Chicago's grant of traffic rights to non-scheduled commercial flights would seem to be reasonably liberal. In practice the vagueness of the authority granted to restrict these services, set out in the last sentence of the Article, gives any State the right unilaterally to prevent the operation of non-scheduled services into and over its territory for any reason it sees fit.

The Conference also saw the need to define the two types of service so that it would be clear which Article applied in any particular case. Accordingly the Convention includes such a definition which unfortunately proved to be less than satisfactory. The inappropriate nature of this defining Article must, to a great extent, reflect the Conference's lack of comprehension of the possible future growth of the non-scheduled sector. The Convention's weakness is that it assumes the distinction between the two types of service is, in fact, obvious. Throughout, it merely states that non-scheduled operations are those where the aircraft is "not engaged in scheduled international air services". In so far as this is the only definition attempted the Contracting Parties are, effectively, given little guidance. This rapidly became a matter of serious concern because of the buoyant growth of the non-scheduled sector. Unfortunately, when ICAO did make some attempt to provide a more applicable definition it found that it had opened a "Pandora's Box".

The problem was simple. After the war numerous factors combined to alter dramatically the strength of the non-scheduled sector:

plentiful supplies of ex-military aircraft and aircrew, ample private capital available for investment, greatly increased demand for international air transport and a chronic shortage of capacity amongst the scheduled airlines. This last feature was particularly important since its effect was to force passengers on scheduled services to book some time in advance of their intended departure date. This being the case, they might just as well have made such an advanced booking with a charter company - almost inevitably at a lower fare. In the immediate post-war years, capacity problems of most scheduled airlines forced them to constrain the options for travel offered the public. This being so, non-scheduled services were not at any significant disadvantages when it came to competing for traffic on some routes. In the face of clear inability by the scheduled airlines to provide adequate capacity, supplementary non-scheduled services expanded rapidly to the point where:

"The growth of these new charter services means that there is now no wide gap between the categories of scheduled services and charter services. The charter services still occupy a relatively small part of the total field of air transport and in general perform a different type of service, but some charter services are in fact scheduled services in all but name". (55.4)

Furthermore, ICAO was well aware that the phenomenon was not necessarily short-term: as long as international air transport as a whole continued to expand, there would be a place for non-scheduled operations. This being so, the difficulty was

to classify and control non-scheduled operations. Some of the very difficult aspects of the problem which faced ICAO were: should the more substantial non-scheduled operations be classed as scheduled services? Where should the line between "substantial" and "less substantial" be drawn? Why should non-scheduled operations be restricted at all if they operated at high load factors and were, therefore, a very efficient form of air transport?

The solutions were not immediately apparent and in considering them ICAO first drew up some preliminary general conclusions. It was recognised that sound regulations, depending on clear definitions, were essential to the continued operation of international air transport as a whole. The non-scheduled operators needed to know how their various activities would be classed and regulated, and the scheduled operators clearly required some form of protection from serious non-scheduled competition. After lengthy deliberations ICAO concluded;

"The basic distinction sought is thus seen to be the distinction between those services that compete in the scheduled service field and those services which do not compete in that field; and this distinction is by no means necessarily the same as the distinction between scheduled and non-scheduled services". (55.5)

Going on from this position, however, it was recognised that the status quo could not be maintained. An unregulated, non-scheduled sector would, sooner or later, begin to affect seriously the

operations of the scheduled airlines. When this happened the Governments, which owned most of the scheduled flag carrying international airlines, would be forced to subsidise them heavily. Consequently rigid control of non-scheduled services would be imposed. Regulation was thus required to protect the non-scheduled sector from its own excesses as much as it was necessary to protect the scheduled services.

No firm conclusion on the exact wording of a universally acceptable definition was reached. Those undertaking further study of the problem were advised;

"The proper function of the non-scheduled air services is the important one of supplying the elasticity and personal services that cannot be supplied by the scheduled services, that is to say it is the function of carrying passengers between places not served or not conveniently served, or not served at the desired time or not in the desired way, by scheduled services". (55.6)

Despite this good advice it was still to be five years before an acceptable definition appeared. In 1952 the Council of ICAO adopted, for the guidance of Contracting States in the application of Articles 5 and 6 of the Chicago Convention, the following "Definition of a Scheduled International Air Service";

"A Scheduled International Air Service is a series of flights that possess all of the following characteristics.
a) it passes through the airspace over the territory of more than one State;

- b) it is performed by aircraft for the carriage of passengers, mail or cargo for remuneration, in such a manner that each flight is open to members of the public,
- c) it is operated, so as to serve traffic between the same two or more points, either
 - (i) according to a published time-table or
 - (ii) with flights so regular or frequent that they constitute a regularly systematic series". (62)

Recognising that there would be difficulties in applying even this simple definition, the ICAO also adopted an appendix of "Notes for Guidance" which indicated the extent of the arguments entered into before a final definition was reached. It contained exhaustive illustrations of the various circumstances in which the definition might be applied in order to show how, and if, different interpretations might be made. Finally, in recognition of the fact that no definition could be devised to cover every eventuality it went on to indicate that there would inevitably be instances in which a dispute concerning the correct interpretation would arise. In these borderline cases;

"...where it is reasonable to assume that the public will assume from the carrier's assertions, advertisements, or the conduct of his operations that his flights will depart according to some pre-arranged schedule rather than at time dependent upon availability of loads, this would support the conclusion that the service should be classed as scheduled. Conversely in such borderline cases, where it is reasonable to assume that the impression created is that the timing of flights depends upon the availability of loads, this would support the conclusion that the service should be classed a non-scheduled". (62.1)

Regrettably, even this broad statement of intent did not cover development in the Inclusive Tour field. The principle exponents of the IT concept - the UK - regarded these operations as "Scheduled"⁽⁶³⁾ even though it classified their operators as "Non-scheduled carriers."⁽⁶⁴⁾ This anomaly stemmed from peculiarities of the UK's domestic legislation. Most other ECAC countries regarded IT services as being non-scheduled and requiring special authorisation outside the terms of Bilateral Air Service Agreements. In fact, although the British later altered their attitude they were, strictly speaking conforming to the terms of the ICAO definition in classifying ITs as "scheduled". Reference to the ICAO definition showed that IT services as offered to members of the British public certainly complied with the requirements (a) and (b) and could, without much difficulty, be construed as satisfying the requirements of (c)(ii). Furthermore, it would be unrealistic to believe that members of the public did not book their holidays in the belief that the flights would depart, "...according to some pre-arranged schedule rather than at a time dependent upon the availability of loads".

The economic principles on which the two sector's operations are based are so widely differing that direct competition between them is both impracticable and inevitably harmful to the scheduled carriers. Since Governments traditionally have placed great store by the activities of the scheduled airlines, it is only natural that the non-scheduled sector should be

subject to controls which limit its natural ability to expand and offer direct competition to the scheduled carriers. Regulated competition between the two sectors must therefore be based on a firm and clear understanding by all parties of the status of different types of service. The activities of the non-scheduled sector have become so extensive that it is no less important to have an Agreement covering these than it is to have one for scheduled services. It is inconsequential, for instance, whether or not IT services are classed as 'scheduled' or 'non-scheduled'; what is important is that the classification selected should be internationally agreed.

The United Kingdom Government has been particularly adamant that an acceptable basis of definition must underlie any Agreement. One reason why the UK delayed for so long before signing the ECAC Multilateral Agreement - even though it honoured its intention- was because it could not agree that the non-scheduled services which were to be liberated were accurately defined. The UK foresaw circumstances in which, under Article 2 (2)(b) of the Agreement, services might be started between points "not having regular links," and operated virtually as scheduled services without being subject to the provisions of Bilateral Agreements covering these. For example, such services would not be automatically subject to the IATA rate controls. The danger, as the UK saw it, was that the freedom to operate services under the provisions of Article 2(2)(b) would be granted on the basis of experience

and this could easily lead to dispute if the controls specified by that Article were in fact unilaterally exercised by one of the parties. (50.2)

In fact, the attitude of the UK towards the need for a clear definition appears to have stemmed largely from the desire to place non-scheduled operations on a firm footing rather than to ensure that scheduled services were not operated without control. Similarly, the UK did not seek such a definition in order to restrict further the non-scheduled sector's scope for expansion - if anything the UK was a consistent and powerful advocate of the sector's right to expand its activities without excessive controls. At the third ECAC Session in 1959 the UK, when finally ratifying the Agreement, went to some lengths to ensure that the Conference did not mis-interpret the UK's attitude or motives for delay. The UK delegation emphasised the following points:

"The United Kingdom remains among the few countries in Europe which have not yet adhered to the Multilateral Agreement for non-scheduled services. This may have led quite wrongly to the impression that the United Kingdom is opposed to the liberalisation on non-scheduled services.

The United Kingdom has in fact always given very liberal treatment to non-scheduled services. Our legislation incorporates a definition of scheduled journeys closely conforming to the interpretation adopted by the Council of ICAO in 1952, and UK operators are free to engage in any activities falling outside that definition. In dealing with applications from foreign operators for non-scheduled traffic rights in the United Kingdom we apply administratively the same liberal treatment. As a result it is extremely rare that an application

for a non-scheduled operation is refused by the United Kingdom authorities....

....(at) the first ECAC meeting.....
we expressed our concern.....at the introduction of a new Article 2(2)(b), which it seemed to us might confuse unwisely the distinction between scheduled and non-scheduled services.....it seemed to us quite wrong that a class of service which required the utmost flexibility for development should be liable to arbitrary and unilateral interruption. Operators of non-scheduled services, like any other operators, have a right to know where they stand and to have a clear idea of the opportunities which they are free to exploit."1.

This attitude was supported by the European Federation of Independent Air Transport. Whilst acknowledging ECAC's efforts the Federation nevertheless felt that the fundamental problem of definition remained and, to a large extent, negated much of the Conference's work. Serious doubt and confusion remained amongst many operators because it was not clear what types of operation were covered by the Multilateral Agreement. The Federation feared that a failure to derive some clear definition of the general fields of operation covered by the Multilateral Agreement would:

".....on an overall European basis....create complications which could be detrimental to the establishment of agreement and result in decisions which are unnecessarily restrictive". (51.2)

The essence of all of these arguments was not that it was important to make some clear distinction between "scheduled" and "non-scheduled" per se but rather that a uniform code of practice should be adopted for the regulation of both sectors.

It should be clear that IT services are incapable of classification into either of the classes above because they in fact constitute a type of service which is unique. IT services can, therefore, only be classed as "IT services". Similarly, a regular series of Group Charter flights constitutes a type of service which does not fit neatly into either of the two classic definitions. The expansion of the air transport industry into entirely new concepts of operation, (which was first noted in the mid 1950's) rapidly outdated attempts by ICAO and ECAC to produce definitions governing every new type of service. By the late 1960's the process had continued to the point where there was no longer any real distinction between "scheduled" and "non-scheduled" services in many cases. This being so the problem of definition was largely overtaken by events. Instead the world's aviation authorities began to devise uniform rules of operation for individual types of service, regardless of whether or not they were "scheduled" or "non-scheduled". Thus ECAC's approach to the problem became subtly altered so that it now considered individual sets of regulations governing different types of operation. The rapid development of the industry into new types of service forced upon the regulating authorities new concepts and philosophies of control.

CHAPTER 6. THE INTERNATIONAL AIR TRANSPORT ASSOCIATION

6.1 Introduction

One of the more important processes in the development of the regulating framework has been the rise to power of IATA. Critics claim that Governments have allowed IATA to operate virtually as an autonomous body and have failed to supervise its activities. Though there may be some truth in this, it is only fair to add that the fault lies with the world's Governments and not with IATA. If the Association has become too autonomous, this only reflects on the Governments which have failed to fulfill their supervisory role. It may be argued that, provided the Association adequately serves the needs of the travelling public, Governments need not necessarily become too deeply involved in IATA's decision making processes. The great difference of opinion centres on the question of whether IATA has fulfilled its obligations to the public or whether it has been more interested in protecting its member airlines.

In this chapter the status and role of IATA is analysed. The intention is to establish the limits of the Association's activities and to indicate the nature of the IATA-Government relationship. In this chapter it is not the intention to discuss whether or not IATA has affected the growth of the industry and in what way. This is dealt with in later chapters. This chapter is concerned with IATA's legally constituted

position and power since much criticism of the Association's activities stems from a misunderstanding of its function, of its position in the spectrum of international regulation, and of the importance of the supervisory role of Governments.

The emergence of IATA as a regulating body is dealt with in section 6.2. Following this description of the Association's emergence as the de facto economic regulatory body, the legal status of IATA is discussed in section 6.3. In section 6.4 attitude towards low-fare policies is presented and discussed and in the final section, 6.5, the Association's actions during the period leading up to the 1956 Non-scheduled Multilateral Agreement, are traced. After this date the impact of non-scheduled activities by non-IATA airlines became more direct and the year may be regarded as a watershed of ideas and attitudes towards this sector. After 1956 it is necessary to view IATA's actions in the light of policies introduced by the American and European Governments. The interaction of the various interested parties becomes more complex and IATA cannot be dealt with as a separate entity.

6.2 The Emergence of the International Air Transport Association.

The emergence of IATA as the de factotariff fixing body for the international air transport industry stems directly from the

Bermuda Conference of 1946. IATA was first established as the International Air Traffic Association, (66) (67) in 1919 and served for some years as the scheduled airlines' collective bargaining body. Much of its activities were concerned with standardisation - of passenger documentation, of government regulations, and of airline procedures. Towards the end of the Second World War and in the aftermath of the Chicago Conference, the airlines became aware of the part which they might have to play in the re-construction of the post-war world. IATA's function as the airlines' representative body, was thus likely to be of great importance. In April 1946 the member airlines met in Havana and agreed that IATA, as it was, should be re-constituted as a new organisation. The name was subtly altered to the International Air Transport Association, which allowed the initials IATA to be retained. The new Association began its legal existence in December 1945 following the passing of a Canadian Act of Parliament. By the time the Bermuda Conference was convened, therefore, IATA already existed as a body charged under its Act of Incorporation with the promotion of collaboration between its member airlines and others not directly involved with air transport. It was further requested to co-operate with other international organisations and, especially, ICAO.

In an earlier chapter we saw that in the Bermuda Agreement the US and UK agreed to fix tariffs by utilising IATA. For the

British, this arrangement was not difficult to accept or to put into operation. The British Government had full authority to control tariffs charged by its own airlines or by airlines operating into its territory. The British scheduled airlines were in any case public corporations ultimately responsible to the Government. The Americans accepted the arrangement less readily.

There were two powerful barriers to US acceptance of the tariff-fixing philosophy put forward at Bermuda. The first, and in many ways the most controversial, was the inability of the US Government to directly control tariffs charged by American airlines in international operations. The Civil Aeronautics Act of 1938 limited the powers of control of tariffs by the Civil Aeronautics Board (CAB) to domestic operations only. There was a clear and deliberate intention to restrict the powers of tariff control to the domestic carriers only.⁽⁶⁸⁾ This being the case, the Americans found that although they accepted the philosophy envisaged by the Bermuda Agreement, their own aviation laws prevented them from applying it.⁽⁶⁹⁾ The only way in which the US Government, through its agent the CAB, could control international tariffs charged by its carriers was by disapproval of agreements between American and foreign airlines.

In order to take advantage of this provision of the 1938 Act, the United States decided to recommend that tariff agreements made by its international carriers should be negotiated through the Conference Machinery of IATA. The CAB therefore signalled its intention to recognise IATA as the de facto tariff-fixing body, for an initial period of twelve months. Permanent approval was given in 1955. The sole purpose of the initial involvement of IATA was, therefore, to give the United States Government through the CAB the same powers of control over rates charged by the national flag carriers in international operations as was enjoyed by other Governments. This fact is frequently ignored, or perhaps not fully appreciated by critics of IATA, but its recognition is essential to the development of a balanced view of the air transport industry and IATA's role in it.

And the

The decision to directly involve IATA was not lightly taken by the United States or the United Kingdom. To some extent in doing so, both retreated from their positions at Chicago, but it was the Americans who made the greatest reversal of policy. The British had, in fact, made a tacit acknowledgement of the status of IATA even before the Bermuda Conference took place. In a White Paper published after Chicago and before Bermuda the British Government made its position clear:

- "1. His Majesty's Government wish to secure the universal acceptance of conditions which would ensure the orderly expansion of air transport. The nations, however, are not yet prepared to place their air services under the control of a single international owning and operating body and there is insufficient support to make possible the formation of such bodies on a regional basis.
2. Attempts at the Chicago Conference to achieve a plan of orderly development in the air were not successful. Accordingly, the plan which His Majesty's Government now present to Parliament is necessarily a national plan, but it has been so framed that it can be readily fitted into any future scheme of international organisation.
3. It is the policy of His Majesty's Government to endeavour to negotiate agreements with other countries in conformity with their ultimate objective of securing well ordered development on a full international basis and so facilitate the later establishment of a multilateral Convention based on order in the air." (13.1)

And later, on the question of rate-fixing;

16. Fares and adequacy of services. - Machinery will be established whereby, as regards internal services, the public will be enabled to make representations concerning fares, rates and adequacy of services. As regards fares and rates on external services, it is hoped that these will be settled by international agreement, full account being taken of the recommendations of the International Air Transport Association, a recently formed Association of the international airline operators of the world." (13.2).

It is clear the British Government had it in mind before Bermuda to use the IATA conference machinery in some way to fix international tariffs. The United States on the other

hand had probably never intended any such delegation of authority to IATA as actually occurred. Although the acceptance of the IATA machinery by the Americans resolved one difficulty,⁽⁶⁹⁾ it created another of equal magnitude.

Any American carrier which entered into an Agreement to fix fares, capacity or frequency could be liable to prosecution under the Anti-Trust laws. There was, however, a precedent for such Agreements in the Shipping Act of 1916 which recognised that the Conference system of tariff-fixing had good as well as bad points. The Act legalised such Agreements provided they were negotiated through a Conference having the recognition and support of the Maritime Commission. The same legal manoeuvre was proposed in order to circumvent the Anti-Trust Laws. CAB recognition of the IATA Conference machinery gave similar immunity to American airlines entering into tariff-fixing Agreements with other American or foreign airlines.

In addition to this straight-forward legal problem arising from its decision to involve IATA, the United States had been forced to make a fundamental reversal of its ideology. In view of the United States position at Chicago only a few months earlier when, in the face of the British demand for "order in the air" - to be achieved by the actions of an autonomous controlling body - they had refused to contemplate such a move, the reliance on IATA was remarkable. Not only was IATA just

such an autonomous body, it was also a trade body principally concerned with the fortunes of the airlines themselves. The Americans, by accepting IATA moved sharply away from a "market place" philosophy and agreed to allow airlines sitting in private to reach tariff decisions without any reference to individual Governments.

In order to forestall charges that they were thereby establishing a legalised cartel, both Governments agreed that any tariff proposals put forward by the IATA would be ineffective until ratified by themselves. In fact, since the British Government was already not restricted in its ability to control tariffs charged by airlines flying into the United Kingdom the clause granting the right of approval or disapproval was mainly important to the United States. Despite this it should be noted that the delegation of tariff-fixing authority to IATA was regarded as a convenience which in no way removed the right of either Government to reject IATA recommendations. This is, perhaps, the key word; the essence of the Bermuda Agreement was that the IATA should recommend tariffs to Governments who would have the final say on whether or not they could be introduced. Responsibility for the introduction of tariffs on routes covered by Bilateral Agreements of this type, thus remained entirely with the Governments concerned.

It is clear that the CAB had every intention of obtaining the necessary powers of regulation to remove the need for reliance on

IATA at the earliest possible time. The Bermuda Agreement accordingly made allowance for the situation in which the CAB, having been granted these powers, could act independently of the Association.^(31.5) Further to this aim the US Government was unequivocal in its attitude towards the necessity of granting the CAB these powers.

"(j) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States".^(31.6)

Clearly the US Government could not have been happy with a situation in which it was unable to control the tariffs charged by American carriers in international operations. That this was a very real weakness was evident in later years.⁽⁷⁰⁾ Furthermore, the CAB's lack of authority required two separate courses of action to be established in the Bermuda Agreement. On the one hand there was the situation in which the CAB had been granted full powers to deal with international tariff disputes and conversely, there was the situation in which it had not.

Where IATA traffic conference machinery produced a tariff recommendation not acceptable to both parties, if CAB had

not been granted full powers of regulation, the objecting party could prevent the inauguration of the service in dispute.

If the CAB had been granted powers then the service was allowed to operate at the contested tariff until arbitration produced a satisfactory compromise. The complications inherently arising from the unfortunate US predicament were no less serious even where no dispute occurred. In this situation even though both Governments agreed on the proposed tariff, the CAB could not make it mandatory for US carriers. The very real practical differences between the two possible situations were graphically illustrated in 1963. In this year there occurred what is commonly referred to as "The Chandler Crisis". This resulted from the CAB's disapproval of the transatlantic tariffs proposed by the IATA Traffic Conference meeting in Chandler, USA. A serious test of the American power of intervention ensued. Because the CAB had not been granted powers to fix international tariffs, foreign Governments could prevent the operations of American carriers at non-IATA tariffs. If the CAB, in this situation, had been in possession of the necessary authority, the US carriers could have operated at non-IATA tariffs until such time as the dispute was settled.

Perhaps the most important feature of these clauses is that clearly indicated yet another change of heart by the Americans. In addition to their capitulation on the method of fixing tariffs they now agreed to further dilution of their Chicago demands by acknowledging the right of an autonomous body to

arbitrate between Governments unable to agree.

In conclusion, therefore, the emergence of IATA as an economic regulating body occurred as a result of a "flaw" in the United States Civil Aeronautics Act of 1938. Had the CAB been granted full rights of economic control in international as well as domestic air transport under this Act, it is doubtful if the IATA Traffic Conference machinery would have ever been used or even accepted by the United States. The irony of the situation is that the weakness of the CAB forced the Americans, who were otherwise very strong, to accept a degree of control in the Bermuda Agreement which they would not have countenanced a few months earlier in Chicago.

6.3 The Limits of IATA's Authority

IATA has become a major force in international air transport. Pricing policies pursued by its scheduled airline members have had a very significant effect on the development of the air transport industry into its current shape. Much has been written about whether or not IATA is a cartel, a monopoly, or an oligopoly, and it is not the intention to develop the argument further here. Pillai,⁽⁷¹⁾ Chuang,⁽⁷²⁾ Wheatcroft,^(28.1) Cooper and Maynard⁽⁷³⁾ and Rosenberg⁽⁷⁴⁾ have adequately expounded the numerous points of view. Neither is it the intention to discuss whether or not IATA acts in the public interest or in the

interests of its members. The intention of this section is simply to establish, clearly and precisely, the extent of IATA's legally constituted powers of control over international air transport pricing.

The Bermuda Agreement initially established the function of IATA:

- (a) "Rates to be charged by the air carriers of either Contracting Party between points in the territories of the United States and points in the territory of the United Kingdom referred to in this annex shall be subject to the approval of the Contracting Parties within their respective constitutional powers and obligations. In the event of disagreement the matter shall be handled as provided below.
- (b) The Civil Aeronautics Board of the United States having announced its intention to approve the rate conference machinery of the International Air Transport Association (hereinafter called IATA), as submitted, for a period of one year beginning in February 1946 any rate agreement concluded through this machinery during this period and involving United States Air Carriers will be subject to approval by the Board". (31.7)

Later Agreements between both the US and the UK and other States reinforced the role of IATA. In fact, though they continued to apply the principle, the Americans altered the wording of the appropriate article in all Bilaterals signed after the "Chandler Crisis". This avoided the problem established by the original Bermuda Agreement wording. The result of the initial involvement of IATA is that, today, most Bilateral Agreements make

direct or indirect reference to the principle of conducting tariff negotiations within the conference structure of IATA. Because the United Kingdom is not restricted by peculiarities of its domestic aviation laws the function of IATA in UK Bilaterals is more usually stated thus:

- (1) "The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.
- (2) The tariffs referred to in paragraph 1 of this Article, together with the rates of agency commission used in conjunction with them, shall, if possible, be agreed in respect of each of the specified routes between the designated airlines concerned in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both contracting parties". (75)

Whatever may be the differences in wording between the many hundreds of different Bilateral Agreements between States, the intention is common to all - tariffs on scheduled international services are to be agreed between the airlines concerned, formally proposed for adoption by IATA, and only brought into operation following review and approval by the two Governments concerned. The sole purpose of this involvement in the regulation

of international air transport is to recommend tariffs to Governments party to Bilateral Agreements. Since IATA has no authority unilaterally to change tariffs, it is, in an academic sense, entirely powerless, being no more than a servant of the world's Governments. Such a viewpoint, however, ignores the realities of power which in fact have given the IATA a considerable degree of importance not immediately obvious from references to its function as set out in Bilateral Agreements.

In earlier chapters it was shown that air transport has certain unique attractions to Governments. There always has been and probably always will be intense political interest in the activities of the air transport industry. The great fear at Chicago was that failure to agree on the principles of "Order in the Air" would result in disastrous tariff-cutting and excessive subsidised competition which would prevent the full potential of the industry from ever being realised. At all costs Governments wanted to avoid uncontrolled competition in post-war air transport. Even the United States Government was prepared to accept that some measure of minimum rate control was essential. The emergence of the re-constituted IATA immediately after the failure of the Chicago Conference to agree an economic regulation provided the dissenting parties (principally the United States and the United Kingdom) with the opportunity to move this very difficult problem of international regulation from the political to the

commercial arena. It is for this reason that the two Governments, and subsequently most others, were at pains to integrate IATA into the regulatory framework.

There seem to be little doubt that the result of using IATA has been to keep scheduled airline fares at an high level- perhaps not as extortionately high as it is often claimed, but undoubtedly higher than would be the case if the "Market Place" philosophy was applied. If this is the case, and if Governments genuinely seek to further the interest of the travelling public, it is surprising how infrequently IATA recommendations are rejected. An interesting insight was supplied by Knut Hammarskjold, Director General of IATA, in an interview with "The Times" newspaper. He points out that the removal of the IATA cartel from the regulatory structure and the introduction of free tariff fixing on the open market would inevitably lead to such low rates on the more densely travelled routes that cross-subsidisation of less popular and uneconomic routes would be impossible. In this situation airlines would no longer be able to operate many politically necessary air routes.⁽⁷⁶⁾

If his analysis is correct, and certainly earlier chapters indicated how significant are such routes, it is clear why Governments generally have been reluctant to allow situations to develop in which IATA's function has been taken over either by themselves or by the "Market Place".

IATA's continued existence as the de facto regulating body is

regarded as essential by most Governments, so essential that they are prepared to accept a certain amount of airline protectionism in order to maintain the status quo. The continued existence of IATA provides them with a unique forum where they can attempt to satisfy some of their political interests. It is generally agreed that IATA member airlines have excellent contacts with their national Governments (many are State-owned in any case) but the private airlines such as Pan Am are equally closely involved with Government policy formulation. This being the case, the inter-airline negotiations at IATA Traffic Conferences must be to some extent in lieu of direct Government-to-Government talks. The oft-repeated claim that they more often than not rubber stamp IATA recommendations is probably accurate, if only because the IATA recommendations are so frequently themselves a reflection of Government's policies and requirements. The IATA Traffic Conferences can only recommend a rate by unanimous agreement - whatever this produces in the way of inflated airline fares it also diminishes the possibility of open disagreement between parties to a Bilateral Agreement. Recommendations from IATA Traffic Conferences are therefore seen to be the product of inter-Government as well as inter-airline negotiations.

Representatives of the British State-owned airline have made the point to this author in discussion that it would be naive to believe that the British Government is not aware of British Airways' intended position on tariffs at forthcoming IATA

Traffic Conferences. It would seem reasonable to assume that the reverse is equally true in that the airline has very clear idea of the extent to which it is free to negotiate. The impression gained is that, where possible, Government influence is restricted to broad outlines of policy. Provided the airlines produce an IATA recommendation which is within these boundaries, Government interest is limited. When the discussions produce deadlock on some point- possibly because one or other airline has reached the boundary of the freedom of negotiation granted to it by its Government - reference must be made back to the relevant authority for further guidance.

This is not to suggest that the airlines do not have to try to satisfy their own commercial judgements. Neither is it the intention to give the impression that airlines at IATA Conferences are hidebound by Government officials hanging over their shoulders. What is intended is that the IATA Traffic Conferences should be seen to be forums where airline and Government interests combine to produce an acceptable tariff proposal. Obviously the IATA member airlines are well aware of the extent to which external factors can affect their operations and for this very reason they would be loath to allow IATA to disintegrate. The determination to ensure IATA is not replaced by direct inter-Government agreement does not wholly result from the knowledge that the IATA mechanism protects its members from free market forces. One equally important, if not the most important, aspect of IATA is that its constitution

requires the tariff negotiations to be in secret - this ensures that Government wishes may be taken into account, discussed, modified or even retracted without publicity giving rise to political embarrassment or enhancement, as the case might be, of the Governments concerned. (69.1)

One series of events which tends to support this view, has been the continued effort of the United States CAB to obtain the powers of tariff control for international carriers. Despite the declared intention of the Bermuda Agreement it is only recently that the CAB has in fact had its authority extended to international routes. The nearest the US ever got to rescinding the role of IATA as the tariff-fixing mechanism in its Bilaterals, was in 1963. A year earlier, in 1962, the CAB had disapproved the proposal IATA tariffs for the North Atlantic. Consequently, a very real crisis developed in international air transport which culminated in the UK threatening to impound American aircraft if they landed in the British Isles whilst charging non-IATA tariffs. This was known as "The Chandler Crisis" and it was only resolved by direct inter-Government action. Resulting from this, the United States carried out a thorough review of its attitude towards the IATA Traffic Conferences and towards the regulatory framework which had evolved. Despite far reaching proposals put forward by the CAB and the State Department and serious consideration by the Administration of these, the United States eventually only reaffirmed its existing position. (60.1)

In particular, on the question of recognition of IATA Traffic Conference machinery, the US accepted that this would have to continue since it was the only practicably attainable solution. This reaffirmation of the US attitude towards IATA, that is to say, the continued support of a private as opposed to public tariff-fixing body, may well have stemmed from a recognition that direct Government involvement in airline meetings would only introduce a further complication to already difficult negotiations. (77.1) This view was certainly held by sections of the airline community. Whilst giving evidence to the Congressional Committee set up to investigate the CAB's request for international tariff control authority, the President of the Air Transport Association argued that this request should be refused on the grounds that, "...it ignores the existence of Sovereign States at the other end of air routes from the United States". (78) This was a clear indication that the existing IATA Machinery allowed the wishes of such States to be taken into account and, for this reason, it should be maintained.

The United States, through the CAB, has perhaps the most persistent record of attempting to influence IATA decisions directly. This "undue influence" which the CAB has sometimes attempted to bring to bear has caused IATA to protest on various occasions that the CAB was attempting to circumvent the declared tariff-fixing policies as established in the United States' various Bilateral Agreements. In spite of the CAB's displeasure

at some of the IATA recommendations however, the US has been no more disposed than any other State to reach agreement on economic regulation outside the IATA Traffic Conference machinery. Despite the fact that on numerous occasions the "Collapse of IATA" has been forecast because of its inability to reach a unanimous decision, this has never yet happened; some compromise has always been found at the last moment. Indeed, a large number of the member States of IATA clearly take the view that, so long as the IATA machinery exists and is recognised by parties to Bilateral Agreements, those parties should make every effort to ensure that settlements are reached within the structure of IATA Traffic Conferences. The eventual resolution of the Chandler Crisis, although achieved in fact at inter-Government level, was projected as a success for the IATA mechanism. (19.1)

More recently, in April 1972, the Australian flag carrier QANTAS attempted to introduce, unilaterally, a fare reduction of 50% on the Europe to Australia route. The UK Civil Aviation Authority (CAA) though agreeing that the fare was reasonable and even desirable, refused to allow QANTAS to offer the new tariff until it had been formally ratified by IATA. This was certainly the point of view of most other European Governments. (79)

The conclusions which can be drawn from the foregoing are twofold:

- (1) In a strictly legal sense, IATA is restricted in its economic regulation of air transport, to the status of an agent acting on behalf of its members. IATA is required to negotiate a

unanimous tariff proposal between member airlines and to propose this to Governments for their ratification. Without such ratification, IATA tariff recommendations are invalid and cannot be introduced.

(2) In the wider sense, it is clear that IATA has, in practice, taken on the status of a quasi-government authority and acts as an agent for Governments as well as for the airlines. IATA's ability to act as a Government agent whilst at the same time ensuring privacy of negotiation is one very important aspect of the Association's continued survival as an almost unique international trade cartel.

Perhaps the final word on the status of IATA and on the work it carries out on behalf of Governments, should go to the editor of "Flight International":

"Poor Old IATA. Hardly anyone has a kind word for the International Airline Trade Association these days. IATA is a cartel, the enemy of the consumer, a smug unresponsive price ring.....exaggerated and silly are the attacks getting, the time has come to ask what sort of world it would be without IATA, and what would be put in its place.
.....IATA fixes prices, or rather it recommends them to governments; but it does not fix capacity.

The real cartel is air sovereignty. Trade is free on the sea, but not in the sky. Governments agreed amongst themselves over a quarter of a century ago at Chicago to control air transport prices and production. Most governments promptly delegated the fare-fixing function

to IATA.....As for traffic, Governments control this by means of bilateral treaties.....

These are the power and trim settings with which IATA must fly and the system has coped remarkably well with the turbulent growth of air transport. Governments have not objected to letting IATA bear the cartel odium; and IATA has been pleased, perhaps at times too pleased to be allowed to get on with the job without too much busy-bodging by politicians and officials.

For governments to take over the fare fixing would cause chaos. Even if civil servants had the expertise, government-to-government confrontations and political posturing would disorder the industry far more than IATA traffic conferences.

It is the best IATA we have got. Clearly it can be greatly improved.....It is too easy, and not really very helpful, to address all the problems and complaints to IATA". (80)

6.4 IATA's Policies On Low Fares and Non-Scheduled Air Transport Operations

From the foregoing it should be clear that IATA recommendations are closely linked to the policies of particular Governments. This is not to infer, however, that IATA does not formulate its own policies from time to time and submit them to Governments for acceptance. IATA has traditionally been concerned with scheduled airlines only. Indeed, until recently its membership was not open to non-scheduled carriers. This relationship between IATA, and its members and non-members, world Governments and the public has produced a situation of conflict in the air transport world.

The principle pressures which may be brought to bear on the scheduled carriers originate in the actions of non-scheduled airlines and Governments. Furthermore, the public pressure for change has been largely in response to actions of the non-scheduled airlines. IATA itself responds principally to pressures from the non-scheduled sector. Pressures from public and Governments though aimed at IATA are prevented from impinging directly on the Conference machinery by its very structure. It is this complicated pattern of interacting pressures which has largely been responsible for the stance which IATA has adopted over the years. That stance has been, of necessity, defensive and protective towards the operations of scheduled carriers and indeed, since IATA is essentially the trade body of those carriers it is hardly surprising that the Association's principle concern has been their protection.

The principle and constant charge which has been levelled at IATA over the years is that it has failed to bring about a steady reduction in scheduled airline fares. One of the most recent studies of IATA's pricing policies concluded (73.1) that the Association had done little to promote lower fares and had in fact maintained artificially high levels. These conclusions are not in dispute, indeed, they are not even original; Wheatcroft (28.2) said virtually the same as did Rosenberg (74.1) and Pillai (71.1). To be sure, some evidence is presented on occasion to demonstrate that IATA has made a consistent effort to reduce fares, but, in general it is impossible to avoid the

conclusion that IATA-derived tariffs are usually pitched at high levels. This author does not believe, however, that this argument is of any real importance. What is far more important is to determine the effect of IATA pricing policies on the public.

IATA has not, historically, pursued a policy of low-cost air travel and there is a very good reason for this. Quite simply, the economics of scheduled airline operation (taking the traditional meaning of that phrase) do not lend themselves to high turnover, marginal profit activities. The very structure of the regulatory framework within which scheduled carriers operate, dictates that their services shall be service-orientated. Until very recently, the air traveller expected high service levels as a matter of course and was prepared to pay for them.

If IATA has been little interested in encouraging its member airlines to offer tariffs in line with those being charged by non-scheduled competitors, this is hardly surprising. The economics of the two sector's operations are so diametrically different that any attempt by the scheduled carriers to match non-scheduled tariff levels must inevitable court disaster. Seen in perspective, therefore, the conservative attitude of IATA may be explained by that organisation's recognition of the inherent dangers in marginal profit scheduled operations. Furthermore, conservatism is not a characteristic of IATA

in other areas. (i)

There are, of course, some serious defects in IATA's fare policies; they are too complex, probably expensive, encourage airline inefficiency and over-capacity and so on. To be fair it must be stated that the first serious attempts to lower airline tariffs did in fact come from IATA's decision to introduce Tourist, and then Excursion fares in the 1950's. These decisions were largely taken on IATA's own initiative and were a significant step for the Association. It would be parsimonious to suggest that such reduction were not an important and worthwhile contribution towards the lowering of the price of air travel. Serious criticism of IATA's policies since that initial contribution is, however, valid.

The maintenance of high tariff levels may be justified by reference to IATA's original Act of Incorporation which states the Association's objectives as being:

"to promote safe, regular and economical air transport....."

In interpreting those objectives some ranking of importance was

- (i) IATA's progressive policies having achieved a great deal for the benefit of the airline traveller: standard documentation, facilitation of ticketing, insurance, payments etc. Perhaps IATA's greatest achievement has been to develop civil aviation (however overpriced the product) as a world-wide system.

called for and in it, safety and regularity took precedence over economical operation. In adopting this approach, scheduled operators were merely reflecting external interest in their activities. The very structure of the operating framework rested on the understanding that air travel had certain unique qualities which engendered Government interest. Given the degree of that interest and the strict restriction placed on airlines' freedom of action by international Agreements, it is hardly surprising that the industry felt itself to be an intrinsic part of world political and diplomatic activity. Any trend towards tacit acceptance of the "essential" interest of Governments must merely have reinforced the scheduled airlines' belief that political rather than commercial pressures were required to be given priority consideration. In the light of their activities it was inevitable that scheduled airlines would develop fixed ideas concerning the nature of their product and the requirements of their customers.

To sum up, therefore, it must be said that two valid reasons may be determined in support of IATA's tariff policies. First, the member airlines genuinely believed themselves to be governed by an internationally accepted tenet that their principle objective was to provide safe, regular, and frequent air transport of high service-orientated quality. Second, having accepted such a governing philosophy, the scheduled carriers found themselves controlled by its operational constraints. Amongst these, and most detrimental to the aim

of reducing fares, was the fact that there was an inherent requirement in such a philosophy for excess capacity and high personnel and station costs. Any reluctance on the part of IATA drastically to reduce scheduled airline fares, almost certainly stemmed from the knowledge that such fares had to be pitched high in order to cover the costs of service-orientated operations.

The scheduled carrier members of IATA will always be able to justify the retail price maintenance policy of the Association on the basis of arguments such as these. Whether or not the practical results of this policy may be defended depends largely on the sympathetic bias of the argument. As a matter of fact, this author believes that the eradication of price competition between scheduled airlines is inevitable and it makes little difference which body controls the application of such a policy.

More serious and valid criticism may be levelled at IATA, however, in respect of its overall leadership of the industry. The great failing of the Association has been its inability to develop scheduled air transport pricing policies which enable the true and very real benefits of scheduled air travel to be utilised by the mass travel market. It is a sad fact that IATA has consistently failed to lead the industry into the lucrative mass-travel market.

6.5 Steps Towards Implementation of Low-Fare Policies 1945-1956

In the previous section it was mentioned that despite its naturally conservative attitude towards reduction of scheduled airline tariffs IATA did introduce significant pricing policy changes in the 1950's. Having examined the philosophy behind the Association's attitude, it is possible to understand the process which brought about these changes and to examine their relative importance. Some explanation is called for as to why this is necessary. In the author's opinion the starting point for any argument on tariffs must be the relevant IATA pricing policy. "Low" fares are only low in comparison with "high" fares of the scheduled sector. Since there is a difference in quality between the two products, the perceived price differential may not in fact represent a true saving. Furthermore it must be said that non-scheduled operators offered low fares in response to an opportunity which they saw presented by the constraint on IATA's freedom to introduce new pricing policies. In a very real sense, therefore, IATA's actions in the early post-war years stimulated the non-scheduled sector to offer a service, competitive in price but arguably not in quality. Whatever the merits or demerits of IATA's pricing policies, therefore, it is those policies which are the yardstick against which all other must be judged.

However slow IATA may appear to have been in implementing low-fare policies, the Association was always aware that only such policies would enable the mass travel market to be tapped by the scheduled airlines. As early as 1949 the Association's Director General was at pains to point out that it was in this direction that the solution to scheduled airlines' economic problems lay. Furthermore, the public relations aspect of lowering fares was not lost on the Association's member airlines who though aware of the need for new pricing policies, were also acutely aware of the weakness of their commercial positions. Generally, these airlines were restricted in their freedom of action by practical difficulties emanating from poor equipment, limited capacity and experienced crew shortages. Any desire to introduce new low-fares was, therefore, tempered with the understanding that:

"....emotion for a popular service can very well overcome the hard facts of business." (81)

No such limitations were felt by the United States carriers, however, since they had ample supplies of modern transport aircraft and experienced crews. Furthermore, the domestic air travel market of the US was sufficiently large to allow serious experiment with so-called "Coach Fares" on internal trunk routes under the auspices of the CAB. Not only did the US have the advantage of operational experience generally, it also had only one economic regulatory body with which to contend. In

view of such advantages, it is not surprising that the US international scheduled carriers, in collaboration with the CAB, led the demand for low-fare pricing policies to be introduced by IATA - particularly on the North Atlantic. Undoubtedly this demand did meet with resistance from the other IATA transatlantic carriers - but largely because of the "hard facts of business" understood only too well by the weak and inexperienced European scheduled carriers. Their eventual capitulation and acceptance of the American desire to extend "coach-class" operation to the North Atlantic route was by no means unconditional.

The IATA meeting in Bermuda, in May 1951, successfully formulated a two-tier pricing policy which, for the European airlines, represented a major policy change. Despite this, the CAB disapproved the proposals - largely because they were deemed to be "too little and too late". It was unacceptable to the CAB that the new fares (i) were not to be introduced until October 1952, thereby missing the Summer season and the Board could not accept the conditions laid down by IATA to control the marketing of the new class. These included capacity limitations so that each airline could only operate four Tourist Class flights each month and the Board objected to this

- (i) The title chosen for the new fares was "Tourist Class" - standard fares which had always been applied now became "First Class".

on the grounds that it contravened the spirit of the Bermuda Principles. It would be wrong to suggest that the CAB's objections originated solely from the desire for more liberal IATA proposals. One of its strongest reservations was that no definition of tourist class seating density was included in the proposal. Well aware that scheduled airlines finances were generally in a weak state, the Board felt that agreement should:

"set the seating density required on air coach service. Otherwise.....there is no guarantee the service will pay for itself". (82)

For their part, the European transatlantic operators had good reason for phrasing the IATA proposal as it appeared. The reality of the relative strengths of the American and European carriers forced the latter to defend their position against any radical new tariff policy. Competition was one thing but, without some limitation on American carriers' operations, the weakness of the Europeans could only result in domination of the market by the US. The likely response of the public to new fares was not in doubt - indeed it was this aspect of the problem which principally exercised European airline management's minds.

"Foreign operators, now forced into coach service, are contemplating with great uneasiness the small sizes of their fleets to handle the expected rush of coach business. And the only quick source for large new transport aircraft is the US." (83)

The late starting date - after the summer peak of 1952 - was undoubtedly designed to avoid a situation in which the European carriers, short of capacity as they were, would be totally swamped by market response to the new low fares. Similarly the capacity restraint included in the proposal would have had the effect of curtailing the American carriers' ability to dominate Tourist Class accommodation market on the North Atlantic. Finally, European carriers must have had strong reservations about the suitability of the transatlantic route for low-fare experiments because of its very difficult operating conditions.

Following the CAB's rejection of the initial IATA proposal, a further meeting was held in September 1951. At this the arguments came to a head and the Americans left the conference with threats of unilateral action. In the ensuing months European Governments and their airlines were forced to compromise. The problem facing them was simple, "Would the dollar earnings made from increased numbers of American transatlantic tourists offset the cost of providing the capacity to carry them?"

Despite reservations concerning the ability of the airlines to meet the demand, European Governments were forced to accept that low fares would generate large and useful dollar earnings. (84)

The British Government was particularly keen on early development of Tourist Class fares despite BOAC's chronic lack of capacity. (85)

By December 1951, the difficulties had been resolved to the

extent that the IATA Conference in Nice was able to propose an acceptable Tourist Class pricing policy. The practical effects of the proposals were that from 1 May 1952 Tourist Class fares would be offered on the North Atlantic at 30% below existing rates in summer and 20% in winter⁽ⁱ⁾

Several very important points are illuminated by the progress of the tourist class fare proposals during 1951. First, American desire to promote "mass air travel" was by no means based on entirely altruistic motives. Very high on the list of reasons for seeking the expansion of the market for civil air transport was their desire to bolster military strength. The "external interests" of Chapter 2 are thus seen to have been highly influential in the shaping of American attitudes.

"The Governments of the principle Atlantic nations have in the past 12 months expressed their concern at the limited capacity of transport aircraft that would be pressed into service in the event of a World War. The United States new Under Secretary for Transport in the Department of Commerce, Delos Rentzel, has encouraged the scheduled operators to swell the capacity of their fleets by introducing as soon as possible on important routes new tourist-class services.

"Every additional transport aircraft that can be employed in profitable commercial service at the present time will help to strengthen the Atlantic Powers' position vis-a-vis public enemy No.1 - Russia". (86)

Second, the European airlines, though conservative in their approach to the introduction of Tourist fares, had valid

(i) Table 4.

TABLE 4 IATA TRANSATLANTIC TARIFFS 1946 - 1964 LONDON-NEW YORK

	US\$	
	Single	Return
1946	360	648
1951 (December)	395	711
1952 (May)	270	486 Tourist Class
1954	320	576 Tourist Class
1958 (April)	252	453 Economy Class
1964	210	399 Economy Class

reasons for adopting such an attitude. Furthermore, it appears to be quite untrue that European Governments were unfavourably disposed towards the principle of low fares. Since the exchange of views within IATA is often represented (71.2) as being a conflict between the "Liberal" US and the "Conservative" Europeans, it would seem to be important to emphasise the true positions of the opponents in 1951. The European Governments emerge in fact as strong supporters of the low-fare concept in the 1951 discussions. Furthermore, resistance from European airlines stemmed almost entirely from the knowledge of their precarious financial and operational states.

The 1952 Tourist Class introduction is an example of "pure" IATA policy definition - the forces and influences at play were little affected by considerations of the non-scheduled sector's activities. The same could not be said of the IATA tariff development in the 1960's when the Association may be seen to have been directly influenced by non-scheduled activity.

CHAPTER 7 THE EARLY ROLE OF UK DOMESTIC AIR TRANSPORT LEGISLATION

7.1 Introduction

In their separate ways many countries have influenced the development of the non-scheduled sector. In particular, in the early post-war years, the UK played a dominant role. The alacrity with which non-scheduled air transport was accepted as an integral part of the British national life style has been noted on many occasions. Specifically, the Douglas Aircraft Company concluded:

"In terms of passenger journeys per capita, the United States, Canada, New Zealand and Australia have traditionally been the most 'airminded' of the major countries in the world. In international travel, however, mainly because of the air charter boom, Scandinavia and the United Kingdom can now make this claim." (i)

Moreover, on the basis of passenger-miles per capita:⁽ⁱ⁾

"..... in international travel, the British appear today to be the world's most airminded nation." (87)

These conclusions certainly support the particular observations of the Edwards Report, which claimed:

(i) Table 5

Table 5

Values of air passengers per capita and air passenger miles per capita for selected countries.

	Passengers per capita	Passenger miles per capita
USA	0.1	225
New Zealand	0.08	225
Australia	0.05	180
Canada	0.13	210
Scandinavia	0.22	175
United Kingdom	0.2	250
West Germany	0.075	90

Source: The Douglas Aircraft Co. "The European Charter Airlines" (1970)

"We regard the record of the Inclusive Tour traffic development as one of the most important credit items in the performance of British Civil Aviation in the recent past. Although we will deal later in the report with the subject of Inclusive Tour pricing policy, we wish to stress here the great contribution made by the private sector in the development of Inclusive Tours. This is a field which was pioneered in Europe by the UK independent airlines We have met few people who would deny that the rapid rate of growth of Inclusive Tours traffic to European holiday resorts has resulted very largely from the concentrated efforts in this field of the independent airlines and the tour promoters with whom they have worked." (16.5)

There is no reason to doubt the accuracy of either of these statements, but, in themselves, they provide little insight into the mechanisms which produce such a phenomenon - such being the purpose of this and following chapters.

This chapter begins in section 7.2 by defining the different types of carrier and service to be found in the UK civil aviation industry so that the origins of such terms as "The Independent Airlines" may be properly appreciated. Following this clarification of terminology, the next section 7.3 investigates the confused period under the Labour Government of 1945-51 during which time attitudes towards the role of the private sector were completely and profoundly revised. The culmination of this stage was the return of a Conservative Government in 1951 and the consequent reappraisal of the question of private operation of air transport services. Finally, the effect of alterations to the legislation governing

the scope of the Independent's activities is considered in (7.4).

7.2 Definition of types of services and carrier

Chapter 5 dealt with so-called "scheduled" and "non-scheduled" segregation of the world airline industry. In the UK environment, however, a further distinction may be determined based on the type of ownership involved.

The 1946 Civil Aviation Act, introduced by a Socialist Administration consolidated the principle that all scheduled services should be reserved for the State-owned Corporations. Privately owned airlines were restricted to "all other services". Two sectors thus became defined by their status as "Public" or "Independent", the former so-called because the Air Corporations were owned by the State and, by definition, the public, and the latter because the private airlines were independent of State finance or patronage. In the light of events in the early days of the post-war Labour Government, the terms "Public" and "Independent" were synonymous with "Scheduled" and "Non-scheduled" operations. In the words of the Government of the day:

"When the Socialist Government came to formulate a policy for Civil Aviation, we thought we had done rather handsomely by private enterprise by debarring it only from the field of regular services and leaving it the aerial work and charter

flying I am prepared to give an assurance that the Corporations do not intend to go into this work in a big way. They will be fully occupied for a long time to come in providing regular scheduled services ... It is not our policy that the Corporations shall make charter work a main undertaking." (88)

Had such a policy been consistently applied, the problem of definition of services in the UK air transport industry would have been greatly simplified. As it was, however, a complete reversal of the policy set out above occurred within a very few years and resulted in Independents being licenced to fly scheduled services. More recently the Corporations became heavily involved in charter operations. Further liberalisation of the British Government's attitude towards Independent operators allowed them to take part in scheduled services on international routes, thereby introducing another complication.

A condition of the Bermuda-type Bilateral Air Service Agreements which Britain negotiated with foreign Governments was that fares for scheduled international air services should be determined through the IATA Conference machinery. This being the case, Independent operators were inevitably bound to join the Association in order to have some say in the determination of the fares they were required to charge. Not all Independents entered the scheduled international air service field, however, and thus not all of them joined IATA. Non-IATA member airlines, though generally restrained by Government policies directed towards support of the Association's activities and rulings, do

have a certain freedom of action on many matters. In particular they may be able to operate charter services at below IATA rates. This severely handicaps scheduled airline belonging to IATA, who wish to operate charters, but who are unable to do so at a price competitive with non-IATA operators. In order to avoid such restriction, therefore, many IATA member airlines set up non-IATA charter subsidiaries.

Though these subdivisions within the industry are by no means uniquely British, it is a fact that every category is identifiable within the UK civil aviation environment so that the following types of operator exist:

Public Corporations, (a) Scheduled - IATA controlled
(b) Non-scheduled - IATA controlled
(c) Non-scheduled - Non-IATA controlled.

Independents, (d) Scheduled - Non-IATA controlled
(e) Scheduled - IATA controlled
(f) Non-scheduled - Non-IATA controlled
(g) Non-scheduled - IATA controlled.

The exact definition of services as "scheduled" or "non-scheduled" is difficult. For purposes of this work, however, Inclusive Tours will be regarded as "non-scheduled".

In large measure, though with different relationships of relative importance, the structure of classification set out above is applicable to most countries. Not all have complete public ownership of the major flag carrier and, indeed, there are instances where the entire national air transport industry is privately owned. The US is perhaps the best example of this phenomenon but, even in this case, it is possible to perceive a special relationship between the flag carriers and the Government which does not exist for the non-scheduled sector. The division of the US industry is unique in many ways, however, and will require further exposition later.

Returning to the particular subject of this chapter, the UK position in the immediate post-war period was somewhat less complicated than the full classification above might suggest. The major division of importance was simply based on the question of ownership - Public or Independent?

7.3 The Development of UK Government Attitudes Towards the Role of the Private Sector 1945-52

7.31 Introduction

It is frequently suggested that the greatest single force responsible for the pattern of development of British civil aviation was the Socialist doctrine of widespread nationalisation in the post-war years. Undoubtedly there were serious

differences of opinion between the Conservatives and the Socialists in the immediate post-war years on the general question of public ownership and private enterprise. These differences extended into the particular field of this study, civil aviation, but in this particular case there was also a large measure of agreement. This stemmed from the peculiar status of the industry in the minds of politicians of all political convictions.

This section has four objectives. First, it aims to determine what differences, if any, existed between the two Parties in their attitude towards the structure of post-war civil aviation and private participation in it. Second, it looks for reasons behind the Labour Government's retreat from its initial policy. Third, it suggests why the Conservatives failed to introduce any radical departure from existing policies on their return to power in 1951. Finally, the section analyses the position of the Independents and their scope for expansion following the change of Government.

7.32 Private Enterprise v State Ownership

The post-war attitudes of the major political parties towards private participation in civil aviation were defined in two White Papers published during 1945. "British Air Transport" (89) and "British Air Services." (13) The first of these, though sometimes represented as the Conservative viewpoint, was

actually issued under the auspices of a Coalition Government and must be regarded as a compromise. The second suffered no such constraint and represented unfettered Socialist doctrine. When the Labour Government's plans were being passed through Parliament on their way to becoming the 1946 Civil Aviation Act, Conservatives put forward their own revised plans which varied considerably from the content of "British Air Transport". Despite this later revision of attitude, it must be said that Conservatives largely gave their unqualified support to the original plan. From the point of view of this discussion, however, it is necessary to consider only the differences between the plans actually presented in the two White Papers rather than with what might have been. Justification for this approach lies in the fact that, but for the return of the Labour Party in 1945, post-war civil aviation would have been governed by an Act based on "British Air Transport" rather than "British Air Services". Comparison of the two thus becomes important.

The most striking aspect of the two plans was their great practical similarity, since by no stretch of the imagination may it be said that the Conservatives' plan ⁽ⁱ⁾ represented a

(i) "British Air Transport". Hereafter referred to as the "Swinton Plan" or "Swinton", after the Conservative Minister of Civil Aviation, Lord Swinton.

charter for the expansion of Independent operators. Indeed Longhurst suggested ⁽⁹⁰⁾ that nationalisation of civil aviation became inevitable as early as 1938 following the publication of the Cadman Report. ⁽⁹¹⁾ In particular that document indicated the economic and political necessity of some degree of public ownership and control of civil aviation. It was, significantly, a Conservative Government which first placed the operation of major international air routes under public ownership. The British Overseas Airways Corporation, (BOAC), established in April, 1940, assumed what amounted to monopoly rights to provide British scheduled international air services.

The ease with which the British Overseas Airways Bill passed through Parliament is an indication of the extent to which all parties felt "National prestige and trading considerations alike" ^(91.1) called for public ownership and control. Clearly, there was little disagreement on the need for some limitation of private enterprise activity in civil aviation. Where there were differences of opinion, however, was on the question of the extent to which that activity should be restricted.

Post-war plans for civil aviation were necessarily delayed by the Chicago Conference. Early in 1945, however, the Coalition Government was prevailed upon to present its views to Parliament - these taking the form of the so-called "Swinton Plan". Though there was a strong measure of Conservative dominance in the Coalition, Labour views had to be borne in mind.

The need for compromise was, therefore, reflected in the provisions of the White Paper. The degree of compromise was not only dictated by political rivalry, the reality of the UK's economic condition also served to modify Party dogma. Discussing the proposal the Labour Minister for Aircraft Production, Sir Stafford Cripps said,

"The White Paper scheme was not primarily based on political compromise between conflicting theoretical conceptions, but was rather put forward in consideration of how to get the best out of all these factors which could be brought together to contribute to the build up of a strong and we hoped effective British Air Transport system in the future. Nevertheless the scheme did result in a political compromise combining as it did a wide degree of government control with a measure of independence of private enterprise". (92)

The "factors" which Swinton hoped to combine included railway interests, shipping companies and travel agents. BOAC was to be an essential part of the package together with private operators comprising "Such other pre-war operators as desire (d) to participate". (89.1) Though it might have been expected that the pre-war operators constituted a major body of knowledge and experience on which Swinton's Plan intended to draw, in fact it would appear that they were largely disregarded. Not only did the White Paper fail to make specific mention of large-scale direct participation by Independent operators, it had also, apparently, failed to take serious account of their view.

Following publication of the plan:

"Four independent airline operating companies..... issued a statement which characterised the Government's policy as unsatisfactory. They were not consulted until February 14th when the plan had been agreed between the Minister and the railway and shipping interests and BOAC, which had been approved by the War Cabinet". (93)

The policy which the Independents found so disappointing was based on the principle that operators should be protected from the effects of excessive competition. In fact the intention was not simply to limit competition; the practical effects would have been monopoly operation of individual air routes by the carrier allotted to them. (89.2) The restriction of competition, per se, was generally acceptable but monopoly operation of air routes was viewed more seriously - particularly by the Independents.

It was not even monopoly operation which most concerned them, even though it was realised that this must inevitably lead to reduce opportunities. Of far greater importance was the proposal that British scheduled air services should be distributed between three large Corporations. Any operators left outside these would, therefore, be unable to participate in scheduled operations. Further limitations on freedom of action for private enterprise were introduced by the Plan's intention to grant the State Corporation, BOAC, monopoly rights

on the Commonwealth and Atlantic routes. Only two areas thus remained open to the Independents: one on the South American routes and the other on Internal and European routes.

Reaction from others than the Independents to Swinton's proposals was generally favourable, however. Most observers seemed relieved that a plan had emerged at all and were prepared to subjugate their reservations concerning its detail to the belief that it was, of necessity, imperfect but nevertheless a good compromise. (94)

The Independent operators and other champions of private enterprise in civil aviation were somewhat less enthusiastic. There were, it was suggested, three principle failings of the Swinton Plan:

1. It perpetuates monopoly, under an operational control which is unproven in the field of commercial air transport.
2. It provides no scope for the emergence of competitive operational techniques and methods of management.
3. It tends towards technical stagnation in aircraft and ancillary equipment, with grave repercussions on the prosperity of the British aircraft industry and its success in export trade". (95)

For the Independents the most disappointing aspect was the sheer lack of opportunity. They were totally excluded from one traffic area and in the other two were to be regarded only

as minor partners in a large Corporation's activities. Indeed the South American route seemed likely to become the "property" of shipping company interests rather than of a conglomerate of Independents. (89.3)

Only on the UK Internal and European routes was direct participation by private operators envisaged and in this respect the White Paper acknowledged that "Such other pre-war operators as desire(d) to participate" (89.4) should be allowed to take up shares in the new Corporation regardless of whether or not they had remained in business during the war. (89.5) Two last concessions were made to the Independents. The first was that future routes would be open to whichever operator - either State-owned or Independent - was able to establish that he was "Best fitted to run them". The second envisaged no restrictions on operation of charter aircraft.

This work is concerned with the general question of how much overall opportunity the Swinton Plan offered the Independents. From what has been said so far it will be clear that this was strictly limited. Indeed, the "Economist", when considering the likely effect of nationalisation of air services a few months later, was forced to concede that the Swinton proposals were already so restrictionist as to offer the Socialists little opportunity "To go any further". The Swinton Plan could hardly be called "A plan for private enterprise". (96)

If Swinton offered little scope for the Independents' aspirations towards scheduled services, the return of the Labour Government in August 1945 was expected merely to consolidate the position. In reality of course, as has already been pointed out, the Socialists had little scope for further restriction of private operators.

The Labour Government's proposals were published in December 1945 as "British Air Services". (i) As might have been expected these now included no compromise on public ownership.

The attitude towards Independent civil aviation was unequivocal:

"...His Majesty's Government have decided that air transport services of the United Kingdom, as a public service, should be placed under national ownership and control". (13.3)

Of more interest here, however, is the effect of such nationalisation on opportunities for private operators. There can be little argument that the Winster Plan further severely restricted the scope of the Independents. The three Corporations (ii) established under Swinton, were to be nationalised to the

(i) Hereafter referred to as the "Winster Plan" after the Labour Minister of Civil Aviation Lord Winster.

(ii) British European Airways Corporation (BEA)
British Overseas Airways Corporation (BOAC)
British South American Airways Corporation (BSAA)

total exclusion of private operators and shipping interests. Thus the Winster Plan's effect was to limit Independents to the field of charter and taxi flying. (13.4) In practice, however, this was hardly more restrictive than Swinton's proposals in which quasi-nationalisation had offered little to the private operators outside the charter field except amalgamation with "surface carrier interest" in order to form a large controlling Corporation.

To sum up, therefore, the widespread nationalisation of British civil aviation as proposed by the Winster Plan effectively made little difference to the opportunities which private operators perceived to be open to them. In this respect it is significant that criticism of the Winster Plan was principally concerned with its harmful effects on opportunities for the Railway Companies, Shipping Companies and Travel Agents. The consequences for private airlines were apparently of little interest.

The great similarities between the two Plans - despite the fundamental differences which existed in other respects between the two sponsors - caused the Conservatives to considerably revise their position. No doubt believing that differences not only existed but needed to be seen to exist, Swinton now presented the Opposition's policy as an entirely new departure from that contained in his original Plan. When they were next returned to power, the Conservatives said, they intended to allow

completely free access to civil aviation for all operators whose applications would be heard by an impartial "Air Tribunal". (97)

An interesting contemporary view of the Labour Government's plan is given by the following editorial comment:

"It would be an exaggeration to describe the tone of the White Paper as apologetic; but stress is laid on the relatively slight changes involved in the new proposals". (98)

The detached view of the general Press was not mirrored by the private operators who were already dismayed by Swinton's Plan and had expected no improvement of opportunity from the Socialists. Furthermore, the Independents were under no illusions concerning the ability of the large Labour majority to turn the White Paper proposals into civil aviation law - as indeed became the case in the form of the Civil Aviation Act 1946. This is not to say, however, that there was not some attempt to moderate the Socialists' attitude.

The Conservatives were severely critical of the Government's plan and made numerous attempts to modify the provisions of the Civil Aviation Bill during its passage through Parliament in the early summer of 1946. Generally their attacks were concerned with the principle of complete public ownership although on occasions specific attention was paid to the future prospects of the Independent operators and to the fact that the Bill prevented them

from contributing their air transport experience. (99) Two particular points raised by the Conservatives were, in retrospect, of great interest. One of these dealt with the question of definitions (100) claiming that the Bill failed accurately to define the scope of charter operations. A more important point was put forward by Lord Swinton who moved an amendment (101) to enable charter services to cater for organised tours. The Government reply was cautious and indicated that they were aware of the special regulatory difficulties of these services which had many characteristics of "scheduled" services. The Minister replied:

".....he had been forced to the conclusion that to concede the amendment would strike at the roots of the fundamental principle of the Bill - namely, that scheduled air services were reserved to the three Corporations". (102)

The importance of this principle to the Socialists precluded any real chance of modifying the Bill to allow the Independents even the limited scope which they might have expected under the Swinton Plan. Reviewing the passage of the Bill, at a later date, the private operators concluded:

".....it was not possible to put before Parliament any combined opinions or amendments to protect the companies, but the strongest objections or the most cogent arguments would have been defeated because the measure was to establish and protect nationalised air transport; the Government majority in Committee voted down every amendment which threatened the principle". (103)

The Bill became law, as the 1946 Civil Aviation Act, on 1st August, 1946. It might be expected that the Independent sector at that point collapsed - unable to see any future for their operations. In fact this was not the case and instead the companies exploited the "Charter and Air Taxi" clause to the full. Indeed, in respect of these types of operation, even whilst the Bill was still under discussion the Minister noted:

"The numbers of charter services which have already been instituted... ..seems to me proof that the people concerned do not feel any clamping down on initiative in regard to charter services". (104)

7.33 The Retreat from Full Nationalisation 1946 - 1951

Lord Winster's belief that the 1946 Civil Aviation Act was not "A clamp on initiative" was certainly supported by the large number of charter operators who came on the market. The quality of these was somewhat more dubious and the large number of entrants was matched by similarly large number of failures. Instability thus became the essential feature of post-war Independent operations. The root cause undoubtedly lay in the provision of the 1946 Act which prevented private operators from carrying traffic of a scheduled nature. The fluctuations of the charter market, therefore, were directly reflected in the fortunes of the private sector. In many instances, of course, the instability was the result of operators' own weaknesses:

...over-optimism, insufficient capital and straight forward lack of business sense. Too many of many of the companies had been formed by enthusiastic amateurs whose previous experience had been limited to Service work. Under relentless economic pressure the life of many companies was short and gay". (105)

Despite the fact that these comments were undoubtedly valid in many cases, the operators were inevitably bound by the terms of the 1946 Act and that legislation must be regarded as the source of their troubles. Commenting on the Winster Plan (which formed the basis of the Act's principles) when it was first published, the "Times" suggested that the charter and air taxi clause was an important concession to private enterprise. In particular it was thought that American experience indicated a great future for charter operators. What the "Times" failed to add was that such a future had to be based on stable and long-term development. The Act's great weakness was that it severely restricted the ability of the charter operators to develop services in the sector allotted to them (103.1)

The concentration of Government interest in the activities of the State Corporations and the "laissez faire" attitude towards the confused and unstable charter sector clearly resulted in insufficient national support for the latter. More dangerous, however, was the lack of control which also resulted from this policy. Without control of the charter sector, the Government could not be entirely sure of its capabilities or direct its growth in the national interest. The problem was thrown into

sharp relief by the India/Pakistan airlift of 1947 and the Berlin airlift of 1948. The sudden capacity demand caused by these two events could only be met by the charter airlines. The wisdom of the 1946 Act which offered no long-term prospects for these and, therefore, no certain maintenance of the reserve air transport potential which they represented, was called into question.

In particular the Berlin airlift became the focal point of the dilemma which now faced the Labour Government which wished to prevent the Independents from being able to challenge seriously the position of the State Corporations. At the same time it also perceived a clear military need for the stable maintenance of the charter sector whose contribution to the airlift had been so great. (106)

Even before the Berlin airlift made its demands felt, the limitations of the nationalisation policy were being experienced. In particular BEA's lack of aircraft meant that it was unable to supply adequate capacity and was unwilling to take on additional services. The Labour Government's awareness (13.5) of this possibility had resulted in the inclusion of one small opportunity for private operators in the 1946 Act. The relevant clause (107) permitted the Independents to operate scheduled services which BEA deemed to be necessary but which it was unable to supply itself. All that was required was that the Independent operator should be recognised as an "Associate" of the State airline. Early in

1948 BEA decided to supplement its own summer schedules by employing "Associate Agreements" with a number of Independents. By the end of the year the demands of the Berlin aircraft were being felt and there developed an increasing urgency to review the Independents' position.

The Kirtleside Enquiry (108) set up to consider whether and, if so, how the Independents sector should relate to the nationalised Corporations, came out strongly in support of the "Associate Agreement" device.

A further recommendation was that the Air Transport Advisory Council (ATAC), established originally as a consumer protection body, should be asked to supervise the means by which such Agreements were entered into and to advise the Minister on their suitability.

In no sense was the ATAC expected to act as a licensing or indeed even as a policy making body. It was required merely to consider whether applications for Associate Agreements were compatible with the Minister's wishes and to recommend rejection of those which were not. (109)

Despite the Council's peculiar status and lack of authority it did eventually evolve into a quasi-licencing authority with strong views. However, although it subsequently acquired a certain

importance and influence, its original powers were never extended and responsibility for implementation always remained with the Minister. Such a policy was to have serious long-term effects for British civil aviation which was thus exposed to direct political involvement and direction.

The Labour Government's acceptance of the Kirtleside recommendations and their subsequent implementation (109.1) marked a small, but significant retreat from nationalisation. Jubilation by the opponents of public ownership was short lived, however, when the implications of the Government's new policy became known. The most disappointing aspect from the Independents' point of view must have been that the "Associate Agreements" were clearly regarded as a temporary measure with no intention of offering long-term prospects. Such stability as the new policy offered was limited to a twelve month period for which the Agreements were valid.

The British Air Charter Association⁽ⁱ⁾ was, predictably, disappointed. Receiving the effect of the new policy it said:

"These Associate Agreements are granted only with the approval of the Minister and are no way permanent. They have helped the Companies, who cannot, however, depend upon the continuance of

(i) The Independent's trade association

the agreements. The Corporation is already taking over some of the routes which were started and developed by the Companies". (103.2)

Furthermore, the inability of the ATAC to act as a mediator between the private and public sectors served only to emphasise the power of the Minister:

"In other words the Corporations have taken advantage of the unfair position created by the Ministry to exploit the private firms to discover which services are worth operating. British European Airways has, in fact, recently declared that it will operate any service which shows any likelihood of showing a profit". (110)

It may well be that this was an extreme view of the Government's intentions. However, the opportunity for exploitation certainly existed and the intention of the new policy was principally to enable BEA to meet short-term capacity deficiencies.

The conclusion reached on this first step away from full nationalisation is, therefore, that it represented a practical necessity rather than a marked change of philosophy. There are no indications that the Labour Government saw it as anything other than expedient to allow private operators to supplement BEA's services in times of need. In adopting such a policy the Government in no way felt itself to be allowing private enterprise to compete with public ownership. The limited advisory status of the ATAC was a further reason why the new policy was

unlikely to have had any significant effect. Ministerial approval was only likely to be given to ATAC recommendations which suited the requirements and interests of the State Corporations.

In August 1949 the Berlin Aircraft ended and the Independents once again found themselves with no stable future and little scope for development. Their contribution to the airlift had its rewards however. The operators gained tremendous experience and the Government at last became aware of the Independents' essential role. This awareness was sharpened by the Korean conflict and by the end of 1950 a new understanding of the Independents' complementary nature became apparent. The Socialists' acceptance of the need of continued existence of the Independent sector had to be reconciled with the "right" of the State Corporations to operate all British scheduled services. If the need for a "Redundancy Provision" was now established, how was that need to be satisfied? A prime requirement was that investment should be attracted to allow the purchase of new aircraft. Without specific opportunities for long-term growth, however, no such investment would occur. Long-term growth had to be based on stability and the charter world was not noted for that quality. Furthermore, BEA was rapidly becoming able to replace "Associate Agreement" services with its own.

The Government's solutions to the problems were set out in the course of two Directives to the ATAC. The first Directive of

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January 1949 was designed to allow Independent operators to supplement BEA's scheduled services. Its intention was not to encourage long-term private sector involvement in these or to establish direct competition with the Corporations. Such security and scope as the Directive allowed was severely and deliberately limited:

"The period of an Associated Agreement should not normally exceed two years.....

Associate arrangements that would hamper the planned development of the Corporation's services should not be recommended.....

The Associate arrangements should, in general, be in respect of the following types of services;

- a) Internal "ferry" and "crosscountry" services.
- b) Internal seasonal services.....
..... or service on routes where... there are large fluctuations of traffic involving excesses of traffic demand over the capacity provided by the Corporation's air services". (109.2)

Clearly, any policy which restricted licences to two year tenure and which regarded "ferry" and "seasonal services" as the limits of the scope of operation, could not be expected to attract significant private capital into the Independent sector. Such investment had to be achieved, however, if the Independents were to remain in existence as a strategic air transport reserve. The dilemma for the Labour Government was that its policy of blanket nationalisation of regular air services would,

of necessity, have to be modified to allow private opportunity without making that opportunity competitive for the Corporations.

The second Directive, of September 1950, reflected the extreme difficulty which confronted a Government's intention of adhering to one of its fundamental principles whilst recognising the need for change. The declared aim of the new policy was to make Associate Agreements:

".....a much more realistic proposition especially for those Companies which may have to contemplate the purchase of new aircraft....." (111)

The solution whereby this was to be achieved rested largely on greater security of tenure. Companies fortunate enough to obtain Associate Agreements could now be licensed for five years. Furthermore, the scope of their activities was extended to services "Both seasonal and all the year round". (112) Despite this further easing of attitude towards them, the Independents saw little real improvement in their prospects. It was simply too much to expect the Directive to alter firmly held convictions concerning the long-term fate of private airlines under Socialist policies. Indeed, the Minister himself had been at pains to dissuade over-optimism by the private sector:

"The greatest possible pains were taken to avoid persuading these companies to commit their money to these ventures". (113)

The Independents gradually resolved their various complaints into one; the simple truth was that they required a certain level of stable work on which to build foundations. The "new policy" contained in the September Directive would have little effect on investment until such time as the Government made a long-term commitment to maintain the private sector. (114) Although the Independents were reluctant to admit it, there can be little doubt in fact about the genuineness of the Government's change of heart. Statements of policy and attitude through the Autumn of 1950 made it quite clear that the new policy had a specific purpose - to ensure the continued existence of the Independents as a reserve transport force. (115)

If the two Directives of January 1949 and September 1950 are compared, it may be seen that they had two, quite different aims. The first set out to supplement scheduled service capacity on an entirely temporary basis. The second sought to establish a framework for long-term survival of the Independent sector. This latter Directive thus represented a major retreat from the philosophy behind the original 1946 Act.

The tangible evidence of practical support which had for so long been sought, materialised in the form of trooping contracts. In these, the Government negotiated with the private companies

to ferry British troops between the UK and overseas bases. Certainly they allowed the Independents to increase their passenger mileage, however, there is doubt about the profitability of the operations. (16.6) Prices were fixed by competitive tender and many firms undoubtedly barely broke-even - so great was their desire to sign a contract while the trooping policy continued in existence.

Though the intent of the Labour Government's policies is clear, their effect is less easy to determine. The return of the Conservatives in November 1951 effectively created an entirely new situation which interrupted trends developing under the Socialists' policies.

1.34 The Conservatives Policy of Minimum Change

Though it was widely understood that the Conservatives intended "To restore a wide measure of private enterprise to the air", (116) the likely policy of the new Government was by no means easily established. The very concept of nationalised civil aviation had originated in a Conservative Administration when it established BOAC. That Corporation remained in existence and had grown in stature under the blanket public ownership policies of the Socialists. The extent to which a Conservative Government would now allow its own creation to face serious competition from the Independents was questionable. It was also well remembered that the Swinton Plan had been notable for its lack of interest in

the private operators. Certainly that Plan had issued from a Coalition Government and certainly the Conservatives, in opposition to the 1946 Civil Aviation Bill, had put forward some radical new ideas. It remained to be seen, however, the extent to which those ideas might be implemented by a Conservative Government returned to power.

The new Minister's first action on taking office was to consolidate the position of existing legislation. While a complete policy review was being held, the ATAC was expected to adhere to the terms of the Directive of September 1950. None of the Associate Agreements recommended for approval were to extend beyond 31 March 1953, however, after which date a new policy was expected to be effective. (117) Though the outcome of the policy review could not be accurately forecast, there seemed every reason to expect it to provide wide scope for expansion of private operators:

"I share the Council's view that.... their current Directive limits the scope for such companies to participate in the provision of scheduled air services, and that little expansion of associate services is likely under these arrangements. The review of civil air service policy which I am now undertaking has, among its objectives, increased opportunities for independent companies to take part in air transport development". (117.1)

Both formally and informally during this period of policy review, the new Administration let it be known that it fully appreciated

the anxiety and frustration of the Independents. The Government "Recognised the need for stable bread and butter work as well as increased opportunities". (118) Despite this, the caution with which the Conservatives approached the subject suggested that their much-publicised desire to champion the cause of private enterprise was being restrained by other factors in the civil aviation matrix.

In particular the new Government found itself caught between two opposing forces. The Independents for their part lost no time in establishing a claim. The 1951 Annual General Meeting of the British Independent Air Transport Association (BIATA)⁽ⁱ⁾ trade body specific proposals:

1. Complete revision of existing Civil Aviation legislation.
2. The exclusive reservation of charter work for the Independents.
3. The establishment of a statutory and independent licencing authority.
4. Greater scope for private enterprise.

The BIATA viewpoint was simple; if the Government wish to establish a virile and profitable Independent sector it must begin by removing restrictions. The extent to which this was possible, however, depended on the degree of protection still to be afforded

(i) BIATA superseded the British Air Charter Association as the Independents trade body.

to the State Corporations. When it became clear, in early 1952 that the Conservatives were determined, "Not to impair the position of the established Corporations", (119) it was immediately apparent that BIATA's four-point plan was hopelessly unrealistic. Such new scope as the Conservatives intended to offer had to be found in areas where, "No interference whatever in the established networks of the Corporations", (120) was created. The enshrinement of this principle in the Conservatives' new policy led directly to a situation in which all parties were equal but some were more equal than others.

The essence of the new policy was that Independents should be able to operate new scheduled services to destinations not previously served by the Corporations. Though there was certainly to be the opportunity mentioned above, there was a secondary, but equally important objective. This was to encourage the Independent airlines to interest themselves:

"In the development of new routes and new classes of traffic not previously served by the two Airways Corporations". (121)

The Minister's proposals as embodied in the new policy were regarded generally as being, "Cautious and incomplete". (122)

In comparison to the four-point plan put forward by BIATA, they were very disappointing and the Association was quick to point out their likely minimal impact.

It may be that the proposals were somewhat less than was expected by BIATA but they reflected the extent to which any attempt to radically alter the structure of British Civil aviation was constrained by external interests. The Independents saw themselves as being restricted to charter operations - which of course was the case under the 1946 and 1949 Civil Aviation Acts. In such a situation their reaction was to regard this as second best. The ultimate aim was, therefore, to operate "normal scheduled services". The Minister, whilst recognising this, had to reconcile it with the impracticality of such an aim. Even if he had wished to see Independent operators competing directly with the Corporations on scheduled services, he knew that this was impossible. Several years later the Edwards Report, when discussing the identical problem, concluded that no Independent could set up competitive scheduled services without initial artificial generation of traffic. Thus, British Caledonian's entry into the scheduled service field in the 1970's was based on the wholesale transfer of established BOAC routes and traffic.⁽ⁱ⁾ In 1952 such an action was entirely unacceptable to the Conservative Government who were adamant in their determination to protect the Corporations.

A further constraint, in the international field, was that scheduled services could not operate except under the terms of Bilateral Air Service Agreements. Thus the ability of the UK Independent operators to enter international routes depended on

(i) Table 7

TABLE 7 ROUTES TRANSFERRED TO BRITISH CALEDONIAN

London - Kano - Lagos - Accra (From BOAC)

London - Tripoli (From BOAC)

London - Paris (Part from BEA)

their being accepted as "designated carriers" by a foreign Government. In a very real sense, therefore, changes in UK domestic legislation had limited international effectiveness. Furthermore, the Minister knew that there was extremely limited scope for new services of a "normal scheduled" nature. In particular he was aware that such new services had to be sufficiently attractive to enable the Independents to generate private investment. Such investment needed to be substantial in order that:

"On routes of public importance, the applicant has the necessary financial resources to provide and maintain adequate services of the standard necessary to fulfill his obligations to the public on an enduring basis". (121.1)

In a more general sense the Minister's freedom of action to introduce new policies was restricted by pressure of Parliamentary work. A new Civil Aviation Act would have taken a very long time to pass through the usual processes and he therefore chose to work within the constraints of the 1949 Civil Aviation Acts. Such a step, however, immediately restricted his initiative. The limited scope for change was reflected by the nature of the Conservatives' defensive arguments in debate where they pointed out the essential similarity to the Socialists' existing arrangements. The constitution of the ATAC was unaltered - it remained an advisory body, Associate Agreements remained the modus operandi and the established Corporation services continued to be protected. It is difficult

to see how the Socialists could possibly have construed the new policy as the Independents' "Golden Moment". (123)

The essential similarity of approach by both political Parties was not unnoticed by BIATA. By July, 1952, when the debates were largely complete and the proposals were being converted into statutory terms of reference for the ATAC, the Independents conceded defeat. Any hope for a bright new future under Conservative Government now gave way to the realisation that:

"....the amount of support we can expect from present and possible future Governments differs only in degree...."
(124)

This proved to be a prophetic statement. Despite the Minister's declared intention to review the "stop-gap" measures at a later date, the 1949 Civil Aviation Acts and the Directive to the ATAC of 30 July, 1952, setting out the new policy remained as the controlling legislation until 1960.

The return of the Conservatives in 1951, heralded as the start of a new era for private enterprise in civil aviation, failed to have any major effect. It principally served only to emphasise the essential similarity between the policies of the two Parties. Though the Conservatives may have been marginally more favourably inclined towards the private sector, their "new policy" was little more than an extension of the liberalising trend begun by the Socialists. Protection of the State Corporations was seen to

be as much a central part of Conservative dogma as it was of the Socialists. The principle new feature of the Conservative policy was that it sought to encourage the Independents to exploit more fully services which could not be classed as "normal scheduled". Though not immediately apparent, this was to have serious consequences for the structure of British civil aviation.

7.4 Changes in the Scope of the Independents Work Following Modifications to the Existing Legislation

So far we have noted the changes which occurred in the period 1946 to 1952 and have sought explanations for them. The eventual position of the Independents in 1952 was considerably altered from that in 1946 and this was to lead to important changes in the course of civil aviation in the UK. Before we can establish the full effect however, it is important to understand the scope and opportunity which was gradually opened to the Independents.

The Civil Aviation Act 1946, must be regarded as the datum against which changes are measured. The intention and result of the Act was to ensure that it should not be lawful:

"....for any person, other than the three corporations, their associates, and the servants and agents of the three corporations and their associates, to carry passengers or goods by air for hire or reward upon any scheduled journey between two places of which at least one

is in the United Kingdom". (107.1)

The Act specified three particular types of services open to all operators and in addition, by implication, any service not covered by the definition of a "scheduled journey" could be similarly regarded. It was shown earlier ⁽⁶³⁾ that ICAO had had considerable difficulty in adequately defining "A scheduled journey" and it would be surprising if the definition adopted by the UK Government had not had serious weaknesses. It read:

"In this Act the expression "scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of it". (107.2)

As events were later to show, this definition effectively left a wide area of air transport operations open to the Independents. It might be thought that this was an accidental result in view of the Socialists' generally declared attitude towards private enterprise in civil aviation.

In fact this closely reflected the Labour Government's attitude. It had always maintained that it wished only to restrict entry to scheduled services. ⁽¹²⁵⁾ This author believes, therefore, that the so called "loopholes" in the definition were in no way accidental. The Independents, however, had become so mesmerised by their exclusion from scheduled services that they

characteristically regarded the legislation as restrictive. In fact, in the non-scheduled sector exactly the reverse was true, but it appears to have been a truth which the Independents preferred not to recognise.

Under the terms of the original 1946 Act, therefore, several types of service remained freely available to the Independents. To class as a "scheduled journey" the service had to be both open to the public and systematic in nature. The "loophole", therefore, allowed the Independents to carry traffic described by either one of these constraints but not both.

At a later date the Independents' exploitation of this opportunity became extreme and was responsible ⁽¹²⁶⁾ in part for the introduction of the Civil Aviation (Licensing) Act 1960. This certainly suggests that the full implications of the chosen definition were not entirely comprehended by the Labour Government in 1946. Nevertheless these opportunities for Independents' operations certainly existed from the date on which the Act came into effect. Services which were either "systematic" or "open to the public" (but not both) could, therefore, be operated without restriction by the Independents.

A further type of service constituting:

"....a series of three or more journeys organised as a tour for the common enjoyment of passengers". (107.3)

was also opened to the Independents but only on the personal approval of the Minister. These services became known as "Circular Tours". The Act also made provision (107.4) for the appointment of "Associates" of the Corporations but did not specifically mention types of service which could be operated under such arrangements. The only guidance was that they had to be:

"....of a kind which the Corporation have power to carry on"

and

"....calculated to further the efficient discharge of the functions of the Corporation". (107.5)

In practice, when the Government decided to make use of the Associate Agreement device, it found that it needed to indicate more precisely what services were expected to be operated. The first Ministerial Directive of 26th January 1949 thus included constraints on the Independents' scope under Associate Agreements. First, they could not operate any route likely to hamper the planned development of the Corporation's services. Second, they could operate only year-round domestic "ferry" and cross-country services. Third, they could operate seasonal services on domestic and international routes as a supplement to the Corporation's services. At the same time as he was extending these opportunities to the Independents, the Minister also placed restrictions on one of the activities regarded as a special case

by the 1946 Act. "Circular Tours" had now to be considered by the ATAC alongside applications for other types of scheduled services.

The Civil Aviation Act 1949 and the Air Corporations Act 1949 made no changes to the types of services reserved "to the Corporations and their Associates" and neither did the Minister's second Directive to the ATAC of 26th September, 1950. This merely clarified the nature of the opportunities available and emphasised that Associate services of all kinds were not expected to compete with existing or planned operations by the Corporations. The major effect of the third Directive to the ATAC of 30th July, 1952, was to remove the constraint that Associate services should not compete with existing or planned operations by the Corporations. The Directive made no attempt to bring the Independents' non-scheduled operations (i) under any form of ATAC control. Furthermore its grant of new types of service opportunity was limited to freight and so-called "Colonial Coach" traffic. The types of operation which the Independents could involve themselves in were thus largely unaltered by the Conservatives' new policy. For any of these services, however, the Corporations and Independents alike could now place competitive applications before the ATAC in the expectation that

- (i) That is services not described by Sections 24 (1) and (2) of the Air Corporations Act, 1949.

they would be treated as equals. An important facet of this policy's aim of introducing greater competitive pressures to UK civil aviation was to allow the introduction of Colonial Coach and Inclusive Tour services to operate on established "normal scheduled service" routes.

To sum up, therefore, we may see that although there was a gradual easing of competitive restrictions on "scheduled services"; the decision to place "non-scheduled services" outside any requirement for licensing by the ATAC remained in force unaltered from 1946 to 1960.

CHAPTER 8 THE DEVELOPMENT OF UK POLICIES TOWARDS INCLUSIVE TOUR OPERATIONS BY AIR

8.1 Introduction

In the previous chapter the general relationship between private and public enterprise in civil aviation was discussed. In the current chapter we are more particularly concerned with the status of the Inclusive Tour Charter (ITC). Despite knowledge of the concept from the earliest post-war days⁽¹²⁷⁾ it made no practical impact on civil aviation until the mid 1950's. The impact was then immediate, however, and quickly established the ITC as an essential feature of UK air transport.

The first part of this work established the nature of the civil aviation environment. In particular it was suggested that change is unlikely to occur without the specific support and encouragement of the Government and the licensing authority.

The major growth of importance of ITCs occurred during a period of political and legislative stability. No change of Government took place and no new Civil Aviation Acts were introduced. Therefore it is interesting to determine whether ITC's developed as a result of straight commercial pressures or because subtle political influences were introduced.

There can be little doubt that some of the incentive had commercial origins; the Independents needed to develop new

services in order to remain in business. However, it is well known that new services and types of service need the support of Governments if they are to succeed - particularly in the international field. It might be suggested, therefore, that the major restructuring of the UK civil aviation industry which took place between 1951 and 1960 resulted not simply from the ATAC's passive acceptance of the Independents' business enterprise. Of far greater importance was the active support given to selected activities and aspects of that enterprise by the ATAC and by the person ultimately responsible - the Minister. This chapter attempts to relate the growth of the Independents' ITC business to the policies of the Minister and the actions of the ATAC.

The chapter begins by analysing the status of ITC operations under the Socialist and Conservative Governments in section 8.2. It next considers the role of the ATAC in section 8.3 and the nature of the policies which the Council sought to have implemented. Finally in section 8.4 the development of the Government's attitude towards the ITC is considered.

8.2 The Status of Inclusive Tours Under Different Post-War Administrations up to 1960

8.21 Introduction

The derivation of an acceptable distinction between "scheduled"

and "non-scheduled" services caused a great deal of difficulty in the early post-war years. At a later date the particular case of the Inclusive Tour was to cause even greater problems. In Europe, the earliest exponents of the ITC concept were the UK Independent operators and it is therefore important to appreciate the status of the Inclusive Tour service under UK domestic law. The problem of adequately defining these operations was no less difficult even in the limited UK context. Indeed, in many ways it was more complex. Ironically it was the Chicago Convention's discrimination between "scheduled" and "non-scheduled" services in terms of the freedom to operate without restriction which caused so much effort to be directed towards defining under which of the two titles inclusive tours should be listed.

8.22 Inclusive Tours 1945 - 1952

The Civil Aviation Act 1946 established "The Three Corporations" as the central instruments of the Labour Government's plan

".....to secure the development of air transport services by corporations operating under public control". (107.6)

These corporations were entitled to carry out any form of air service operation, without restriction. (107.7) Although this specifically included the right to operate charter services later provisions of the Act made it clear that the

Corporations were to be regarded principally as scheduled operators. More particularly the Act made it illegal for any operator, other than the three Corporations and their Associates:

".....to carry passengers or goods by air for hire or reward upon any scheduled journey between two places of which at least one is in the United Kingdom. (107.8)

By definition, therefore, all services offered by airlines other than the Corporation and their Associates had to be "non-scheduled". Even whilst the Bill was passing through Parliament, however, doubts were expressed about the particular status of "Charter services to cater for organised tours such as might be desired by travel associations and other bodies catering for holidays". (128)

Though the Conservative Opposition might have considered the term "Charter services" as being an apt description, it was unacceptable to the Labour Government. This was because the latter believed that such holiday tours were essentially within the spirit of the definition of "scheduled journey". (107.2)

By implication, therefore, it could not be accepted that such services should be open to operation by the non-scheduled sector. Such a concession, it was argued:

"....would strike at the roots of the fundamental principle of the Bill - namely that scheduled air services were reserved to the three corporations". (129)

There must be some doubt that it was particularly the ITC concept to which the Minister was referring in this instance. It seems more likely that it was the general field of regular holiday air travel from which he sought to bar the non-scheduled operators. This view is supported by the Minister's much later reference to Inclusive Tour work as being "A special class not envisaged by the Act and requiring careful consideration." (130)

The Corporations' preoccupation with the development of "normal scheduled services" effectively ruled out the possibility of their being able to cater for the particularly seasonal nature of Inclusive Tours. Indeed, one of the principle reasons for the introduction of Associate Agreement operations was to cater for just such a seasonal demand. The only means by which independent operators could involve themselves in ITC services, legally, was to re-designate the operators to some status other than non-scheduled. The revised Terms of Reference of 1949 and 1950, therefore, in no way eroded the concept of an Inclusive Tour being a scheduled service. Instead it allowed the potential operators to alter their status so as to be eligible to operate ITC's. In this curious manner Inclusive Tours were regarded in UK law as scheduled services even though they were, in the main, operated by "non-scheduled" operators.

8.23 Inclusive Tours 1952 - 1960

The Conservatives' "new policy" of 1952, though considerably altering the scope of work available to the Independents, did not in any way replace existing legislation. As a result, Inclusive Tours continued to be classified as "scheduled services" and the Independent airlines were not relieved of the necessity of entering into Associate Agreements with the Corporations in order to operate them. Throughout the 1950's therefore, the ITC services operated by Independents under Associate Agreements were treated, domestically, as scheduled operations. Paradoxically, however, UK law allowed there to be "non-scheduled" ITC services as well - operated by Independents not Associated with the Corporations. Provided these services were covered by the "closed group" provision they could be operated without reference to the ATAC which, of course, was only concerned with so-called "scheduled" services. The majority of European States also regarded ITC services as non-scheduled and thus, regardless of their status in UK law, all ITC operations from the UK, in fact, were treated as non-scheduled services requiring individual approval by the receiving country and not covered by bilateral Agreements.

The trend towards exploitation of the closed group loophole in the late 1950's was, therefore, only to be expected. All ITC's were regarded in the same light by the receiving country regardless of whether or not the ATAC had considered the

original application. The domestic status of the particular operator was of little consequence and many companies which were wholly and completely orientated towards ITC operations had no need to obtain the "Associated" title because there was ample opportunity for development of the "non-scheduled" closed-group services. By the mid 1950's the situation had become little short of farcical. What was particularly damaging for the Government was that its legislation, by classing Inclusive Tours as "scheduled services" and by poorly defining that term, had brought about the substantial development of an ITC industry which was largely outside the control of the UK licensing authority.

The solution to this difficult and undesirable situation lay in a redefinition of the ITC service. By the end of the 1950's when it was becoming clear that the ITC represented a class of service per se, the only realistic solution was the replacement of the existing legislation with a new Act which it was hoped would remove some of the more serious anomalies.

8.24 Conclusions

The conclusion on the status of the ITC service under UK legislation in the period 1946 to 1960, must be that it was a hybrid. Technically, of course, ITCs open to the public were scheduled services and those open to closed groups only were non-scheduled. In practice, as the specifically liberal

treatment proposed by section 3(vi) of the 1952 Terms of Reference for the ATAC made clear, ITCs increasingly came to be regarded as a service requiring specialised regulation and not fully catered for by the established categories of "scheduled" and "non-scheduled".

8.3 The Role of the Air Transport Advisory Council

Before starting to investigate the activities of the Air Transport Advisory Council (ATAC) and its responsibility for the change in structure of British civil aviation, it is important to understand the limitations of the Council's powers. Clearly, the extent to which it could be held responsible for development was closely related to the extent of its regulatory powers. In fact it was the unfortunate fate of the ATAC to hold the status of a "quasi-licensing body" - required to make licensing recommendations to the Minister without having the power to implement those recommendations itself or to relate them to its own policies.

As originally conceived, the ATAC was a consumer protection device, the sole function of which was to hear complaints from the public concerning the standard of air services offered.^(45.1) Allowance was made, however, in the original Terms of Reference for the Council to consider:

"...any question which may be referred to the Council

by the Minister, being:-

- (a) a question relating to facilities for transport by air in any part of the world, or relating to charges for such facilities; or
- (b) a question which in the opinion of the Minister requires consideration with a view to the improvement of air transport services". (107.9)

The reorganisation of legislation under the 1949 Civil Aviation Act did not include any changes to the formal function of the Council. The Terms of Reference were identical before and after the introduction of this Act. Despite this lack of formal redefinition of its function, however, the Ministerial Directive of January 1949 made it clear that, in future, the Council was indeed to fulfill a somewhat more comprehensive role. As a result of this change, the Council became involved in the consideration and vetting of applications to operate scheduled services by the Independents under "Associate Arrangements". There is no suggestion that this now placed the Council in the position of being an independent licensing authority since the final authorisation remained firmly with the Minister, nevertheless the position of the ATAC as an advisory body for the benefit of the Minister in his decision making role implied that some weight was now to be given to its deliberations and opinions

That the ATAC did in fact have its own opinions on the desirable future growth and structure of the industry is clear from the early Annual Reports, but it is equally clear that the Council's recommendations to the Minister were based in the main on the

on the guidelines he had set out for them in his Directive. (109.3)

It is also quite clear that the ATAC recognised its essential function as an advisory body for the benefit of the Minister in implementing his policies:

"...the ultimate responsibility...rests with the Minister...the recommendations of the Council...should be in accord with his policy..."

"...The Council...should treat the applications in order that their recommendations might be in accordance with the Government's policy. The ultimate responsibility...has remained with the Minister..." (109.4)

Despite these obvious restrictions on the ability to implement independent policies, the Council continually put forward its thoughts on what should be done. In particular, it emerged at a very early stage as a champion of the Independent airlines. There can be little doubt as to where it felt encouragement should be given. In so far as it was not entitled to pursue its own policies, the ATAC went as far as it could in making clear its position and the pattern of comment which runs as a constant theme through the Annual Reports of the Council suggests strongly that there was a desire to see the continued existence and further strengthening of the Independent sector;

"The Council's general conclusion...is that the Minister's decision not to deny the public the benefit of such facilities as the Charter Companies were prepared to provide under these Associate Arrangements was thoroughly well justified in the event". (109.5)

"The Council's general conclusion....is that the remarks in paragraph 21 of their Report last year have again been borne out...The Council hope, moreover, that the greater security of tenure which will be allowed in certain cases to Associate Companies under the new arrangementswill enable some of the Companies to offer more regular and increased facilities to the travelling public..". (112.1)

".....It has, moreover, become even more apparent that there is only a limited field in which Independent Companies can hope to operate associate services economically under the present arrangements.....".(117.2)

"The Council's general conclusion....is that while under the present arrangements their scope is limited, these services have been of considerable benefit to the travelling public in that they have carried 91000 passengers, the greater number of whom would not have been catered for by the Airways Corporations.....". (117.3)

The second policy Directive of September 1950, was partly in response to the ATAC's conclusion that the Independents were providing a worthwhile service and needed official encouragement to ensure their continued participation. The Directive of 1950 did not, however, in any way alter the status of the Council but merely changed the guidelines laid down by the Minister.

The change in Government in 1951 did at last result in an alteration of the Terms of Reference of the ATAC - though, significantly, not in the manner generally sought by the Independents⁽¹³¹⁾ or proposed by the Conservatives in Opposition.⁽¹³²⁾ The new Government and the ATAC held broadly similar views on the desirability of expanding the scope of operations of the Independents. In view of the

Council's earlier comments concerning the limited field of the Independents' work and the new Government's declared aim of reintroducing competitive market forces into the national transport system it is hardly surprising that the two were broadly sympathetic to each others', and the Independents' case. What is more surprising is that the Conservative Government in practice failed significantly to alter the status of the ATAC by introducing new legislation. As a result it continued to operate as a quasi-licensing authority throughout the period of the Conservatives' time in power and effectively remained an advisory body. In practice, however, the ATAC did find itself in a singularly more powerful and influential position following the change in Government.

The Terms of Reference which were to govern the activities of the ATAC for the whole of the period up to 1960 were set out in the Directive of July 1952. These Terms of Reference specifically restated the original concept of the Council's rôle:

"....Applications by Independent companies for Associate Agreements will, as before, be considered in the first place by the Air Transport Advisory Minister whose decision will be final". (121.2)

Despite the continuing lack of legal powers to determine policy, the Minister himself indicated that the Council was likely to take on this rôle:

"....In discharging their responsibility for advising me under their new Terms of Reference on the future development of our national air transport, the Council, with my full support, found it necessary to adopt in their consideration of applications a more detailed and comprehensive procedure than hitherto". (121.3)

Throughout this statement runs the implication that the Council was to become involved with the assessment (if not the formulation itself) of air transport policy.

The extent to which the ATAC allowed itself to be fettered by its lack of legal power to determine policy is the subject of the next section. This section has only been concerned with defining the formal position. The conclusion reached is that the legal status of the ATAC remained unchanged from the date of its original establishment to its disbandment in 1960. The effective status, however, altered continually throughout the period so that the Council eventually became a de facto licensing authority capable of formulating its own policies for future development and getting these implemented by the Minister.

8.31 Policies of the ATAC

Despite the statutory limitations on the Council's authority, there is no doubt that from its earliest days it had its own ideas on the way in which the industry as a whole should develop. As far as it was able to, without seriously transgressing

its Terms of Reference, the Council continually argued for greater opportunity for the Independent sector. The Independents therefore had a strong supporter of their cause in the ATAC.

Whilst the Labour Government remained in office, however the ATAC could do little to bring about change. The Council was no more than the Minister's servant and was clearly in no position to openly challenge his policy. The frustration felt by the ATAC is reflected in many of the Annual Reports published during the Socialists' term of office. (112.2) (117.4)

The effect of the inability of the ATAC to determine and implement its own policies and the inhibiting effect of the Socialists' legislation is well illustrated by the early history of ITCs to the Channel Islands. In its report for 1949, the Council note enthusiastically that:

"...inclusive tours to the Channel Islands were generally highly successful. Many of the new services to the Islands from various provincial centres proved themselves extremely popular even though, in many cases, the services were not finally approved until the summer was well advanced". (109.6)

However the ATAC was required to regard the Independents' operations as supplemental to the Corporation's only until such time as the latter was able to operate the route itself. Thus, the tone of the next Annual Report, for 1950, was considerably altered :

"The total number of passengers carried on Associate Services during 1950 was about 66,000. This figure represents a slight increase on that for 1949 even though, due to the BEAC's increased capacity between the London area and the Channel Islands, there were no scheduled or inclusive tour Associate Services during 1950 on that route". (112.3)

Clearly, in such a situation, the ATAC was in no position to implement its own proposals for the industry's development. Under the aegis of a Conservative Government, however, the situation was considerably altered and although no sweeping adjustment of the Council's status resulted there was considerable new opportunity for it to criticise existing legislation and to offer its thought on future policy. Because the Conservatives delayed in producing new Terms of Reference for the ATAC, the operations for 1952 were governed by a peculiar mixture of political interests. Since the mixture made the regulations temporarily more restrictive, they proved to be inhibiting towards the Independents operations. Not only was there little expansion in 1952, many services which had been authorised were withdrawn. Though the Council could do little to determine the shape of any new policy, it went to some lengths to point out failings in the existing legislation. In particular it emphasised the need for long-term prospects for development of traffic in whichever fields were to be opened to the Independents.

An early indication of the ATAC's likely attitude to Independents applications following the receipt of the Directive of July 1952, appears in the Report for that year. (121.4)

Two particular themes are immediately apparent. One is that it believed Independents to be largely interested in new services and types of service "Of considerable public interest", and the other that the existing services of BEA and BOAC would not be harmed by the operations of the Independents. Whereas the Council spoke in general terms when reporting its first year of operation under the policies, the second year's work resulted in considerable comment concerning, particularly, the ITC activities of the Independents. Indeed 1953 appears to be the year in which this type of operation first established itself as a significant form of air travel. Apart from the commercial pressures which might have caused this, the Directive of July 1952 also played a major role. The stated objective of the new policy was:

"....to give greater opportunities to private enterprise to take part in air transport development without in any way impairing the competitive strength of our international air services....by avoiding any measures that would undermine their existing international network it is the intention that (the Air Corporation) shall retain that position". (121)

Despite the insistence that existing route networks were to be protected, the Directive specified two particular types of service for which the ATAC recommend approval even where

those services were on routes already served by the Corporations.

One of these was the so-called "Colonial Coach" service and the other the "Inclusive Tour". Though both were treated similarly in that they could operate on existing routes, there were subtle and important differences between the details of guidance for the ATAC when considering applications.

Colonial Coach services were in fact severely constrained by the Minister's requirements for eligibility. Three particular points were required to be satisfied; first, the route had to be cabotage^(45.2) in character: second, the service had to be of a distinctly lower standard than that of normal scheduled services. Finally, and most significantly the service had to be specifically dependent on the generation of a new class of traffic.^(121.5) The effect of these conditions of eligibility was to make "The considerations of applications to operate these services....one of (the ATAC's) most difficult tasks". One opportunity for the Independents to operate on major international routes was, therefore, effectively very limited in scope.

The regulation governing the acceptability of Inclusive Tour application were a different matter. In their consideration of these, the ' ATAC was only required to ensure that:

"...such services are not likely materially to divert

traffic which would otherwise be carried by any operator authorised for route". (121.6)

The Directive's failure to attempt a definition of "material diversion of traffic" meant that the ATAC was entirely free to formulate its own opinions on the matter. In a very direct sense, therefore, the formulation and implementation of its own policy towards ITC operations was allowed and even encouraged by the Minister's Directive. This was a decisive departure from the established status of the ATAC up to that date. Though the Council, in later years, reiterated that its function was not "To express views on the policy for civil air transport", (59.1) there can be little doubt that in the case of ITCs, an independent policy was decided upon and implemented to the fullest extent permissible under the terms of the 1952 Directive. Despite the statutory limitations on its powers imposed by the 1949 Civil Aviation Act, the ATAC was indirectly granted the opportunity to significantly influence the development of ITC operations. Following receipt of the Conservatives' "new policy" Directive in July 1952 the Council implemented its spirit to the full and emphasised from the start that it believed there to be ample areas of opportunity for the Independents which would not affect the Corporation's services.

In the following discussion particular emphasis is placed on the ATAC's attitude towards Inclusive Tours and only limited reference is made to other types of service. Despite this,

it may be inferred that the attitude towards ITC operations by the Independents was indicative of the generally liberal interpretation of the Terms of Reference.

In considering the development of the ATAC's policies towards Inclusive Tours, three phases may be identified; first, a period of uncertainty and policy formulation up to 1954, second, a period of liberal application of the adopted approach from 1954 to 1957 and, finally, the onset of doubt about the full implications from 1957 to 1961. These phases are now dealt with separately.

8.321 Policy Formulation by the ATAC

The early support for the "right" of the Independents to develop some form of stable traffic was a feature of the ATAC's policies noted earlier. Indeed, it now seem clear that the Council would have welcomed any opportunity for the Independents to operate "scheduled" services. Although the definition of these, under the Air Corporation Act 1949, automatically included Inclusive Tours, it is doubtful if the ATAC ever came to regard these services as providing the basis for stable growth. ITC operations were thus treated as no more than an interesting new idea with some potential. They were regarded as expendable, however, and the real long term future of the Independents was felt to lie with the development of "normal scheduled services". Twice in these early years

of policy development the ATAC indicated its belief that ITC services should eventually be replaced by normal scheduled operations. (112.4)(133)

Despite this element of doubt about long term prospects, however, the Council adopted a policy of maximum liberal interpretation of the Minister's guidelines. Although it freely accepted that its policies might not stand the test of time, the ATAC believed that any ITC operations which were in the public interest and which offered some prospect of economic development should be approved. If it had doubts about long term growth potential, however, these were not matched by doubts about the nature of the ITC traffic. At a surprisingly early stage the Council indicated that it recognised ITC passengers as being a new breed of air traveller who had not previously been attracted by the Corporations' normal scheduled fares. Thus, from an early date there were signs that the Council believed ITC operations had two essential features. First, the potential for their development was very much affected by factors beyond the Independents' control. Second, and most important, the Council did not believe that ITC passengers would be diverted from the Corporation's established scheduled traffic.

Despite these firmly held convictions, however, the Council felt bound to develop its policies cautiously and in particular limited the period for which licenses were recommended to two years.

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and 204

missing.

Towards the end of 1953 the ATAC found itself being forced to adopt a definitive attitude towards ITCs. In that year BEA started to protest that their traffic was likely to be materially diverted to ITC services and applications for 1954 operations suddenly reversed previous trends and increased considerably. Though there had been insufficient operating experience to determine whether or not the ATAC's policies were correct it became clear that the Council was unlikely to have much time in which to define its attitudes.

8.322 Liberal Application of Adopted Policy 1954 - 1957

In December 1953, BEA had begun to be seriously alarmed by the growth of ITC applications and protested that material diversion of its traffic was likely if the ATAC continued to recommend their widespread approval. In fact, the traffic carried on ITC services by the Independents in that year constituted only a very small percentage of the total - just over 3%.⁽ⁱ⁾ The cause of BEA's concern lay in the great increase of application⁽ⁱⁱ⁾ for services beginning in 1954 and the ATAC itself expressed surprise at the degree of interest shown by the Independents in this type of operation. The Council had still not been able to assess the results of the licensing recommendations so far and was, therefore, reluctant to restrict the Independents' development of an entirely new type of service.

(i) Figure 1
(ii) Figures 2 & 3.

FIGURE 1. INDEPENDENT OPERATORS' ITC PASSENGERS AS A PERCENTAGE OF THE TOTAL PASSENGERS CARRIED IN THE YEAR SHOWN.

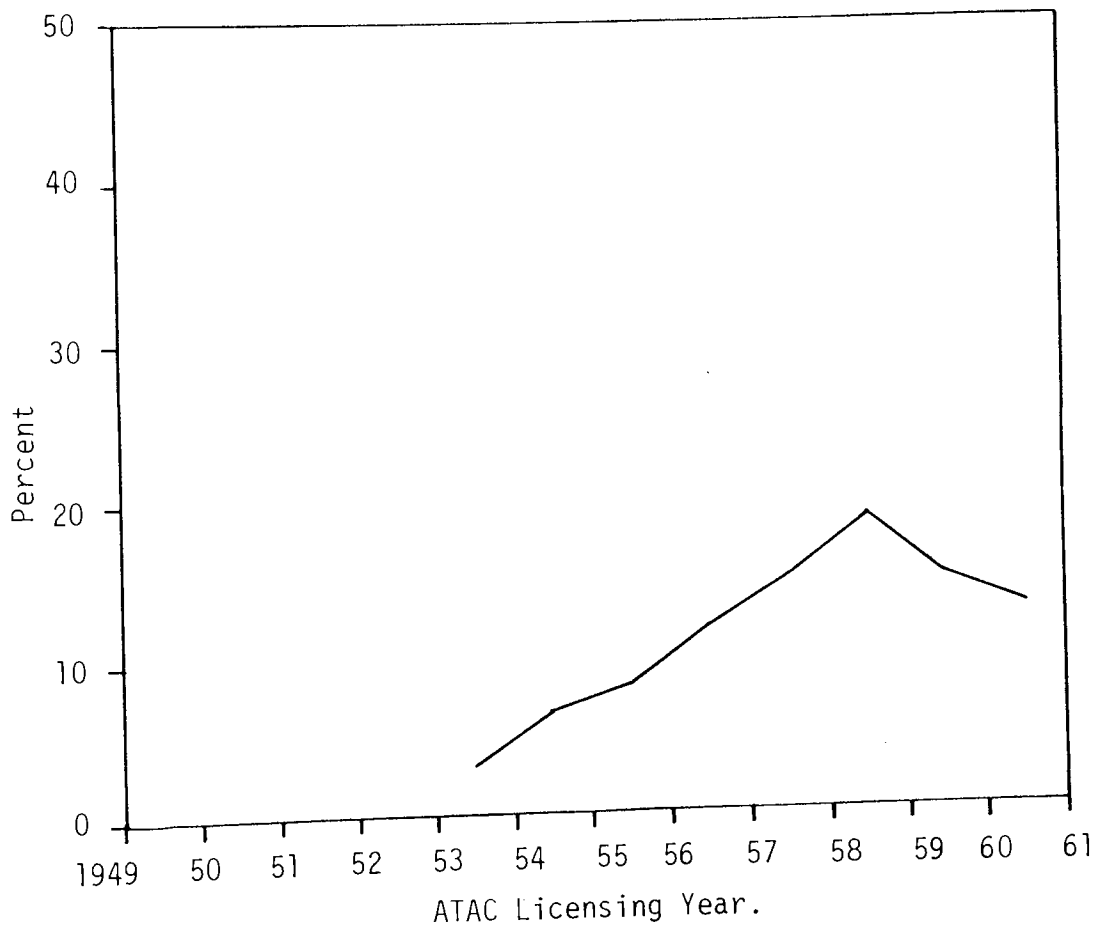


FIGURE 2. ANNUAL PERCENTAGE INCREASE IN NEW ITC APPLICATIONS MADE TO THE ATAC

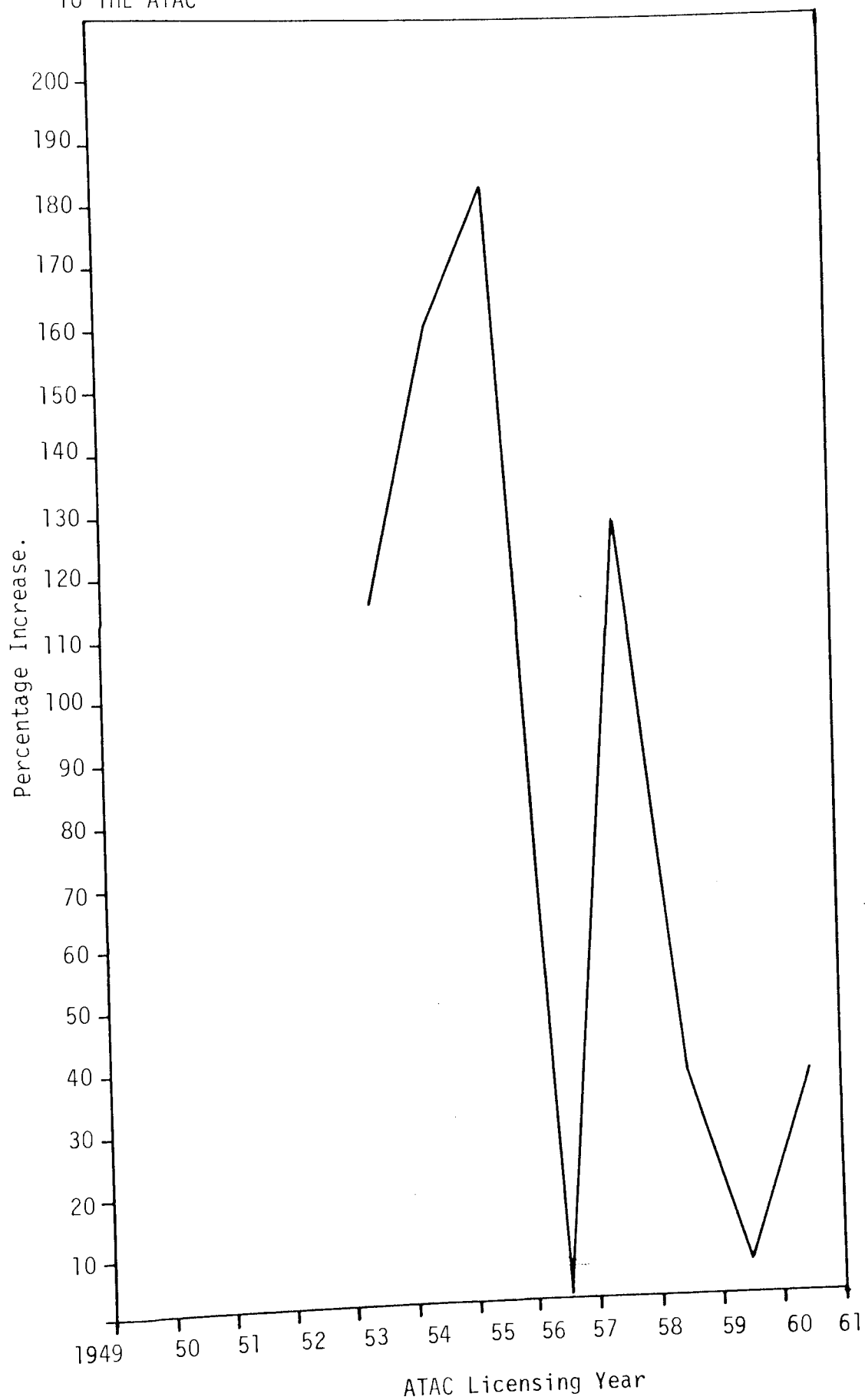
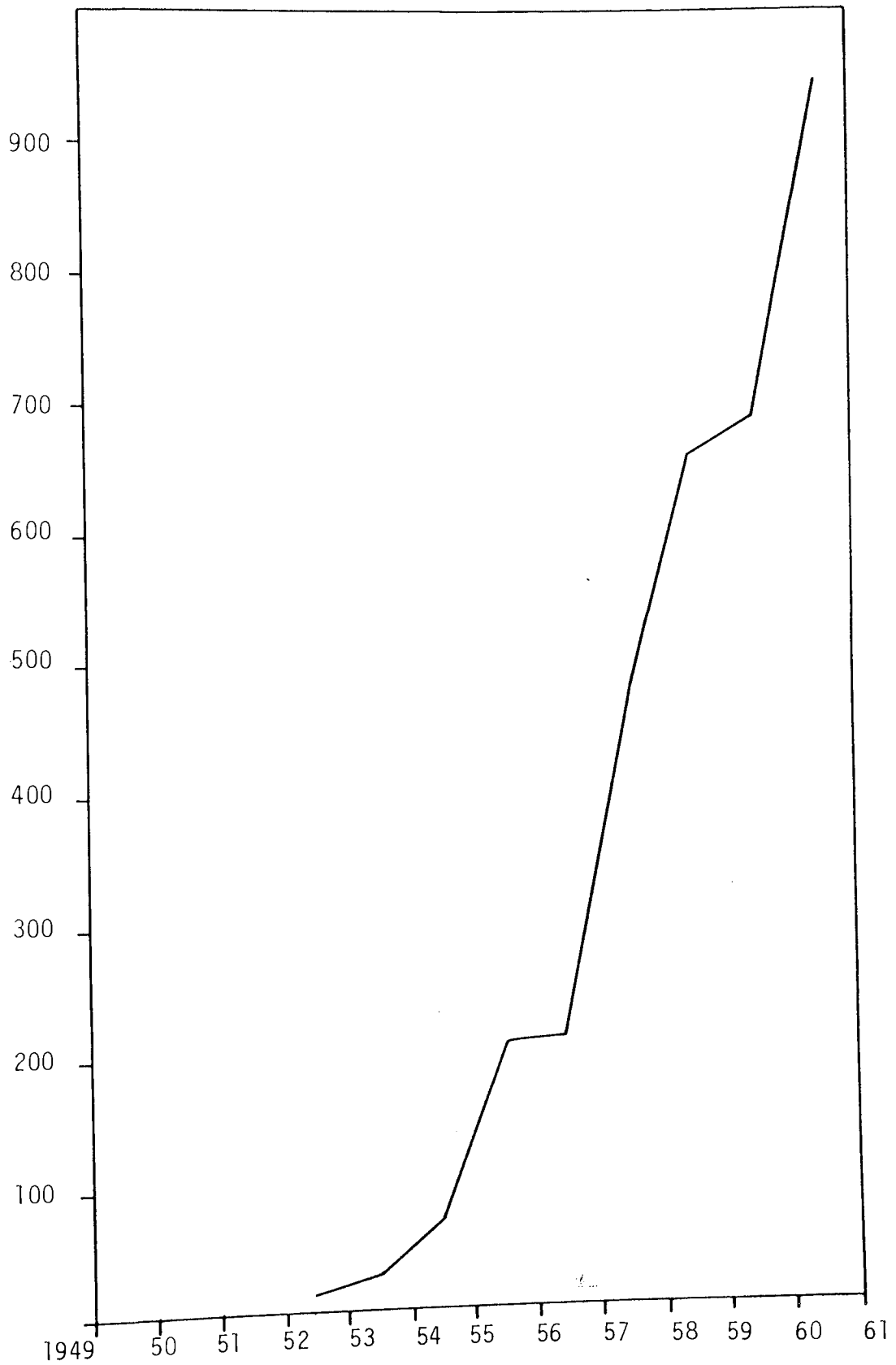


FIGURE 3. APPLICATIONS RECEIVED BY THE ATAC IN THE PERIOD SHOWN FOR NEW ITC SERVICES TO BE OPERATED



The Corporation's concern stemmed not from the number of passengers being attracted to ITC services, per se, but from the fact that ITC operations were one of the few types of service which could legally be operated in parallel with established "normal scheduled services". If competition was likely to be experienced from any direction, therefore, the principle potential was here. The Council preferred not to see the "problem" in these terms. Instead it felt that interest by the Independents in a new type of service, which the Corporation was not itself offering, was something to be encouraged. In order to be able to assess the true effects of ITC "competition" on normal scheduled service traffic, the ATAC at an early stage was forced to reject BEA's protests.

In 1954 the Council consolidated its attitude to ITC operations on established routes served by normal scheduled services. Two features forced a rapid crystallisation of attitude so that by early 1955 the ATAC could state categorically that it believed ITC services generated a new type of traffic, that this did not "materially divert" traffic from established operators and that this generally promoted the interests of civil aviation.^(58.1) This clear statement remained the essence of the ATAC's policy on ITCs throughout its life.

The two features which caused this statement of policy were

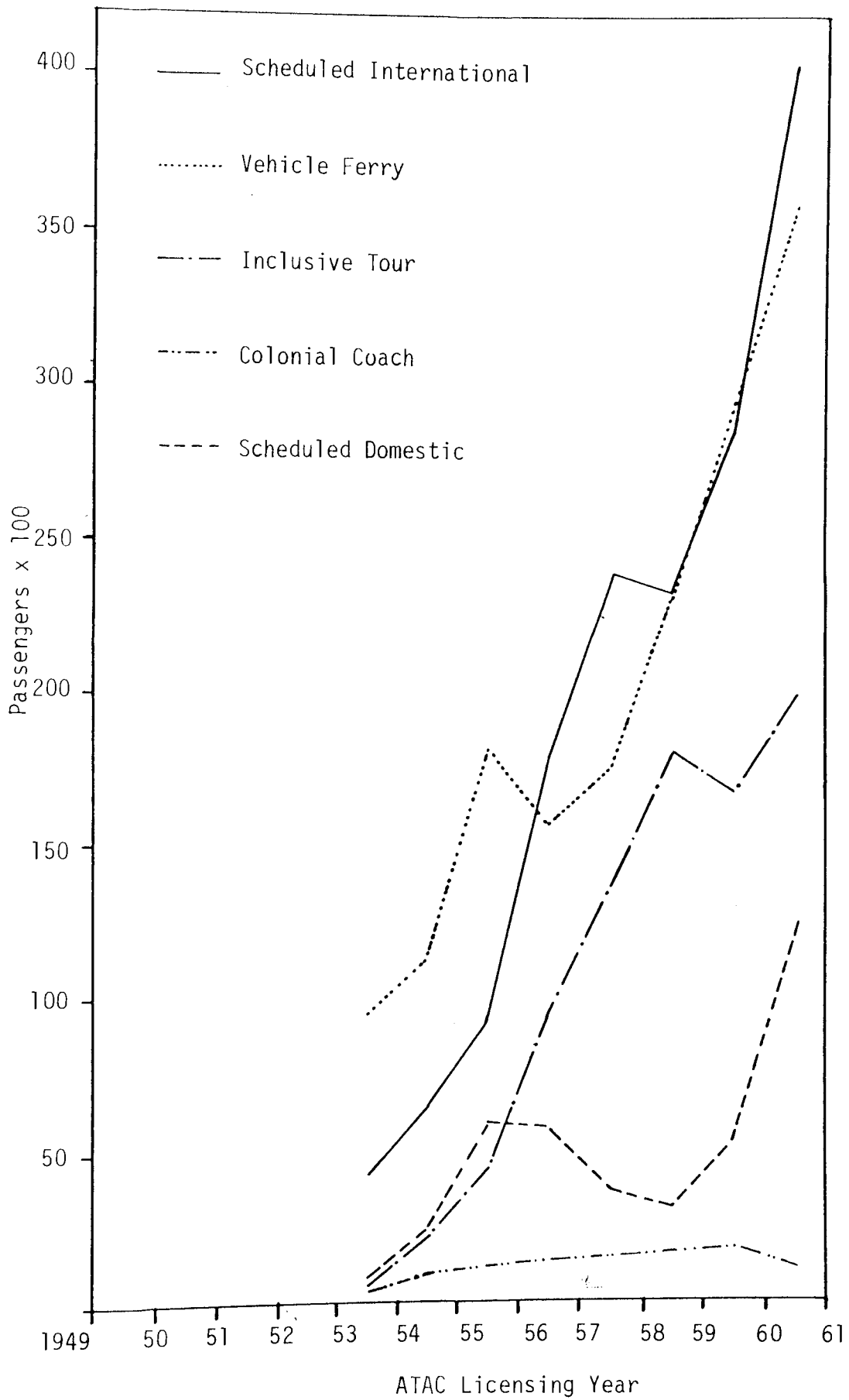
the growth of ITC traffic in 1954⁽ⁱ⁾ and of applications for services in 1955.⁽ⁱⁱ⁾ BEA reacted strongly to both trends calling for restriction of further such services on virtually any route on which it operated. Its reason was simple - ITCs, in the Corporation's view, achieved their growth at the expense of normal scheduled services. The ATAC took entirely the opposite view in believing that the majority of ITC passengers would not be attracted by the IATA fare levels and normal scheduled international services.

In the last months of 1954, therefore, this clear difference of opinion culminated in an outright challenge by BEA against the "licensing" policies being adopted by the ATAC. Clearly it was a situation in which the Council needed to assert itself and defend its policies. Any sign of weakness or uncertainty about the correctness of their policies would have laid the ATAC open to greater pressure to change its view on ITC operations.

The Council was in the difficult position of having to draw conclusions about the possible effects of long-term growth in a new and highly volatile industry. The established State-owned operator was hostile towards the way in which that industry was developing. The situation was further complicated by the fact that the ATAC had to convince not only itself, but also the Minister, on the correctness of its decisions and policies developed in a period of great

(i) Figure 4
(ii) Figure 3

FIGURE 4. PASSENGERS CARRIED ON UK INDEPENDENT AIRLINES.



uncertainty. The Minister's role will be considered later, but it is perhaps pertinent to note that, whatever his personal beliefs concerning the nature of the relationship between the Public and Private sectors, the Conservative Government's policy continued to be that the State Corporations should in no way have their existing services undermined.⁽¹³⁴⁾

The Minister had, therefore, to tread warily along a path laid out for him by his advisor, the ATAC. Unless his directions and objectives were clear it would have been easy for the Minister to remain on familiar ground and apply a restrictive approach to ITC developments. In such a situation it is hardly surprising that the ATAC pursued a policy of clearly giving a lead to the Minister in order to ensure the implementation of their liberal ideas towards ITCs rather than the restrictive approach of the State Corporation.

By December 1954 the discussions in the hearings before the ATAC had convinced the Corporation that further objections to every ITC application was futile. In particular it had become clear that the Council's mind was largely made up and that it intended to recommend widespread approval for these services. There were, of course, other reasons for the State airline's change of heart and these will be considered later in the work. However, the strength of the ATAC's conviction that ITCs did not "materially divert" traffic from the scheduled services was in itself a major influence.

Despite the Council's acceptance of the ITC concept, it continued to have reservations about the way in which the industry should be regulated. One feature of this period was, therefore, that the Council could not envisage any of the Inclusive Tour services developing into stable, long-term operations. Instead it saw the ITC as a business venture requiring constant revision of contract between Travel Agents (as the tour organisers) and the operators. With the exception of this one area of doubt, however, the 1954/55 confrontation succeeded in crystallising attitudes so that the regulatory framework governing expansion of the ITC industry took on its definitive form. The principle elements of regulatory policy were:

1. The recognition by the ATAC and the Minister that opportunities for the Independents were severely limited, even under the terms of the 1952 Directive. In particular, the one other type of service which could operate on established scheduled service routes - "the Colonial Coach" - was experiencing difficulties and showed little promise for future growth.
2. The declared intention to allow maximum expansion of the Independents' activities within the constraints of the relevant legislation.
3. The acceptance of the principle that ITC traffic was believed to be largely newly generated traffic in its own right. ITC traffic growth was therefore not considered to be taking place at the expense of "normal scheduled services"

These three elements formed the basis of the ATAC's policy towards the development of ITCs and, in implementing that

policy, the Council was liberal in its treatment of the Independent's applications.

In 1954/55 confrontation with BEA had resulted from the Independents' expanded interest in ITC development.

Compounding the issue had been the very high level of approval given to applications. Thus the crisis year was characterised by a 160% increase in new ITC applications to the Council⁽ⁱ⁾

and the approval of about 85% of these for operation in 1955/56.⁽ⁱⁱ⁾

In the event the Minister finally approved 50 applications⁽ⁱⁱⁱ⁾ and the majority were taken up so that the

Independents' ITC traffic figures for 1955/56 proved to be

buoyant. While these figures were becoming available, however,

it became clear that applications for the following seasons

ITC services were very considerably increased. The eventual

figures for new ITC applications in 1955/56 represented a

18.3% increase on the previous season.⁽ⁱ⁾

Despite this enormous increase, however, the Council continued to view such

development favourably, and in that licencing period the

"recommended for approval" rate for new ITC applications rose

to over 90%.⁽ⁱⁱ⁾

It may be argued that in these early years the scope for expansion

was so great as to warrant such liberal treatment. However, the

Independents' shortage of capacity was a problem which seems

(i) Figure 2

(ii) Figure 5

(iii) Figure 6

FIGURE 5. PERCENT OF NEW ITC APPLICATIONS SUBMITTED TO THE ATAC IN THE YEAR SHOWN AND FINALLY APPROVED BY THE MINISTER.

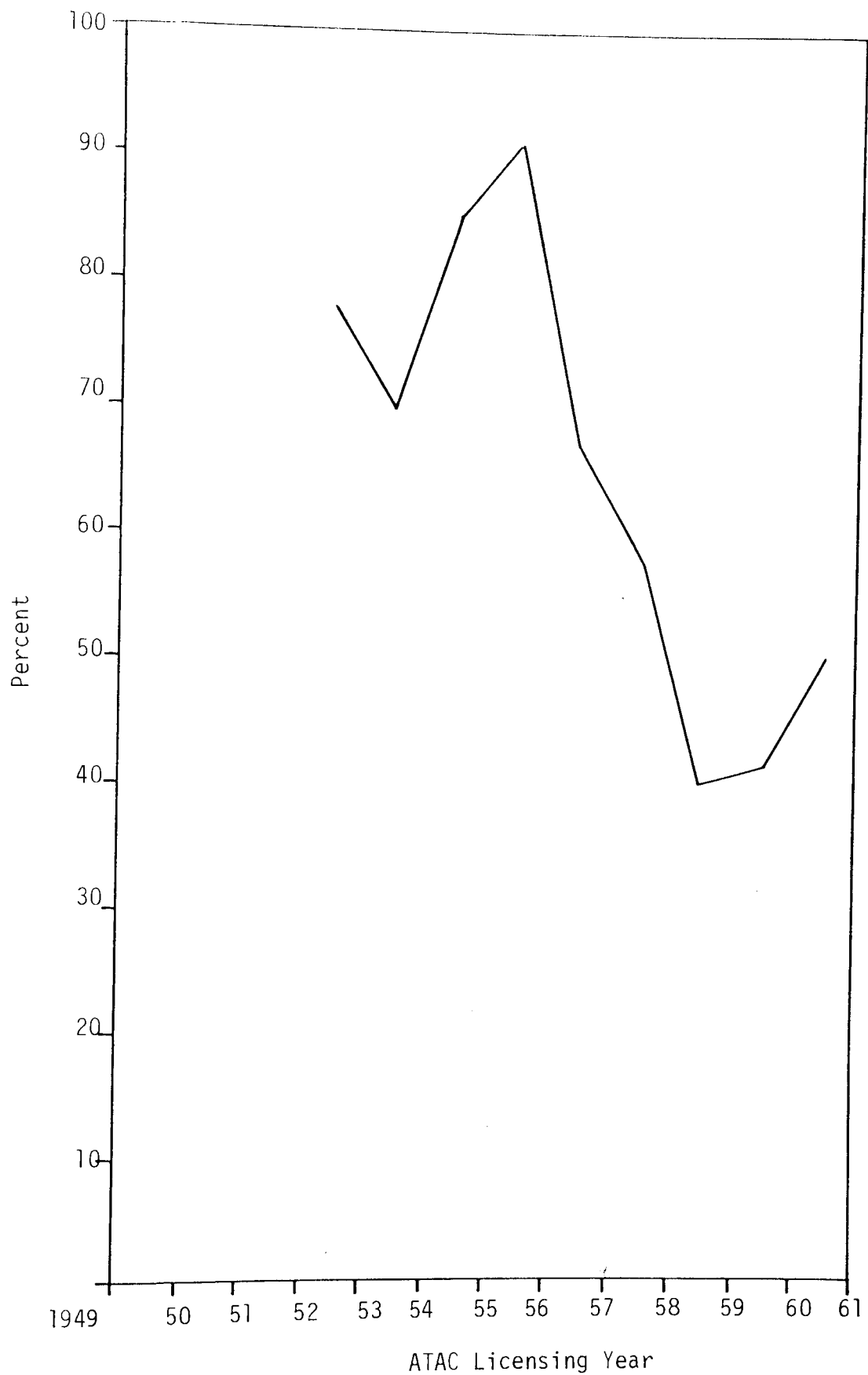
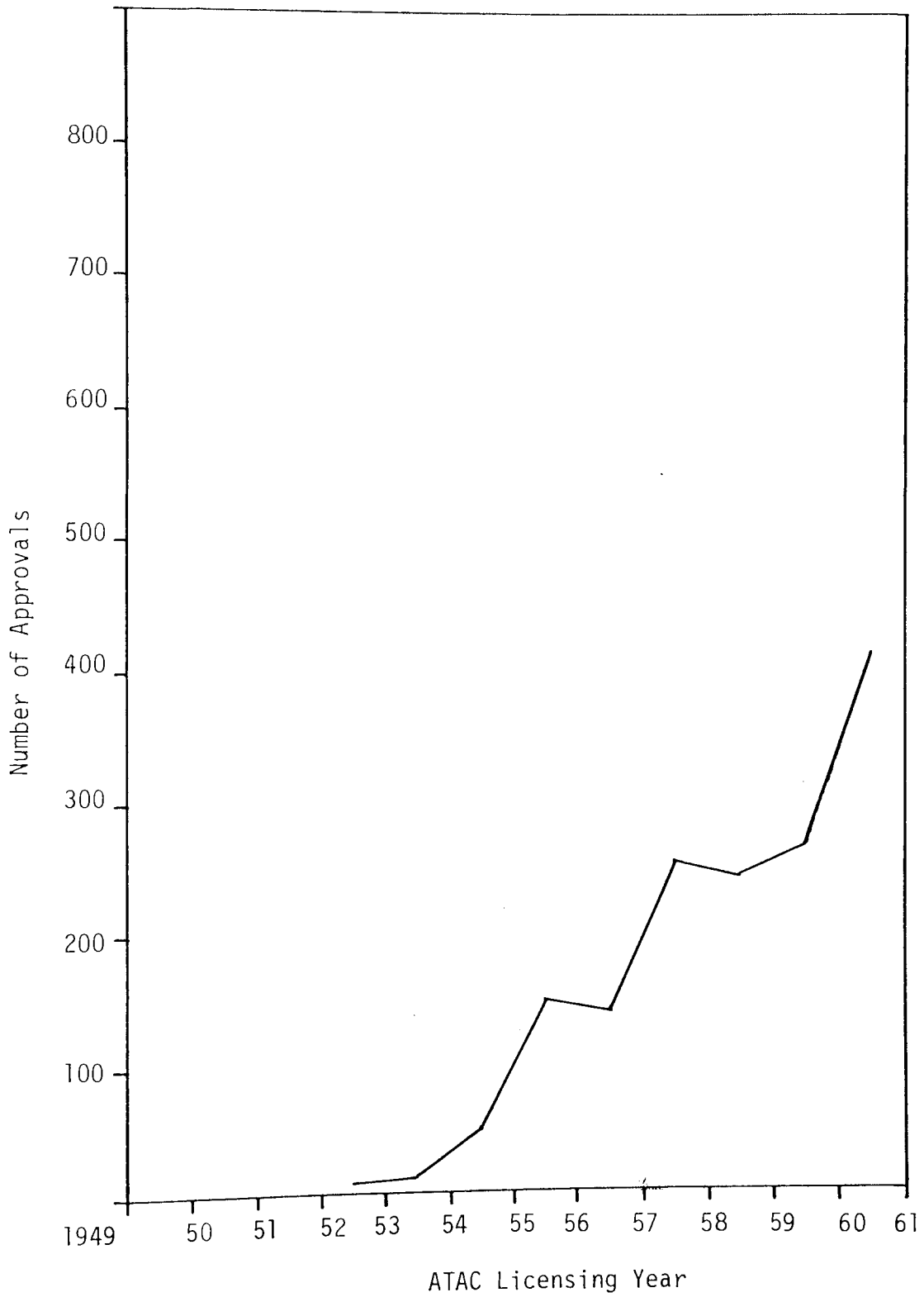


FIGURE 6. APPLICATIONS FOR NEW ITC SERVICES RECEIVED IN THE YEAR SHOWN BY THE ATAC AND FINALLY APPROVED.



to have resulted in an entirely predictable reaction to this policy. Faced with the authorisation of services on such a large scale and, lacking suitable equipment, the operators reacted by not taking up some 41% of the approved applications in 1955/56.⁽ⁱ⁾

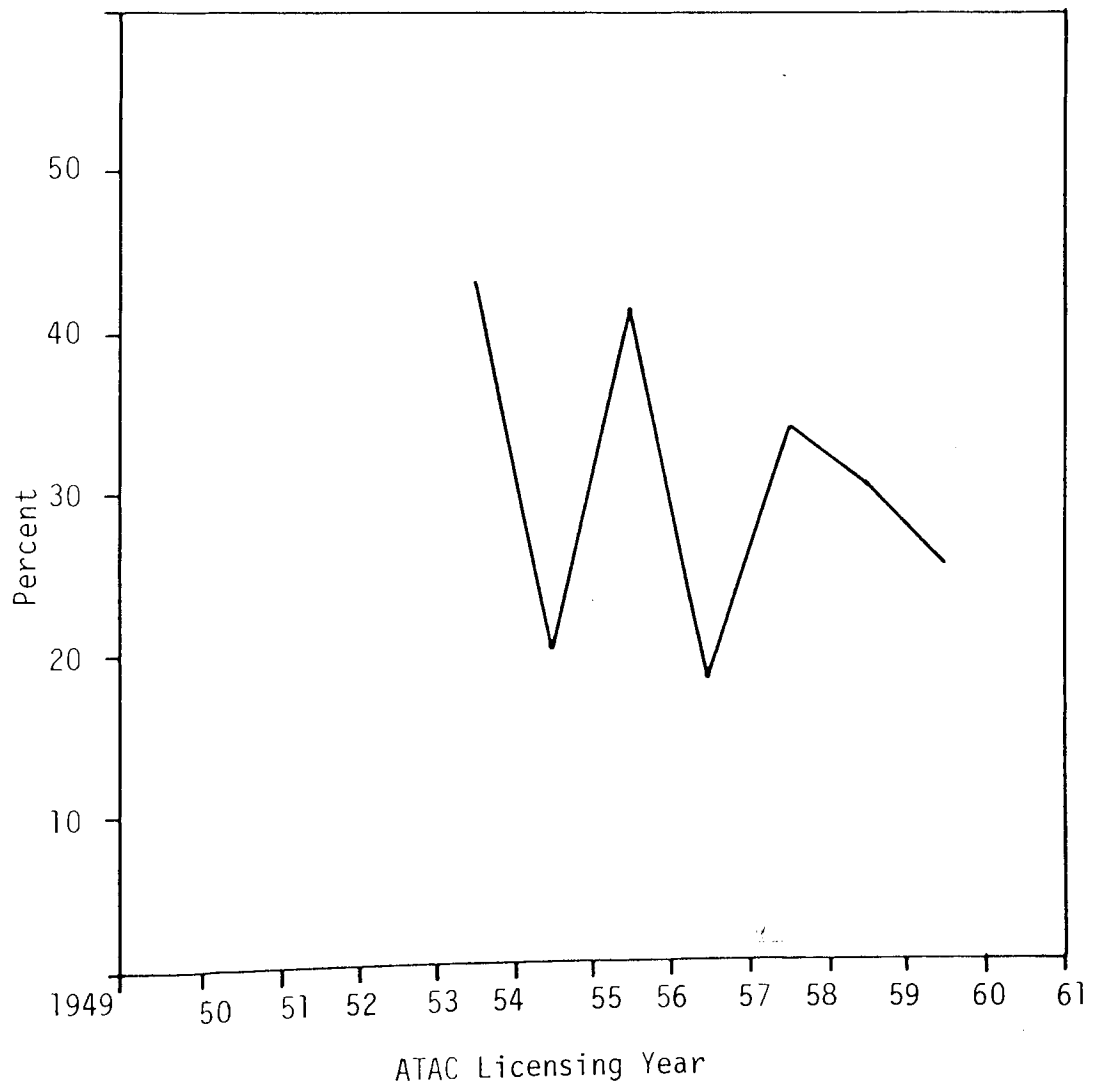
In assessing the Council's reaction to this, it is important to appreciate that the consideration of ITC applications constituted about 75% of the total workload by 1956. The Independents' abandonment of 41% of the approvals finally given represented a considerable and unacceptable waste of effort by the Minister and the ATAC. Additionally, the entire applications hearing procedure had been re-organised around the requirements of the tour organisers and operators. It was, therefore, not surprising that the Council began to question its own attitude and policies towards an industry which clearly was involved in frivolous activities. Though there was no direct suggestion of malpractice made by the ATAC, the Minister had no hesitation in declaring:

"Some withdrawals are unavoidable, but the time of the Council and of my Ministry are wasted if applications are made for services which companies have no intention of operating". (59.2)

Whatever the Council's unpublished feelings were, however, its reaction was immediate and significant for there was a clear indication of disillusionment with the Independents

(i) Figure 7

FIGURE 7. PERCENTAGE OF NEW ITC APPLICATIONS APPROVED BY THE MINISTER BUT NOT TAKEN UP.



and the onset of a distrust for their intentions.

8.323 The Final Phase - Re-Assessment 1957 to 1961

It would appear that the companies also recognised the ATAC's change of mood and consequently made no effort to artificially increase the number of ITC applications by "over-bidding" in the 1956/57 season. Total new ITC applications therefore showed no significant increase on the previous year.⁽ⁱ⁾ Despite this self-imposed restriction, however, the applications represented a 50% increase in capacity over those finally authorised (but not necessarily taken up) in 1955/56. Faced with the previous year's high withdrawal rate and, in spite of this, a sharp rise in ITC traffic eventually carried on the remaining services in 1956/57,⁽ⁱⁱ⁾ the Council recognised that it could afford to be increasingly selective in its authorisation recommendations. A further consideration encouraged this view; a trend had developed for some tour operators to saturate existing markets. This contravened the general aims of the Council which was concerned that the fullest expansion should occur in new areas not well served by scheduled operators.

The severity of the change in approach to new applications was immediately apparent. The approval rate dropped to 67%⁽ⁱⁱⁱ⁾

- (i) Figure 3
- (ii) Figure 4
- (iii) Figure 5

and the total number of licences approved by the Minister was actually smaller in 1956/57 than in 1955/56.⁽ⁱ⁾ Encouragement for an extension of the new "hard-line" approach came in the shape of the operating statistics resulting from the 1956/57 licensing decisions. Despite the virtual stagnation of capacity growth, traffic, in terms of passengers carried, maintained a consistent and healthy growth.⁽ⁱⁱ⁾ It is hardly surprising that the withdrawal rate sank to its lowest-ever level of 18%.⁽ⁱⁱⁱ⁾

The success of its new approach, that is the adoption of selective rather than generally liberal expansion policies, encouraged the ATAC to become more assertive in its dealings with the Independents. In the past it had sought to protect their interests and had continually supported the widest exploitation of ITC services. Indeed, it might be said that the Council went out of its way to protect these operations - often on the basis of a rapidly-formed opinion and with very little data from which to calculate long term trends. In short, the Council had frequently gambled that its policies were correct, knowing full well that if they were not the result could be disastrous for the State Corporations, the Government, and UK civil aviation as a whole.

In 1957 the number of ITC applications ones again showed a substantial increase^(iv) The Council had seen the results

- (i) Figure 6
- (ii) Figure 4
- (iii) Figure 7
- (iv) Figure 3

of its more restrictive policy in the previous year and now knew that the effect on traffic growth had been negligible. The enormous increase in capacity now being applied for was clearly unrealistic. The conclusion reached, therefore, was that the Independents were attempting to use the ATAC as pawn in a game in which competitors attempted to out-bid each other.

The Council was annoyed by this and clearly felt that the independents had exploited their position as "underdog" in order to achieve rapid growth. The operators inevitably wished to concentrate their efforts on the more popular well-established routes but the ATAC believed its mandate was to encourage the development of new services. This, coupled with the suspicion that companies were deliberately over-bidding for licenses in order to restrict the opportunities for their competitors, encouraged the Council to extend its policy of selective expansion. Thus, though some popular routes were granted no capacity increase for 1958 ITC's, the overall effect was to encourage development of new routes to bring about an increase in total ITC capacity.

At the 1957/58 licensing season drew to a close in early 1958 it was once again clear that, despite the low approval level by the ATAC for new ITC applications considered in that period,

(58%)⁽ⁱ⁾ too many new services had been approved. In consequence the percent withdrawn after approval once again rose to an alarming 34%.⁽ⁱⁱ⁾ This represented some 93 applications and such a waste of time and effort could hardly have passed without comment by the ATAC.

"This is a practise which the Council deprecate and one which might prove prejudicial to other operators. The Council hope that in future all applications put forward will be for services genuinely intended to be operated and for capacity which it is within the ability of the operator to provide". (135)

Certainly, this could hardly be regarded as anything more than a mild admonition, but it marks the start of a period in which the ATAC became increasingly *unhappy with the behaviour of the industry* whose activities it had largely sponsored.

As 1958 progressed the results of the previous year's licensing policy became clear. Despite the economic recession ITC traffic remained buoyant and maintained its steady growth rate. This at a time when "normal scheduled" air services were suffering from reduced demand. The excessive importance of ITC traffic as a proportion of the Independents' total traffic carried in 1958/59 ⁽ⁱⁱⁱ⁾ merely serves to emphasise the contrast in growth performance. Despite the success being achieved in maintaining steady growth rates, however, the Council

(i) Figure 5
(ii) Figure 7
(iii) Figure 1

clearly felt the Independents were doing little to support its policies. Indeed, the tone of the Council's Report for 1958/59 indicates frustration with the Independents' antics, and at one point borders on straight sarcasm.⁽¹³⁶⁾ It is difficult to avoid the conclusion that relations between the ITC industry and the ATAC began to deteriorate rapidly in this period. The Council had, in the past, taken a great deal of trouble to reorganise its procedures around the requirements of the ITC applicants. It had taken a decisive stand on the basis of dubious data in order to promote the developing ITC industry in 1954, and it had done this largely out of a sense of good will towards the Independents. Now they refused to comply with the council's requests for moderation and appeared to regard it with amused contempt.

Thus, as the 1958/59 licensing season drew to a close the familiar pattern was repeated. A large number of ITC services previously authorised for 1958 operation were withdrawn (i) and the Independents continued to make excessive claims for new capacity in the following season. The Council's reaction was considerably more militant than in previous years, however, and using the economic recession as its defence the ATAC instigated a major campaign against the tour promoters and operators who had so consistently flouted the rules. Its principle concern seems to have been to reassert its authority over an industry which was increasingly seeking to circumvent the usual guidelines and mechanism for dealing

(i) Figure 7

with applications. In one area at least, Circular Tour operation, there was a clear danger that the Council's lack of overall control of all civil aviation activity would lead to the undermining of its policies and authority.

The Independents reacted to the ATAC's more restrictive policy implementation in two ways. Firstly they increasingly applied directly to the Minister for permission to operate "Circular Tours" on routes for which they had also applied through the ATAC for ITC licences. This, of course, was entirely legal since the Minister had relieved the Council of the duty to consider Circular Tours, in the Autumn of 1952. (121.7)

What was unacceptable about the practice was that the Circular Tour services increasingly:

"...appeared to the Council to be sufficiently akin to Inclusive Tours to require..... consideration in the same context as Inclusive Tours ". (136.1)

Indeed, when the Council did consider applications for 52 Circular Tours to be operated in the summer of 1959, it found that only 15 were "In the public interest". Neither was its attitude to ITCs any more liberal and the "recommendations for approval" rate for applications for new services received in the 1958/59 licensing period sank to the lowest ever. A mere 40% of such applications were approved by the Council. (i)

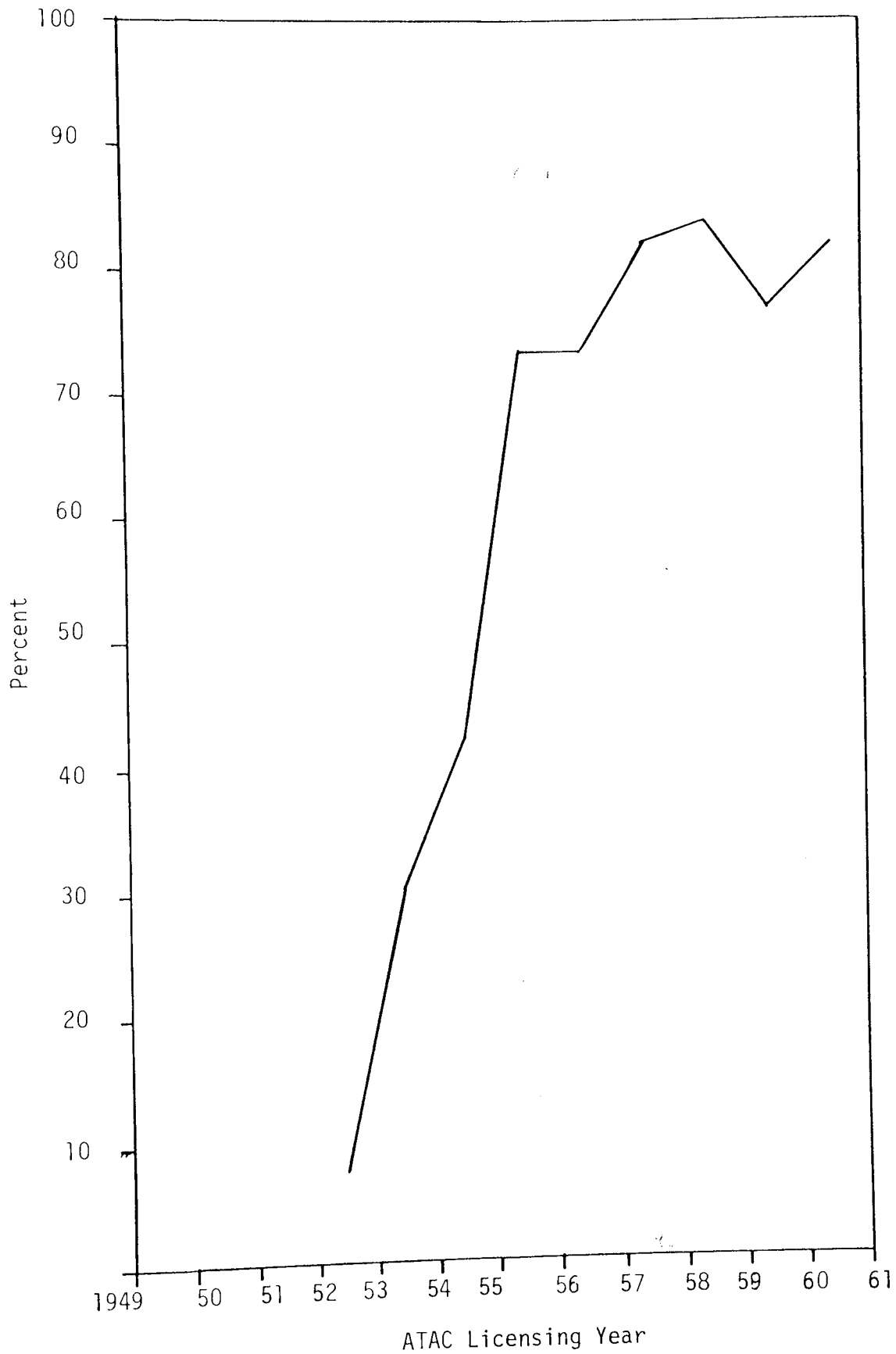
(i) Figure 5

Though there were good reasons for such action^(136.2) one consequence of it was to force the Independents to reappraise their position. Their ITC traffic had steadily increased as a proportion of their total business from 3% in 1953/54 to 18.5% in 1958/9.⁽ⁱ⁾ Indeed, if one ignores the Vehicle Ferry and Colonial Coach services which were of importance to only a very few Independent operators, the latter percentage rises to 25.4%. Such heavy dependence on ITC traffic meant that any restriction on its further expansion by the ATAC severely affected the growth of a large proportion of the Independents' membership.⁽ⁱⁱ⁾

The second device the Independents employed to circumvent such restriction was to exploit the "closed group travel" provisions of Section 24 of the 1949 Air Corporation Act. Because the applicability of this was so poorly defined, the Independents found that it was simple to organise ITC traffic so as to constitute a "closed group". Having done so, the ITC service could be operated as a "non-scheduled" service and therefore without formal ATAC consideration or approval. The very low level of approval for ITC services to be operated in 1959/60⁽ⁱⁱⁱ⁾ together with a high withdrawal rate for those services actually approved, no doubt contributed to an overall decrease in ITC traffic carried during 1959^(iv)

- (i) Figure 1
- (ii) Figure 8
- (iii) Figure 5
- (iv) Figure 4

FIGURE 8 APPLICATIONS FOR NEW ITC SERVICES AS A PERCENT OF APPLICATION FOR ALL NEW SERVICES



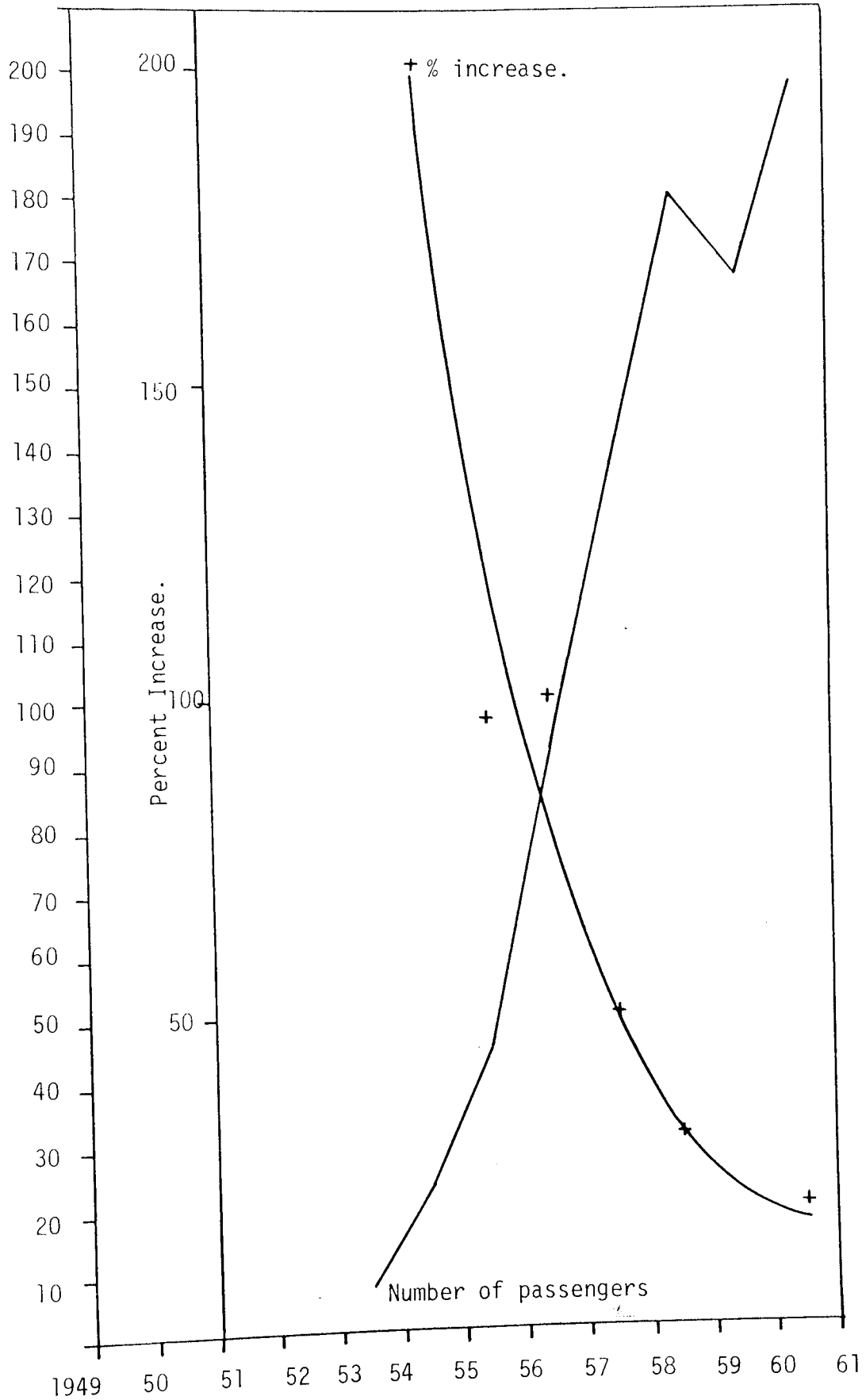
The extent to which the ATAC's own policies, as applied in 1958/59, were responsible for the traffic results of 1959/60 per se, seems doubtful. Certainly the Council itself accepted none of the "blame" and suggested instead that in particular the fall in traffic was due to the withdrawal of one major operator's licence. Many passengers were therefore, unable to travel and many more were carried on services not approved under Associate Agreements. For such operations no traffic figures were required to be kept. Compounding the problem was the long-term trend towards greater use of the "closed group loophole" and also the fact that BEA was able to introduce the so called ITX fare⁽ⁱ⁾ in this period so that much traffic switched from the Independents to the State airline. The assertion that:

"...a growing amount of this type of holiday traffic is being carried by means other than Inclusive Tour Services approved under Associate Agreement". (126)

is supported by Figure 9. It can be seen that the hiccup for 1959/60 did not repeat itself in the following year. What is more important is that the growth rate following the hiccup returned to the pattern set by previous seasons - that is, a steady decline in the percentage growth rate for ITC passengers carried. Furthermore, the return to "normal" growth trends in 1960/61 was not achieved by drastic changes

(i) Inclusive Tour Excursion - a special low fare to be sold to travel agents only, for inclusion in inclusive tour packages for individual sale to the public.

FIGURE 9. ANNUAL PERCENT INCREASE IN ITC PASSENGERS AND TOTAL ITC PASSENGERS CARRIED.



in the Council's licensing recommendation policy. Figures 3 and 6 illustrates how numbers of net ITC applications and approvals in 1959/60 were very little changed from the previous licensing period. In Figure 5 it may be seen how the Council's high rate of rejection in 1958/59 was continued in the following period. The extreme stability of the licensing policy between 1958 and 1960 contrasts strongly with the fluctuations in traffic figures in the same period and further suggests that this latter phenomenon had little to do with the actions of the ATAC.

The more general trend towards a steady reduction in growth of traffic carried on Associate Agreement ITC services may, indeed, be regarded as a reflection of ATAC policies. Such a viewpoint, however, disregards the constraints of the Council's terms of reference. The Council had to bear in mind the different needs of all sectors of British civil aviation and was thus bound to take the widest possible view of the ramifications arising from any individual applications. It may well be that the Council's "hard-line" approach of the late 1950's made the Independents increasingly seek to circumvent the Associate Agreement licensing procedure. The desire to achieve growth by any possible means was, of course, entirely selfish and the tour operators were little interested in the effects that their expansion might have on other sectors of the industry. Increasingly, therefore, traffic carried on ITC services recommended for approval by the ATAC became

only the tip of the iceberg.

Though it was generally accepted - not least of all by the ATAC - that the traffic trends on ITC services operated under Associate Agreements did not represent the true picture for ITC traffic as a whole, it is interesting that the Council refused to modify its own policies to encourage the "loophole" operations to return to the Associate Agreement fold. Possibly this was because the years of serious licensing avoidance were relatively few and the problem was removed entirely by the 1960 Civil Aviation (Licensing) Act. As a result, the Council was never required to develop strategies for combatting what was in effect serious erosion of its status. In later years when the Air Transport Licensing Board - the ATAC's successor - was placed in a similar position, it was forced to capitulate to pressures resulting from widescale circumvention of the licensing procedure.

Though, in this final phase, the Council was caused to reappraise its policies towards the Independents' ITC activities, there was no retreat from the fundamental principles of licensing as established by the crisis of 1954/55. Certainly the Council suffered disillusionment at the hands of the Independents who had reacted to an initial policy of active promotion of their interests by exploiting the body responsible. Despite this, the Council largely maintained its support for the widest and most reasonably possible expansion

of ITC services. At no time did the Council reverse its conclusion of 1954 that the traffic carried by ITC services was inevitably newly generated and unlikely to be attracted to "normal scheduled services". If the ATAC became increasingly resistant to applications for new services it was probably for two simple reasons; first the opportunities for expansion of viable ITC operations into new areas were limited and, second the Independents' irresponsible actions forced the Council to be more cautious in its approach to ITC expansion.

8.4 Government Interest in the Concept of Inclusive Tours

The ATAC, though principally responsible for implementing policies laid down by the Government was able to develop its own ideas on the way in which British civil aviation should be encouraged to expand. On the particular question of ITCs it has been shown how the Ministerial directive of 1952 allowed the Council to be particularly influential since little if any guidance was provided for its interpretation of what constituted "material diversion of traffic"

In the implementation of the Minister's plans there can be no doubt that the Council followed a general course of action which was entirely acceptable to him.

One observer has suggested :

"It is a most remarkable tribute to the work of the ATAC....than on only one occasion out of the many hundreds of cases it handled did a Minister see fit not to accept a recommendation from the Council". (137)

This author believes that such a record is principally important for its emphasis of the extent to which the Council adhered to the Terms of Reference issued to it. Though the Council was an informed and influential body, there is no evidence to suggest that it was able, at any time, to direct Government policy in order to achieve particular aims. The importance of the Council in promoting UK Independents' ITC activities, though very great, was nevertheless overshadowed by the actions and policies of Central Government. The policy instructions issued to the ATAC, and which were followed more or less exactly by that body merely represented the published results of a policy formulation process carried out by successive Government. Without Ministerial acceptance of the ITC concept and its exploitation by the Independents it is doubtful if the ATAC could have encouraged the growth of the industry to the extent it did. If the Council played an important role by liberally interpreting its terms of reference towards ITCs, the Minister, who established those terms and who supported the Council's interpretation of them had an equally vital function.

Without the decision at Government level, to allow and encourage the expansion of ITC services by the Independents, the Inclusive Tour industry would never have been so heavily influenced by the activities of the UK Independent airlines in the 1950's.

That there was general Government support for ITC expansion must, therefore, be beyond doubt. The reasons for this support are the subject of the current section. It is important to know what were the characteristics of large scale ITC operations which were attractive to the British Government.

To answer the question we must refer to the numerous external interests which, it was suggested in Chapter 2, largely control the definition of policies towards civil aviation. It will be remembered that the various interests were grouped under the following headings:-

1. Sovereignty of Airspace
2. Military interests
3. Aircraft manufacturing interests
4. Foreign policy
5. Facilitation of international travel
6. Balance of trade considerations
7. Trading advantages and traffic rights
8. Satisfaction of the Public Interest

In the context of the overall review of policies towards British civil aviation development in the early post-war years and the particular question of the role of the private sector, we may immediately identify the influence of certain of these interests. The initial move towards "Associate Agreements" in 1949 occurred when

BEA was unable to provide the full air transport facilities required by the British public in peak periods. Therefore, "Facilitation of domestic travel" and "Satisfaction of the Public Interest" loom large as principle influences on the Labour Government's thinking. The more serious retreat from nationalisation, represented by the September 1950 Directive was more particularly influenced by "Military interests".

By this date the reserve military transport potential represented by the Independents had been recognised by the Government and the intention of the Directive was to provide greater long-term stability. The military value of the Independents was not lost on the Conservative Government either, and a major reason for the "new policy" of 1952 was that stable expansion of the Independent sector was regarded as vital.⁽¹³⁸⁾ Furthermore, even in peacetime the UK Government made extensive use of the Independents for trooping. This work soon became a major part of the Independents' operations - often to the detriment of the general public, since a general shortage of capacity meant that trooping operations frequently precluded the acceptance of civilian charter work.⁽¹³⁹⁾

If the general expansion of the Independents was considered to be useful from the point of view of providing the Military interests with a reserve transport force, one of the more difficult problems concerning that expansion was the directions in which it should take place. We have seen that there was a firm intention not to undermine the State Corporations' established

routes and services and at the same time some form of stable "bread and butter work" was necessary. Indeed, the decision to prevent serious competition with BOAC or BEA on their scheduled services had another purpose other than mere restriction of competition. The very importance of the Independents lay in their largely "non-scheduled" status. Because they had few scheduled service commitments the Independents constituted an emergency reserve. If their scheduled services expanded to the extent where they could seriously compete with the State Airlines, the Independents would cease to offer the prospect of an easily mobilised transport reserve. Furthermore, the excursion of the Independents into international scheduled service operation was impracticable in many instances because of the restrictive terms of bilateral Agreement. The UK Government was only too well aware that the entry of a second or third British airline into scheduled services on particular routes was either impossible or likely to result in dilution of the proportion of traffic carried by the State Corporation. In few instances would foreign Governments permit the British proportion of the total traffic to increase appreciably.

As a solution to these difficulties the ITC promised to hold the key. It was to all intents and purposes a non-scheduled service not encroaching on the terms of bilateral Agreements. It served a traffic which, though numerically very important to the carriers concerned, was of very little importance to the maintenance of commercial, diplomatic, financial and industrial

life in the UK. The wholesale cancellation of holidays resulting from the sudden use of the aircraft by the military powers would have little effect on the administration of the UK. As a vehicle for the rapid expansion of the Independent sector, therefore, the ITC concept was recognised as uniquely useful as well suited.

In the wider political and economic sense, Inclusive Tours were no less attractive. At the most basic level, the widespread promotion of these holidays enabled large numbers of Britons to holiday abroad in the sun. Furthermore, because they purchased a package deal from the tour promoter the individual tourist required to convert relatively little sterling into foreign currency for his holiday. It is hardly surprising that the ITC industry expanded as rapidly as it did, in the view of the very real advantages to the UK economy of this type of arrangement. Inclusive Tours allowed the growing demand for opportunity to holiday abroad in the sun to be satisfied in a most economical and effective manner. In view of this, and because they were a new type of service which were believed not to compete with the scheduled airlines for the same traffic, the benevolent attitude of the Government towards rapid expansion of ITC's is not difficult to understand.

TABLE 8 PASSENGERS CARRIED BY UK INDEPENDENT OPERATORS.

Year (ATAC)	Total	Inclusive Tour	Colonial Coach	Scheduled International	Vehicle Ferry	Scheduled Domestic	Isle of Man	Channel Islands
1953/54	250820	7750	4870	43200	95000	9000	42000	49000
1954/55	360678	23418	10128	65752	112658	24936	54008	69778
1955/56	558381	45995	13456	92681	181284	59416	66777	98772
1956/57	737447	92081	15457	178736	156026	56934	81495	156718
1957/58	195927	137416	15970	239414	173524	37793	101805	210005
1958/59	949892	180014	17000	229179	224612	31141	80158	187788
1959/60	1118383	166671	19130	274938	291083	54129	94695	217737
1960/61	1517943	198689	12078	404625	358030	124553	121270	298698

Source : ATAC Annual Reports.

TABLE 9 INDEPENDENT OPERATIONS' ITC PASSENGERS CARRIED AS A PERCENT OF TOTAL INDEPENDENTS' TRAFFIC.

Year	Percentage ITC Passengers
1953/54	3.09
1954/55	6.49
1955/56	8.24
1956/57	12.49
1956/58	15.00
1958/59	18.95
1959/60	14.90
1960/61	13.09

Source: ATAC Annual Reports.

TABLE 10 NEW ITC APPLICATIONS

Year	Number received By ATAC	Annual % increase	Number considered by Minister	Number finally approved by Minister	% finally approved by Minister	Applications for all new services	ITCS as a %
1952/53	13		9	7	78		
1953/54	28	115	27	19	70	93	30
1954/55	73	160	61	52	85	175	42
1955/56	207	183	163	148	91	287	72
1956/57	210	1	201	137	68	288	73
1957/58	478	127	424	252	59	585	82
1958/59	653	37	579	240	40	* 776	84
1959/60	689	5	644	266	41	* 896	77
1960/61	947	37	846	422	50	*1151	82

Source: ATAC Annual Reports

* not including circular tours.

TABLE 11 ITC APPLICATIONS APPROVED BUT NOT TAKEN UP

Year	No. of ITC applications approved by Minister.	Not Taken Up.	
		No.	%.
1953/54	14	6	43
1954/55	59	12	20
1955/56	156	64	41
1956/57	143	26	18
1957/58	273	93	34
1958/59	253	75	30
1959/60	310	78	25

Source: ATAC Annual Report.

CHAPTER 9 REACTION TO THE POLICIES OF THE 1950's

9.1 Introduction

In earlier chapters it was shown that the legislation under which the Independents expanded their interests into the ITC field was a hybrid. It originated in the post-war atmosphere of nationalisation by a Socialist Government and was later modified to satisfy the Conservative requirements for greater scope for private enterprise. Despite its peculiar origins and its establishment of the ATAC as a quasi-licensing authority without any proper authority in fact, the arrangement did work tolerably well. Certainly, the lack of open discord between the Minister and the ATAC on one hand, and the ATAC and the airline operators on the other suggests that all concerned were more or less content with the workings of the system. This author believes, however, that the lack of open argument was merely a reflection of the status quo in that all parties recognised the powerful position of the Minister and, therefore, the futility of disagreement. The ATAC could, justifiably, claim in any dispute that it had no authority to hear and judge appeals and it must also have recognised that its statutory relationship to the Minister prevented it from pursuing policies contrary to his wishes. Under the 1949 legislation, therefore, the opportunity for complaint was limited to the extent that it hardly existed.

The outward calm relationship between the ATAC, the Minister and the industry was, however, deceptive and masked the growing pressures for fundamental change. Those pressures came, inevitably, from the Independent sector and its supporters who, whilst grateful for such opportunities as existed, refused to accept that the Conservatives had in fact made any fundamental changes to the competitive relationship between the public and private sectors as established by the Socialists. In short there was a growing feeling that the Conservatives' failure to implement statutory changes in British civil aviation law in 1951 was increasingly indefensible and a clear statement of intent towards the private sector in civil aviation was urgently required.

In this chapter an attempt is made to investigate the Independents' reactions to the Conservatives' policies in the 1950's. In particular we seek evidence of the Independents' attitudes towards the ITC business, for it is by no means obvious that they saw it as the key to their future prosperity. This question is dealt with in section 9.2.

Partly in response to pressure from the Independents but also to a considerable degree for their own administrative convenience, the Conservatives eventually introduced legislation to replace the existing system. Thus, the Civil Aviation (Licensing) Act 1960, may be regarded as their response to deficiencies, in a general sense, evident in the regulatory framework after ten

years operation under hybrid legislation. The importance of the Act, particularly from the point of view of the likely effect on Independents' expansion prospects is considered in section 9.3

One of the major aims of the Act - and this was to satisfy both the Government and the industry, though for different reasons - was to establish a body responsible for licensing of air services. Though the aim might have originally been to place air service licensing under the independent control of a properly constituted body, the Act was eventually to prove deficient in this respect. Such a flaw has considerable relevance for this work because it was as a result of it that political direction of air transport development could be maintained. In the context of this work, that directly affected the Independents' involvement in the non-scheduled market and thus their interest in the potential of the ITC business. Just as the ATAC was of considerable importance to the early establishment of the UK's policies towards ITCs, so the new body - the Air Transport Licensing Board (ATLB) - was to play an equally important role. The final section of this chapter, (section 9.4), therefore, deals with the establishment of the ATLB and considers its function and the limitations on its independent action in licensing matters.

9.2 The Independent's Reactions

Though the UK Independent airline operators have been heavily involved in the exploitation of the ITC concept such involvement is the result of historical accident rather than deliberate design. (14.0) The translation of the idea into a viable business proposition was as much due to the activities of the tour promoters as it was to the enthusiasm of the Independent airlines. In this context it is, perhaps, significant that one of the earliest references in Parliament to "tours by air" concerned the interest of non-aviation bodies:

"I have had more ingenious ideas about cheap travel by air from the railway Companies than from anybody else....it was a representative of one of the railways who said to me, "Why should we not have fortnightly tours by air...?" (141)

On reflection such a state of affairs was hardly surprising since the railways had had long experience between the wars of the mass movement of tourists to Europe and this had included the development of chartering techniques in conjunction with the large travel agents. It was, therefore, an entirely logical step to attempt to utilise the advantages of the aeroplane in similar arrangements. Similarly, it would have been most surprising if the Independent airlines had been actively promoting "Ingenious new ideas about air travel", in the post-war period. In 1945 no private airline had more than a few

year' experience on which to draw; their equipment was old and therefore not well suited to airline operation; and finances were precarious. In such a situation their immediate preoccupation was to establish a basic level of "traditional" air services which would offer some hope of long-term development and survival.

The Independent airlines thus required two essential ingredients in the context of post-war operations. First they required investment and, second, they required "respectability" and this latter quality was in itself a pre-requisite for the former. In the minds of the public and of the Independent operators, status went hand-in-hand with scheduled operations and it was towards these that the private operators naturally gravitated. Comment at the time by Ivor Thomas, M.P. to the effect that:

".....the greatest curse that had overlaid British civil aviation in the past had been the VIP mentality". (142)

accurately conveyed the underlying belief in many sectors of British civil aviation, including the Independents, that the only services worth operating were those which satisfied the scheduled service requirements of an elite minority of the public.

The dismay of the Independents at post-war developments in the relationship between the public and private sectors stemmed largely, if not wholly, from their belief that the legislation

excluded them from the only area of air services worth pursuing - scheduled operations. Despite the "Times" assertion that the freedom granted to the Independents to take part in charter operations constituted an important and major concession, (143) there is little evidence to indicate that they saw these so-called opportunities in the same favourable light. The essence of their reaction to the Government's post-war aviation policy was that their restriction to charter activities was in effect a relegation to second rate status. Such an interpretation, whether or not it was correct, merely strengthened their desire to operate scheduled services- only the achievement of such being sufficient to clothe them in "respectability". The belief that it was necessary for any private airline to achieve scheduled service status in order not to be regarded as a second-rate undertaking was one which coloured the independents' attitudes and affected their decisions until well into the 1960's.

The belief that the key to success lay in operating scheduled services per se, may well have been incorrect but it was certainly true that the diet of charter, air-taxi and "Other fringe activities" did not constitute a sound basis for long-term expansion of the Independents' activities. The market for these services was characterised by extreme fluctuations of demand which were almost impossible to predict in advance and which brought about intermittent collapse of charter rates. Since most of the Independents were undercapitalised

they were often unable to cope with such severe changes in their fortunes. The Conservatives' recognition of this problem resulted in the so-called "New Deal" in 1952 under which certain scheduled service opportunities were opened to the Independents. In reality, as we have seen, these opportunities were strictly limited and were described by one champion of the Independent's cause as "crumbs". (144) It was suggested earlier that the ITC concept was attractive to the Conservative Government because it allowed conflicting objectives to be partly achieved. Certainly ITC traffic did become important to the Independent sector during the 1950's but it must be remembered that operational techniques for Inclusive Tours were not at this time sophisticated. The role of the airline in the IT package was simply to provide the transport function and, since this was principally required on peak summer week-ends, it did little to help the year-round utilisation of the airline's equipment.

In many ways, therefore, ITC work - though lucrative - added to the Independents' problems of achieving a steady work-load throughout the year. The expansion of ITC services did little to solve basic problems of attracting new finances since these would only be forthcoming if a firm programme of work could be demonstrated. Furthermore, that programme had to be such that new equipment would be properly and fully utilised. ITC activities, as they existed in the 1950's certainly could not satisfy such requirements and Independent airlines were, therefore,

forced to seek eventual entry to the scheduled service market. With these comments in mind, it is not surprising that the Independents were slow to revise their attitudes towards the importance of different types of service. This is not to imply that the Independents did not welcome ITC business - it was, after all, a relatively stable source of charter work - but it did not obviate their fundamental need for work capable of providing year round utilisation of their aircraft. (145)

Towards the end of the 1950's certain of the Independents did manage to integrate themselves into the inclusive tour industry so that they operate in partnership with tour promoters on long-term contracts. This removed much of the pressure of cut-throat competition which at least ensured that charter rates could be maintained at a realistic level. Such developments were, however, limited and for the majority of the private sector the problem of low utilisation remained as a constant threat.

An excellent indication of the nature of the reaction to the "New, but as it turned out somewhat scrubby pastures", (146) is given by the following;

"There was certainly another big rise last summer. (In ITC traffic) But this is not the kind of traffic on which big enterprises can be built. A vigorous and well-equipped merchant air transport industry, fighting for trade with international

competitors with the same vigor as the merchant marine, cannot be developed out of the business of carrying holiday parties to the tourist resorts of Europe...yet this is where most of the expansion has taken place". (146.1)

However incorrect such an assessment of the potential of the ITC market might have been, it cannot be denied that thinking such as this formed the basis of the Independents' reaction to the policies implemented by the Conservative after 1952.

9.3 The Political Response - The Civil Aviation (Licensing) Act, 1960

The Civil Aviation (Licensing) Act, 1960 ⁽ⁱ⁾ was, perhaps, most notable for what it did not set out to achieve rather than the reverse. It is not the purpose of this section to analyse the 1960 Act in its every facet. What we seek is an understanding of the philosophy behind it rather than an intimate knowledge of its workings.

The Act was a response - albeit muted - to the mounting pressure for reform of the statutory competitive positions of the public and private sectors. The reforms demanded were designed to place both sectors on an equal footing and to allow free and open competition between them. At first glance it appeared that this was indeed the intention of the Act and that sweeping reforms would result. In practice, however, it became clear that the Act was in no sense a policy-

(i) Hereafter referred to as "The 1960 Act" or, simply "The Act"

forming document and did little to formally alter the existing status quo. It seems more likely, in view of its contents, that the real purpose of the Act was to tidy up an increasing unmanageable system of control of civil aviation in the UK. The loopholes evident in the working of the 1949 legislation as modified by the 1952 Ministerial Directive were increasingly undermining the efforts of the ATAC and were creating a situation which was little short of farcical. The central purpose of the Act was, therefore, to place the licensing of all public air transport services under the control of a single body. The Act though removing overt Government protection from competition from the private sector for the State Airlines, did not remove the possibility for such protection to be implemented in more subtle ways. Furthermore the Act refrained from declarations of policy towards the development of British civil aviation or from instructing the new licensing body in the directions towards which it should aim its licensing activities.

The principle purpose of the Act was, therefore, to replace the existing and increasingly unworkable licensing mechanism with a better one. A secondary purpose was, it was believed, to create equality of opportunity for the Independents; here at last was the manifestation of the Conservatives pledge in 1951 to allow greater scope for private enterprise. What was understood to be the purpose, however, and what subsequently transpired to be the Government's interpretation of that purpose were two entirely different things. In this respect

the fundamental weakness of the act was that it retained the possibility for political direction of licensing policy. Despite the establishment of a new "independent" licensing authority the Act failed to remove the Minister from the licensing process. Though it would be naive to believe that political interest in civil aviation could ever be completely removed it was certainly realistic to hope that such political interest might restrict itself to broad policy declarations.

In a very direct sense this latent opportunity for the Minister to become involved in the detail of air service licensing considerably affected the nature of the Independent's involvement in British civil aviation in the 1960's.

9.4 The Air Transport Licensing Board

The body set up by the Act to fulfil the function of the licensing of "Any flight for reward or in connection with any trade or business", was the Air Transport Licensing Board—commonly referred to as the ATLB. It is not the purpose of this section to analyse the general performance of the Board or to enter the argument concerning its status or relationship with the Minister. Unlike its predecessor the ATAC, the Board's activities have frequently been the subject of analysis and comment (147)(148)(16.7) and there is little point in reiterating it here. Having said that,

it must be qualified by the need for some explanation of the Boards powers, role, method of working and relationship with political interests. Such a need results from the complex combination of factors which combined to produce a UK policy towards air transport in the 1960's. Just as the ATAC contributed towards the emergence of the ITC industry in the UK and the Independents' involvement in it, so the ATLB also played a vital role in the determination of policies for the further development of this involvement in the 1960's.

Each of these analyses has concentrated on two essential characteristics of the Board; first it was provided with no indication of the policies which the Government wished it to pursue and it therefore had to formulate its own and, second, the opportunity continued to exist for the carefully considered licensing decisions of the Board to be reversed by the Minister in the course of appeals. There is no doubt that the combination of these two seriously undermined the ATLB's authority and effectiveness and contributed to the further entrenchment of the UK Independent airlines in non-scheduled air service operations.

Perhaps the most succinct statement of the peculiar position in which the implications of the 1960 Act placed the ATLB is contained in the following quotation:

"It is questionable whether a system which provides for hearings by the Board and then for appeals from decisions of the Board to a single Commissioner who reports to the Minister who, in turn, can either accept or reject his Commissioner's findings is, in so far as it purports to be quasi-judicial, either logical, desirable or in accordance with the principles of natural justice". (45.3).

The reasons for the eventual failure of the 1960 Act and its subsequent replacement by new legislation are to be found in essence, in this single sentence.

CHAPTER 10 UK NON-SCHEDULED AIR TRANSPORT POLICY FOLLOWING THE INTRODUCTION OF 1960 ACT

10.1 Introduction

The events of the 1950's established the UK Independents as a major force in European non-scheduled operations. Their activities were responsible for the expansion of many important categories of non-scheduled service both within Europe and internationally. This interest in non-scheduled operations resulted directly from the limited opportunities available to the Independents under the operative legislation. The essential over-riding influence on the direction of the Independents' efforts in the 1950's was the continuing clash of interests resulting from the State's ownership of BOAC and BEA. The evolution of the Independents' ITC trade was in no sense a phenomenon of natural origin, instead it was artificially stimulated by deliberate Government action designed to ensure that the Independents fulfilled a particular function.

After the passing of the 1960 Act and the establishment of the ATLB as an "independent" licensing authority the possibility for political direction of air transport policy remained. This was subsequently used by successive politicians to ensure that ATLB decisions were, in practice, producing a politically acceptable air transport system and policy for the UK. In the fifties the

same opportunity for political direction of policy had resulted in the Independents being forced to accept a role which they might have avoided had the legislative framework allowed for greater freedom of competition between the public and private sectors. In a similar manner the involvement of the Independents in non-scheduled operations after the 1960 Act had become law was very much influenced by political manipulation of the "independent" ATLB.

If the fifties produced the correct conditions for the initial involvement of the Independents, so, in the sixties, conditions were such that this involvement was consolidated greatly. Thus, after 1965, the pressures on the Independents were greatly intensified and resulted in their general abandonment of pretensions towards achieving "scheduled service" status. Once such aspirations were removed many of them at last recognised that if they were to survive they had to concentrate their efforts on the exploitation of the mass-travel market. Out of this realisation came tremendous forces of change which were to have far reaching effects for air transport as a world-wide industry.

This chapter considers how and why the Independents came to be so intimately involved with non-scheduled operations in the 1960's. Initially there was little change from the situation which developed in the last years of the ATAC's life. The ATLB's policies in the first few years, dealt with in Section 10.2, were most notable for their lack of originality in the area of non-

scheduled service licensing. In 1965 however, political pressure was brought to bear on the ATLB and this directly influenced the subsequent role of the Independent airlines vis-à-vis the State Corporations. This is dealt with in Section 10.3. The following Section 10.4 considers the results of political intervention in the ATLB's policy formulation and discusses the effects on the ATLB in addition to the effects on the air transport industry.

10.2 Early Policies of the ATLB

As has been seen, there existed from the start the possibility for political intervention in licensing decisions reached by the ATLB. In the early years of its operation, however, this was not a significant problem - certainly with respect to the various types of non-scheduled service. The licensing record may thus be accepted as a reliable indication of the policies adopted by the Board in the first few years of its existence.

It will be remembered that the last five years of the ATAC's life were marked by a rapid loss of confidence in the motives and the reliability of the Independents. As a result the Council became progressively less liberal in its recommendations on the award of ITC licences. The all-time low of 40% approval in 1958/59 was only marginally improved upon in the following year. The ATLB therefore inherited a situation in which the Independents in particular appeared to be very much on trial.

Consequently the Board took itself and the licensing procedure very seriously. In the field of ITC licences, it immediately became clear that the Board intended to insist on rigid standards - particularly in the financial sphere - before it would allow greater liberalisation. No doubt such an approach was encouraged by the failure of no less than ten ⁽¹⁴⁶⁾ air transport operators during the first full year of the Board's existence. Clearly the future avoidance of such public failure of the regulatory system was essential if the ATLB's members were to fulfill the requirement placed upon them to exercise their functions "in such a manner as to further the development of British civil aviation". ⁽¹⁵⁰⁾

Inevitably the ATLB's early policies were influenced by what had been done during the ATAC's "reign" and the development of new policies must be viewed in the light of a move away from the status quo as it was in 1961. Very clearly the members of the Board, coming as they did from various walks of life with little specialised knowledge of air transport, were unlikely suddenly to introduce startling new licensing philosophies which might easily overturn the order established by the ATAC/Minister arrangement of the 1950's. In numerous ways, therefore, the ATLB was severely constrained by factors inherited from its predecessor.

First and foremost the Board had to face the fact that, whether or not it had formulated a policy on the matter, every single ITC licence issued by the ATAC expired at the end of the 1961 summer season. There was a second feature inherited from the

ATAC which, though more obscure in origin, was equally important as a factor likely to influence the Board's decisions. One of the many loopholes in the legislation administered by the ATAC was that foreign airlines could operate ITC services for British travel agents and tour organisers without the need to apply for a licence from the Council. By 1961 the tour operators and organisers were using the threat of diversion of traffic to foreign airlines as a means towards forcing the ATLB's hand in the adoption of a more liberal ITC licensing policy. It is a measure of the ATLB's serious state of mind and its recognition of its vitally important role that the Board rejected this argument out of hand. (149.1)

The essence of the Board's first steps into the problems of ITC licensing thus revolved around its firm belief that the one ingredient lacking thus far from the ITC business was stability. From the accompanying graphs it is clear that the pattern of applications for all types of service in the first full year of the Board's operation was very similar to the pattern established in the last year of the ATAC. New ITC applications remained at the same level ⁽ⁱ⁾ as did applications for scheduled services, ⁽ⁱⁱ⁾ consequently new ITC applications remained as a constant percentage of the total. ⁽ⁱⁱⁱ⁾ A significant exception to this

- (i) Figure 10
- (ii) Figure 11
- (iii) Figure 12

FIGURE 10 TOTAL NUMBER OF NEW APPLICATIONS FOR ITC LICENCES RECEIVED BY THE ATLB IN THE PERIOD SHOWN.

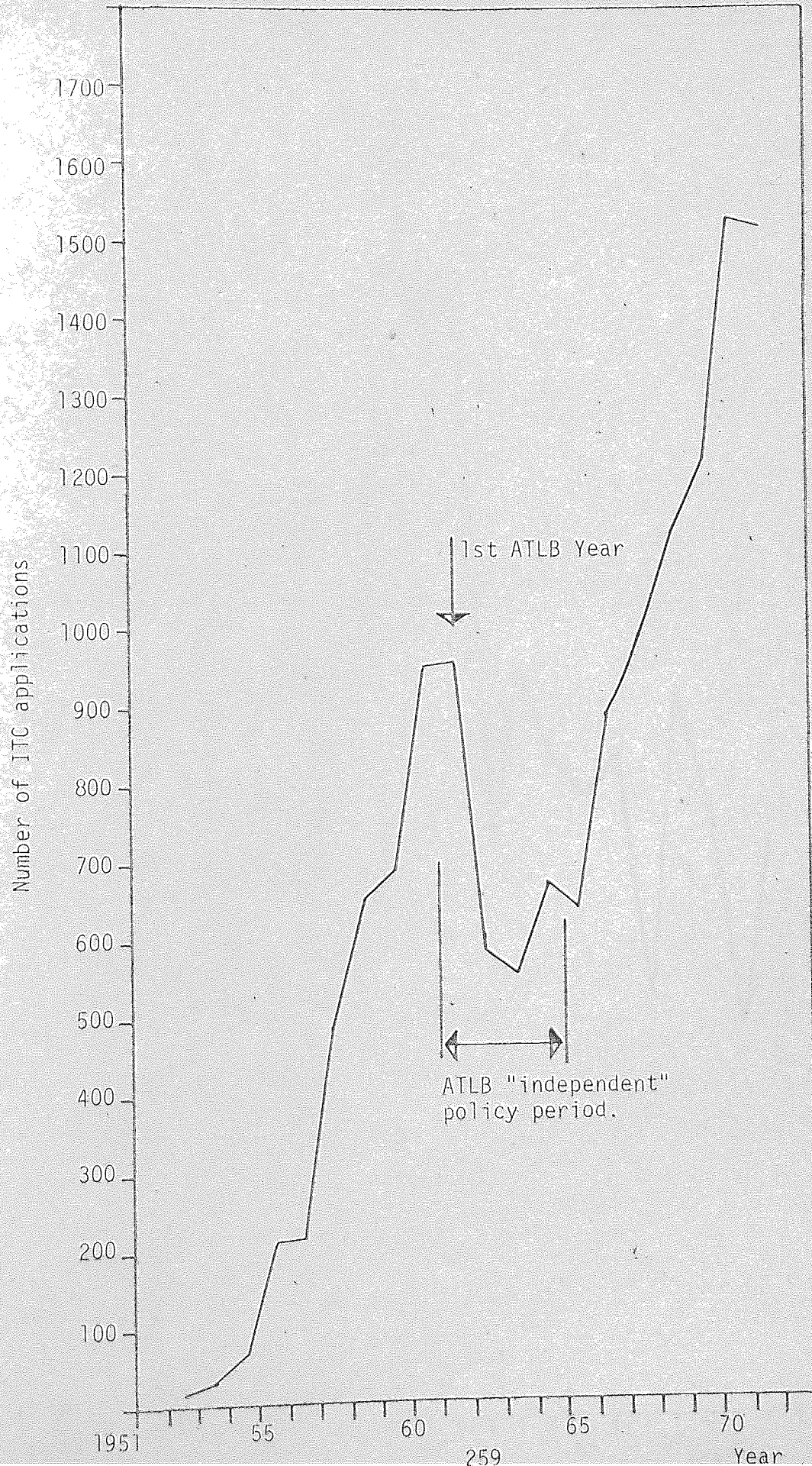


FIGURE 11 TOTAL NUMBER OF NEW APPLICATIONS FOR ALL TYPES OF "NORMAL SCHEDULED SERVICE" RECEIVED BY THE ATAC AND ATLB IN THE PERIOD SHOWN.

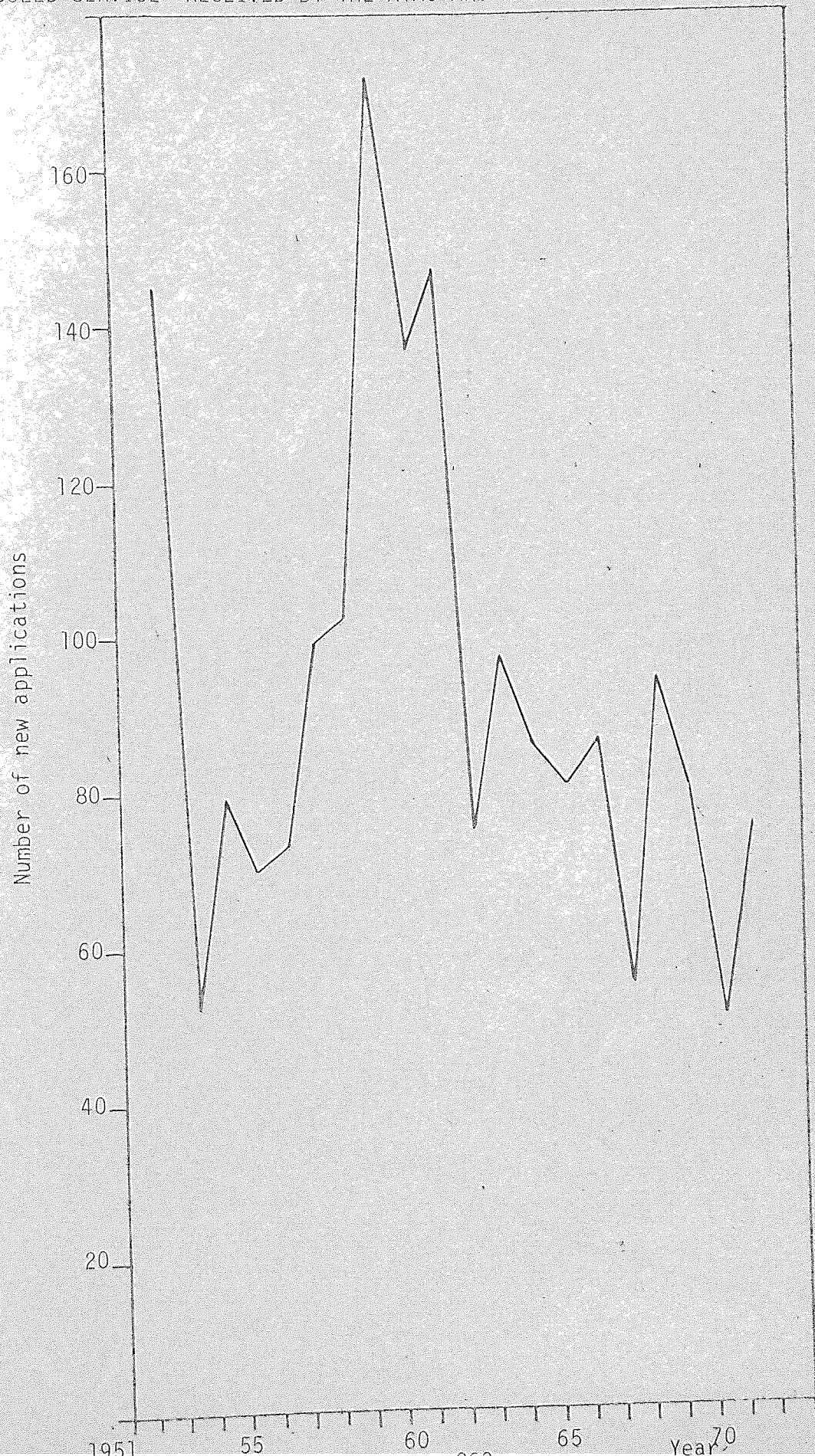
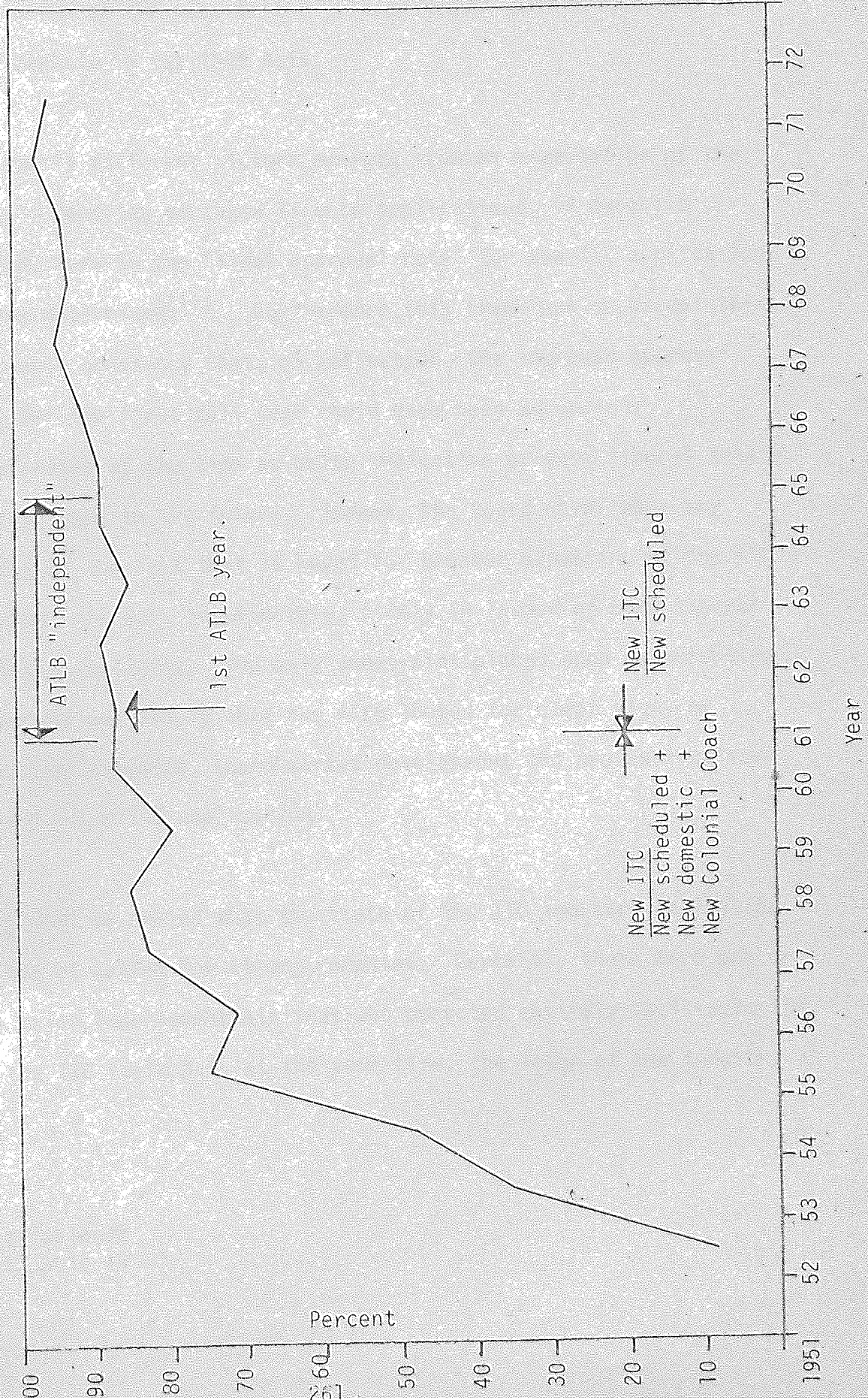


FIGURE 12 NEW ITC APPLICATIONS RECEIVED IN THE PERIOD SHOWN, AS A PERCENTAGE OF ALL NEW APPLICATIONS FOR ALL PASSENGER SERVICES.



picture of constancy was the emergence of a large number of charter applications⁽ⁱ⁾ and these for the first time provided an indication of the size of the "closed-group" market operated under the loophole in the 1949 Acts.

A slightly different picture emerges from an examination of the Board's handling of these licence applications. A decisive upwards turn in the "final approval rate" for new ITC applications may be determined⁽ⁱⁱ⁾ Furthermore this trend was to be maintained with such constancy that, on reflection, the improved approval rate for the first full year could have been accurately interpreted at the time as being indicative of more liberal treatment to come in the future. Indeed, the Board never made any secret of the fact that it hoped for greater expansion of the ITC business and was, in principle, firmly in favour of more liberal licensing policies. The only constraint placed upon uncontrolled expansion was simply that the ATLB looked for clear signs of financial strength, sound market development and professionalism behind every ITC application.

It cannot be denied that the state of the ITC industry in 1961/62 in the UK called for strong remedies. Certainly there were one or two major Independent airlines who operated entirely satisfactorily in the ITC field but, at the same time, the image of the industry

(i) Table 12
(ii) Table 13

TABLE 12. ATAC/ATLB LICENSING RECORD.

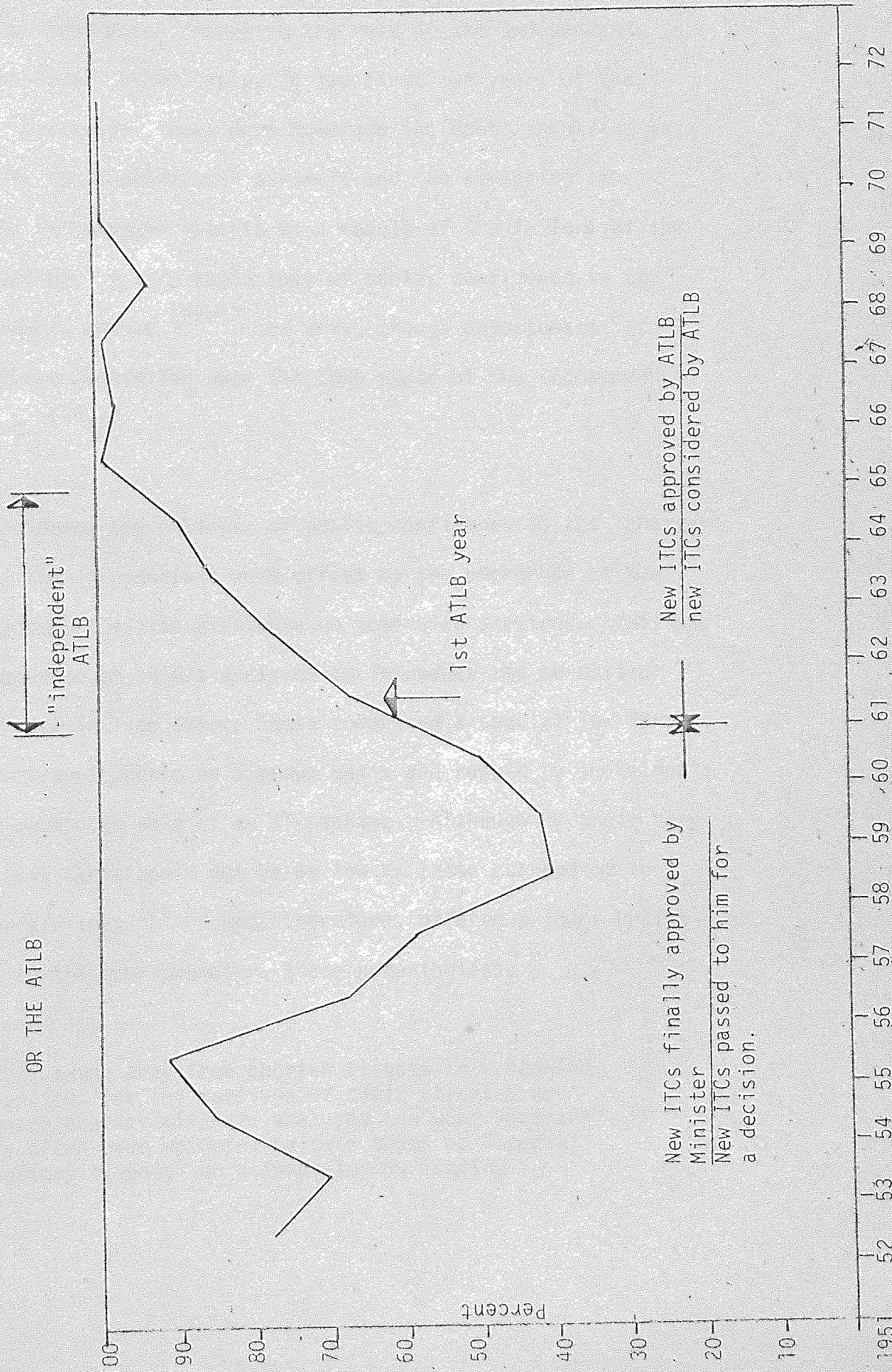
Classification: 1. ITC
 2. Domestic scheduled
 3. International scheduled
 4. Colonial Coach
 5. All freight
 6. Vehicle ferry
 7. Circular tours
 8. Charters

Year	New Application							
	1.	2.	3.	4.	5.	6.	7.	8.
1952/53	13	57	63	25	21	5		
1953/54	28	11	31	10	10	3		
1954/55	73	20	52	7	9	10		
1955/56	207	30	38	2	4	4		
1956/57	210	19	53	1	3	1		
1957/58	478	20	75	4	4	3		
1958/59	653	29	57	28	5	0	70	
1959/60	689	38	132	2	12	17	62	
1960/61	947	48	89		12	17	46	38
1961/62	958	147						471
1962/63	583	75						349
1963/64	554	97						560
1964/65	672	86						419
1965/66	638	80						545
1966/67	887	86						573
1967/68	985	55						727
1968/69	1122	94						941
1969/70	1217	80						1103
1970/71	1530	50						1813
1971/72	1518	75						2200

TABLE 12 CONTINUED.

Year	New Applications Approved							
	1.	2.	3.	4.	5.	6.	7.	8.
1952/53	7	27	35	2	6	5		
1953/54	13	8	6	6	5	2		
1954/55	50	10	21	1	7	5		
1955/56	148	19	28	0	1	2		
1956/57	137	14	19	3	3	4		
1957/58	252	12	34	0	4	2		
1958/59	240	7	24	1	5	1	16	
1959/60	266	33	35	1	7	1	31	
1960/61	411	29	36		6	22	32	29
1961/62	482		87					454
1962/63	355		43					319
1963/64	439		60					532
1964/65	521		59					410
1965/66	552		59					526
1966/67	740		53					555
1967/68	845		37					706
1968/69	862		37					866
1969/70	1082		56					1082
1970/71	1292		23					1572
1971/72	1361		59					2124

FIGURE 13. PERCENTAGE OF ALL NEW ITC APPLICATIONS CONSIDERED AND FINALLY AUTHORISED BY THE MINISTER OR THE ATLB



as a whole was poor. Subtle influences arising from this unfortunate situation, however, combined to produce eventually the most fundamental change in the role of the Independents in air transport. Regrettably, in the first two years of the ATLB's existence, there were numerous incidents involving fatal accidents to Independents' aircraft and the stranding of tourists in European resorts as a result of the failure of the tour company. A very rapid loss of public confidence in the Independents ensued (27.1) and this, though unfortunate, at last focused attention upon the true state of the Independents' fortunes. (25.2)

By coincidence the collapse of public confidence in the "charter" IT's of the Independents were offset by the emergence of new holiday opportunities available on scheduled services. This was a consequence of IATA's decision to introduce the so-called "ITX" fares in late 1959. These comprised a special low fare sold to travel agents on a group basis and resold to individuals of the public as part of an IT package. Although by their very nature ITX fares could not be as low as those charged by the charter airlines (16.8) and, therefore, offered a lower profit margin to the tour promoter, these nevertheless:

"....swung away from charter flights to scheduled services for the carriage of their clients, and where charter aircraft are used the word "charter" is often over weighted by such terms as "Special holiday flights" or accompanied by lengthy

assurances that the airline and the aircraft are completely reliable". (151)

Such an immediate, if irrational, response caused the ATLB to concur with the view that:

"....in the long term the tendency will be for inclusive tour passengers to travel by scheduled services...." (152)

Significantly, such a point of view was expressed at about the same time within ECAC ⁽¹⁵³⁾ and this coincidence of opinion serves to emphasise the deep misunderstandings which still surrounded the developing ITC industry. The point about the alacrity with which these various regulating bodies, and particularly the ATLB in this case, welcomed the new competitiveness of the scheduled carriers in what had previously been an industry dominated by non-scheduled Independent carriers, is that it emphasises how little the basic concept of the ITC operation had altered. Because it was still, essentially, a seasonal business based on the negotiation of season-by-season contracts and licences, it could not provide so-called "bread and butter" work for those operators heavily dependent upon it. Thus, poor utilisation of equipment over the year remained the fundamental weakness of the ITC business in 1962. It was, of course, a vicious circle - the Independents were financially weak and therefore were generally poorly equipped with cast-off aircraft,⁽ⁱ⁾ frequently totally unsuited to the role for which they were now used. The combination of unstable finances, poor

(i) Table 13

TABLE 13. AIRCRAFT FLEETS OF THE UK INDEPENDENTS, 1960.

	DC-3	Viking	DC-4	Hermes York	Viscount	Britannia
BUA	3	5	3	-	5	2
British Eagle	-	10	-	-	-	-
Dan - Air	-	-	-	4	-	-
Derby	6	-	-	-	-	-
Skyways	-	-	-	14	-	-
Other	7	25	8	7	-	-

Source: The Douglas Aircraft Co. "The European Charter Airlines" p.5.

equipment and extreme fluctuations in demand for their services ensured that the Independents remained very much second-rate airlines. The addition of fatal accidents to this list of unsatisfactory features, whether or not directly related to them, inevitably led to a steady erosion of public confidence.

Against a background such as this, it is hardly surprising that in some areas of officialdom the apparent impending decline of the Independents in the ITC market and their replacement by more respectable and stable State-owned scheduled airlines, was greeted with relief. Clearly there was a section of the regulating authorities which believed that the Independents' involvement in ITC operations had been an unfortunate necessary evil.

A more reasonable assessment of the problem was that the structure of British civil aviation since the war, though it had been responsible for encouraging the Independents' involvement in ITC work, had not been flexible enough for them to combine this activity with other, perhaps less lucrative, but more stable operations. Thus, it was entirely true that without some ability to operate a basic scheduled service network on a year-round basis, no Independent airline could hope to develop long-term expansion plans for ITCs. The essential structural fault in the system was that ITC operations continued to be regarded - even by the Independents' themselves as "charter" services and, as every-

one knew, these could never form the basis of sound airline expansion. One culprit for this state of affairs must be the so-called "closed group loophole" of the 1950's because this had operated in such a way as to encourage the Independents to devote much of their IT activity to satisfying the holiday requirements of groups. Closed group IT operations were indeed charters and this perpetuated the belief that the function of the airline in the mass-travel market was to supply air transport capacity "on demand" to whichever party required it.

In retrospect it may be suggested that the Board's belief that only scheduled services carrying IT passengers could hope to form the essential basis for a sound industry expansion was undeniably correct. Despite the fact that the Independents continued to operate ITC services on a charter basis, eventually the terms of the charter were such that the ITCs in question were of necessity operated to tolerances approaching and in some instances exceeding those for scheduled services.

This revamping of the ITC concept and the rearrangement of the chartering terms under which they were operated was, perhaps, the single most important contribution of the UK Independent airline operators to the air transport industry in the 1960's. Not only were they responsible for exploiting the concept in the first place, they were also responsible for ensuring that it could continue to be operated as a completely viable and separate

industry, largely removed from the general constraints and fortunes of other sectors of air transport operations. However, such an important change did not occur by accident and it is the purpose of later sections in this chapter to investigate what factors combined to produce such a result.

In 1962/63, however, IT operations still adhered to the formula established in the pioneering days of the fifties and two years of "freedom" under the terms of the 1960 Act had yet to achieve much in the way of increased opportunities on traditional scheduled services. Finances of the Independents, therefore, remained weak and although the ATLB was clearly determined to improve this situation it was faced with the reality of a situation created by factors historically beyond its control.

In the first place the Independents, acting in an ad hoc capacity for most of the time, had had little opportunity to cost properly their operations. Since they operated largely in the highly competitive charter market they were alternatively beset with problems of over-capacity or excessive demand. Thus their pricing policies were inevitably based on the philosophy of "What the market will stand", rather than "Cost plus profit". In such a situation, particularly where charter rates might have to be quoted instantaneously on enquiry if there was to be any hope of a successful bid, the result was that the true costs of many operations were lost in the general confusion created by the ever present need to maintain high utilisation of the aircraft at

any cost. Historically, therefore, the Independents were generally not equipped to present properly audited accounts to the ATLB in support of their requests for ITC licences.

A secondary problem, in some ways linked to the first, was that in the early years of the ATLB's activities, the industry was suffering from severe over-capacity problems. Inevitably, therefore, the market price collapsed and although there was a form of IT price control - the so-called Provision 1 ⁽ⁱ⁾ this did little to protect the operators from being forced into marginal-profit or even below-cost quotation positions.

Provision 1 was designed to protect the scheduled carriers by ensuring that the cost of an IT holiday on a non-IATA carrier (in the UK's case this meant inevitably the Independents) was no less than the lowest scheduled airline fare on the same route. What this mechanism did not do, however, was to protect the Independent operators since Provision 1 merely controlled the price of the IT package offered to the public. It made no attempt to control the price of the charter offered by the airline to the tour organiser. Despite pleas by the organisers that they were being forced to sell IT holidays at prices higher than they really wanted to and were, therefore, being forced to make excessive profits, there is little evidence to

(i) Provision 1 was established by the British Government to exert some level of price control on ITC's in order to protect the scheduled carriers. Not all Governments introduced such controls however, and the UK Government's action was virtually unique.

suggest that they did not further seek to maximise those profits on their own initiative by forcing down charter rates to uneconomic levels.

Financial weakness was, therefore, a serious source of embarrassment to the Independents and to the licensing authority which clearly recognised that rigid adherence to the letter of the law would probably remove most Independents from the ITC market. (154) This problem of instability was not, however, a new phenomenon - particularly when viewed as a block to re-equipment plans (155) and perhaps the only reason why so many of the Independents had in fact survived as long as they had was because of the growing interest of shipping firms in the emerging "charter" air travel industry. To some extent this was a natural act of self-defence since the last years of the 1950's had seen a steady decline in the share a seaborne passenger traffic and a spectacular increase in air passengers.⁽ⁱ⁾ Inevitably, and possibly as the Government had always hoped, the shipping companies took tentative steps towards involvement in ITC work. There was, of course, considerable sense in such a move since the shipping firms had a great deal of experience in chartering techniques which were sadly lacking from the air transport world - it is thus hardly surprising that the single most important revolution in the basic ITC concept came about as a result of the direct transfer of shipping charter techniques to air transport. There can be little doubt that the ATLB recognised the impossibility of its situation and decided therefore to risk a somewhat lax interpretation of the rules.

(i) Table 14

TABLE 14. SEA/AIR PASSENGER TRAFFIC ON THE NORTH ATLANTIC

Year	Air (IATA only) (thousands of passengers)	Sea
1948	253	501
1949	273	652
1950	317	691
1951	342	710
1952	448	844
1953	523	892
1954	581	738
1955	692	962
1956	835	1011
1957	1019	1027
1958	1292	964
1959	1540	881
1960	1929	879
1961	2176	785
1962	2587	820
1963	2836	810
1964	3551	715
1965	4092	649
1966	4700	603
1967	5505	504
1968	5753	374
1969	6776	338
1970	8018	252
1971	8591	218

Sources: 'Flight International', 12th June 1969.
IATA, "World Air Transport Statistics"
ICAO, "Development of International Air Passenger
Travel - Europe" (1973)

Thus it may be seen attempting to justify such an approach in its third annual report:

"....one interpretation under the act might lead us to revoke existing licences and not to grant further licences but this extreme course could mean the end of a number of air services which are of benefit to the public and might, in our judgement, become profitable after a period of development". (152.1)

The inference was that the Board believed it had the authority to conduct experiments in licensing policy which might produce long-term success of one form or another. Whether or not it was correct in its assumption, there can be little doubt that one of the single most important stumbling blocks to the Independents' growth in the past had been the lack of long-term prospects. Even in the ITC field which had historically become the "property" of the Independents, there was an unwillingness on the part of the licensing authorities to encourage the formulation of long-term contracts between travel organisers and the airlines. In other fields of the Independents⁽ⁱ⁾ activity the uncertainty was equally pressing and it was therefore encouraging to find that the ATLB was prepared to introduce a certain amount of risk into its licensing decisions.

The figures speak for themselves in many respects and indicate clearly that the general trend of ATLB licencing decisions in the

formative years of its activity was, particularly for ITCs, increasingly liberal. (i) By 1964 therefore the "approval rate" for new ITC applications had reached approximately 90%. Despite this increased liberalisation, however, it should not be thought that the Board was adopting a policy of carte blanche approval and indeed, one of their greatest problems remained that which had always led to friction between the industry and the ATAC in the 1950's. Although the ITC business was maturing and individual operators and promoters were developing a sound feel for the various markets in which they operated, there remained, nevertheless, a considerable degree of cut-throat competition. In particular certain operators attempted to eradicate the opposition by blanket application for licences they never intended to take up. More seriously, perhaps, many of the applicants had every intention of operating on whichever routes to which they could gain access and this undoubtedly confronted the ATLB, as the regulatory authority, with severe problems.

The ITC industry, expanding as it was at a rate which can only be described as dramatic, had clearly shown an inability to regulate its own affairs. Provision 1 was but one example of the way in which extreme competition forced operators into untenable positions from which recovery was very difficult. The ATLB's principle job was, therefore, to regulate the ITC business from a detached standpoint. Thus it was left inevitably to the Board to reduce capacity requirements for future season's operations to ensure "Realistic supply of Capacity". (156)

- (i) Figure 13
- (ii) Figure 14, Table 15.

FIGURE 14. ITC PASSENGERS, SUMMER SEASON OUTBOUND FROM THE UK.

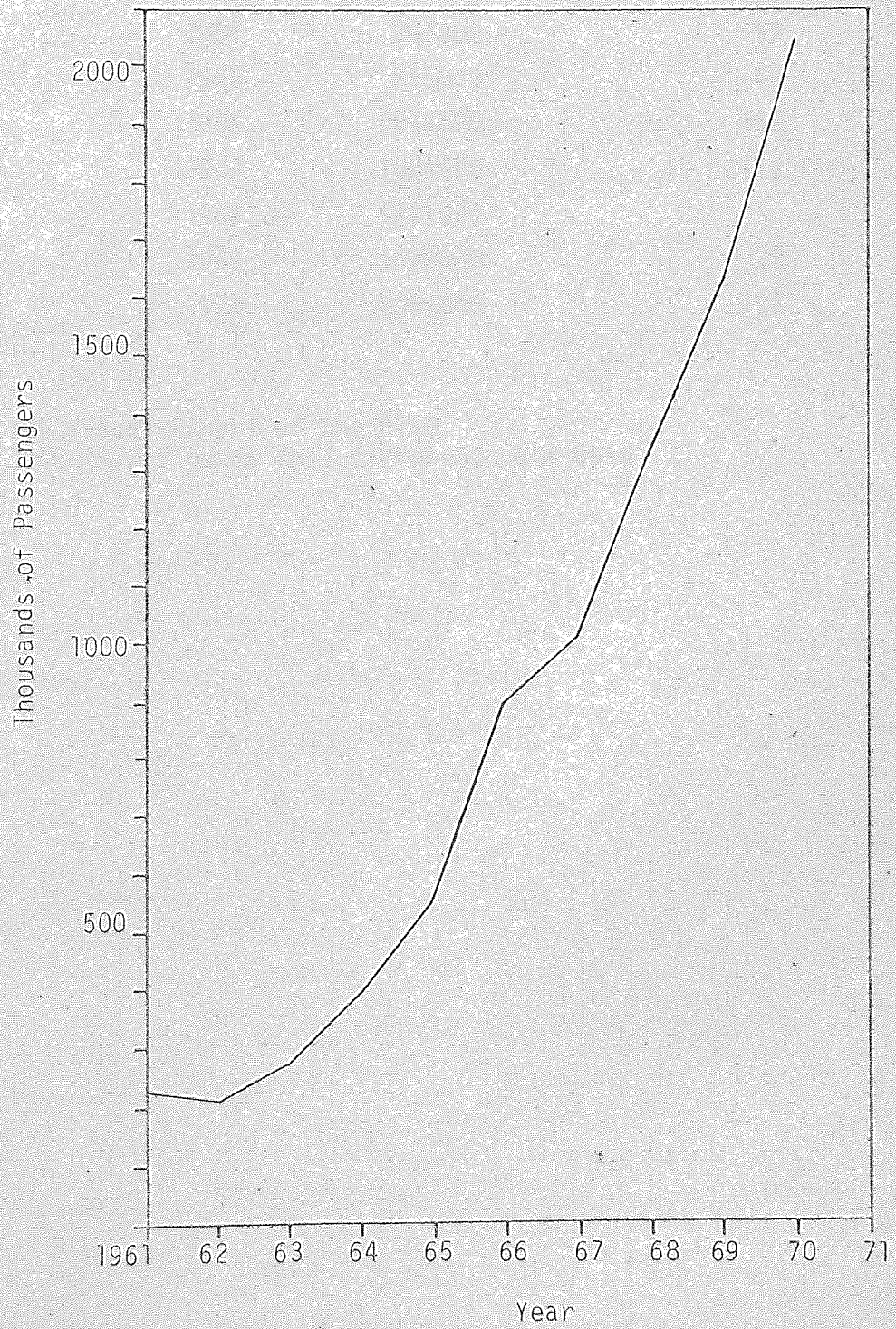


TABLE 15. ITC PASSENGERS - SUMMER SEASONS OUTBOUND FROM THE UK.

	Year	Passengers	% Increase
April to September	1961	225000	-
	1962	222000	-1
	1963	261000	+18
	1964	397000	+52
	1965	555000	+40
	1966	898000	+62
	1967	1004000	+12
	1968	1331000	-
	1969	1629000	+22
	1970	2051000	+26

Source: 11th Annual Report of the ATLB
(1968-1970 figures to a different data base).

Since the Board's involvement in the regulation of ITC capacity was inevitable until such time as the industry proved itself capable of acting in a manner less directly controlled by short-term financial incentives, its licensing function continued to be vital. Furthermore, just as the ATAC had discovered, this requirement for a vetting and licensing procedure imposed serious constraints upon the Board's ability to plan its yearly workload. Perhaps here, for the first time, the real importance of the change which was rapidly overtaking established doctrine on the function of air transport became evident. By 1964 the importance of the Independents' IT business had become such that the entire UK licensing "calendar" was structured so as to fit the licensing programme to suit the demands of the UK holiday industry. (156.1)

Despite the Board's clear indication of favourable consideration of ITC applications, (and remember that at this time the major UK ITC effort was still being provided by the Independents - the Corporations being largely unimportant) the response from the operators was not encouraging. Following the very high number of applications in the first ATLB year, almost entirely the result of the need for blanket renewal of all licences following the end of transitional arrangements, the level of applications collapsed and showed no major indication of improvement during the entire period under review. (i) To place these figures in

(i) Figure 10

perspective it is equally clear that there was a similar drop in applications for new scheduled services of all kinds.⁽ⁱ⁾

Unfortunately it is not possible to determine the percentage of these latter applications which stemmed from Independent operators. Taken at face value, though, they show that the importance of ITC work remained high despite the drop in total applications.⁽ⁱⁱ⁾ Furthermore the scheduled applications came from both private and public airlines whilst the ITC applications came almost entirely from the private sector, thus the importance of ITC work to the Independents is emphasised and was probably even higher than the level indicated in Figure 12

Whatever the exact nature of the ratio, however, it is clear that in the early years of the ATLB's rule there was not an explosion of interest in introducing new ITC services. The reasons for this are complex but essentially revolve around the Independents' ever present desire for scheduled service status. Such conflict as developed under the 1960 Act in these first few years clearly indicated that scheduled services were the ultimate goal of most Independent airlines. One important factor behind this drive for "scheduled respectability" was the emergence of the shipping lines as shareholders in the larger Independent airlines. (137.1)

Despite the fact that many of these lines were essentially cargo-

(i) Figure 11

(ii) Figure 10

biased, many others had significant and long standing histories of involvement in luxury sea travel on scheduled services. (157)

One of the great weaknesses of the ATLB's position was that it was never issued with a clear statement of the policy it should adopt in order to conform with the Government's wishes for the progression of British air transport development. In the absence of such guidance the Board merely adopted policies which it felt to be correct and pursued them consistently towards their eventual achievement. It was, of course, naive of the Board to believe that it could operate licensing policies which were clearly in conflict with the policies of the Government in power, but it is this last phrase which forms the essence of the Board's eventual difficulties. Provided the "Government in power" remained unchanged then there was every reason to believe that the Board could indeed develop a case law (149.2) which would gradually point the way towards the sensible regulation of British air transport. On the basis of such a case law there was every reason to believe that the Independents and the Corporations would eventually learn to co-exist.

In reality, however the opportunity had never really existed for the Board to develop any such independent case law for, as we saw earlier, it was constituted in such a way as to allow direct political control and reversal of its "independent" decisions.

Indeed, it had been clear from the start of the 1960 Act's life that there were specific areas in which the Minister intended to

maintain control. The ATLB believed that since the Act did not provide:

"....any positive guidance on policy for the Board to follow in deciding whether or not to grant an application and it appears to have been the intention of the legislature to leave the Board unfettered as regards the general policies they should pursue...." (149.3)

it could, therefore, rely on its own pattern of decisions to develop the missing policy which would "Gradually unfold by way of a form of case law". Whatever the Board might have believed, however, the passage of the Act through Parliament resulted in numerous illuminating comments which made it clear that the (then) Conservative Government had very different ideas as to how the case law might develop. Accepting that no policy guidance was officially given, Mr. Duncan Sandys placed a slightly different emphasis on the emergence of the so-called case law. The significant difference of interpretation was:

"....The future pattern of British aviation will emerge progressively from the decisions of the Board and from the results of appeals to the Minister...." (16.9)

(Authors emphasis)

The importance of the appeals to the Minister was to become evident in later years - particularly after 1964 when the Socialists were once again returned to power. It is not the place here to argue the pros and cons of the Board's activities or interpretation of

terms of reference, Edwards (16.7) provides one of the most thorough analyses of this point. What now becomes important is to consider the effect of direct political intervention in the activities of the ATLB particularly in the context of the activities of the Independents

The first four years of the ATLB's existence were hardly dramatic in their effect on the structure of the ITC business or the general non-scheduled business of the Independents. In short it may be fairly stated that the Board probably refrained from experiments because it was only too well aware of its own technical lack of expertise. It had, for example, no permanent research team which could promulgate new ideas and test various hypotheses; it was the very antithesis of the regulatory structure established in the United States. For these first few years, therefore, the Board was left reasonably well alone to pursue such policies as it felt fit. To be sure there were disputes over decisions and it quickly became quite clear that there was in the appeals procedure a dangerous opportunity for interference by the Minister. Nevertheless, despite general indications that the Board was not always as independent as it had hoped (137.2) - largely because the Minister reserved the right to add his contribution to the determination of a case law - the system worked and new opportunities were opened to the Independents which transformed the character of British civil aviation. Thus, in this period though the Minister wielded power

and influence, it remained intangible in nature and was rarely overtly used to direct the ATLB along given paths towards the satisfaction of political rather than commercial objectives.

The honeymoon period - if that is what it was - did not last, however, and shortly, precipitated by the change of Government, the function and independence of the ATLB was progressively and fundamentally challenged. In the following section this change in political climate and the effect on the ATLB and the industry is analysed.

10.3. Political Direction of ATLB Decisions

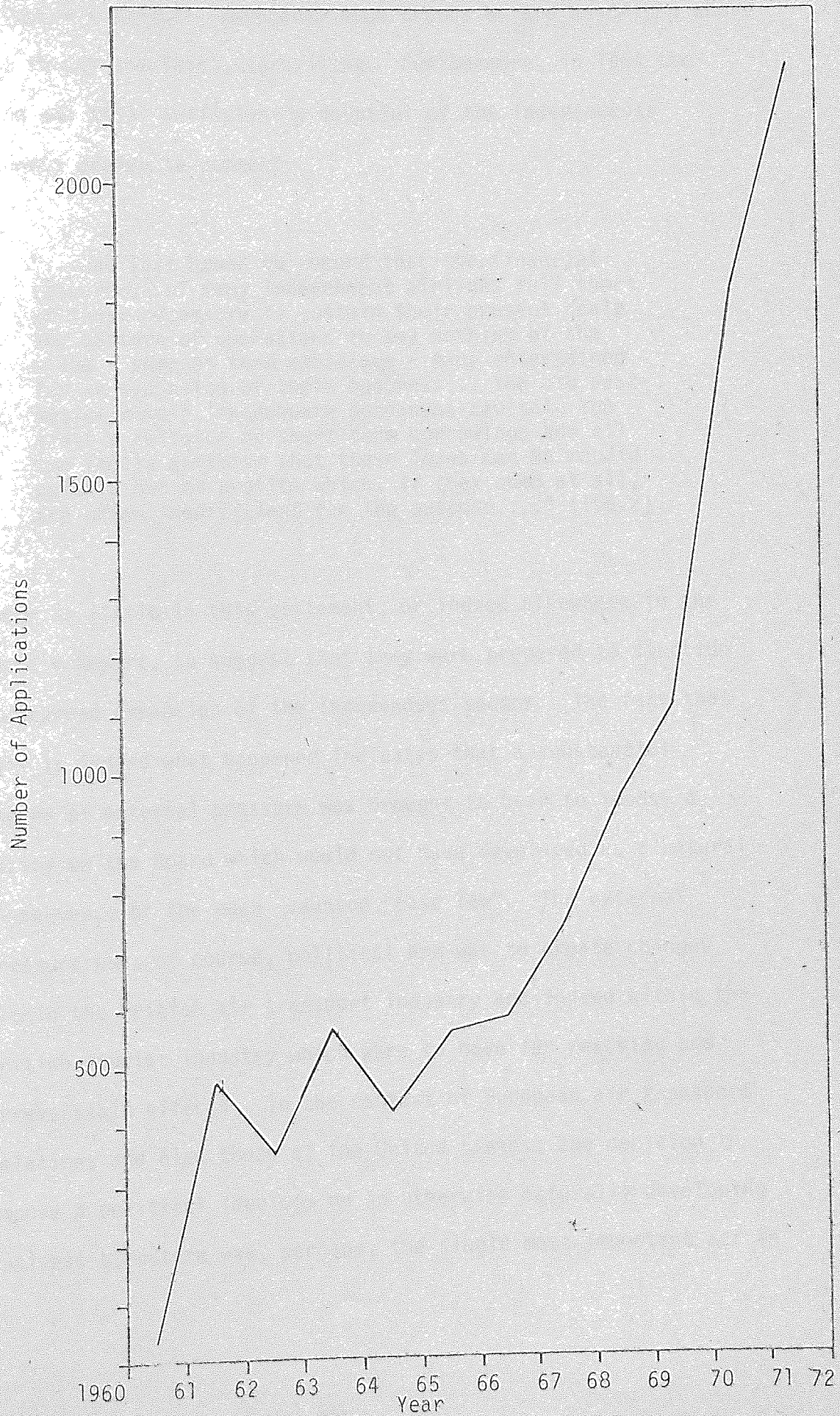
A glance at the accompanying graphs makes it clear that in 1965 something happened to alter dramatically the established structure, relationships, and operations of British civil aviation. Perhaps the most immediately apparent feature is the rapid growth in the number of new ITC applications.⁽ⁱ⁾ On inspection other trends become apparent: There is a subtle upturn in the percentage of all new licence applications which were for ITC work;⁽ⁱⁱ⁾ there is a virtual cessation of refusals for ITC applications;⁽ⁱⁱⁱ⁾ the same is true of applications for charters ^(iv) and this in the face of a dramatic increase in this form of activity.^(v)

Now, it has been shown that the Board had been moving towards the gradual liberalisation of treatment of all such services, but in

(i) Figure 10
(ii) Figure 12

(iii), (iv) Table 12
(v) Figure 15

FIGURE 15. APPLICATIONS RECEIVED FOR CHARTER SERVICE LICENSES



view of its cautious character as a result of acknowledged weaknesses in technical competency such trends as are described above are, to say the least, surprising. Furthermore, in 1964 the Board was still sufficiently doubtful of the Independents business acumen to comment:

"....we felt bound to record that the financial resources of many independent airlines fell short of those necessary to sustain their present scale and pattern of operations to say nothing of the plans - some of them ambitious - many entertained for an expansion of their business....the old weaknesses remain, inadequate permanent capital, too great a reliance on short term borrowings and all too facile optimism that these loans can be repaid quickly out of profits which, if they come at all, are often insufficient for the purpose...." (156.2)

There is little in this statement, or indeed elsewhere in the Board's Report, to suggest that they were prepared to sanction widespread expansion of the Independent sector. The fact that this is indeed what happened indicates that a substantial degree of external pressure was brought to bear to impose a policy on the Board which would not have developed as a natural consequence of the much vaunted "case law". The external pressure was, of course, political and was to create changes within the British air transport industry and indeed within the British tourist industry which were to have far reaching and irreversible effects. In the context of European air transport relations and also those of the United States, the decision to impose a political ideology on an otherwise naturally developing business structure was, perhaps, the single most important act in

international air transport since the signing of the Chicago Convention. It is this act of political will which this section seeks to analyse and explain.

The discussions so far in this section have revolved around the actions of the ATLB in controlling the Independents non-scheduled operations. However, to appreciate fully the events - both political and commercial - of the mid 1960's, it is necessary to review the fate of the aspirations which the Independents developed as a result of the emergence of the 1960 Act.

To recap: in 1957 the failure of the existing air transport legislation in the UK was apparent for all to see. The fallacy of the belief that Independent airlines could develop stable operating patterns on the basis of charter services in the main with a few "Associate Agreement" scheduled services thrown in for good measure and with trooping contracts as an implicit expression of the Government's good faith had at last been recognised by all concerned. Trooping contracts rarely provided more than a means of keeping aircraft in service and Edwards (16.6) concluded that their financial contribution to the well-being of the Independents had been minimal. Indeed, there is every reason to believe that the UK Government's principle achievement from its trooping policy of the fifties was the saving of considerable sums of taxpayers money. The Independents certainly provided a most cost-effective solution for a Government faced with the need to transport large numbers of troops around the

world. If trooping contracts failed, in the main, to help the majority of the Independents maintain an adequate level of year-round profitable activity, the "Associate Agreement" scheduled services may be regarded in a more charitable light. Some of them were highly successful and despite early fears that the Corporations would merely use the arrangements to exploit private enterprise, there is little evidence to show that this was in fact the case. Indeed in view of its hybrid nature the arrangement worked surprisingly well.

Nevertheless, the arrangement did rule out the possibility for direct unfettered competition between private and public sectors and in this respect it must be admitted that the opportunities for the Independents were severely limited. A final indication of the state into which UK air transport policies had sunk by this date is given by reference to the one area of operations in which "competition" between the public and private sectors was still theoretically permissible. In the field of Colonial Coach services - pioneered by the Independents and generally recognised as a remarkable innovation - the ATAC's recommendations for operating restrictions to be imposed so as to afford the State Corporations protection, were little short of farcical:

"There must be better ways of protecting the two nationalised air corporations from indiscriminate poaching of their traffic by independent operators than by insisting that the only aircraft

the independents shall use are not only old when the service begins, but shall continue to age along with it so that the competitive position of the independent service deteriorates steadily with time". (158)

The essence of the Independents' hopes for the future was simply that the new Act would in some way rescue them from the morass into which they had fallen where they were, "Limited in the amount of capacity they can offer, in the kind of passengers they can carry, in the routes they can serve and uncertain even of the volume of business for which they are competing". (159)

From the point of view of the Government, however, there were other aspects to the question which severely constrained its freedom of action. Not the least of its reasons for seeking to restructure British civil aviation was to allow the State Corporations greater freedom of commercial action. Just as the Independents suffered from the fact that they were unable to maintain the fullest profitable utilisation of their equipment throughout the year because they were prevented from participating in some types of air service, so the State Corporations - particularly BOAC - were equally affected by their inability to operate in certain markets. Thus Government policy did not encourage the State airlines to enter the "charter" market or the troop transport competitions and this was particularly unfortunate for BOAC which found itself with uncompetitive equipment for "prestige" passenger services and which it was unable to utilise on charter work. The fundamental

problem facing any Government in 1960 was that the principle of reserving types of operation for particular operators simply did not work - all operators required equal opportunity to enter any market in order to obtain full utilisation. Thus the Government's interest in the 1960 Act would appear to be as much based on concern for BOAC's competitive position as it was for that of the Independents.

Whether or not the latter recognised that this might have been the case is difficult to determine, but certainly it was made clear in Parliament during the passage of the Bill that the intention was quite definitely to allow the Independents suddenly to present a competitive challenge to the State Corporations. Despite later protestations, therefore, the Independents could never honestly claim that the 1960 Act had ever promised to be a charter for unbridled competition on any route they chose to select.

In spite of this latent restraint, however, there is no doubt that the new Act did present new opportunities in many previously unexplored (by the Independents) areas. Consequently they took full advantage of them and were soon applying for scheduled service rights across the North Atlantic and on other routes where previously only the State airlines had operated. The ATLB adopted a broadly liberal approach to all new applications and as a result Independent airlines were at last licensed to operate in competition on UK domestic services. There were restrictions,

however, principally in that whereas BEA was granted unlimited frequencies for its services the Independent operators were not. In the international field there was the added difficulty of traffic rights which had to be negotiated by the Minister before any licensing decision of the Board could become practically effective. For these first few seasons of the Board's operation, possibly because all concerned were feeling their way under an unfamiliar set of guidelines, there was little contention between the various parties.

If there was not obvious dissatisfaction, however, it nevertheless existed - particularly amongst the Independents who recognised that the 1960 Act had done little to affect their position vis-a-vis the Corporations. Despite this dissatisfaction and the suspicion that the "independent" ATLB was in fact no more than a reconstituted ATAC, many private operators applied for and received permission to operate scheduled services. In the granting of domestic service licences the ATLB was relatively liberal except in that it restricted the frequencies allowed. This seemingly minor restriction had serious consequences for scheduled service domestic operations, however, and by 1964 signs of strain were becoming evident. It was patently clear that the 1960 Act had done little to improve the state of relations between the Minister, the Independents and the State

Corporation.⁽ⁱ⁾ The limited effect on the operating structure of the Independents is illustrated by the 1964 Annual Report for British Eagle Airways. This showed that despite the so-called "New opportunities" the emphasis of the airlines work was still in the traditional areas; trooping 40%, charters 25%, ITCs 15% and scheduled services 20%. Furthermore, and far more serious, was the fact that the new scheduled service opportunities had resulted in very heavy losses which largely offset the profits made on trooping, charters and ITCs. The selection of British Eagle as the model is a reflection of the airline's dominance in the Independent sector at the time and although the airline later collapsed it must be said that it was one of the first to attempt to exploit the new opportunities to the full.

If the Independents harboured suspicions about the workings of the Act under the Conservative Administration, the return of the Labour Government in 1964 heralded the start of a period of growing uncertainty among the Independents. Certainly the Act had provided opportunities and these had to some extent been exploited by the private sector, but in many areas it was evident that the Minister

- (i) It should be noted that the Minister's interference with ATLB decisions did not always mean that he supported the State airlines. One of the earliest complaints about the working of the appeals procedure came, in fact, from BEA when the Minister over-ruled the Board and granted increased frequencies to Independents on domestic services. BEA commented "BEA is disappointed that the Licencing Board's decision, which would have limited excess capacity on these economically difficult routes, has been reversed". Annual Report for BEA, 1963/64, p27.

held the trump card. International traffic rights, for example, could only be negotiated through him, and the ATLB, whilst being able and willing to licence UK Independents to operate international services was powerless to negotiate the traffic rights necessary to ensure those services would be operated. The ATLB was clearly acting in a vacuum - pursuing policies which depended entirely on the sympathetic support of the Minister for their implementation. The Conservative Government had demonstrated that its basic belief in the need to "protect" the State airlines over-rode its desire to promote private enterprise - despite the fact that this was a central issue in its dogma. Limited success under the Conservatives did not bode well for the Independents when the Labour Party was returned to power. In response to this change of Government came increasing demands from the private operators that they should be placed in the picture regarding their future, once and for all. Their competitive relationship with the State Corporations was unclear; there were no clearly defined areas of influence in which the Independents could hope to dominate developments; long-term licences were still not being issued by the ATLB and, perhaps most important of all, there remained a complete lack of an official policy for the development of UK civil aviation. It was one thing for the ATLB to talk about the development of a case law and to maintain a belief that a balance would eventually be reached, but it was quite another to ignore the fact that political interests remained and could effectively influence both the acceptance of the case law and the progression towards a balance. The Independents' growing frustration and concern at the workings of the Act under

the Conservative Government was therefore merely aggravated by the change of Government.

Soon after the return of the Labour Party to power the Independents made a formal request for a clear statement on their future role and the response to that request was such that the course of UK civil aviation was changed.

On 17th February 1965 Mr. Jenkins, the Minister of Aviation, made his statement to the House of Commons on what were termed, "Guidelines to the Government's views of the objectives of licensing policy". (160) These guide-lines, representing the first clear statement of any Government's policy towards UK civil aviation, though welcome for that reason, were no less unpleasant in their implications for the Independents. It was clear the Minister had recognised the opportunities open to him to direct ATLB policies and intended to make use of these to ensure that civil aviation development in the UK followed the requirements of a Socialist Government. The statement itself was long and complex and in the context of this work two features achieved prominence. The first was that the Independent airlines could not look forward to the expansion of scheduled service operations - domestic or international - and the second was that there was to be official UK Government support for the activities of the Independents in the charter inclusive tour market.

The effect of the Minister's conclusions on how British civil aviation development should be promoted and in particular on the position of the ATLB as the "independent" licensing authority, was to undermine the authority of the Board and to reduce it in status to little more than a reconstituted ATAC. The Minister's intention to control the ATLB so as to produce politically acceptable solutions to licensing problems was absolutely clear:

"I do not, therefore, propose to re-open with foreign governments those cases where the ATLB has licensed parallel international services by British operators and it has so far proved impracticable to secure the necessary traffic rights on acceptable terms". (160.1)

This sentence effectively ended any hopes of UK Independents being able to compete with the State airlines on international routes - not necessarily because it was impossible to secure traffic rights but because this might harm the position of the established operators, who were inevitably BEA or BOAC. This attitude of mind, this desire above all to protect the established "rights" of the State airlines to the lucrative developed markets was further emphasised:

"I shall be ready to use my statutory powers to direct the Board to refuse applications when it appears to me that foreign rights cannot be obtained without detriment to an established service or to the British share of the traffic as a whole". (160.2)

Nor was such an attitude limited to those areas where the Minister

could claim that he was bound by the limitations of international bilateral traffic rights. On the UK domestic services where there was evidence that the actions of the Independents following favourable (if limited) licensing decisions by the ATLB were generating new attitudes to domestic air travel within the UK and where BEA was certainly being forced to review its standards in the face of competition, restrictions were also to be imposed:

"On some trunk routes in the United Kingdom independent companies are now operating services of limited frequency alongside BEA. The ATLB has not so far thought it right to allow them to operate at anything approaching an unrestructured frequency. That accords with my own view.so far as it rests with me....I do not think it right to offer them the prospect of an unrestructured or extended frequency in the near future". (160.3)

The significance of this statement was that it posed insuperable problems of utilisation and competitive departure timings for the Independents. British Eagle's reaction, though perhaps emotional, was immediate and it ceased domestic trunk services forthwith following the Minister's statement. Certainly the airline had been losing money heavily on the domestic services (161) but this was to be expected since it had yet to achieve the full potential of its investment in new equipment and advertising for its highly competitive services.

The effect of the Minister's statement on the ATLB was direct and serious. Furthermore, it was immediately apparent that the state-

ment had been prepared largely in isolation from the Board -
deliberately - because:

"The formation of Government policy on civil aviation, no less than in other fields, is a matter for the Government. As far as the ATLB was concerned, the Minister of Aviation has always had the benefit of the Board's views, and he took full account of these...." (162)

Whereas few would disagree with the Minister's assertion that it was a matter "For the Government", it could not be denied that this recognition of responsibility had taken a long time to reach fruition. The very point about the 1960 Act in its setting up of the ATLB was that it failed entirely to provide:

"....any positive guidance on policy for the Board to follow in deciding whether or not to grant an application and it appears to have been the intention of the legislature to leave the Board unfettered as regards the general policies they should pursue". (149.2)

It now became apparent that this interpretation was incorrect and that the ATLB was to be very much controlled by Central Government policy. Furthermore that policy was likely to be dominated by the desire to protect the State Corporations against intrusive competition from the Independents. More reasoned reaction to the Minister's statement came from the chairman of another Independent operator, Skyways, who said, "At least we have a clear policy".

The inference was that however disappointing or restrictive this might be it did at least allow the Independents to recognise the limitations of their role. Under the previous legislation during the Conservative term of office from 1951 to 1964, although much had been promised the Independents, the action necessary to provide those opportunities had been totally absent.

The ATLB's own reaction was somewhat muted and, it might be argued, naive. The essence of its conclusions on the implications of the Minister's words was simply that he had said little to affect their constitutional position. The Board, therefore, rejected any suggestion that it should now tailor its licensing policies to fit in with the Minister's requirements and maintained that they were still required, under the terms of the 1960 Act, to reach independent conclusions on the issues before them. The Board hoped that the Minister would respect their decisions in the main whilst at the same time having regard to modifications required in the light of wider national issues (163). It is sufficient comment on the impracticability of such an attitude towards the happy combination of Ministerial and ATLB objectives, to quote from the penultimate report of the ATLB:

"It is generally agreed that the machinery and history of appeals against the Board's decisions have been unfortunate, and have gone far to undermine the Board's authority. The Board has been much encouraged to read the statement....
... "The Secretary of State's policy, when considering appeals will be to uphold the decision of the Authority unless there are clearly major reasons for departing from it". It is hoped that

the Secretary of State will make a start now by treating the Board in the same way as he intends to treat the Authority. If the Minister's assurance is repeated, remembered and accorded more respect than a similar assurance given by the Minister of Aviation when the 1960 Act was under discussion, the Board will have no cause to repeat the qualms expressed in its last report about appeals being settled by a member of the Executive". (164)

The purpose of this work is not to analyse the way in which the relationship between the ATLB and the Minister altered - that it did alter in a significant and unfortunate manner is evidenced by the above quotation. What is more important is how this changing and deteriorating relationship affected the development of British civil aviation.

10.4 The effects of the Ministerial statement of February 1965.

In the previous section it was suggested that the Minister's statement was an event of major significance for British civil aviation. Though there had been early indications that the appeals procedure built into the 1960 Act could, in fact, allow political interference sufficient to over-rule the ATLB's decisions, this was the first time that the Minister responsible had openly stated his intention to direct the ATLB along certain paths.

So far as this thesis is concerned the most important area of his statement was that dealing with inclusive tour operations. The other issues he dealt with cannot, however, be forgotten for, indirectly, they increased the Independents' interest in ITC work.

This redirection of interest stemmed largely from the statement's clear intimation that it would be difficult for any Independent operator to compete effectively with the State Corporations on scheduled services. However unpalatable that may have been it did at least provide the Independents with their first clear guide as to what should be their future development plans. Consideration of the opportunities remaining inevitably forced them to the conclusion that they had to make a success of ITC work and non-scheduled operations generally, if they wished to survive. Such a situation was not new, of course, except that this time there was a feeling of having reached the end of the road. In the past there had been the belief that a change of Government might bring about more liberal policies but little had actually resulted from such a change, in fact, and it was now clear that future changes in Government were unlikely to result in new opportunities.

In addition to the negative side of the Minister's intentions, however, there were also many positive features which the Independents were quick to recognise and which further caused them to reconsider the direction in which they should direct their expansion plans. In general terms it was immediately obvious that the Minister wished to see the widest possible expansion of ITC services by British operators. In view of his restrictionist attitude towards the Independents' activities in scheduled services it is not, in itself, surprising that he was prepared to offer widescale ITC opportunities as some form of consolation. The British Government still depended heavily upon the Independents for

trooping and could not, therefore, simply introduce policies which would lead to the rapid decline of that sector.

What was surprising about the Minister's statement, however, was that it tacitly accepted the probability that damage to scheduled service operators might result from the scale of ITC operations envisaged. (160.4)

Here, indeed, was a remarkable departure from established principles which had guided the ATAC throughout the fifties and the ATLB thus far. In accepting that his encouragement of ITC expansion would result in damage to some scheduled services, the Minister was effectively relieving the ATLB of their duty under the terms of the 1960 Act to consider, when hearing applications for new services:

"The extent to which any air transport service proposed would be likely to result in wasteful duplication of, or in material diversion of traffic from any air transport service which is being, or is about to be, provided under and air services licence already granted". (150.1).

Furthermore the Minister appeared to be contravening not only UK domestic precedent but also the intention of the 1956 Paris Agreement on non-scheduled services which was based on the understanding that liberalisation of non-scheduled operations could only be allowed if the interests of scheduled service operators were unlikely to be harmed.

Clearly the British Government had decided upon a new approach to the problem of effective regulation of non-scheduled operations and had decided that the widest possible expansion of the UK Independents into non-scheduled operations was now desirable. In the past, of course, it had been a Socialist Administration which had originally relegated the private sector to non-scheduled work only. This had been a largely negative action however - almost as an accidental consequence of the introduction of an air transport policy which gave no importance to the Independents anyway. Now it was different and it was evident that the Independents could expect very real support from the UK Government in the expansion of their non-scheduled operations as an integral part of British civil aviation. Two reasons for this are immediately suggested. The first and perhaps the most difficult to prove is that the newly elected Labour Government recognised the political advantage to be gained from projecting itself as the Administration which brought cheap, reliable holidays in the sun within reach of "the man in the street". Furthermore if foreign holidays were to be permitted at all in a time of economic "squeeze" as existed in the UK from 1965 onwards, then certainly the ITC was the most cost-effective method of achieving this. Some evidence for this conclusion - that it was a politically attractive solution - is presented in the Minister's statement, particularly when he justifies the virtually unlimited granting of ITC licences on the grounds that not to do so would "Prevent some members of the public who want inclusive tours from booking them". (160.5)

A second reason why the Minister might have been anxious to allow the UK Independents unlimited opportunities in the ITC field is that in doing so he was able to discourage the growing tendency for foreign registered aircraft to operate UK-originating ITCs. So long as the ATLB resisted the temptation to approve every application it received, there remained the probability that tour organisers would simply use foreign carriers instead. From the earliest days of the Board's existence the threat of excessive intrusion by foreign carriers had been held up by the tour organisers and operators as the most pressing reason for approval of applications. To its credit the Board resisted much of this pressure and the Ministry of Aviation took steps to ensure that the use of foreign registered aircraft was not such an easy way around the licensing regulations. (165)

However great was the real, as opposed to the suggested, intrusion by foreign carriers into the UK ITC market there can be little doubt that the British Government preferred its IT traffic to travel on UK airlines if only for the sake of conservation of foreign exchange. Some sources claimed that in fact the foreign carriers never really gained a foothold in the UK market (166) and it is certainly true that after 1963 foreign airlines carried a rapidly declining share of the UK ITC traffic. (16.10).(i)

The reaction of the ATLB to the Minister's intentions towards ITCs was that they broadly agreed. Despite the fact that they had both reached the same conclusions, however, the Board's reasoning was

(i) Table 16

TABLE 16. FOREIGN AIRLINES' CARRIAGE OF UK OUTBOUND ITC TRAFFIC
SUMMER SEASONS

Year	Passengers	% Increase	% Of Total
1961	70000		24
1962	130000	+87	37
1963	180000	+38	41
1964	195000	+ 8	33
1965	188000	- 3	25
1966	192000	+ 2	18
1967	251000	+31	20
1968	254000	+ 1	17

Source: "British Air Transport in the Seventies", Cmnd 4018, p.22

somewhat different to that of the Minister. In the first instance the need for more simple processing procedures for ITC applications was self-evident - the Board could hardly keep abreast of the work load imposed on it by the existing system. Secondly, though the Board had pursued a deliberately cautious policy towards ITC licensing in the first years of its life, by 1965 it was sufficiently sure of the effects of its policies to be able to conclude:

"We can find no evidence that inclusive tours have been responsible for any material diversion of traffic from the scheduled carriers. On the contrary, BEA's total passenger traffic continues to grow at much the same rate as before the inclusive tour charter traffic reached its present proportions". (163.1)

Possibly, therefore, the changes which came about after 1965 could well have occurred whether or not an official Government policy had been imposed on the ATLB. This author believes, however, that the changes would probably not have been as fundamental or have occurred so rapidly had it not been for the Minister's clear indication of the services which would in future be open to the Independents and actively supported by him.

So far we have considered the content of the Minister's statement, but have given little thought to what prompted it in the first place. Reasons for the Minister's policies have been suggested, but to understand these more fully it is necessary to consider the events immediately preceding the statement. It is ironic that it was a blanket appeal against the ATLB's ITC licensing policies by BEA which caused the

Minister to review IT policies and to fundamentally reject BEA's case.

In the 1964/65 licensing period there was a sharp increase in the number of new ITC applications⁽ⁱ⁾ and, bearing in mind that this ignores the growth in foreign-carrier UK ITC traffic a situation was rapidly developing in which BEA felt it necessary to challenge the increasingly liberal policies of the ATLB. Just as in 1954, therefore, BEA was determined to bring about a confrontation in order to resolve a difficult problem which directly affected its operating economics. Seeking ⁽¹⁶⁷⁾made an analysis of BEA's appeal and his conclusion that:

"By forcing a Ministerial appraisal of inclusive tour policy along these lines, BEA's appeal might yet turn out to give most benefit to those who are now holding up their hands in horror."

was almost prophetic. It should not be thought, however, that BEA's action was unforeseeable since from the earliest days of the Board's existence it had claimed the ATLB's policies towards ITC licensing were "regrettable". It is certainly true that traffic growth on some routes had virtually stagnated ⁽¹⁶⁸⁾ and common sense would suggest that the large increase of ITC work on these same routes must have been in some way responsible.⁽ⁱⁱ⁾ The Minister's comment ^(160.6) that, "This traffic may have some effect on scheduled carriers,"

(i) Figure 10
(ii) Figure 17

TABLE 17. SCHEDULED V NON-SCHEDULED AIR TRAVELLERS TO SPAIN

Year	Scheduled, (i) 2 - way flows in thousands			Total	% Increase	Non-Scheduled, (ii) 2 - way flows in thousands	
	Palma	Barcelona	Madrid			(iii) Total	% Increase
1958/59	42	27	24	93			
1959/60	57	40	29	126	+35		
1960/61	65	51	34	150	+19		
1961/62	84	73	49	206	+37		
1962/63	119	86	55	260	+26	224	
1963/64	132	94	71	297	+14	390	+74
1964/65	142	89	84	315	+ 6	502	+29
1965/66	160	90	101	351	+11	826	+65
1966/67	158	111	115	384	+ 9	1164	+41
1967/68	148	88	120	356	- 7		

(iii) Summer Seasons flow only.

Sources: (i) "British Air Transport in the Seventies", Cmnd 4018, p.322
(ii) Peters, M. "International Tourism", Hutchinson, London (1969), p.275

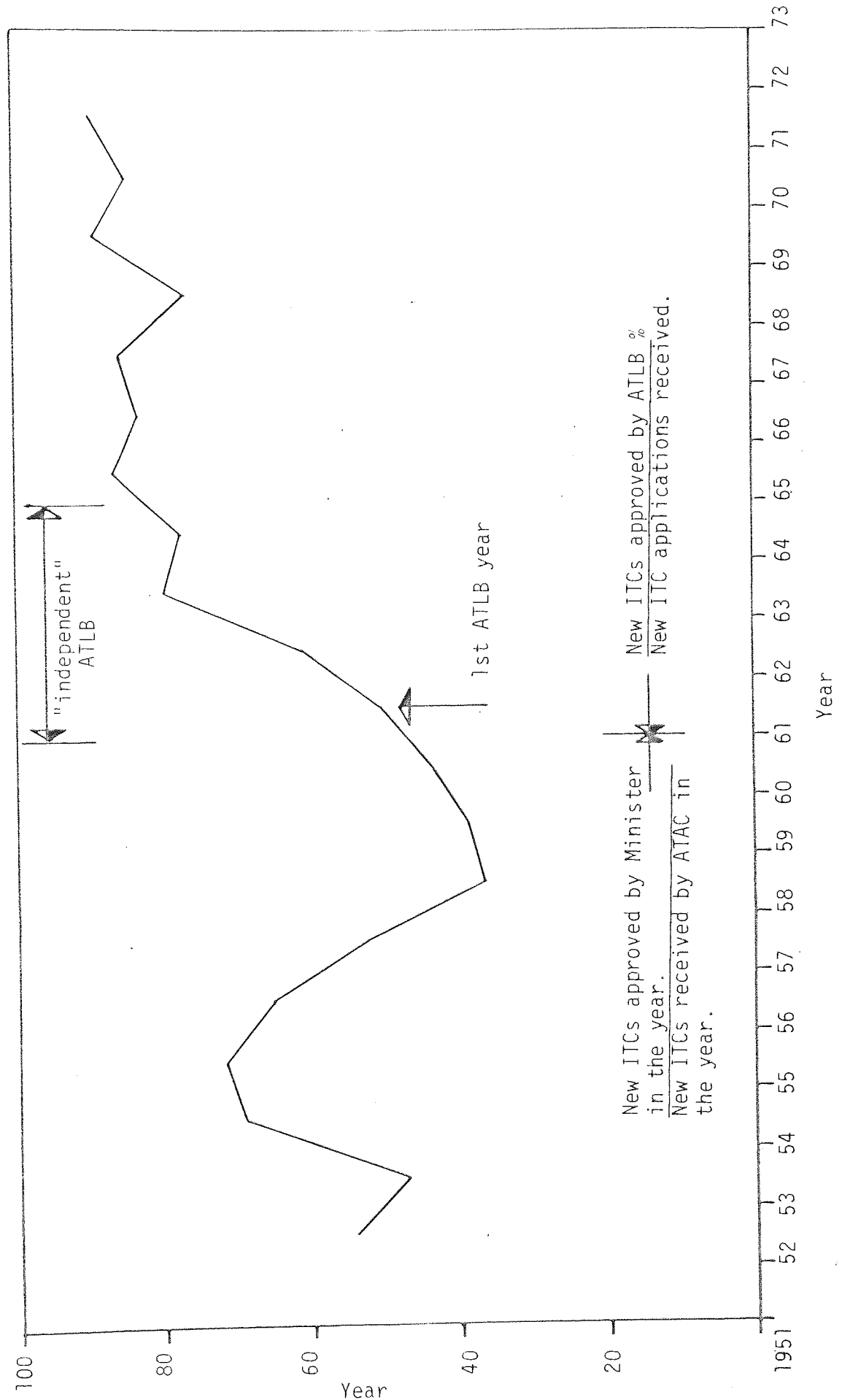
must be regarded as having been based on a full understanding that in some markets there was little doubt about it.

BEA's complaints about the erosion of its traditional traffic on some routes by ITC services became increasingly forceful as time went on and, of course, culminated in the 1964 "blanket" appeal. Its argument in support of its case were, however, curiously at variance with opinion in many quarters and indeed were frequently difficult to reconcile with the facts. BEA claimed, for instance, that the Board had by 1962/63 virtually abandoned the regulation of ITC applications by British Independent operators. Certainly the Board was becoming more liberal but its approval rate for new ITC applications in 1962/63 was still only 60% (i) and it was, at that time, clearly indicating its belief in the gradual replacement of ITC operations with ITX services (152.2) of which BEA was the principle proponent and indeed which had come about largely on BEA's initiative.

Another curious inference made by BEA was that the Board had in some way, as a result of its "liberal" licensing policy for ITCs, "Opened the way for foreign airlines to operate reciprocal services". (168) In fact, as we have seen, the Board had no control over these airlines and had deliberately restricted UK Independents' capacity even though it knew that tour organisers would simply charter foreign aircraft. The Board had in fact been adamant that it would regulate UK Independents' capacity regardless of the threat to "Go foreign"

(i) Figure 16

Figure 16. NEW ITC APPLICATIONS APPROVAL RATES



so as to ensure the proper supply of capacity to to the demand level indicated.

Despite the increasingly liberal policy towards ITC licensing which the ATLB was introducing as each season passed, the essence of the Boards' philosophy was caution (27.1) even though by 1963/64 its approval rate had increased to 80% (i). At this stage BEA determined to make a stand - no doubt encouraged by the return of a Labour Government to power with its tradition of support for the cause of the nationalised industries. It was against this background, therefore, that the Minister formulated his policy statement of February, 1965.

This section is concerned with reaction to that statement. The Board's reaction was, as already noted, slightly complacent since it could fairly claim that the Minister's policies largely coincided with its own. BEA's reaction was to unreservedly withdraw its appeals against the 1963/64 ITC licences. It later became evident that the Minister's statement, which in many respects was fundamentally in opposition to BEA's case, was accepted by the State airline with no less feeling of resignation to an unpalatable new situation than it had been by the Independents. If the latter were disappointed because it prevented them from scheduled service expansion, BEA were equally aware that their appeal had produced an unexpected result

(i) Figure 16

with which they now had to live. Both sides of the airline industry in the UK were, therefore, forced to take stock of their positions within the new guidelines and of their expectations for the future. The very baldness of BEA's comments indicates their recognition of the fact that here, finally, were the guidelines for the future.

"The Minister decided not to control Inclusive Tour charters.....BEA would be free to compete fully in the Inclusive Tour charter market, and this the Corporation is determined to do". (169)

In this simple statement we find the final recognition that the Inclusive Tour charter industry - for so long the poor relation of scheduled services - had arrived as a respectable and integral part of the operations of all types of airline. Status had finally been endowed on at least one form of charter service, the ITC.

Despite earlier comments to the effect that there was an intrinsic conservatism within the ITC industry which, it was suggested, had held back the evolution of new techniques for marketing and supplying the basic product - that is, cheap holidays on the Continent - this must be qualified.

It is certainly true that in 1964 the concept of the ITC operation had altered little. It essentially rested upon reasonably tenuous links between certain Independent airline operators and tour organisers. The licensing system itself had discouraged the formation of more binding contractual links between these two essential individual constituents of the IT industry. The ATAC and ATLB had both been reluctant to issue licences for ITC operation for more than one or

possibly two-year periods. Tour organisers could not, therefore, rely on the same operator automatically receiving renewed licences year after year. Despite the licensing authorities' defence of such policies it is clear that they produced certain undesirable qualities of instability within the Independent airline sector. Principally this was because the market economy philosophy controlled prices and Provision 1 offered no protection to the airlines. Thus charter prices spiralled downwards under remorseless pressure from travel organisers. The inevitable result was, of course, the failure of some airlines to the general detriment of the ITC industry's image as a whole.

Recognising that this was an undesirable situation, one or two individuals had made serious attempts to review the nature of the problem and to produce a satisfactory result. Two essential features had to be present in any solution proposed. First, the tour organiser had to be able to rely on the airline chosen to provide the transport portion of the holiday package. In this sense, "reliability" implies predictable approval of licence applications and also a relatively low charter price. Second, the airline had to be able to survive at the charter rate negotiated and, furthermore, to have some security of tenure so that future expansion could be properly planned.

Consideration of the implications of these two essential features indicates that only one solution could satisfy the requirements.

Either the airline had to control the tour organiser of the tour organiser had to control the airlines. By "control" we mean that the activities of the one had to be intrinsically linked to the activities of the other. Further consideration also makes it plain that there was an essential "servant and master" relationship between the two parties which inevitably meant that the controlling influence would be likely to be the tour organiser. The Independent airline operators had done little to exploit the concept of the ITC on their own initiative and had consistently regarded themselves as merely supplying the transport portion of the package. The development of new markets and thus of new business for the Independents' aircraft had been done almost exclusively by tour organisers and travel agents. Indeed this was the inevitable outcome of a continuing desire on the part of the airlines to regard ITC traffic as no more than a stepping stone towards the eldorado of scheduled service operations.

If there was an inevitable coming together of airline and tour organiser caused by the unsatisfactory nature of the annual charter tender competition and scramble for licences, there were other forces which contributed in no small way to this movement. The great problem for the Independents had always been low utilisation. Poor profit margins on services where utilisation was high, such as Government trooping contracts, merely aggravate their financial weaknesses. Though a formal link with one well-established tour organiser undoubtedly removed some of the utilisation worries of the Independents it was not in itself a panacea for all their troubles.

Furthermore, the parent tour organiser was unlikely to reap the full rewards of ownership of the transport portion of the package holiday unless it could ensure the greatest possible utilisation of the equipment. Thus, not only was it important, probably essential, for tour organiser to control the air transport operator, he also had to extend his control to the hotel accommodation forming the third essential feature of the package. So long as hotel booking remained outside the control of the tour organiser it was inevitable that the traditional weekend-to-weekend booking philosophy would prevail. This being the case mid-week utilisation of aircraft became difficult if not impossible. Thus there was an inevitable trend towards total ownership of all constituent parts of the package holiday by one agency. System design of holidays though long in evolution and not designed principally for the Independent airlines' benefit nevertheless proved to be their salvation and was a most notable contribution to the change in market structure which occurred in the sixties.

Once overall control of all three elements in the holiday package had passed into the hands of the tour organiser, "The hotel and the airline are relieved of all load factor problems and virtually all marketing costs". (27.2) Coincidental with the development of this philosophy came the Minister's statement, and the explosion of ITC traffic which occurred from 1965 thus becomes more understandable.

Despite the general conservatism, therefore, some elements within the

industry were intent on developing radically new techniques.

"System design" was the first, and possibly the most important, but others also evolved with increasing rapidity once the Minister's intentions had become clear. Such developments were, however, the exception rather than the rule up to the date of the announcement of the "new policy".

10.5 Developments in the UK charter industry after 1965.

Although the emphasis has so far been on the Independents' involvement in ITC operations, it should not be thought that this was the dominant area of their business. From 1960 onwards they had taken advantage of the opportunities available under the 1960 Act to develop scheduled services. Indeed, some of the larger Independents had put considerable effort into developing extensive route networks - often in direct competition with the Corporation. A further aspect of their activities was a considerable amount of pure charter work and, of course, trooping for the Government. The annual report for 1964 for British Eagle emphasised the diversity of interests. The report forecast ⁽¹⁶¹⁾ that in 1965, British Eagle's traffic would be split in the following manner:

Inclusive Tours	10%
Charters	20 - 25%
Scheduled Services	30%
Trooping	40 - 35%

Clearly, for this airline in particular, ITC work was not a major activity and, indeed, reference to Figure 1, Chapter 8, shows that prior to 1961, for the Independents as a whole, this type of traffic had never constituted more than 20% of the total.

The reason for this relative insignificance of IT traffic is that it was characterised by several features which limited its attractiveness. First, the operation of IT services required the award of a licence from, initially, the ATAC and, later, the ATLB. To some extent this was an unwieldy and time-consuming process which some operators preferred to avoid. Second, IT services did not necessarily relieve the Independent operator of his utilisation problem. "System design" of holidays was slow to make any impact on the tourism industry and even in 1965 the majority of ITs conformed to the traditional pattern. Consequently, any operator who tied his summer operations to the activities of the IT industry, found that in winter most of his potential capacity was not required. A third disadvantage was that IT services, though perhaps technically non-scheduled, actually had to be operated to a rigid timetable. Thus their operation had many of the characteristics of scheduled services without the advantage of regular, year-round operation.

Although the growth of the IT industry in the UK was undoubtedly due to the involvement of the Independents in it, this must be considered to be a relative importance. Though the Independents were important for the IT industry, the significance of IT traffic for the Independents was limited.

The Minister's declared intention to support the Independents in the exploitation of all types of non-scheduled services forced this sector to reappraise its attitudes towards future growth. The Minister's statement may be considered as a watershed of ideas and aspirations and is considered by this author to have marked the start of the erosion of traditional values in the air transport industry - both national and international. The upheaval which subsequently followed was partly the result, undoubtedly, of the new policy proposed in the 1965 statement. In addition in the international arena other Administrations were reaching similar conclusions on the role of non-scheduled carriers in the international air transport system. Their conclusions, though by no means identical to those of the UK Government, had the same theme - that there was to be positive promotion of non scheduled activities in selected areas and types of operation.

Because of the international nature of the disturbance and because of the various contributions to the forces of change it is not possible to consider the activities of the UK Independent operators in isolation after 1965. For this reason, the very important changes of technique in IT operations, the expansion of ITCs into the intercontinental sphere and the very great expansion of group charter travel - all of which occurred after 1965-have to be considered in conjunction with the activities of foreign airlines and Governments.

CHAPTER II THE POLICIES OF UNITED KINGDOM CIVIL AVIATION IN THE PERIOD 1965 - 1971

II.1 Introduction

Although this chapter attempts to treat UK civil aviation in the late 1960's in isolation, it must be recognised that this is an artificial approach. In practice, in this period, UK policies were constrained by non-domestic considerations to an extent not previously experienced. Despite this the Independent operators maintained their prominent position in international non-scheduled operations.

The period under review was an unfortunate one for the UK, since it was characterised by a steady undermining of the Licensing Authority and a subsequent temporary loss of initiative in international aviation.

Despite the fact that it is an artificial segregation it is, nevertheless, convenient to continue the isolated analysis of UK policy. This period was characterised by two important events. In 1965 came the Ministerial Policy Statement which laid down clear avenues of expansion for the Independents and in 1971 the UK licensing system was fundamentally restructured.

The chapter begins by describing in section 11.2, the mechanism through which the system was brought into disrepute and a reappraisal made necessary. In section 11.3 the detailed reaction of the British Independent operators to political and licensing activity is discussed.

11.2 The Politics of UK Civil Aviation 1965 to 1971

11.21 Introduction

In the previous chapter it was suggested that the somewhat muted response of the ATLB to the Minister's Statement in 1965 on Civil Aviation Policy, was surprising. It is a fact that the Board made no public comment which indicated it believed its authority was in danger of being eroded or undermined. The reason for this lack of open comment no doubt stemmed from the accord between the Minister and the Board on the basic intention to promote widespread growth of charter operations. Thus, although the reasons for their similarity of view were different, the fact that they were similar removed the immediate stimulus for disagreement.

Despite this initial compatibility of attitude, however, differences of opinion became apparent quite quickly afterwards. The problem of economic regulation of non-scheduled airline activity - particularly in the context of price control - was eventually

to become the achilles heel of the UK licensing system. It brought the weakness of the ATLB's position to the forefront of the debate on the desirable framework of British civil aviation regulation.

The dispute which developed originated in the AIB's declared intention to safeguard the finances of British civil aviation. The Board had inherited a situation in which the level of financial stability was considerably lower than was desirable at a time when the Independent airlines were being offered widespread new opportunities for expansion. From the start of its licensing life, therefore, the Board was aware that its success in fulfilling its regulating role, "In such a manner as to further the development of British civil aviation", would largely depend on the extent to which it could monitor and improve the finances of the industry. There is little doubt that the Board saw this requirement as being of paramount importance.

Its determination to fulfill this aim coloured the Board's attitude towards the economic regulation of the non-scheduled sector and caused, eventually, open dispute with the Minister (and later the President of the Board of Trade),⁽ⁱ⁾ over the

(i) Responsibility was passed to the President from the Minister on 1st August 1966.

policies to be adopted.

11.22 The Dispute over Price Control of ITC's.

British policy on the price control of Inclusive Tours on chartered aircraft corresponded to the relevant IATA ruling. Following its traditional policy of support for the overall authority of IATA, even though it disagreed with many detailed aspects of the Association's activity, the British Government incorporated the IATA rule into its own legislation. Thus the "Standard Tariff Provision 1" (170) read:

"The tariff to be charged for international carriage shall be determined by reference to the relevant resolutions of the International Air Transport Association from time to time in force and approved by the Minister, or by reference to such other tariffs as may from time to time be approved by the Minister."

The well-known result was to tie ITC prices to the relevant IATA fare level on any given route. Although this was relatively unimportant in the early history of ITCs, it later became a major source of dispute between the IT industry and the ATLB. As tour operators became more efficient their costs reduced to the level at which, they claimed, Provision 1 was forcing them to overcharge for IT holidays. In 1965, as the ITC industry entered a period of major growth, the implications of the application of Provision 1 as a general rule were becoming more generally constraining on the tour organisers.

The discussion which follows is not particularly concerned with the details of the effects of Provision 1 or with the arguments which were presented for and against its continued application. These have already been succinctly presented elsewhere. (16.11) (171)

Of far greater importance is the general principle of ITC price control which Provision 1 represented and the nature of the dispute which resulted between the ATLB and Board of Trade over its removal or replacement. Allied to this dispute was the weakness of the ATLB's position, which was highlighted, and the need for a reappraisal of UK policies towards civil aviation.

The first move towards serious public discussion of the principle of price control for ITC operations came from the Independents' trade body, the British Independent Air Transport Association (BIATA). In the Association's Annual Report for 1964 - 65 some criticism was levelled at Provision 1, not from the point of view of its general intention - to control ITC pricing - but rather from the point of view that it was wrong to use IATA tariff levels as the yardstick for the price fixing mechanism. Presented in this way, criticism of Provision 1 appeared eminently reasonable and in December of 1965 the Association made a formal representation of the ATLB for its removal. It is interesting to note that it was Provision 1 particularly, rather than the general principle of price control, which BIATA sought to end. Indeed, the representation was even more specifically designed to remove price control for winter ITCs.

There was considerable evidence to show that whereas summer ITCs were little restricted by the effects of price control, "The elimination of Provision 1 in the winter would help develop a large market for winter holidays which, in the absence of any practical encouragement, remains dormant at present...."(172)

The significance of the BIATA submission was not lost on either the ATLB or the Minister of Aviation. Consequently at the close of the 1965 hearings for ITC licences a formal inquiry was initiated for which the Board requested written evidence from interested parties.

The outcome of the inquiry was revealing. In particular it emphasised the division of regulatory responsibility between the ATLB and the Minister, for, having heard the evidence the Board had to recognise that price control of ITCs was an international tariff decision which automatically became the responsibility of the Minister. Thus, the Board could only recommend a course of action to the Minister who was free to implement his own policies whether or not they coincided with the suggestions of the Board. Nor was it a remote possibility that there would not be complete agreement between the two or that the Minister would overrule the ATLB. He had already demonstrated his intention to pursue an independent policy on other aviation matters and the advisory nature of the Board's role was, by this time, well established and accepted.

In point of fact there was some disparity between the Minister's

conclusions and the proposals put forward by the ATLB. The most striking aspect of the inquiry was the strength of feeling evident in all sectors of the industry that there should not be a wholesale removal of price controls. The prospect of a rate-war was clearly unattractive to all. Equally convincing, however, were the arguments for the modification of the Provision 1 regulation in two limited areas of operation. The evidence was overwhelming that short duration winter holidays and remote-destination holidays were two particular types of tour in which Provision 1 might well be frustrating the development of the market. (173) In making its recommendations to the Minister, the Board divided the problem into two parts. Dealing firstly with short winter holidays the ATLB made the somewhat surprising suggestion that the British Government should take no action on the matter but that British IATA member airlines should attempt to get the relevant IATA tariffs reduced through the normal Conference machinery. This idealistic approach hardly stood up in the light of reality for, as BIATA commented:

"Some charter airlines specialising in inclusive tour traffic consider that IATA fare policies are designed to restrict charter traffic by non-IATA carriers without regard to wider interests.....
.....The Association (BIATA) must, therefore, have reservations about entrusting to IATA, whose concern has often been to restrict the growth of inclusive tour charters by non-IATA carriers, responsibility for obtaining creative fares on which to establish lower prices for IT holidays by charter flights". (174)

Such comment was unanswerable and indeed, as events were to show, compromise between scheduled and charter airlines on the vexatious question of ITC operations was impossible to achieve even in the limited UK domestic sphere. To expect the full IATA Traffic Conference to reach such a unanimously acceptable compromise was, to say the least, optimistic. Though some attempt to define a common approach among UK operators was made, it progressed slowly and failed completely to propose new price fixing policies. The tensions which produced such stalemate were in many ways similar to those which might have been expected to prevent agreement within IATA. It was unfortunate that by 1966 BIATA - the body which had raised the whole question of Provision 1 in the first place - was beginning to disintegrate rapidly as, one by one, the larger Independent operators attempted to shake off the "charter" image. Thus in October 1964 British United Airways left the Associated to be followed by British Eagle in April 1967 and Caledonian in November of the same year. In May 1967, therefore, when the ATLB was informed that the UK airlines had at last reached some common point of view on price control of ITCs, ⁽¹⁷⁵⁾ the Independents only collective instrument for expressing opinions was already in a state of collapse.

In essence, therefore, the UK regulating authorities failed to respond in any positive sense to the restrictions which existed on the growth potential of short winter inclusive tour holidays.

On the second type of tour which was believed to be constrained by Provision 1 - distant-destination holidays - both the ATLB and the Minister made some attempt to suggest liberalising policies. On this particular question, however, signs of dispute between the two were evident - possibly because a particular line of action was called for and suggested by the ATLB. The Board believed that there was a strong case for a relatively simple "rule" regarding cases in which Provision 1 might be relaxed. It simply suggested that, once the minimum IATA fare was £75 or more, the question of excessive price for an IT holiday should be seriously considered and action taken to ease the application of Provision 1. The Minister, whilst accepting the intention of the ATLB proposal, refused to allow the easing of Provision 1 on tours within Europe. Since in 1966 the majority of "distant destination" ITCs were in fact still within the confines of Europe, the Minister's proviso proved to be frustrating for the ATLB's intentions towards price control of these types of tour.

The reason for the Minister's hesitancy was largely the fear of establishing precedents. Continual references to "a rule or formula" (171.1) make it clear that it was not the removal of Provision 1, per se, which was the stumbling block. The real difficulty lay in establishing a realistic methodology for fixing the price of ITCs to an ever increasing number of destinations both within and without Europe.

In August 1966 the responsibilities of the Minister of Aviation under the 1960 Act were transferred to the Board of Trade.

The occasion marked the start of a period of steady decline in relations between the ATLB and the Government through the latter's agent, the Board of Trade.

The need for positive action on ITC pricing policy was emphasised by the devaluation of sterling in November 1967 and its consequent effect of increasing IATA air fares.

To prevent stagnation of the holiday industry which was already suffering from the effects of economic "squeeze", the President of the Board of Trade allowed ITCs for the winter of 1967/68 and the summer of 1968 to be sold at prices marginally below IATA rates. Having done this it was a natural step to instigate and inquiry into the whole question of ITC prices.

The result of the inquiry was to support the previous conclusions of the ATLB - that as a general rule Provision 1 should not be relaxed. Thus, after October 1968 the Board of Trade (BOT) proposed to increase UK ITC prices to the full Provision 1 level. The two exceptions were, as usual, distant-destination tours outside Europe and winter holidays in Europe and North Africa. The coincidence of opinion noted by the ATLB (175.1) was not, however, to last.

The ATLB was always aware that it operated in a power vacuum. From the earliest days it had been clear that the Minister would

always be able to frustrate the independent actions of the ATLB if he so desired. For this reason, particularly in the case of international tariff negotiations (ie ITC prices) where it had no authority the ATLB recognised it had no option but to follow the pricing policies adopted by the BOI. Following the guidelines laid down, therefore, the ATLB's response to a series of "test cases" submitted to it in the 1968 licensing season was predictable - it rejected each of the applications for ITCs priced at tariffs below Provision 1.

The rejection of these applications was done for two reasons. First, because it was Government policy to apply Provision 1 and the ATLB was in no position to adopt an independent approach to ITC price-fixing even if it had so wished. Second, because the ATLB genuinely believed the ITC industry, and the Independent airlines in particular, could not survive the pressures likely to result from a wholesale removal of price control. The ATLB was only too well aware of the weaknesses in the Independents' finances and recognised its essential function which was to take the long term view of developments in the best interest of British civil aviation. The detailed reasons (176) for generally supporting Provision 1 - or at least the intention behind it - were convincing, however unpalatable their implications might have been for the Independent operators.

A further reason for the ATLB's cautious approach to the recommended tariff for these applications was because their sponsors had made

it clear from the start that these test cases and the reaction to them was to be used by the industry as a pointer to future pricing policy. With so much attention focused on their deliberations, it is hardly surprising that the ATLB adopted a rigidly orthodox approach and made a very conservative licensing decision.

The ATLB's conclusion that:

"These risks (of the removal of price control) are by no means remote possibilities, as events in the past year have shown. If price control were abandoned they could quickly become a threat to the tour industry, to the public and to the stability of an important sector of British civil aviation". (176.1)

became one of the essential features of its resistance to relaxation of price control. Furthermore it also concluded that the criticism of Provision 1, even if valid, failed entirely to present logical alternatives. Consequently the proposed solutions, "Had an even more artificial air than Provision 1 itself," and left the Board, "With no real alternative to consider". (176.2)

There was little, if any, support for the ATLB's decision and the tour operators immediately appealed against it. In doing so, of course, they justified the caution with which the ATLB had approached the "test cases" in the first place since the importance of them to the tour operators now became abundantly clear. Dissention per se was not harmful for the ATLB or the operators but the

subsequent events arising from this dissention very definitely were. In April 1969 the Board of Trade, to which body appeals were now addressed, overuled the ATLB decision and granted the tariff dispensation requested by the operators. This action, coming as it did only twelve months after the public declaration of the maintenance of Provision 1 by the Bol, virtually destroyed the credibility of the ATLB as an independent licensing body. Furthermore, not only was the ATLB seen to be subservient to the Bol's intentions for civil aviation regulation, it was also plainly regarded as being of little consequence by the Bol. The latter had firstly reversed its position with regard to the price control of ITCs - without any evidence of research on which to base this reversal - and, secondly, had not seen fit to advise the ATLB that it was to be guided in future by the revised dogma.

Though it is impossible to justify the treatment of the ATLB in this appeal it is not difficult to determine reasons for the new approach to ITC price control by the Board of Trade. Before discussing these, however, some attention should be paid to the criticism which was levelled at the ATLB for pursuing its restrictionist policy in the hearing of the so-called "test cases". In particular the Edwards Report⁽¹⁶⁾ was critical of the ATLB's attitude believing it to be too inflexible. Certainly this is a valid criticism but, in the light of the Bol's unilateral overuling of the ATLB's carefully considered decision, it is difficult to see how the latter was

to be expected to implement, "Experimental elimination of price control" (16.12) if the parameters of the experiment were liable to be altered by a random influence such as the results of appeals to the Bol. A further criticism of the ATLB's reasons for maintenance of Provision 1 was that the necessary protection of the public from failure of tour operators could be achieved by methods other than price control. In the long term this was probably true but the ATLB was acutely aware of the short term financial pressures which afflicted the industry and it was on this understanding that its attitudes were based. Perhaps better than any other authority the ATLB knew the strengths of the Independent airlines finances and, however restrictionist its attitude and however much its policy was criticised, it cannot be denied that when put to the test the ITC industry proved unable to protect itself from price wars when artificial controls were removed. The Court Line collapse was a classic example of what the ATLB sought to prevent.

If the ATLB was cautious in its policies, this was only because it was charged with shepherding the Independent airlines into a period of expanded opportunities before they were properly prepared to exploit them. In such a situation the pressures to cut corners and work to hazardous financial margins were very great. The Board recognised this but was largely a lone voice calling for realistic expansion rather than explosive growth financed by hypothetical prospects.

Had it been simply a question of expanding the Independents' ITC business, it may well have been that the ATIB's policies would have been upheld. However, extraneous factors entered the considerations and significantly altered the balance of the arguments. First was the role of the ITC holiday in the society of the UK in the mid-sixties. Devaluation of the pound had made travel on the Continent increasingly expensive for those who wished to make individual travel arrangements. Despite this the British public had had its appetite whetted by the ITC holidays of the fifties and sixties and increasingly was coming to regard the annual holiday in the sun as a right. Further liberalisation of ITCs was the easiest way to satisfy this desire - particularly if it was matched by the greatest possible reduction in price. Thus, by 1969 when organisers costs were being significantly reduced by new marketing methods it was politically unacceptable to force them to charge "excessive" prices when they were publicly declaring that they were thereby being forced to make excessive profits. As noted earlier it is doubtful if this was entirely true since the organisers continued to maximise their profits by forcing down charter rates to uneconomic price levels. In this sense the operators very clearly did need protection from free market forces. The removal of ITC price control was, therefore, a politically attractive device.

A second factor which probably affected the BOT's attitude was that the State airline BEA itself entered the ITC market with its own non-IATA subsidiary, BEA Airtours in March 1969.

Restrictions placed on the Independents regarding pricing would have been equally applicable to BEA. The declared aim of BEA Airtours was to capture 20% of the ITC market by 1972.⁽¹⁷⁷⁾ Consequently there needed to be considerable expansion of opportunity to prevent the Independent operators suffering erosion of their traditional sphere of operations. For BEA Air tours to be profitable, maximum utilisation of their equipment had to be ensured, this meant that Provision 1 restrictions would have to be removed. Thus the establishment of the State airline's charter subsidiary was an event of some political significance in its own right and the poor state of BEA's finances at the time made it unthinkable that the subsidiary company should risk any possibility of financial losses. It followed that the State airline's movement into ITC holidays depended on the implementation of a favourable Government policy towards the widespread expansion of that sector.

For many reasons, therefore, the ATLB was out of step in its decision to maintain Provision 1. The correctness of that decision, however, was borne out by later events. Unfortunately the industry which the ATLB sought to control-the ITC holiday business - was a particularly virile one which had very short planning horizons. Such an environment did not lend itself to the measured imposition of price control to create regulated expansion. The ATLB's attempt to work to long term growth patterns was unrealistic in the face of the types of pressures

which existed for rapid and unpredictable changes in growth characteristics of the industry.

The overruling of the ATLB on this occasion was an unfortunate event, however, it focused attention on the nature of the UK regulatory problem.

A change of Government, coupled with the publication of the Edwards Report ensured that some fundamental change would soon occur in the structure of the regulation of UK civil aviation. Despite this, the ATLB continued to adopt the attitude it believed to be correct on the question of price regulation of ITCs. It never deviated from the proposition that the ITC industry had the wrong innate characteristics to ever satisfactorily prevent rate wars developing. The ATLB argued that artificial imposition of minimum tariffs protected the operators from their own excesses, and the public from eventual monopoly control of the ITC industry by those who could weather the storm of a price war.

Some support for this approach began to manifest itself within the operator's own ranks where the addition of BEA Airtours' capacity and competition had created serious overcapacity problems by 1970. Despite the ATLB's determination to maintain stringent standards of financial viability within the civil aviation industry, its statutory powers were not sufficient to allow it to act in such a way as to positively

promote this result. In addition to the very real likelihood of reversal of its decisions on appeal, the ATLB also had limited powers of control over the tour organisers who were such an important part of the package holiday sector.

By 1970 the true nature of Britain's regulatory problem was becoming clear; it no longer made sense for responsibility to be split into two categories - the ATLB for day-to-day licensing administration and the Bol for policy formulation. Furthermore, the inherent weakness of a system which regulated airline operators but not the tour organisers who employed their services had become obvious. This realisation, together with the conclusions of the Edwards Report which was published contemporaneously with the ATLB's overruling on Provision 1 test cases made it inevitable that a move should be made towards the restructuring of British aviation law.

The overturning of the ATLB decision on appeal to the Bol was an unnecessary event since, despite the ATLB's fear that control of ITC prices had been lost to the regulating authorities, there was not in fact a wholesale removal of price control. Indeed, having undermined the authority of the ATLB in such a spectacular manner, the Bol then went on to introduce very limited experiments with ITC pricing policy. Furthermore, the majority of these used Provision 1 as a guideline to a greater or lesser extent. Thus, although there was a move towards the relaxation of price controls after 1969, it was a

drift downwards from IATA fare levels rather a sudden drop.

As an example of the Bol's approach the removal of Provision 1 price controls for summer 1970 are informative. In general ITCs for this season were to be pitched at a level in line with IATA fare levels as they had been in 1968. Thus, though there was a clear reduction in the minimum price floor, it was still related to the "artificial constraints" of Provision 1. Even more ironic was the fact that by the end of 1969 numerous voices were being raised in support of the ATLB's determined insistence to maintain rigid price control and its stand against the wholesale removal of price control was gaining increasing acceptance. Both the chairman of BEA (which had just established BEA Airtours) and of the Thompson Organisation (which owned Britannia Airways) argued that tour prices had fallen low enough and any further fall would result in massive dilution of revenues.

In the last years of its existence the ATLB continued to maintain a firm stand against the removal of price control and although it knew that, following the recommendations of the Edwards Report, some new authority would replace it, the ATLB never deviated from its original beliefs. In its penultimate Annual Report the ATLB noted, with some bitterness, the successful appeal by Thompsons against the application of Provision 1. It further noted the representations it was receiving from operators who were alarmed at the low level of charter rates.

The ever-downward spiral of ITC prices was a trend in which the ATLB never had any faith and which it continued to criticise for the duration of its existence (180) The final comment on the need for price control of ITCs and charter rates is reproduced below:

"The Board believed that charter prices paid to airlines were too low (a view later confirmed by airlines) and that this was partly due to the suicidal price-cutting in which tour operators seemed to be engaged; a contributory factor might be ignorance of the size of losses that were being generally incurred". (36)

Though the maintenance of price control was not wholly responsible for the subsequent revision of UK aviation legislation, it was highly significant and played a major role in focussing attention on weakness of the system. Furthermore the dispute between the ATLB and the BoI forced the recognition of the new, wider, importance of civil aviation in the late 1960's - particularly in the context of the holiday industry. It was also important for its highlighting of the problems of the economic relationship between the public and private sectors. Whereas previously debate had concentrated largely on the principle of restricted competition between the two, the Provision 1 tariff dispute made it clear that ownership of airlines was not the important issue.

Thus, although Provision 1 was a highly contentious issue it has to be viewed in the context of other developments within the UK.

civil aviation industry.

11.3 Response of Industry to the Political Initiatives

The very real opportunities opened to the Independents by the content of the Ministerial Statement on Civil Aviation Policy in 1965 is emphasised by the growth rates for charter operations after this date.⁽ⁱ⁾ Despite the concentration on ITC operations so far in this work, the importance of these to the Independents has to be qualified. Certainly the Independents were vitally important to the growth of the ITC industry but it is not necessarily the case that the reverse was also true. It has already been noted that prior to 1961 ITC traffic never constituted more than 20% of the Independent's total. Though some airlines, such as Britannia, were wholly committed to ITC operations, other operators with a more traditional mix of types of service emphasised the limited and relative importance of the ITC's.

One reason for this fairly limited impact of ITCs was undoubtedly the seriousness of the attendant problems which went with ITC services. One of the more unsatisfactory aspects of these was their highly seasonal character - particularly in the period up to 1967 before Provision 1 was relaxed for winter holidays. Second, the operation of ITCs necessitated the obtaining of

(i) Figure 15

a licence from the ATLB, a long and sometimes expensive procedure. Third, the ATLB and, previously, the ATAC were resistant to requests for long-terms ITC licences. This inevitably reduced the confidence of the operators in their forward planning. Problems of utilisation, profitability and requipment thus combined to reduce considerably the attractiveness of ITC operations. In view of this it is hardly surprising that the importance of ITCs was reletive.

An equally significant area of operations was the so-called "other charter" market, i.e. charter services which responded to a demand for air transport not available from scheduled services or ITCs. Reference to the ATLB records shows there was a substantial increase in request for "other charter" licences following the introduction of the 1960 Act. It may be argued that this increase was no more than a reflection of the size of the previously-unmonitored "closed group" services. However, even if this construction is correct, it only serves to support the belief that "other charter" operations had always remained as important as ITCs to the Independents.

Following the Minister's Statement in 1965 the growth rate of all charter services became very much more rapid and this was particularly true of "other charters".⁽ⁱ⁾ In this section the two areas of the charter market are discussed separately. First the question of the evolution of more sophisticated

(i) Table 12

ITC operational techniques and, second, the wider issue of expansion of all charter operations.

11.31 The Evolution of ITC Operational Techniques.

Prior to 1961 the methods used to construct IT holidays by air were relatively crude; the airlines role was simply to supply air transport for tour organisers who usually developed their tour plans in isolation from the Independent operators. The Inclusive Tour business was, therefore, relatively inefficient in the intergration of the airline and tour organisers' best interests. Even by 1964, when the ITC industry was growing rapidly in stature, contractual links between airlines and tour organisers remained so tenuous that the ATLB felt unable to issue licences of more than one year's validity. Thus, in 1965, although the ATLB had perviously indicated its willingness to issue such licences to applicants showing firm evidence of a stable relationship between tour organisers and airline operators, it was forced to comment:

"We have no objection in principle to granting Class B licences for Inclusive Tours for a period or more than one year, and we are prepared to do so wherever satisfactory assurances of continuity of operation over the longer period are provided. But, as we pointed out in paragraph 100 of our fifth Report, there is little point in our considering applications for licences extending over a period of years if the relationship between the air operator and the tour organiser is such that they cannot

even produce evidence of firm arrangements
in respect of the first year's programme. (1/8)

In May 1965, no doubt in direct response to the Minister's Statement, the Thompson Organisation made a significant move by purchasing the Independent, Britannia Airlines. The justification for this being the "Substantial growth prospects in the holiday travel business".⁽¹⁷⁹⁾ Despite the fact it was an isolated event it did, in fact, mark the start of a period of transformation of thinking on the role of the Independent airlines in ITC operations. Thompsons' intention was to integrate the various constituent parts of the Inclusive Tour package so as to obtain maximum utilisation of each. The rewards of such integration were difficult to envisage and this was emphasised by the slowness of the Thompson initiative to permeate through the industry. Thus, two years later the ATLB was still commenting on the lack of similar arrangements on a large scale:

"...we have not yet been provided with the evidence of the firm arrangements between air operator and tour organiser that we consider necessary.....in this matter".(171.2)

Again, possibly in response to such criticism of their lack of enterprise, two more elements of the "System" holiday combined shortly afterwards when Monarch Airlines formed an operating agreement with Cosmos Holidays. One again, however,

this move was not followed by a landslide of such arrangements between other companies. "System" design of IT holidays was, therefore, a concept which the airlines were slow to implement. One reason for the slowness of Independent operators to adopt this technique and to seek permanent contractual links with tour organisers and holiday firms, stems from their history.

It will be remembered that, prior to 1965, the Independent operators had had no clear indication of Government support. The instability of the charter business increased the supposed attractiveness of scheduled services and many of the Independents were mesmerised by the desire to achieve this status.

Following the Minister's Statement, however, there were clear indications that in future the Independents would have to concentrate their efforts on non-scheduled operations. The indication that they would attract Government support if they did was sufficient to persuade most Independent operators that non-scheduled services might hold better and more permanent rewards in the future. Since the Minister had indicated his intention to support actively any ITC applications, it was clearly most logical for the Independent operators to seek expansion in this field.

Expansion could undoubtedly be achieved through the mechanism of long-term link with a holiday organisation. A disadvantage of this device, however, was that it inevitably required the airline operator to accept the essential servant and master

relationship inherent in its philosophy. Thus, for the arrangement to be most beneficial for both the airline and the holiday organiser, the latter had to dictate operational requirements to the former. However necessary such a requirement might have been, it ignored the fact that most Independent operators were strongly individual in character and were naturally reluctant to hand over control of their airline to an organisation which merely wished to use the aeroplane as a convenient means to an end. "System design" of ITs, therefore, was a technique which had serious practical difficulties.

Whether or not they were attracted to the particular arrangement described above, however, the Independent operators were faced with the need to become more specialised if they were to survive in the new political climate of selected expansion opportunities. For some of these operators there was a natural reluctance to hand over development control to tour organisers. Even where there was not an inherent dislike of the master and servant relationship, some Independent operators found that there were simply not enough well-established tour organisers with whom to enter into long-term partnership. Consequently the operators formulated their own approach to the problem of survival in a limited and specialised market.

One such survival technique was that adopted by Laker who set up the airline Laker Airways as a contract hire company to the package-tour industry. This was a unique move and was

made even more revolutionary by Laker's purchase of new jet equipment to service the contracts. That any Independent operator could consider buying new jet equipment exclusively for IT work was an indication of the extent to which events were forcing a certain degree of revitalisation on the IT industry. It was also an indication of the Independents' recognition of the limited but valuable expansion prospects opened to them by the Minister's statement.

The advantage of Laker's contract hire approach was simply that it had most of the benefits of the full systems approach to ITs and at the same time allowed the airline operator to control his own development plans. Thus, when the tour organisers Lord Brothers entered into a contract with Laker in 1967, it was simply for the purchase of aircraft time to the value of \$500,000. Laker provided the aircraft capable of generating these seat-miles but the contract placed no obligation on Laker to ensure his future development plans coincided with the requirements of Lord Brothers. This was the concept of the time-charter in which the hirer paid a fixed sum for the unlimited use of an aircraft over a set period of time.

Clearly this was a significant new development for the IT business and for the Independent's participation in it. The time-charter relieved the operator of the problems of utilisation and gave the tour organiser the flexibility of aircraft usage which would only otherwise be obtainable from direct integration

of the aircraft operator into the structure of the tour organisation.

Although Laker's approach to the problem was unique in that he created an airline solely and completely to engage in contract hire to tour operators, his use of the time charter technique was merely indicative of a general trend developing in the charter industry. The rise of Court Line in the late 1960's is an excellent example of the overall effect of the Ministers policy statement of 1965 on the growth of the Independent's business. In 1965 the shipping company Court Line Ltd purchased the Independent airline Autair. The intention was to use the airline as a stepping stone into the still-young leisure industry and although the airlines's charter traffic increased dramatically in the years 1966 to 1969 it maintained its interest in scheduled services.

Table 18. PASSENGERS CARRIED BY AUTAIR INTERNATIONAL LTD.

Year	Charter	Scheduled
1966	81000	25100
1967	97000	70400
1968	273200	78300
1969 (January-October only)	500100	66000

Source: Flight International 19 March 1970.

Despite this continued interest in scheduled services, however, the political climate after 1965 was such that market penetration by a small Independent operator became difficult. Thus, the traffic figures for scheduled services were largely stagnant. By 1969 the situation had deteriorated to the extent that it was decided to relinquish the scheduled services and concentrate on IT work. In an exact emulation of Laker's technique the owners of Autair completely re-vamped the airline and set about promoting it as a specialist charterer of air transport capacity to the Inclusive Tour organisers. Subsequently, Court Line (as the "new" airline was called) formed a very close association with Clarksons, the holiday firm, to the extent that in 1969 it purchased 80% of Court's capacity. Despite this close connection between the two, however, this was not the same type of relationship as existed between Britannia Airways and its owner - the Thompson Organisation. In this case Britannia was an intrinsic part of the Thompson holiday "system" and simply serviced the air transport needs of it. Court Line and Laker, on the other hand, remained under the control of their own boards of directors and were free to diversify their chartering activity into fields other than IT work alone.

There were numerous variations on the two specific themes outlined above and all of them had the objective of ensuring adequate year-round utilisation of the Independents' aircraft. That the new techniques were successful is indicated by an analysis of the types of aircraft operated by the Independents in the period 1967 to 1971.

TABLE 19. UK INDEPENDENTS' FLEETS 1967 - 1971.

Aircraft Type	Class	Numbers operated by UK Independents.		
		1967	1969	1971
Ambassador	2 piston engines	15	6	-
DC-4	4 piston engines	2	3	-
DC-6		-	-	-
DC-7		-	-	-
Herald	2 turboprop engines	11	10	8
748		12	6	5
Viscount	4 turboprop engines	43	42	32
Britannia		42	24	11
Boeing 737	Short-haul Jet	-	5	9
One-eleven		22	23	51
Trident	Medium-haul Jet	-	-	-
Comet		3	7	22
Boeing 707	Long-haul Jet	1	6	16
VC-10		3	4	4

Sources:

Flight International, "British Airline Survey", 28 September 1967.
 Flight International, "British Airline Survey", 10 April 1969.
 Flight International, "British Airline Survey", 4 November 1971.

Table 19 summarises the fleets of the Independent airlines in the years 1967, 1969 and 1971. Two features are self evident: first, that the Independents have been particularly good customers of the UK aircraft manufacturing industry and, second, they have made significant purchases of new jet equipment. This is further evidence of the greater strength introduced into airline finances from 1967 onwards and, in particular, of the fact that high utilisation became possible as a result of structural changes within the ITC industry. Clearly, the sophisticated chartering techniques allied with a positive Government attitude towards expansion of ITC capacity and so-called "system design" techniques combined to create favourable conditions for the growth of Independent airlines restricted to charter operations.

11.32 The development of long-range charter operations by UK operators.

The developments within the ITC industry, noted in the previous section, were almost entirely domestic in nature. The removal of price control and the vertical integration of the ITC industry were not questions which directly affected foreign Governments. The domestic issues raised by developments in the Independents' conduct of their European ITC business set the scene for later, more far-reaching disputes between the various elements of UK civil aviation regulation. Despite this important early indication of strains within the regulatory system, however, these did not materially affect long range charters for some time.

The important early issues in this area of operations were largely concerned with the health of the US economy since the North Atlantic was the market which first attracted the attention of UK charter operators. At the start it must be said, of course, that the UK Independent operators were by no means as dominant in transatlantic charters as they were in European ITCs. Nor was the UK policy towards long-range passenger charter operations formulated in a complete vacuum - the conflicts of external interests ensured that opinions of foreign Governments had to be recognised and frequently incorporated into operational UK charter policy.

The wider issues inevitably bound up with the Independent operators' determination to enter the intercontinental charter market clearly have to be recognised but, initially, it is helpful if the issue is concentrated on those developments which specifically involved British policy decisions.

As with so many other aspects of charter operations, the British Independents achieved early importance in world-wide long range charter operations. The reasons for this are not difficult to determine. In the first place there was the policy of successive Governments to encourage the continued existence of these operators without creating significant competition for the Corporations. Although this allowed some scheduled services to develop, the major area of expansion remained firmly in the non-scheduled sector. Second, the Independent airlines were at

one end of the most heavily travelled route in the world, the North Atlantic, and Britain's "Special Relationship" with the US naturally encouraged them to regard this route as a natural outlet for their expansion plans. Third, despite the constraints of international interests in air routes, the UK was fortunate in having a widespread network of cabotage routes on which it was technically free to implement its own tariff policies.

The definition of "Cabotage" which was effective under the 1960 Act was as follows:

"Cabotage means carriage, other than domestic carriage, intended by the operator of the aircraft to begin and end at places each of which is in a country or territory referred to in paragraph (b) of subsection (7) of section 2 of the Act or in a protected state (whether or not there is intended to be a break in the carriage), provided that Kuwait shall be deemed not to be a protected state".

The relevant section of the Act read:

"....the United Kingdom or in any part thereof, or in any of the Channel Islands, the Isle of Man, the said Federation (of Rhodesia and Nyasaland), or a colony, protectorate or United Kingdom trust territory...." (150.2)

The extent of these territories, even in 1960, is shown by Table 20 and although other European States had similar cabotage routes under their control they did not have strong charter airlines which could make as much use of them as could the British Independents. Thus although the scheduled international services were provided by the State Corporation, a complementary and widespread network of charter and low-fare

TABLE 20 U.K. COLONIES, PROTECTORATES, PROTECTED STATES, TRUST
TERRITORIES (1960)

Aden	North Borneo
Bahamas	St. Helena
Bermuda	Sarawak
British Guiana	Seychelles
British Honduras	Sierra Leone
British Virgin Irelands	Singapore
Falkland Islands	Somaliland
Fiji	Tanganyika
Gambia	Uganda
Gibraltar	Western Pacific Commision
Hong Kong	West Indies
Malta	Zanzibar
Mauritius	

Source: Whitakers Almanac (1960)

services was provided by the Independents who gained considerable long-range experience in the process. Although cabotage routes were technically outside the mandate of IATA tariff decisions, in fact the realities of international air transport politics ensured that cabotage tariffs were generally in line with parallel IATA route fares. Indeed, recognising that cabotage routes were nevertheless constrained by international considerations the UK achieved only marginal exploitation of their possibilities and for the most imposed, "Restrictions designed to prevent their being used to undercut fares on international journeys". (152.3)

For most of the period under review - up to 1971 - this was a correct assessment of the UK attitude towards cabotage opportunities. After this date, however, these routes became more widely used to develop new tariff policies. This point is considered in the following chapters.

It will be remembered that by 1964 the ATLB was convinced of the generally beneficial effect of ITC services. Early doubts about the need for capacity restraint were dispelled and although price controls were considered essential, the ATLB did not feel these should be tied to IATA policies. In view of the success of European ITC operations with their beneficial strengthening of the Independent sector, the ATLB took a major step forward in 1964 by licensing Caledonian for transatlantic ITC operations. Its reasons for doing this were largely based on the presumption

that the time was ripe for a, "Modest experiment," in order to test the effect of ITC operations on North Atlantic travel. It is clear that the ATLB, in initiating this experiment, was aware that close monitoring of the results would be necessary. It is equally clear that the ATLB was anticipating that there would be a net benefit to air travel on the route if ITCs were allowed to develop in a properly regulated manner.

This first step towards the introduction of ITCs on the North Atlantic was constrained by two factors outside the ATLB's control. The most immediate of these was the division of responsibility in the British licensing system and the existence of the appeals procedure. Thus the ATLB decision was immediately the subject of an appeal by BOAC, the substance of which was that material diversion of traffic from scheduled services would result. The BOAC appeal raised questions of fundamental importance for the future direction of British civil aviation policy for it was known that the United States was in the process of reviewing the role of its Supplemental carriers. (i) The Minister's decision would thus be widely interpreted as reflecting the overall British attitude towards the regulation of charter operations into the UK. Following the Statement of February 1965, however, the outcome of the appeal was never in doubt and in May the Minister predictably rejected it. In addition to confirming the UK Government's

- (i) The US Supplemental carriers approximate to the British Independents. This definition is discussed in greater detail in following sections.

liberal approach to expansion of charter operations the decision also indicated that it was reviewing its attitudes towards IATA. The Commissioner who had recommended the rejection of the BOAC appeal had based his recommendations on two conclusions. The first was that IATA should devise better promotional fares to encourage air travel and the second was that there was no fundamental reason why Governments should apply IATA rules to non-IATA airlines.

Even after the Minister had signalled his support for transatlantic ITCs, however, Caledonian had still to be awarded authorisation for their ITCs by the United States. Some delay was incurred while the US reviewed its regulations. The final authorisation for Caledonian's ITC operations was not granted until December, 1965 and even then it was restricted to services to the US only. The ITC authorisation and the directional constraint which went with it were the result of considerations of the impact of these services on the US balance of trade. The evolution of US policies, however, must be left until a later chapter. By 1966, therefore, the stage was set for the introduction of ITC operations on the North Atlantic, but the appeals procedure and the CAB's deliberations resulted in the Caledonian ITC programme being delayed until 1967. Fortunately for the airline this allowed time for the CAB to formulate its ideas on transatlantic charters and to recognise the beneficial effects ITCs could have on the US balance of trade. The net result of the delay to Caledonian's ITC authorisation, therefore, was to remove the directional constraint imposed by the CAB initially. In May 1967 Caledonian became the first airline to

be granted ITC authority for operations in both directions across the Atlantic. In granting this dispensation the CAB made it clear that they had been particularly influenced by the United Kingdom's "consistently liberal" treatment of traffic rights applications by US Supplementals.

In fact, however, the CAB's change of heart on the authorisation of ITC operations came none too quickly for the ATLB. Ever since the original authorisation of Caledonian's ITC application in 1964, the ATLB had been busily promoting transatlantic and other long-haul experiments with low-fare services on cabotage routes. In doing so it established a leading position as a regulatory authority determined to expand the market for air travel.

The ATLB's reasons for pursuing this experiments were two-fold. First, there was the requirement that it should further the development of British civil aviation. This inevitably forced the ATLB to consider favourably any extension of operations which might increase the overall air transport market without diluting the traffic on established services. European experience under the ATAC and the first few years of its own rule had largely exploded the myth of excessive diversion of scheduled traffic as a result of the introduction of ITCs. It was natural, therefore, that the emergence of long haul ITCs should be viewed favourably. A second reason for the interest in expanding the Independents' share of world air travel was, simply, that BOAC suffered an embarrassing shortage of capacity throughout the mid 1960's and was patently unable to engage in experiments aimed at generating even greater

demand which it would be unable to satisfy. Even more pertinent was the fact that at a time when BOAC was cancelling scheduled services because of aircraft shortages (181) it would hardly have been politic to enter the non-scheduled market.

In a purely domestic sense, therefore, the ATLB was firm in its belief that the greater possible liberalisation of non-scheduled services should be encouraged - particularly on lucrative routes such as the North Atlantic. In an international sense, however, the ATLB recognised that liberal treatment of UK carriers would only result from similar treatment of foreign carriers by the UK authorities. To create the correct conditions for favourable treatment of the Independents, therefore, it was recognised that the UK would have to pursue a liberal policy towards all foreign carriers. That such a policy followed was noted by the CAB in its authorisation of Caledonian but it is also the case that foreign governments were slow to react to the UK initiative. To an extent this was understandable because the UK Independents constituted an almost unique body of airline expertise complementary to the national flag carrying airlines - BOAC and BEA. Very few other countries had similar air transport strength in their non-scheduled sector and were thus little interested in opening new long-haul opportunities to compete with scheduled services.⁽ⁱ⁾ Some countries such as France generated so little non-scheduled international traffic that they were strongly resistant to encouraging it by foreign carriers. So far as the United States

(i) Table 21

TABLE 21. EUROPEAN CHARTER AIRLINES 1969.

Nationality of carriers.	Total 1969 Charter passengers. (i)	Total fleet engaged permanently in charter work (turbine aircraft only).
Austria	95000	-
Belguim	110407	-
Finland	165278	1
France	500000	1
Germany	1797828	20
Italy	360000	5
Netherlands	620000	11
Scandinavia	1863000	19
Spain	1676000	18
Switzerland	242000	3
UK	4074979	101
Yugoslavia	204725	4

(i) Two-way flows.

Source: The Douglas Aircraft Co. "The European Charter Airlines".

was concerned, however, there was a strong non-scheduled sector which the US desired to promote.⁽ⁱ⁾ Unfortunately questions of balance of trade delayed the development of liberal US treatment of foreign non-scheduled carriers. By mid-1967 the ATLB was beginning to conclude that continued liberal treatment of US Supplemental carriers could only be justified if there was an immediate reciprocal action by the US. The absence of any indication that this was about to happen forced the ATLB to recommend:

"....that the adoption by the United Kingdom of a liberal policy towards the admission of United States carriers' charter operations should be conditional upon the maintenance of the principle of free and equal opportunity for the airlines of both countries and the avoidance of administrative decisions or regulations which, while having the appearance of impartiality would in practice place UK civil aviation at a disadvantage". (171.3)

Fortunately, the necessary change in US policy occurred soon after the ATLB had made its observations. As a result the way was opened for major expansion of charter operations between the two countries. For the next two years, relations between the US and UK remained relatively stable, and in this environment charter services flourished. In the more general international context there were widespread differences of opinion on the liberalisation of non-scheduled services and these will be dealt with later. In the more limited sphere of the UK, however, 1968 and 1969 were the years in which the results of the ATLB's "limited experiment" on the introduction of ITC services across the Atlantic

(i) Table 22

TABLE 22. US SUPPLEMENTAL CARRIERS FLEETS, NOVEMBER 1968.

Type	No. in Service	No. on Order
Long-haul jets	37	13
Short-haul jets	16	3
Turboprop	31	6
Piston	71	
Totals	155	22

Source: The Douglas Aircraft Co. "US Supplemental Air Carriers"
Market Research Report C1/804/1313 (1968).

began to be appreciated. On the basis of these results the UK authorities formed opinions on future policy but, once again, the division of responsibility for regulation of British civil aviation created a situation of serious rift between the two interested parties.

Despite the ATLB's belief that charter operations should be encouraged on the North Atlantic and the CAB's acceptance of this principle, domestic issues in both countries limited the extent to which this policy could be implemented. In the UK the problem was complicated by the need to ensure compatibility between UK charter policy and that of other European States. This was necessary for the practical reason that US ITCs inevitably incorporated stops at more than one European destination. It was, therefore, unrealistic to pretend that the UK could ignore the constraints of European charter policy. The Board of Trade, therefore, when considering applications for transatlantic ITCs had to bear in mind the attitude of other European authorities and, in particular, the member States of ECAC. The ATLB in making recommendations on the award of ITC licences suffered no such constraint and was free to reach conclusions on the basis of the best interests of British airline operators. Not surprisingly there were deep divides between ATLB and Board of Trade attitudes towards charter operations and particularly ITCs.

Differences of opinion were inevitable but the manner in which the two parties failed to co-ordinate their public positions on

the matter was regrettable and was symptomatic of the essential weakness of British civil aviation regulation.

Despite the accord reached in 1967, the expansion of transatlantic ITC operations was not particularly rapid or significant. This was partly due to the uncertainty over the authority of the CAB to grant ITC licences and partly due to the Board of Trade's determination to pursue a "European" licensing policy. Thus the number of transatlantic ITCs authorised for operation by US Supplemental airlines was 13 in 1967 and 5 in 1968. In 1969 the figure was increased, but did not represent a major expansion of this type of traffic. (182) The implications for 1969, however, were that ITC traffic would increase considerably as a result of the CAB's final authorisation to grant ITC licences.

By late 1969 there were clear signs of alarm within ECAC and IATA at the impact that charter operations were having on travel trends. Recognising these, and reacting to them, the Board of Trade wrote to the British airline operators advising them of the likely future restrictionist policy on transatlantic ITCs. This action precipitated a crisis in British civil aviation for it soon transpired that the Board had not consulted the ATLB before drawing up its draft proposals. Thus there was an untenable situation in which the body set up to promote the best interests of British civil aviation was seen to be both overruled and in diametric opposition to the body which had the final control over the issue of international air service licences. The disinclination

of the Board of Trade to publish the text of their proposals merely added to the growing demands for a revision of the British aviation regulatory environment.

These demands had in any case been stimulated by the lack of progress on the recommendations of the Edwards Report, published in May 1969. When the Government's intentions did become clear with the publishing of the White Paper, "Civil Aviation Policy" (183) they did little to allay suspicions that there was something fundamentally wrong with the way British civil aviation was controlled. Of particular concern to many was the declared intention that the Board of Trade should continue to control the international licensing aspect of the regulatory system. Despite the White Papers' declaration to the effect that:

"The Board of Trade, in discharging its continuing responsibility for international relations in the civil aviation field, will retain its present responsibility for giving or withholding approval of IATA tariff resolutions and for negotiations with other Governments on tariff matters. In carrying out these functions the Board of Trade will act in close consultation with the (Civil Aviation) Authority at all stages and each will have the benefit of the other's advice". (183.1)

The history of relations between the Board of Trade and the ATLB did not bode well for the future. First had been the serious rift created by differences of opinion on the price control of ITCs and later had come the conflict over the liberalisation of transatlantic ITCs. Neither was it simply a question of the Board of Trade and the ATLB agreeing to differ. The conflict had

arisen because the Board of Trade had acted unilaterally in complete disregard of the opinions expressed by the body closest to British civil aviation - the ATLB.

The developing crisis in British civil aviation was no more than a reflection of the combination of various factors. The first of these was that there had never been a truly independent and sovereign licensing authority in the UK. The numerous attempts to modify British legislation had always fallen short of the fundamental revision which was required. The British regulatory system was the result of compromise rather than practical requirement and it was clearly unsuited to cope with the demands of a rapidly changing market structure.

A second element in the growing crisis was the awareness of the IATA carriers that they had been thrown onto the defensive by charter operators. The emergence of non-scheduled operators as generators of competition for the scheduled airlines was a rapid development which had largely been unmonitored. Though there may have been individual recognition of the growing charter competition, the generation of common policy by IATA member airlines and ECAC member States was a slow process naturally unsuited to rapid response to new competitive activities of the non-scheduled airlines. Despite this unwieldy characteristic, however, it was a fact that ECAC was broadly sympathetic towards IATA airlines and the few ECAC member States who had strong non-scheduled sectors found the Conference's resolutions inhibiting.

Third in the list of factors was the tremendous increase in charter traffic which occurred in 1969.⁽ⁱ⁾ There is little doubt that this was the year in which the results of increasingly liberal policies towards non-scheduled operations became clear. The size of the traffic increase was sufficient to cause a backlash against the non-scheduled operators and a reappraisal of the need to protect IATA airlines operating scheduled services.

Factors such as these and in particular the evolving policies of the CAB which now overtook the previously-liberal British in implementing new directions of charter expansion faced the British Government with a mounting crisis. A final factor in this complicated situation was the imminent British General Election. In previous elections, aviation had rarely been a major issue. In 1970, however, civil aviation, and particularly the Independent sector, was widely recognised as having affected the lives of much of the electorate through the provision of ITC services. Political considerations were therefore a further powerful factor in the confused situation which existed during 1970 in the British regulatory system.

When this confused situation was finally resolved and a re-organised system set up, Britain once again took the lead in the development of a new structure for the international air transport market. Pending that re-organisation, however, regulation of non-scheduled activities lacked direction and this unfortunately was reflected in the mushrooming expansion of diverse charter

(i) Table 23, figure 17.

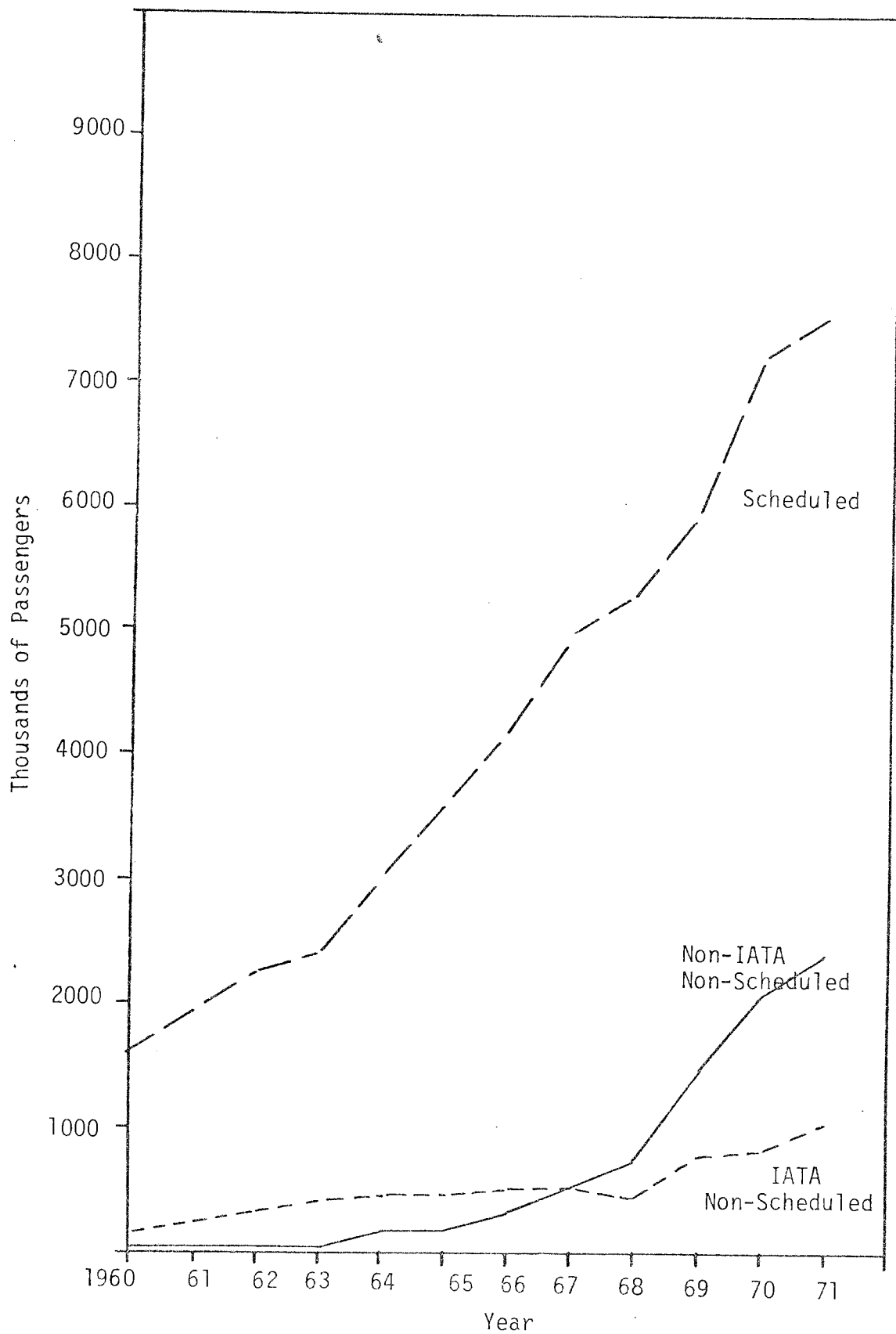
TABLE 23. TRANSATLANTIC AIR TRAFFIC 1960 - 1971

Year	IATA scheduled	IATA non-scheduled	Non-IATA non-scheduled
	(thousands of one way-passengers)		
1960	1760.0	168.2	30.0 (i)
1961	1919.5	256.5	30.0 (i)
1962	2272.2	315.2	30.0 (i)
1963	2422.2	414.1	45.0
1964	3069.2	482.0	174.0
1965	3611.3	480.5	197.5
1966	4197.5	502.9	303.0
1967	4987.4	517.1	510.0
1968	5258.1	495.1	753.0
1969	5996.8	779.7	1499.3
1970	7201.0	816.6	2076.0
1971	7531.9	1059.0	2403.9

(i) Estimate.

Source: ICAO, "Development of International Air Passenger Travel-Europe" (1973)

FIGURE 17 TRANSATLANTIC AIR TRAFFIC 1960 - 1971



operations. Only towards the end of this crisis period, when the Civil Aviation Authority was being set up, did a sense of direction reappear in British civil aviation policy. It is, perhaps, regrettable that it was in this brief period of confusion that major charter expansion took place - in many instances for the simple reason that with the licensing system in disarray it was easier to bring about the initiation of new types of service whose potential for disrupting established travel patterns was not properly understood. In short, the major expansion of long-haul charter activity occurred when the UK was least well equipped to monitor, regulate and direct it.

CHAPTER 12 UNITED STATES RESPONSE TO EUROPEAN INITIATIVES

12.1 Introduction

The isolated treatment given previously to UK policies and actions must be related to events elsewhere in the international spectrum. Initially it was Europe which was principally affected by the UK Independent's activities, but, it was not long before the North Atlantic became a prime target for their attentions. The introduction of British enterprise in the air travel market of the North Atlantic raised questions of fundamental importance to the United States. The US aeronautical regulating body - the CAB - in responding to the British initiative had to consider the wider implications for the US economy and for the competitive relationship between the scheduled and non-scheduled American carriers.

This chapter is concerned with evaluating the development of US policies towards non-scheduled international travel by air. In section 12.2 the status of US non-scheduled operators is considered. This is followed in section 12.3 with an exposition of the essential characteristics of US policies towards international non-scheduled operations. The final section, 12.4, deals with the United States assumption of leadership in the restructuring of the international air transport industry in the late 1960's.

12.2 The Status of US Non-Scheduled Operations.

Although a distinction has never existed in the United States between public and private ownership of airlines this does not mean that a similar type of delineation of the industry into two sectors has not taken place. In earlier chapters it was shown that Pan American in particular accepted the role of the State Department's "chosen instrument" which granted the airline status within the industry reminiscent of that of the European State-owned carriers. The relationship between the US scheduled carriers and those variously described as "non-scheduled", "irregular" or "supplemental"⁽¹⁸⁴⁾ is no less complex than that between the British State Corporations and the Independents. Furthermore, that relationship has had a similarly important result for international civil aviation.

The immediate post-war history of the US non-scheduled operators was not a happy one and the increasingly poor level of stability in financial terms and safety performance led initially to a constraint on their opportunity to operate without CAB authority. Having thus restricted entry to the industry and imposed a measure of stabilisation, the CAB instigated the so-called, "Large Irregular Air Carrier Investigation".⁽¹⁸⁵⁾ The purpose of this was two-fold in that it set out to answer two fundamental questions related to the future of non-scheduled airlines in the US. The questions to be answered were:

- "1. Is there a need for air transport services by the large irregular carriers and irregular transport carriers in addition to and supplemental to services performed by the public carriers holding certificates of public convenience and necessity.....
2. If the answer to the foregoing issue is in the affirmative, what type or types of such supplemental services would be best adapted to the performance of the transport service required to meet the need.....(185.1)

Although it was not the CAB's intention to define the non-scheduled carriers as "Supplemental" to the scheduled operators, ie. providing only those services not supplied by scheduled carriers, this nevertheless was a widely accepted interpretation. (185.2)

Indeed, the unfortunate overtones of the title "Supplemental" have been principally responsible for the numerous disputes which have occurred between the CAB and the scheduled carriers. The exact nature of the role envisaged for the supplementals is, however, important - particularly when their interaction with the UK air transport operators is under discussion.

Whereas the segregation of the UK (and many European) civil aviation industry was originally on the grounds of reservation of role for the State-owned airlines, this was patently not the case in the United States. In that case, the segregation had little to do with the CAB's intention to protect the scheduled carriers. The Supplemental carriers were non-scheduled operators who had chosen to take on that role and to avoid the high overheads and constraints of scheduled service operation. The CAB's regulatory intentions were designed to protect the

scheduled carriers from unfair competition, the Supplementals from their own excesses and the public from unreliable and unsafe air transport services.

The result of the CAB's investigation was that it found the answers to the two questions above to be in the affirmative. Confident, therefore, in the correctness of its judgement that there was indeed a need for a limited number of Supplemental carriers, the CAB awarded certificates of public convenience and necessity to 25 Supplemental carriers.

There followed one of the perennial disputes between the scheduled carriers and the CAB as to the legality of the latter's action and the limitations of the powers invested in it. Thus, the Board was overruled in the US Court of Appeals on the grounds that it did not have the authority to certificate Supplemental carriers. Subsequently these powers were sought by the CAB, together with a clarification of the role envisaged by the US Administration for Supplemental carriers. Not until 1962, however, were these requests complied with when Congress enacted Public Law 87-528. This confirmed Supplemental carriers as being limited to charter operations and authorised the CAB to certify such carriers for public service operation in certain geographical areas.

This affirmation of the Board's powers was, however, only a part of much more fundamental revision of US policies on civil aviation.

In earlier chapters it was shown how the emergence of the British Independents was due largely to considerations of domestic politics. In the United States¹ case, however, it was the impact of international relations which was primarily responsible for the revision of policy. US aviation policy came increasingly under attack from supporters of the US operators as, throughout the late 1950^s, foreign Governments discovered the protectionist features of the Bermuda-type Bilateral Agreement. Consequently there was a steady erosion of US predominance on many important air routes to the US.⁽ⁱ⁾ Thus, whilst the UK's policy review was aimed at ensuring openings for the continued expansion of the Independent operators, the US review was more fundamentally concerned with protecting the position of US international civil aviation generally. In straight forward aeronautical terms there were grounds for revising US attitudes in view of the increasing failure of US bilateral Agreements to produce the conditions expected. (186)

The US concern at the collapse of the Bermuda Principles in many bilaterals, together with what was regarded as excessive fifth freedom carriage of North Atlantic traffic by foreign carriers, was aggravated by further domestic considerations. First was the recession which affected North America in the period 1959 to 1961 and second was the mounting US balance of payments deficit which threw pressure on the dollar. The first of these was reflected

(i) Table 24

TABLE 24 CARRIAGE OF US-GENERATED AIR TRAFFIC 1950 - 1960

Year	To/From Europe		To/From S. America		Trans - Pacific	
	NATIONALITY OF CARRIER					
	US %	Foreign %	US %	Foreign %	US %	Foreign %
1950	62.7	37.3	80.0	20.0		
1953	51.5	48.5	70.3	29.7	78.7	21.3
1954	52.5	47.5	71.9	28.1	82.1	17.9
1955	53.8	46.2	68.8	31.2	86.0	14.0
1956	52.8	47.6	64.5	35.5	82.1	17.9
1957	48.4	51.6	65.0	35.0	77.8	22.2
1958	41.5	58.5	58.6	41.4	70.8	29.2
1959	40.5	59.5	56.5	43.5	69.4	30.6
1960	39.8	60.2	55.4	44.6	67.0	33.0

Source: Report of the Task force on National Aviation Goals, Washington (1961), p.108

in a reduction in the number of US nationals travelling abroad and, in particular, in the number of foreign nationals travelling to the US on business. The upturn in the US economy towards the end of 1961, however, brought further problems since it stimulated the number of US citizens holidaying abroad.⁽ⁱ⁾ In a curiously ironic way, therefore, this increase in airline traffic was recognised as contributing to the US balance of payment deficit.^(186.1)

In recognition of this difficult position several study programmes were initiated in the US from 1960 onwards.^(186.2) Their purpose was to provide an insight into past failings of US policy, to indicate how these might be corrected in the future and to suggest future strategies for development of US civil aviation so as to generate the maximum possible benefit to the US economy and airline industry.

For different reasons, therefore, the United States and United Kingdom entered the decade of the sixties with revised policies on civil aviation. It was the interaction of these policies which was to lead to the extraordinary upheaval which occurred in international air transport - first on the North Atlantic and, later, on the majority of the world's air routes. As with the earlier chapter on the UK, the following section deals particularly with the evolution of the US attitude towards long-haul charter operations. Although the essential involvement of scheduled

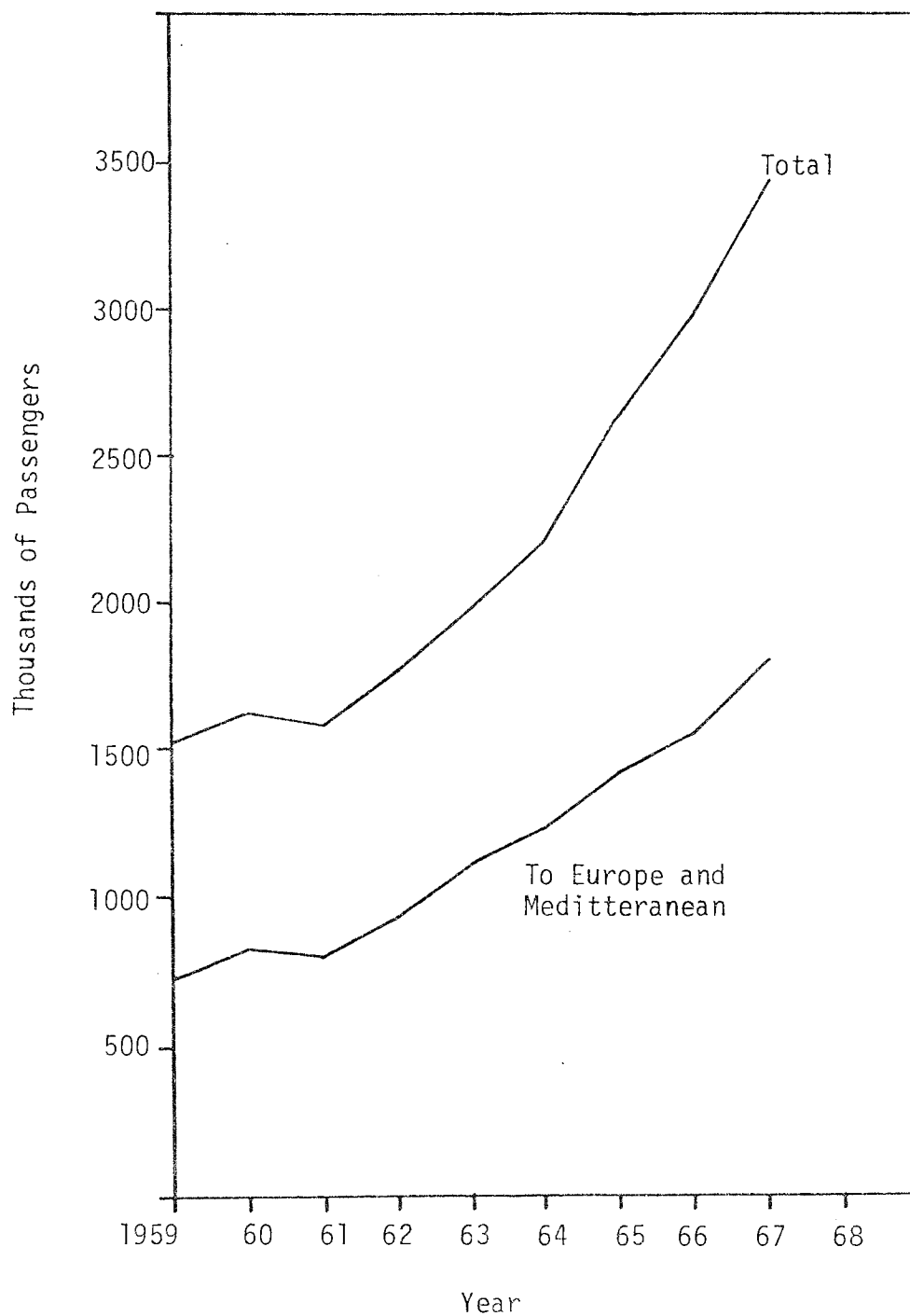
(i) Table 25, Figure 13.

TABLE 25. US TRAVELLERS TO OVERSEAS DESTINATIONS, 1959 - 1967

Year	Thousands of passengers	
	To Europe/Mediterranean	Total
1959	705	1516
1960	832	1634
1961	836	1575
1962	931	1767
1963	1102	1990
1964	1250	2220
1965	1405	2623
1966	1570	2975
1967	1800	3425

Source: Peters, M. "International Tourism" Hutchinson, London (1969).

FIGURE 18 US TRAVELLERS TO OVERSEAS DESTINATIONS 1959 - 1967



carriers cannot be ignored, as far as possible it is the intention to discuss these in the context of IATA. The following section, therefore, deals specifically with the expansion of US Supplemental carriers into intercontinental charter operations..

12.3 US Policies Towards International Non-Scheduled Operations

Two distinct periods may be determined in US non-scheduled operational history. First is the period in which the US was lagging behind the European Governments in their liberalisation intentions for the non-scheduled sector. Second is the period in which the United States took the lead and introduced policies towards this sector which threw European Governments once again into a restrictive mood..

12.31 The Conservative United States Policy: 1945 - 1965

In common with most other States which impose some limitation on the composition of group charter flights,^(64.1) the United States based its economic regulations governing non-scheduled operations on IATA Resolution 045 which was itself derived from the 1952 ICAO "Definition of a Scheduled International Air Service."⁽⁶³⁾ Initially US and European regulation of non-scheduled services was essentially similar but the removal of discussions concerning a Multilateral Agreement from the international to the European

theatre ensured that policy development would thereafter be independent. Thus, the 1956 Paris Agreement ⁽⁵³⁾ totally disregarded the United States position.

A consequence of this was that whereas the European States became principally concerned with ITC operations within Europe, the US concentrated on group charter operations - the so-called "Affinity Group Charter". ⁽ⁱ⁾ Even if the Paris Agreement provisions left much to be desired, they offered some competitive openings for European non-scheduled carriers within Europe. US Supplemental carriers, however, were hindered by two things. First the delay in granting the CAB powers to authorise charter services, and, second, the fact that any such services were almost certain to operate on routes not covered by US Bilateral Agreements covering non-scheduled operations. A further severe constraint was that the CAB refused to authorise ITC services.

The CAB's resistance to long-haul ITC operations was based largely on the premise that this type of traffic would seriously affect scheduled traffic, though this was in complete contrast to the opinion of many European Governments who had had some experience of the impact of these services. The CAB was also influenced by the general state of the US airline industry.

- (i) This being a charter by the members of any group having an affinity other than the desire for cheap travel.

In 1963 the scheduled international airlines were only beginning to emerge from a period of severe over-capacity. The resultant low load-factors and the erosion of US carriers' shares of the market meant that many of these carriers had a very difficult time in the early 1960's. Faced with their gradual recovery, it was perhaps not surprising that the CAB preferred not to introduce a significant new type of service having a large potential for drawing off "traditional" scheduled airline traffic. Undoubtedly therefore, the CAB engaged in protectionism through its restraint of ITC operations. It was this restrictionist attitude which forced the ATLB to reconsider its own recommendations on non-scheduled operations - particularly across the North Atlantic. Fortunately, as already noted, the CAB adopted a more liberal approach to ITCs from 1965 onwards, and this culminated in the award of ITC rights to Caledonian in December 1965 followed by similar authorisation to US Supplementals.

The resultant appeal by US scheduled carriers successfully blocked the implementation of this authority for two years. Despite this, it was a vital reversal of previous CAB policy and requires some explanation.

12.32 The Revision of US Policies 1965 - 1971

Several factors combined in the mid-1960's to change the CAB position on transatlantic ITCs. First was the need for a positive

response to the British initiative on liberal treatment of transatlantic charter operations. As already noted, the ATLB recommended this action in the hope that it would stimulate reciprocal US policies, but the lack of favourable US action was, by 1966, was causing considerable concern in the UK.

A second factor which strongly influenced the CAB was the publication of the ICAO investigation into inclusive tour air services. Though suffering from a fundamental lack of properly collated data on ITC operations, the report was still able to conclude that properly controlled ITC operations would not harm scheduled services and, in fact, probably generated an entirely new type of traffic:

"Information on this point from the European studies is not clear, but there is some evidence that the inclusive tour services there reached a different market from that which would have been reached by inclusive tour offers, even at the same price, on the scheduled services". (64.2)

Such a conclusion was not in itself sufficient to justify experimental services which might possibly detract from scheduled traffic. However, coupled with a general upswing in international travel and an improvement in the finances of the scheduled carriers by 1956-66, the pressure for experimental introduction of ITC services was considerable.

An additional stimulus was the CAB's recognition of the difficulties facing the Supplemental carriers, who, in contrast to the scheduled

airlines, were suffering from a growing financial crisis. The introduction of ITC authority, therefore, was a positive act designed to improve the opportunity for the Supplementals. If one major aim of CAB policy was to improve the outlook for the Supplementals, however, a further aim was to encourage the maximum benefit to the US economy from air travel sources. This aim became one of the major facets of transatlantic air travel in 1964-66.

In late 1964 the United States suffered a sudden worsening of its balance of payments deficit. The subsequent pressure on the dollar forced the Administration into stern measures to correct the position. Inevitably one of these measures concerned foreign travel. Reacting to the crisis, the CAB investigated the impact of the air transport industry on the US balance of payments and the result was a clear indication of the beneficial effect of encouraging "to-US" travel. One result of this was the authorisation of European charter airlines to operate into the US and, in particular, the operation of ITCs by Caledonian. The CAB was, therefore, quick to act on its conclusion that:

"Promoting foreigners' travel to the US has outstanding advantages for the balance of payments". (22.2)

In view of the Board's desire to improve the fortunes of the Supplementals and the realisation of the vast new market opened up by ITCs on the North Atlantic, it is not surprising that the CAB was in favour of Supplementals' ITC activities. Neither is it surprising that the

CAB granted blanket ITC authority for Supplementals within the United States in view of its further conclusion that:

"Americans going abroad are always minus items in the air transport account, whether they travel by US or foreign-flag.....(22.3)

The clear implication being that the best solution for the balance of payments was that Americans should holiday at home. There was, understandably, some considerable resistance from Europe to allegations of a "travel gap" on the North Atlantic. (188)
This became one of the central contentious issues in later years.

The CAB's new approach to charter operations was illustrated by widespread grant of traffic rights to European charter carriers from 1964 onwards. The scheduled carriers inevitable appeal against ITC authorisations by the CAB, though raising important points of law and successfully delaying implementation of that authority for two years was bound to fail. Eventually, when the courts were unable to rule on the legality of the CAB action, the issue had to be settled by an Act of Congress. Thus, in September 1968, Public Law 90-514 was enacted which redefined "Supplemental air transportation" as:

"Charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity...to supplement the scheduled service

authorised by certificates of public convenience and necessity....." (187)

The passing of the Act was significant in two major respects. First it indicated the unequivocal support of Congress for the Supplemental carriers and their right to equal trading rights alongside scheduled airlines. (189) This was further emphasised by the speed (ie. two months) with which the Bill passed through from conception to Presidential signature. Second, confirmation of the CAB's authority to allow ITC's ensured that the Supplementals would be enabled, and encouraged:

"To exploit the foreign-originating IT market, to encourage foreign travel to the US and contribute towards reduction of the large balance of payments deficit." (190)

The final authorisation for the CAB to licence ITCs by US Supplemental carriers in September 1968, signalled the start of a period of fundamental reassessment of US aviation policies. Despite this, there was not an immediate explosion of ITC traffic on the North Atlantic. This was primarily because the Supplementals were constrained on two counts in their operation of US-originating ITCs. First was the imposition of a tour price control which tied tariffs to the relevant IATA tariff levels. Second, and more important, was the requirement that these tours should stop at more than one foreign destination. This inevitably meant that the European Governments could not pursue individual policies towards the US expansion of transatlantic ITCs. Clearly, the UK

Government could not authorise US-originating ITCs into the UK without conferring first with other Governments affected by the tour itinerary. It was doubly unfortunate that the majority of US ITCs went from London to Paris and the French authorities were renowned for their restrictive attitudes towards ITCs generally.

This requirement for multi-stop ITCs directly affected the growth of ITC operations on the North Atlantic. However reference to Table 26 indicates that the constraint on charter operations was relative. Particularly noteworthy is the speed with which US Supplementals reached a position of dominance.

The impact of the new US policies towards ITCs was quickly recognised but it should not be forgotten that the CAB had, throughout the dispute over its ITC authorising powers, continued to authorise numerous group charter operations. By late 1968, the US liberalisation of its control over charter operations was beginning to be felt at all levels throughout the scheduled airline industry. In particular IATA was forced to seriously consider ways in which the charter carriers could be combatted. By late 1969 the Association had devised the so-called "Charter Bulk Inclusive Tour" (CBIT) fare which, whilst giving the CAB much to consider, was sufficiently revolutionary to give the non-scheduled carriers cause for serious concern. Though IATA had been slow to react to the clear indications of market change

TABLE 26 TRANSATLANTIC TRAFFIC OF THE US SUPPLEMENTALS

Year	Passengers in Thousands		
	US Supplementals	TOTAL Non-Scheduled	Supplementals Market Share %
1960	-	198.2	-
1961	-	286.5	-
1962	-	345.2	-
1963	-	459.1	-
1964	-	656.0	-
1965	-	678.0	-
1966	247.6	805.9	30.7
1967	394.7	1027.1	38.3
1968	560.2	1248.1	45.0
1969	1070.9	2279.0	47.0
1970	1233.0	2892.6	42.7
1971	1409.6	3462.9	40.7

Source: ICAO, "Development of International Air Passenger Travel-Europe". (1973).

evident from 1965 onwards, it is true to say that the CBIT concept successfully regained the initiative for IATA. The Supplementals were, therefore, thrown onto the defensive.

The conflict with Europe and IATA arising from the activities in the main of US Supplemental carriers, was instrumental in bringing about a major review of international civil aviation policy by the Nixon Administration. When the results of this were published in January 1970 it was clear that the United States was entering an era of fundamentally different approach to the problems of international civil aviation regulation. Thus, just as the UK was, in 1970, reconstructing the regulating devices of its industry and reassessing its aviation policies, so the US was similarly engaged at the same time. Indeed, a simplistic but essentially correct assessment of events in the international air transport industry in the early 1970's would be that they were almost entirely the result of interaction between UK and US changes in aviation policy. Although the "new" policies of the UK were not to be immediately obvious, as a result of delays in establishing the new regulatory structure, indications of the essential elements of the United States' revised attitudes were quickly apparent following the publication of the results of the Nixon Administration aviation policy review.

12.4 United States Leadership in Restructuring the Industry.

While the US had been engaged in its long discussion as to the exact nature of the powers vested in the CAB, it had been the UK which had made most of the running in international civil aviation. Thus, the 1960's were principally to be noted for the largely passive role forced on the CAB and the resultant cautious approach to innovation in international air transport.

The publication of the draft conclusions of the Nixon policy review was a significant event because it indicated that the United States was determined to regain the initiative and was no longer prepared merely to react to European policies. The new US policies were dictated by four specific desires. First, to consolidate and increase the strength of the Supplementals in international operations. Second, to reverse the trend of steady weakening of the United States position on many key international routes. Third, to expand the air travel market by the judicious introduction of low fares and, fourth, to weaken the traditionally rigid demarcation of carriers into scheduled/non-scheduled categories.

Despite the forceful nature of the US intentions and the temporary loss of initiative by the UK, it should not be thought that the two had conflicting aviation policies. Though there were differences of opinion - some of them quite serious - there was a large measure of agreement between the two. This became particularly

clear when the UK had stabilised its domestic legislation and the new Civil Aviation Authority was in a position to assert its authority. Whatever the nature of their differences, however, both countries were motivated by the same considerations. First was the importance of their Independent or Supplemental sector which required positive Government action to ensure continued strength and expansion of opportunity. Second, and very much tied to the first point, was the acceptance of the thesis that IT traffic did not normally erode traffic previously carried by scheduled carriers.

The acceptance of the argument that IT, Group or Bulk low-fare traffic was fundamentally of a different nature to that traditionally attracted to scheduled services, was a major feature of both the UK and US attitude towards international aviation policy in the 1970's.

In the case of the United States, this manifested itself in the clear intention to make air travel available to the widest possible market and to ensure that the size of the market was not restricted by considerations of outmoded and inappropriate adherence to traditional definitions. Thus, one significant feature of the US policy was that traffic should be classified by its nature rather than by the nature of the airline carrying it. In the new US philosophy, therefore all Inclusive Tour passenger, whether on scheduled services or on charter flights would be regarded as belonging to the same "separate fare" category. Similarly, the

charter category would include passengers travelling in a group but on a scheduled aircraft.

The radical nature of such proposals clearly indicated the United States' determination to regain the initiative in international civil aviation and to force the introduction of economic policies which it believed to be correct and necessary, whether or not the full IATA Traffic Conference agreed.

CHAPTER 13 RESPONSE TO BRITISH AND AMERICAN POLICIES

13.1 Introduction

Expansion of non-scheduled activities took place on a world-wide basis throughout the 1960's. Consideration of many of the principles of that expansion and reaction to it may be restricted to the particular case of the North Atlantic. Historically it is a fact that this route has set the trend of new developments, and charter activity was no exception to this rule.

In discussing transatlantic operations, the United States and United Kingdom clearly deserve particular attention. Similarly, response to their policies may best be determined in terms of IATA and ECAC. The former is considered in section 13.2. ECAC representing collective European response, is seen to have passed through two specific phases. In section 13.31 is the introspective period in which the Conference was largely concerned with the implementation of the Multilateral Agreement. In section 13.32 the later period of more outward looking policies is considered.

13.2 The Role of IATA, 1965 - 1971

The actions of the United States and United Kingdom in attempting to define new markets for their "second sector" airline operators to expand into, inevitably affected the scheduled international airlines who, as a matter of course, were members of IATA. The Association's rate-making policies may, therefore, be used as a guide to this particular section of reaction.

In earlier chapters it was suggested that the traditional view of IATA as a restrictionist cartel, resistant to any form of low fare policy, is both incorrect and unfair. Furthermore such a view ignores the constraints which, in practice, have affected IATA's attitudes towards low-fare policies. These may be seen to stem from the Association's principle and over-riding concern for the economic well-being of its member airlines. Since IATA is a trade body it was only natural that it should be protective towards the interests of its members. A second constraint has been that even where the need for a new marketing approach has been recognised by the airlines, they have usually been unable to adopt rapidly a uniform approach to the best course of action. The basic requirement for unanimous agreement on all tariff decisions emanating from an IATA Traffic Conference has been difficult to achieve without frequent recourse to compromises which tend, naturally, to be conservative.

In essence, therefore, however favourable has been IATA's general attitude towards low-fares, the conduct of detailed negotiations for their implementation has been seriously constrained by considerations similar to those set out above. The complexity of IATA Traffic Conference negotiations has been such that IATA has frequently been unable to take the initiative in framing new promotional fares. Indeed, it may be said that from the mid-1950's to the mid-1960's IATA was in a state of continual turmoil as it was forced to cater for one new development after another.

Despite these constraints, as early as 1951 IATA was seriously considering the introduction of lower fares on the North Atlantic. Such considerations, however, were inhibited in the Association's view:

"...by stern economic limitations to the extent to which fares could be reduced, particularly in a world of rising prices". (191)

Similarly, there was early recognition of the fact that existing IATA regulations on charters were not adequate "To prevent charter operations of their own members....from undermining the normal rate structure of scheduled operations". Criticism by the UK Independents that IATA rates were particularly unsuited to be the basis of ITC price controls was, of course, entirely valid since, as the above quotation indicates, IATA existed primarily to protect its member airlines in the execution of their

"normal scheduled services".

The constraints on IATA's ability to introduce new tariffs of a revolutionary nature did not prevent the steady introduction of so-called promotional fares. International tariffs were gradually reduced over the years,⁽¹⁹²⁾ both directly and through the introduction of "Economy" and "Tourist" classes. Two particular issues forced IATA to make a more fundamental reappraisal of its tariff policies. First was the problem of serious over-capacity in 1960/61. Second was the increased North Atlantic charter activity in the mid 1960's which began to make serious inroads into IATA carriers' traffic. This latter feature of international air travel was wholly responsible for IATA's revolutionary introduction of group travel tariffs on scheduled services.

Steady increases in charter activity - even with IATA's group fares in operation - culminated in IATA restructuring its tariffs so as to increase generally all normal fares whilst at the same time increasing the scope of the group travel opportunities. It was this particular decision, taken at the 1962 Chandler Traffic Conference, which was disallowed by the CAB and which caused the so-called "Chandler Crisis".

The Chandler Crisis has been analysed elsewhere⁽⁷⁰⁾ and it need only be mentioned that the resulting conflict between America and Europe was primarily responsible for forcing the United

States to review its air transport policy. Even this was not, in itself, significant except that it highlighted weaknesses in the United States regulatory system and indicated a need for the US to concentrate on solving the North Atlantic "travel gap" (i) The investigations arising from the Chandler Crisis were instrumental in highlighting the effects of various air transport policies on the steadily worsening US balance of trade.

The clear indications of US intention to encourage Westbound transatlantic air travel were noted by IATA which spent most of 1964/65 attempting to determine pricing policies which would have the result desired by the United States Administration. The involved nature of these promotional tariffs, coupled with a world-wide recovery of traffic growth, resulted in IATA losing touch with the extent of non-scheduled operations. Throughout 1964, therefore, tariff discussions were only marginally interested in "fringe" non-scheduled activity. The CAB-encouraged expansion of transatlantic charters, coupled with the UK's traditionally liberal attitude towards these operations, rapidly transformed the scene, however, and by late 1965 IATA was becoming seriously concerned at the size of the non-scheduled operators' market penetration. Resulting from this increased awareness, it is possible to determine a clear switch in attitude among IATA member airlines in 1966. Instead of being able to pass off

- (i) The popular title for the imbalance between US and European-originating tourists on the North Atlantic.

charter competition as nothing more than a nuisance being successfully contained by promotional tariffs, scheduled airlines were now having to make direct appeals to their Governments.

BOAC's comments were typical:

"....the licensing of American Supplemental carriers to operate Inclusive Tour Charters across the Atlantic would, if their operations attain the measure of commercial success they must expect, deprive BOAC of a significant part of its existing and development traffic; prejudice the orderly development of BOAC's provisioning and pricing policy; jeopardise BOAC's Boeing 747 investment; undermine BOAC's prospects of future financial profitability; require revision of BOAC's financial target under the provisions of the Air Corporations Act 1967 and inhibit the development of BOAC service to gateways other than those now served". (193)

In the face of such strong comment, it is hardly surprising that the British Board of Trade was resistant to the ATLB recommendation for widespread authorisation of transatlantic charters.

Similarly, European Governments faced with the possibility of serious erosion of transatlantic traffic carried by their flag carriers, adopted an equally hesitant approach to the acceptance of American non-scheduled expansion.

Throughout 1967 and 1968 IATA became increasingly aware of the extent and nature of the charter airlines' inroads into traditional scheduled service routes. Despite this, the scheduled airlines did little to correct the situation - either by entering the charter market themselves or by re-appraising IATA promotional fares policy. Indeed it will be

remembered that the ATLB itself commented on BOAC's poor penetration of the transatlantic charter market - presuming this to be a symptom of its IATA anti-charter mentality.

The failure of IATA to respond to the charter challenge continued only for as long as the US Supplemental carriers were constrained from operating transatlantic ITCs by US domestic policy. As soon as the CAB was empowered to authorise such operations IATA made determined efforts to reappraise its tariff policy. These efforts were further encouraged towards the end of 1968 when US ITC policy became more clear and the size of the likely US involvement through its Supplemental carriers more properly understood. Recognising that it was now facing a major threat to the established positions of its member airlines, IATA at last made its first active challenge to the ever-increasing strength of the non-scheduled carriers.

In December 1968 an IATA working party recommended the adoption of the controversial "Bulk Fares" otherwise known as "Charter Bulk Inclusive Tours" (CBIT) and in January 1969 the Dallas Traffic Conference accepted them - though not without severe reservations. The revolutionary nature of the tariff was such as to make the CAB grant only temporary authority for its introduction. This limited authorisation reflected the CAB's concern the CBIT tariffs might well pose a fatal threat to the continued expansion of Supplementals' ITC operations. Though wishing to see greater competitiveness from the scheduled sector, the CAB had no wish to see this result in the demise

of the Supplemental carriers who had only recently received full authorisation to exploit the ITC market for the benefit of the US economy.

Though there was considerable confusion throughout 1969 as various airlines had second thoughts on CBITS and re-opened the tariff arguments, the 25th Annual General Meeting of IATA recognised that the Association had reached a cross-roads at which it had to formulate new attitudes towards charter operations generally. Non-scheduled carriers could now no longer be ignored by IATA and neither could the market which the former undoubtedly served.

13.3 The Role of ECAC as a Means of Collective Response to UK and US Policies.

Although it was the introduction of ITC operations on the North Atlantic route which was instrumental in accelerating the fundamental re-organisation of international air transport, it should be remembered that it was in Europe that the initial effects of ITC operations were felt. Consequently, the very serious problems concerning the desirable relationship between normal scheduled carriers and ITC operators were first encountered by the member States of ECAC.

ECAC and the parent body, ICAO, provided Governments with invaluable forums at which to air their views and obtain some over-view of the very difficult regulatory problems they were facing. Not the least of these was the lack of precise definitions and, in particular, and effective categorisation of ITCs. The extraordinary nature of these operations meant that they could not adequately be described as "scheduled" or "non-scheduled" - not that this in itself had any significance. Of far greater importance was the fact the the inability to adequately categorise ITCs meant little or no statistical information was collected on ITC traffic by ECAC member States in the 1950's. In consequence, these services developed into a regulatory vacuum where no sensible estimate of the emerging IT industry's strength and potential could be made.

At the same time as the British Government was crystalising its attitudes towards the role of the private sector in post-war civil aviation, ICAO was engaged in the further detailed consideration of problems left over from the Chicago Conference. In particular there was considerable difficulty in determining the applicability of Articles 5 and 6 of the Convention. This serious problem received a commensurate level of attention from ICAO. (56)

The discussions within ICAO at this time did little more than set the problem in its proper perspective and explore the implications of the various approaches to it. Of particular

interest, however, is the stance adopted by the British delegates to the Assembly. Given that the British Government was at the time engaged in seeking wider expansion of the opportunities for the Independents outside "normal scheduled services", it was imperative that such opportunities should result from ICAO's investigation of the role of non-scheduled carriers. Despite the fact that under UK law operations were "scheduled", the UK delegates attempted to have accepted the general proposition that in fact such services were "non-scheduled". The importance of a favourable decision on this proposition was that the operation of ITC services by the UK Independents would not then be constrained by Chicago Article 6.

The truth of the matter, of course, was that such services constituted a class in their own right. Consequently it was difficult, if not impossible, to locate them exactly within the regulatory framework. In the event they became generally regarded as "non-scheduled" - such a result occurring by default rather than by design - for despite the fact that the official ICAO "Definition of a Scheduled International Air Service"⁽⁶³⁾ could easily be construed to encompass ITCs, nearly all Governments found it impossible to accept that this could ever have been the intention.

The relegation of ITCs to some status generally regarded as being "less-than-scheduled" but not purely "non-scheduled" meant that these services remained effectively in a limbo. The practical result was that ITC traffic development took place under the

auspices of international regulations and conventions which were at best inappropriate and at worst negligent.

In an earlier chapter it was noted that following the confrontation between itself and BEA in 1953/54 the British ATAC adopted an excessively liberal attitude towards ITC licence applications by the Independents and traffic carried on these services increased thereafter at a very fast rate. In addition similar expansion took place in the closed-group sector where licences were not required and, more importantly, where traffic figures were not collected by the authorities. A similar situation existed in Scandinavia where ITC operations achieved considerable importance from 1955 onwards. Though the Scandinavians had no reservations about classifying all such operations as "non-scheduled" it did mean that, as in the UK, statistical information on the size of the ITC market was not regularly and reliably reported.

In parallel with the British, Scandinavian and, after 1955, West German expansion of ITC traffic, ECAC was concluding the Multilateral Agreement on Non-Scheduled Commercial Services in Europe. It was suggested in an earlier chapter that this Agreement was little more than a very slight improvement on the provisions of Chicago. One consequence of such a limited approach was that the two most important types of non-scheduled service were excluded from the Multilateral Agreement. However, having successfully concluded limited initial Agreement

there was general support for the suggestion that it should be extended in scope to liberalise further specific categories of non-scheduled service. The acceptance of this principle proved easier than its implementation, however, for ECAC members soon realised that such liberalisation could only be properly based on a sound understanding of the shape and strength of the non-scheduled sector. In short, what became abundantly clear was that no country was prepared to liberalise the treatment of a growing industry whose size and potential were unknown

Despite the general reluctance to make such liberalisation mandatory under the terms of the Agreement, many Governments indicated that they would in fact treat ITC services liberally. Thus, the British Government refrained from signing the Multilateral Agreement until 1961 but actively pursued a policy of liberal treatment for ITC applications and placed little restriction on their operation by non-British carriers.

Though such liberal treatment by individual Governments was useful for the operators, a fragmented approach such as this masked the elements of the basic regulatory problem. Because specific aims and measures to achieve those aims in the field of ITC operations were not developed by ECAC as a body, individual member States were encouraged to formulate their own policies in isolation. This undoubtedly worsened ECAC's ability to understand the European ITC problem and probably delayed its involvement in the

search for solutions by a critical degree.

ECAC's reaction to the development of ITCs may be conveniently split into two phases. The first is that period in the late fifties and early sixties when ITCs were very much a European problem and gave ECAC no cause for concern as to the wider implications involving other non-European Governments. The second phase is that in which ECAC was found to be lacking in its ability to meet new challenges from charter operations from outside the European theatre.

13.31 The First Phase: ECAC's Introspective Period

The relegation of ITC regulation to individual Governments within Europe rather than to the ECAC as a whole undoubtedly resulted in a fragmented approach towards the liberalisation of such flights. This sort of regulation of a virile industry inevitable weakened ECAC's ability properly to monitor traffic development.

Surprisingly, ECAC was not immediately aware of the danger of unmonitored liberalisation and in this initial period at the end of the 1950's, it was left to individual Governments to point out the possible consequences of ECAC's liberalisation activities. The Swiss Government was particularly critical of both the lack of effective monitoring and the lack of a proper understanding of the nature of the ITC product. The Multilateral Agreement

it argued, had been based on the belief that:

"....scheduled and non-scheduled services are complementary and...the criterion for removing regulations is whether or not the scheduled services will be harmed". (55.2)

Such a belief, however, was naive in the Swiss view since there was already considerable blurring of the distinction between scheduled and non-scheduled. They doubted, therefore, whether the complementary nature of ITC services really was as great as was supposed and suggested that the question of the liberalisation of ITC services merely served to emphasise:

"...a certain lack of understanding by Governments, scheduled airlines, ECAC and IATA of the very great impact that IT work was having on the market." (51.3)

Furthermore, the Swiss argued that a proper understanding would not be forthcoming until adequate statistics, collected on the basis of common definitions, were obtained.

It might be expected that ECAC would have felt such data collection to be a fundamental prerequisite for any liberalisation. In fact the Multilateral Agreement was concluded with little attempt to establish a mechanism whereby the activities of the sector it was intended to liberalise could be monitored. This was surprising and served to emphasise the initial, extremely limited scope envisaged for the Agreement by the signatory parties when

drawing it up. A further indication of such limited application was the fact that the Agreement was extraordinarily imprecise in many areas - it did not, for example, even attempt to define "non-scheduled services". This weakness of the Agreement was one reason why the British refrained from ratifying it for, in the minds of the British Government, these flaws indicated a fundamental misunderstanding by ECAC of the likely future development of non-scheduled services.

ECAC's eventual realisation of the urgency of the statistics problem came not a moment too soon. By 1957, when, it will be remembered, massive growth of ITCs from the UK was taking place the Conference was forced to record:

"...The incompleteness of the picture of non-scheduled operations reflected by the regular reporting machinery was clearly disclosed by the estimate of global air transport operations in 1954 that was made when the bases of State's contributions to the ICAO budget were reviewed by the council in 1955....
....Secondly, statistics are not required to be reported in respect of operators wholly engaged in non-scheduled operations....
....the extent to which statistics of non-scheduled air transport are available is still so deficient that assessment of the magnitude of such operations continues to rely largely on guesswork". (51.1)

Later in the same paper in a prophetic comment clearly aimed at the emerging ITC industry, the problem of statistical reporting was more explicitly stated:

"...It seems likely that the activities not reported to ICAO include substantial intra-European non-scheduled operations and these may be of particular concern to certain countries or of special significance at certain times of the year or on certain routes".

Having identified this serious deficiency, however, ECAC was under no illusions that it could be easily rectified. The first tentative steps towards a better understanding, therefore, promised nothing more dramatic than a recommendation that the Conference Secretariate should report later "On the possibility of obtaining regular statistics of non-scheduled operations in Europe". (51.4)

By the very nature of ECAC's structure, it is hardly surprising that more decisive and immediately effective steps were not adopted. The fact that ECAC sought to resolve difficulties by universally acceptable measures meant that those measures were inevitably compromises. Furthermore such compromises were often hedged about with particular reservations or points of dispute by member States. It was not unusual, therefore, to find individual States pursuing a unilateral course of action. Thus the UK's failure to sign the Multilateral Agreement stemmed from the vague phrasing in Section 2(2(b)) and the inadequate definition of "non-scheduled operations". Such inexactitude was, however, deliberate in order to make it possible for States to identify the operation involved, "According to their own interpretation".

Similar independent action was taken by four ECAC members in order to gain some insight into one aspect of the "non-scheduled problem" which was of particular concern to them. Austria, Germany, the Netherlands and Sweden jointly commissioned an independent report (194) on the status of Inclusive Tours in Western Europe. This was a highly significant document if only because it constituted the first serious attempt to gauge the size and nature of European ITC services. It marked the beginning of a more informed and enlightened approach towards Inclusive Tour licencing and regulation within Europe. The report's two most important conclusions both concerned the UK.

First, the supremely important UK domination of the European ITC industry was confirmed. Secondly the report was able to state categorically that;

"With the exception of the UK, the only country where IT's are regarded as scheduled services, none of the interested countries has precise statistics on this type of traffic".

Such a statement is even more extraordinary when it is remembered that, by 1958, a considerable proportion of the UK's ITC effort was being devoted to closed group services which were unmonitored. Thus the percentage share of the European IT industry's traffic originating in the UK was probably somewhat higher than the 42.6% indicated by the report.

The Third Session of ECAC, therefore, meeting in March 1959, had before it two important documents. One of them^(52.3) - the Secretariat's response to Recommendation No. 30 of the Second Session - provided the fullest exposition of the extent to which statistical reporting was deficient. The other,^(52.4) produced by ITA, indicated for the first time the size of the emerging industry.

In an earlier chapter it was suggested that the extent to which ITC operations undermined much of the scheduled carriers' traditional traffic in Europe was surprising - particularly in view of ECAC's declared aim of liberalising non-scheduled operations which did not harm scheduled services. It now becomes clear, however, that such a result was inevitable in view of the Conference's declared inability to monitor the effects of its policies towards non-scheduled operations. Furthermore, the Conference was not only unable but also unwilling to act decisively to correct developing difficulties.

By contrast to the British awareness of the strength of the emerging ITC industry in the late 1950's, ECAC was extraordinarily ill-informed. Consequently, market trends tended to be misunderstood and economic control of ITC operations was generally lax. Thus, at a time when these services were expanding at a rate never before experienced, ECAC's sole reaction was to refer the problem of statistical data reporting to ICAO^(52.5) and to recommend further study of Inclusive Tours using the existing ITA

study as a base. (52.6)

ECAC's lack of information on the non-scheduled sector and, in particular, inclusive tours was referred to the Committee on Co-ordination and liberalisation (COCOLI). This small group, it was hoped, would provide the essential forum at which attitudes could be contrasted and compromises reached. Even this limited group was unable to deal effectively with the complex problems peculiar to inclusive tours, however, and a further delegation of authority was made to the so-called Non-Scheduled Inclusive Tour Study Group (NSIT). This became the principle organ of research into ITC operations, both from the point of view of the degree of desirable control and the extent of the existing market and demand.

It was symptomatic of the generally favourable ECAC attitude towards ITCs that the NSIT brief was to consider how, and if, the Multilateral Agreement should be extended to inclusive tours. These were currently excluded from the terms of the Agreement and there was considerable concern at what some regarded as an anomalous situation. In fact, it is difficult to understand why ECAC should have considered further liberalisation to be necessary since there was little evidence to show that ITCs were being restricted in their development by their exclusion from the Multilateral Agreement. This was nowhere more clear than in the case of the UK. Despite the British Government's failure to ratify the Agreement until 1961, British Independent operators successfully

achieved major expansion on the basis of bilateral negotiations between the UK and foreign Governments. Furthermore, the UK made it plain, even after the Agreement had been signed, that it would continue to utilise bilateral negotiations to achieve expansion of non-scheduled opportunity.

The NSIT study group was clearly aware of the dangers of formulating recommendations for action on the basis of insufficient data. Here was the essence of the European problem. Not only was it difficult in a practical sense to collect data, but also what did exist was unlikely to be based on common definitions or reporting standards. The definition of ITCs thus became, once again, a major problem. To resolve it, member States had to agree on the role of these services and the degree of acceptable competition for scheduled carriers. However, without accurate statistics it was impossible to determine the effects of scheduled/non-scheduled parallel operations.

The slow response of ECAC, as a body, to market trends is hardly surprising when difficulties such as these are considered. Nevertheless by 1961 NSIT was able to present its recommendations for the more detailed classification of non-scheduled services and the controls to be applied to them.

Successful compromise within the small NSIT study group, however, was not mirrored in the larger COCOLI - principally because a wider spread of interests required more precise, and

thus less easily acceptable definition of terms. Furthermore, even if acceptable definitions could have been agreed the liberalisations to be extended to the various types of service presented extraordinary difficult problems.

Certainly COCOLI itself was unable to resolve these and it was, therefore, left to the Fourth ECAC Session to attempt to reach a conclusion.

The Conference was faced with a basic dilemma:

"The question was whether the list of the main types of non-scheduled international flight appearing in APPENDIX 2 of the NSIT study group report could be accepted, or whether it should be modified in the light of the Netherlands proposal in WP/60 or the IATA comments". (195)

The "Netherlands Proposal" was nothing more than that existing definitions and practices in the Multilateral Agreement should be adhered to in further liberalisations (195.1) "IATA comments", however, are of greater interest since they reveal the IATA mentality towards non-scheduled operations in the very late 1950's. Indeed, it might be said that they indicate an attitude of mind divorced from the reality of a world of increasingly rapid change. IATA's belief in its own infallibility is in the author's view, nowhere more plainly indicated than in the following:

"...if differences prevail as between the terminology used by the Study Group and that enshrined in Resolution 0-45 it is not a matter upon which the IATA can usefully offer any observations...." (195.2)

The increasing urgency for common policies towards non-scheduled operations forced the Conference to adopt revised, and less liberal, proposals than those emanating from NSIT. In particular the regulations governing affinity charters were altered to incorporate the main elements of IATA Resolution 0-45. The mere adoption of acceptable definitions was only a partial solution, however, and of far greater complexity were the liberalisations to be extended.

The original NSIT report had recommended that the suggested categories of non-scheduled operations be treated in different ways under the various articles of the Multilateral Agreement. The study group had, after all, been established to consider further liberalisation possibilities and had undertaken the study of inclusive tours "enthusiastically" (195.3) Despite such a positive approach, however, severe problems faced the NSIT group. In particular in its search for opportunities for greater liberalisation it was forced to be cautious:

"....with regard to flights involving sale of capacity to the public, this was perhaps no more than a true reflection of the general attitude of Governments at large". (195.4)

In reality, though many Governments were happy to encourage ITC expansion on a bilateral basis, few would surrender their negotiating positions to the blanket authority of a Multilateral Agreement. Even the UK has reservations about such a step:

"She agreed with the Netherlands that there was room for considering a multilateral approach to the problem, (but) was not prepared to go as far as to apply Article 2, paragraph (2) of the Multilateral Agreement to inclusive tour operations". (195.5)

The essence of most Government's attitudes was undoubtedly that they simply did not know enough about inclusive tours to make extensive automatic traffic rights concessions. Thus, although the Conference was generally of the opinion that ITC's should be liberally treated, there was little indication that the member States understood exactly what the results of such "liberalisation" might be. The absence of firm statistics reduced the whole question of the impact of ITC expansion on scheduled carriers to conjecture.

In contrast the clear beneficial results for many European holiday areas, and consequently national balances of payment, were more easily assessed. In the absence of serious shocks to the European scheduled airline system, there was little to encourage ECAC to do anything other than to continue the leisurely assessment of ITC operations within Europe. Consequently, the outcome of the Fourth ECAC Sessions was that NSIT was given an expanded brief

to consider the principles necessary for the maximum possible liberalisation of ITC traffic.

Four aims were now included in the NSIT terms of reference:

1. To consider the study of non-scheduled commercial operations in Europe prepared by ITA.
2. To consider the principles which should govern the operation of inclusive tour charters with the object of establishing the maximum possible liberalisation of this type of traffic.
3. To study the question of the standard form of notification of authorisation of inclusive tour flights.
4. To consider the information gathered from states on the exact practice of ECAC member states in classifying inclusive tour flights or non-scheduled operators.

Only the second point created serious difficulties for NSIT. As usual the problem of definitions remained and it is clear that the continuing ignorance of many Governments on the fundamental results of greater ITC liberalisation, became a matter of serious concern for the group:

"...it was not possible at this stage, to propose new recommendations to COCOLI but suggested that the matter warranted further study since the volume of inclusive tours was, as indicated above, growing very fast and that it was now creating situations which it had not been possible to forecast. The study group felt that before constructing principles of liberalisation for inclusive tours, the conditions under which these tours were to be performed should be further analysed.... "

Although there was an increasing sense of urgency about the study of ITCs, ECAC as a whole does not appear to have become seriously concerned. This emphasises, yet again, that even as late as 1962, the liberalisation of ITCs was regarded as a domestic problem. The close relationships between many European States obviated the need for ECAC to determine urgently common policies. If the Conference was unperturbed by developments, however, NSIT was not. Alarmed, therefore by the quickening pace of non-scheduled intrusion into international services, the group recognised the need for new priorities. It was clearly pointless to consider general regulatory principles until such time as certain essential facts were known about the scale of operations. The new approach adopted by NSIT from mid-1963 onwards, therefore, was that propositions for future development could only be sensibly based on a full awareness of the current situation. That such an awareness had not yet developed is obvious. Bearing in mind the developments within the UK's aviation industry and the expansion of transatlantic traffic, which was building up by 1964, it is extraordinary that NSIT was unable to analyse the 1963 summer season traffic within Europe because of:

"...a basic difference in the compilation of the figures". (196.1)

and

"...a need for a common definition and interpretation of the terms used before strictly comparable statistics of inclusive tour traffic can be compiled". (196.2)

NSIT's awareness of a developing crisis, and the inability of the ECAC member States to take a macro view of non-scheduled operations both within, and without, Europe, is clear. The group's frustration with the stagnation of ECAC initiative on non-scheduled services and the excessive concentration on detail soon became clear. At a time when long-haul charters of all types were increasingly being operated and, in particular, the US and UK were indicating fundamental changes of policy towards transatlantic charters, ECAC's statistical information was virtually useless. This was simply because the member States continued to adopt a European view of such services and largely ignored "external" events. NSIT responded to the Conference's failure to take a wider view by pointing out the need for compromise and the urgency of positive action. A proper understanding of the size and role of charter services was unlikely as long as ECAC members:

"...whilst agreeing on the value of standardizing the basis on which states would furnish the statistics found it difficult to agree on a basis". (196.3)

The interval between the Fourth ECAC session in 1961 and the Fifth in 1964 did little to extend European understanding of the developing role of non-scheduled operations. Certainly there was a general awareness of new competitive forces in the international air transport industry, but, ECAC seems to have been unable to act decisively. NSIT, for example, was forced to note that it felt unable to continue with effective study of ITC

operations until such time as:

"...ECAC had confirmed the type of information required, and given the necessary directions". (196.4)

It was not only ECAC as a whole which failed to grasp the essence of the non-scheduled problem, however, for NSIT itself seems not to have recognised the true nature of the ITC industry. At a time when the British ATLB - a body with possibly a unique expertise and experience in regulating ITCs - was criticising its own inability to control all aspects of the inclusive tour package, the NSIT group dismissed the concept of including travel agents in its deliberations. It seems extraordinary that the group could on the one hand recognise the importance of travel agents who, "Not only influenced the price to be paid to the operator but also determined the price to be paid by the public", and on the other hand discuss possible investigation into their activities because the group, "As aeronautical authorities....were only concerned with airline operators."

Here, perhaps, is the essential flaw in ECAC's approach to the non-scheduled problem. To ignore a fundamental factor on the basis of a demarcation decision revealed a basic misunderstanding of the industry's restructuring which was taking place.

One reason for ECAC's continued leisurely investigation into all types of non-scheduled commercial operation stemmed from NSIT's

non-scheduled role. Thus, whatever the group might recognise as being necessary invariably had to wait for ratification by the full ECAC which was thus shielded from the day-to-day developments and the three year gap between full sessions tended to remove all sense of urgency.

If ECAC previously had been able to treat non-scheduled traffic growth in a detached manner, however, the same was not true after the 1964 Session. The work program endorsed by the Conference for the NSIT study group now included two specific items which indicated a new awareness of the non-scheduled problem. The items were:

1. The investigation of all national regulations governing the operation of non-scheduled services - including those of North America.
2. The question of intrusion by non-ECAC charter airlines into the European charter market.

Prior to 1964 it had been possible for ECAC largely to ignore the question of non-European charter activity. After this date, however, Europe lost the initiative - particularly on the North Atlantic - and was thus forced to take note of developments outside the ECAC States.

13.32 ECAC's Wider Role, 1965 to 1971

As with many other aspects of civil aviation development, 1964 was also a significant year for ECAC. The Fifth Session, meeting in that year, at last indicated a greater awareness of the wider issues of non-scheduled expansion. It is clear that the Conference now recognised the complementary as opposed to supplemental role of these services. Furthermore, the complex character of the operations it had so far been determined to "liberalise" was now better appreciated.

"As these flights, as distinct from regular services, play an essential part in encouraging specific types of traffic....the volume...increases proportionately every year. Although this phenomenon may have appeared to depend upon temporary circumstances in the beginning i.e. to benefit from the availability of aircraft of conventional design at low prices for marginal use, there is every reason to believe that these flights are acquiring a more permanent character than was originally supposed....the Multilateral Agreement...is undoubtedly a remarkable success thanks to the flexibility and liberal spirit with which Member States usually apply it in accordance with ECAC recommendations....other types of flight, such as inclusive tours...call for special regulations specially designed for them. Otherwise they would be liable seriously to prejudice the normal running of regular services which must indeed be the backbone of air transport and are not subject to the contingencies of travel agencies but respond to the more permanent need of public welfare". (196.5)

The new understanding of the role of ITCs in particular did not mean that it was any easier to determine regulatory policies

likely to be unanimously acceptable. Once again, therefore, the question of economic regulation was removed from the multilateral to the bilateral arena. Indeed, it might be said that the deliberations of the Fifth ECAC Session replaced the philosophy of multilateral liberalisation to encourage the expansion of non-scheduled operations, with multilateral caution and bilateral control.

The reason for ECAC's reappraisal of policy was, of course, the aggressive new United States attitudes towards transatlantic services of all kinds. Particularly disturbing for ECAC were the indications of unprecedented competition from the US Supplementals. Such a development raised questions of importance going back to the fundamentals of economic regulation of non-scheduled services. It is, important therefore, to understand the evolution of ECAC thinking on these matters.

Any effective European response to transatlantic developments inevitably required there to be proper collection of traffic statistics and analysis of them. From its earliest days the Conference had been hindered by the weakness of the non-scheduled data collection system. Consequently the first serious attempt at traffic analysis in 1963 failed because of the data's essential unreliability. The three years between the Fifth ECAC Session in 1964 and the Sixth in 1967 were spent by NSIT in considering "The extraordinary development of IT traffic". Indeed, so important was the statistics deficiency felt to be, that a

special sub-group was established to concentrate on this question. Despite their determined efforts, progress towards reliable and comprehensive statistical reporting was very slow. Towards the end of the three years, however, the NSIT group was able to claim a certain limited success:

"The statistical information submitted to the study group at its last meeting showed a substantial improvement. As a matter of fact, and in spite of some marginal inconsistencies that still exist, the statistics are broadly comparable and were a useful basis for considering the development of inclusive tour traffic in Europe". (197)

That it took nearly ten years continuous effort to reach this result is in itself an indication of the fragmented approach by ECAC members to regulation of this most important section of non-scheduled activity. Furthermore, ECAC's isolated preoccupation with European matters resulted in the non-scheduled statistics which now, at least, were becoming available, being completely inadequate for any assessment of the impact of intercontinental-traffic:

"....on intra-European traffic and the participation in the latter of airlines of non-ECAC Member States". (197.1)

Such a situation was particularly unfortunate in 1967 because of the long-delayed US incursion into transatlantic ITC operations was now imminent and there was very little time left for unhurried

study of market trends and possible regulatory devices.

A second question affected by new US policies was ECAC's overall responsibility for the travel industry. It will be remembered that initially the Conference accepted the basic tenet that, as an aeronautical authority, it should not concern itself with the activities of travel agents. There was some logic in this argument if only because ECAC was in a weak position when trying to introduce controls into areas technically outside its jurisdiction. Thus, many countries (including the UK) did not even allow their own aviation authorities to control non-aviation aspects of ITCs. This being so, it was unlikely that ECAC's attempts to expand its influence would have met with much success. Despite this very real constraint there is evidence that ECAC became increasingly aware from 1966 onwards of the necessity for controlling the activities of two organisers.

In recognition of this need, but cognizant of the practical difficulties in the way of the direct satisfaction of it, ECAC at its Sixth Session in 1967, adopted a general recommendation for the protection of charter passengers.^(197.2) The concern of ECAC went much deeper than this, however, and was influenced by its new understanding of the shape and size of the ITC industry in Europe. In particular, what was now becoming generally understood, was that non-scheduled air transport was essentially just one element in the matrix of European tourism. The serious implication of this service function was that the traditional balance between the two sectors of the air transport industry

- scheduled and non-scheduled - was of little consequence to those responsible for promoting inclusive tours. This being the case, the direction of development of European air transport became largely dependent on the actions of "non-aeronautical" tour organisers. They in turn were influenced by market demand for cheap holidays. Furthermore, it was difficult for any Government to attempt the reversal of trends and to seek to limit ITC expansion simply on aviation considerations alone. The huge market for ITCs in Europe demanded cheap air transport - regardless of the type of carrier supplying it - thus there was a natural affinity between the IT market and charter services. ECAC's concern with the latter made its eventual interest in all aspects of the IT operations inevitable.

ECAC's reassessment of its policies on commercial non-scheduled flights was characterised by the replacement of the intention to "liberalise" this sector with a new objective of controlling expansion. In that this represented a major change of philosophy it is important per se; however, such a change was no more fundamental than that already forced on IATA. In short, ECAC's revision of policy merely emphasised the important international consequences of a new competitive relationship between the scheduled and non-scheduled air transport sectors.

The decision by the United States CAB in 1966 to authorise transatlantic ITCs by the Supplemental carriers, though temporarily rendered invalid by legal proceedings, signalled the start of a

new phase in international non-scheduled operations. The immediate and pressing problem for ECAC was to develop a uniform interpretation of the CAB regulations. Some indications of the urgency of the situation may be gained from the fact that, for the first time, it was necessary for the Member States so-called Directors General of Civil Aviation to negotiate directly to determine a common position.

In view of the historically favourable attitude to ITCs prevalent within Europe, it is important to understand why the CAB's action created so much concern. It will be remembered that the US acted largely in response to an increasing European dominance in transatlantic scheduled operations. It was precisely to correct this situation that the CAB authorised ITCs by the Supplementals. If Europe was now alarmed at the prospect of ITC activity by these carriers, such a response was entirely reasonable in view of the declared US intention to re-establish a fair share of the transatlantic market. ECAC's own research had lead it to conclude:

"A simple analysis of air transport development data from the 1964 to 1967....would show the following conclusions;

- (c) The distribution of total European airline by markets shows the supremacy of the intercontinental and transatlantic market, with 60.5% of the total passenger-kms, 71.3% of the total mail ton-kms, and 79.6% of the total freight ton-kms, against 29.8%, 16.7% and 16.8% respectively in the intra-European market". (197.3).

From which it could be gathered, without going into a deeper analysis that an initial valid conclusion was:

"...although ECAC deals more specifically with intra European services it cannot afford to ignore the long-range services to and from Europe". (197.4)

Thus, if ECAC's lack of data on European ITC activity was a source of embarrassment, the advent of US ITC liberalisation measures in a market clearly so important to European scheduled carriers was a very serious matter. Reacting to this new and unexpected situation the ECAC Member States adopted a uniformly defensive posture to the US moves and to further unbridled expansion of non-scheduled activity. Such reaction indicated the start of a more considered approach to charter operations. The original extension of the Multilateral Agreement had never been intended to make non-scheduled operations seriously competitive for scheduled services. Despite this, ITC's and affinity charters expanded rapidly under bilateral arrangements. The entry of the United States into ITCs further expanded the market but in this case, because the intention was clearly to achieve market domination, ECAC's Member States were forced for the first time to assess the impact of non-scheduled liberalisation on scheduled operations.

Their conclusions were predictable and largely unanimous in expressing:

"...some anxiety...as to the consequences which intercontinental IT charter flights might have on the general economy of the transatlantic markets and particularly the carriers who provide scheduled services which it must remain the first duty of the administrations to ensure". (197.5)

To recognise the threat to their scheduled carriers was one thing, but to devise protective devices which would not antagonise non-ECAC Governments was another. The political interests in civil aviation made the imposition of restrictions on charter activity difficult. This was particularly true when it was the United States which sought new opportunity. That ECAC was aware of the delicate situation was evident.

"...in remarking this, I am merely noting a fact without any intention whatever, need I say, of suggesting to the Committee some sort of European coalition against the outside world either to the East or to the West". (197.6)

"...the German delegation wishes to point out in this connection that it does not consider the co-operation between European aviation departments to be a first step leading to a regional policy with protectionist intentions....". (197.7)

The Sixth ECAC Session in 1967 was, undoubtedly the one at which the Member States reassessed the role of the Conference and the future direction of their policies on non-scheduled operations. In particular they appeared to recognise, at least, the true nature of the non-scheduled sector. Thus, the belief that this sector's operations were by definition less

important or necessary than those of the scheduled operators, was now firmly rejected. Indeed, the proven ability of ITCs, in particular, to encourage the expansion of new markets was a final blow to the traditional view of the non-scheduled industry. The impending market entry by US carriers forced the realisation that the non-scheduled sector was both permanent and equally as important as the scheduled one. Furthermore, because the ECAC Member States had taken too casual an attitude towards intra-European ITCs and had failed to reach multilateral agreements on them, these services were now not properly covered by any Multilateral Conventions. The prospect of bilateral agreement between some ECAC Members and the US thus was a possibility and one which, ultimately, would have repercussions for all European Governments.

To some extent, the shock of the US actions jolted ECAC out of its lethargy by forcing the crystallisation of common attitudes. Previously it had been possible for many Governments to adopt double standards on charter services. Now, the US expansionist intentions forced the adoption of more realistic, and honest, positions. In view of the British Board of Trade's adoption of the common ECAC attitude towards ITCs on the North Atlantic - despite the fact that this contradicted the recommendations of the ATLB - the comments by the Director General of IATA to the Sixth ECAC Session are interesting:

"....Another vital area of concern requiring attention by ECAC is non-scheduled air transport, and I am pleased that the study group on non-scheduled services and inclusive tours (NSIT), ...is doing very useful work in this problem area. Nevertheless I would still raise the key question as to what the policy of governments really is regarding non-scheduled air transport....I believe that urgent governmental attention to the charter problem in Europe is needed...The European non-scheduled problem became really acute before governments started to deal with in in a serious way. Now the same problems are becoming acute in much wider contexts... I believe that there is a need for Governments to follow a consistent policy in their overall economic approach, and to define the role of air transport (and their national airlines) in the general economy of their countries. Having defined their policy the rest should be build up logically around this policy....as an example it does not make general economic sense for a government to allow its national carriers to acquire new and extremely expensive equipment...and at the same time allowing a free-for-all to charter operators".

Clearly, ECAC entered the period of most significant charter expansion, from 1968 onwards, with an entirely new attitude towards non-scheduled operators. Some of the more considered reaction to the new policies came from the Council of Europe in its response to the Sixth ECAC Session Report. Whilst acknowledging the existence of an unforeseen difficulty, the Council was at pains to point out that the basic question was whether or not the European Governments should restrict the expansion of new air travel opportunities on the grounds that the operators satisfying existing demand would thereby be damaged. Despite many unfortunate aspects of the CAB actions in suddenly altering its intentions, the Council was forced to point out that the public should not suffer as a result. If cheap air travel could be

supplied, the public should have access to it. Misdirection of air transport industry in the past did not justify restrictive correction in the present which would undoubtedly make air travel too expensive for the so-called mass travel market.

CHAPTER 14 THE RESTRUCTURING OF AN INDUSTRY

14.1 Introduction

This final chapter is concerned with the manner in which the various interested parties in international air transport came to terms with the mounting crisis within the industry which was so evident by late 1969. Though there was a multilateral effect of this resolution of difficulties, this should not be allowed to mask the very real and important domestic issues which had first to be resolved.

Both of the principle forces behind the drive for greater opportunity for non-scheduled carriers, that is the United States and United Kingdom, were pre-occupied with domestic considerations throughout the crisis period. The United Kingdom, having done most of the early promotional work on long haul charter services and, particular on the North Atlantic, having drawn United States' attention to the benefits likely to accrue from increased non-scheduled operations, found that its legislative weaknesses precluded any further effective direction of the developing industry. The United States on the other hand, had resolved the majority of its own problems and was principally concerned with developing means whereby its new policies could be implemented.

In the author's view there is no doubt that it was these two parties in particular which influenced the industry's restructuring. Their joint activity was instrumental in introducing entirely new concepts of tariff structuring into the international air transport industry. However important their activities may have been, however, the reaction to those activities from other Governments and the scheduled airlines of IATA is equally significant. Indeed, in the latter's case, the Association was itself responsible for a considerable part of the reassessment and restructuring process.

In this chapter, though the important roles of the UK and US are given considerable attention, the individual activities of other parties are also analysed. The first three sections, therefore, deal with United States and United Kingdom policies and domestic considerations. Section 14.2 deals with the crystallisation of US opinion on the competitive rights of her Supplemental carriers in international commercial operations. Section 14.3 is concerned with the domestic turmoil in the UK which began in 1968 and culminated in the introduction of a new Civil Aviation Act in 1971. The final section of the first three is devoted to analysing the interaction of UK and US policies. Following this, in section 14.5 the role of European authorities, acting through ECAC, is considered and finally, in section 14.6 the all important influence of IATA is discussed.

14.2 The Crystallisation of United States Intentions

The previous chapter indicated that by 1970 the policy review instigated by the Nixon Administration had uncovered enough information to allow the formulation of draft proposals for future principles of operation. The most significant aspect of these proposals was, of course, that the trend towards the steadily lessening United States dominance of international air routes should be halted and, if possible, reversed. The steady weakening of the US position had come about, it was believed, because foreign Governments were not interpreting the Bermuda Principles included in Bilateral Agreements with the US in the spirit they were intended. Thus, the absence of pre-determination clauses meant that many Governments encouraged their national airlines to provide excessive capacity on routes to the United States.

The need to redress the balance was not merely the result of considerations of national prestige, however, and of far greater importance was the renewed understanding of the economic value of the international air transport industry. The deterioration of the US balance of payments deficit threw into sharp relief the limited but important contribution that more judicious use of American carriers for international travel could make.

A vital feature of the new United States policy, therefore, was the emphasis placed on the importance of encouraging the wider

expansion of US carriers into international travel. This inevitably meant that the Supplemental carriers now became the spearhead of the new United States determination to increase its share of the air travel market.

If the intention was clear, however, there was little indication for the CAB as to how it should attempt to achieve this aim. The CAB, having only recently gained some measure of control over international non-scheduled operations by the Supplementals, was now faced with the daunting task of determining an equitable means whereby these carriers could compete with established scheduled airlines. Complicating the issue was the fact that the CAB's actions would affect not only US carriers but foreign ones as well and this inevitably implied some degree of conflict in foreign relations. Though the solution of the CAB's dilemma was unlikely to be rapid, nevertheless it was clear that the determination of the United States Government to improve the position of its airline operators in international services would force some structural change in the near future. The inevitability of this, coupled with the disturbing (for scheduled carriers) degree of market penetration achieved by charter operators in 1969, particularly, galvanised IATA into defensive activity.

The prime intention of the IATA tariffs which evolved was to negate the impact of US Supplementals's charter fares on transatlantic travel. There can be little doubt that IATA's

tariff proposals were competitive. Indeed, in a ruling that was in fact overtaken by events, the US Court of Appeals directed the CAB to rescind its approval of the IATA promotional tariffs "package" because the fares deprived the Supplemental carriers of their rights under the Anti Trust Laws.

Even without this decision from the Courts, however, the CAB had long been aware that the IATA promotional fares and in particular the so-called, "Charter Bulk Inclusive Tour" (CBIT) tariff, would likely to cause difficulties for the non-scheduled carriers. Neither would these difficulties be limited to a restriction of new traffic for there was serious cause for concern that the CBIT tariffs would actually allow scheduled carriers to erode the traditional markets of the non-scheduled operators. In its role as a mediator between the two sectors the CAB clearly had to solve a difficult regulatory problem and it was with some reluctance that it approved the CBIT fares. More worrying than this competitive challenge from IATA, however, were the wider implications of the Association's action. It quickly became clear that IATA concern at the impact of charter competition was influencing the attitudes of parent Governments of the scheduled carriers. Consequently there was a political as well as economic response to United States intentions. If the Supplemental carriers could have successfully countered the promotional activities of IATA, there was considerable doubt that they could cope so easily with the defensive and restrictionist policies of the European Governments acting through ECAC.

In the face of these two challenges to increased US participation in international air travel, the CAB had a clear choice. Either it could promote the Supplemental carrier's interests and thereby bring about a confrontation with ECAC or it could restrict their activities and risk severe criticism from the American public. The stark realities of this choice were that a conflict with ECAC was inevitable.

Once the decision to champion the cause of the Supplementals had been taken, an immediate hardening of US opinion may be detected. Thus, convinced that it faced a hard struggle with determined European Governments, the CAB sought, and obtained, powers of control over international air services operated into the United States. In particular the CAB was granted authority to restrict capacity offered by foreign scheduled airlines and was further empowered to limit the number of on-route charters⁽ⁱ⁾ offered by IATA airlines operating into the US.

It should, perhaps, be emphasised that this did not signify a move towards greater US restrictionism. Rather, the reverse is true and the purpose of the CAB's new powers simply was to give it some means of 'persuading' foreign Governments that they should act more reasonably towards United States carriers. The object of the new powers, therefore, was to enable the CAB to take retaliatory action against individual airlines whose Government persisted in inhibiting expansion of the Supplementals.

(i) These being charters operated between points normally catered for by scheduled services of the same airlines.

Following the draft proposals, the definitive new US policy on international air transport emerged in late 1970. It was significant in three vital respects. First, there was a firm intention to retain the basic regulatory framework established by Chicago. Second was the declared intention to maintain the IATA Conference machinery as the principle rate determining body. Finally, and most significant for the future structure of the whole industry, was the emergence of a new concept where the traditional distinctions between scheduled and non-scheduled carriers were replaced by a new market split based on the type of traffic carried. This redefinition of the difference between the two types of air travel implied an essential equality of opportunity for both. In its turn, this required there to be more stable operating climates for both sectors and this could only be achieved by the development of so called "Charter Bilateral Agreements". Bilateral Agreements covering the activities of operators in the mass leisure travel sector of the industry were a radical new idea. Previously these services, largely supplied by non-scheduled carriers, had been operated under the terms of the Chicago Convention. As was seen earlier this document granted little in the way of continuity of traffic rights for these services and instead provided only short term authorisations on a flight-by-flight basis. Such regulation was clearly incompatible with the United States desire to encourage the widespread expansion of Supplemental's activity.

The achievement of the US goal, therefore, was increasingly seen as depending on the development of stable operating environments for non-scheduled operators. In the United States view, this could only be satisfactorily provided by Bilateral Agreements extended to non-scheduled operations. Multilateral Agreements, it was claimed, had little applicability:

"...if we attempted to achieve a multilateral agreement limited to substantial commonality of charter types, it would probably be at the cost of further delay in the accomplishment of needed bilateral understandings and increased tourism business". (198)

In addition to the US Government's determination to seek Bilateral Agreements to cover the mass travel sector (initially, at any rate, the non-scheduled one) there was a determination as well to ensure that any expansion of this sector would not harm the scheduled carriers who, of course, included United States operators. Thus, for the CAB, a prime question for debate was how the increased activities of the Supplementals were to be effectively policed to ensure no serious erosion of the position of scheduled carriers. One particular area in which policing activity would be necessary was to control affinity charters. Though it was impending ITC operations across the Atlantic which first generated the defensive policies of Europe, in fact the most serious challenge came from affinity charters - whether legal or otherwise. Hand in hand with the determination to establish the Supplementals in fair and equal competition with scheduled

carriers therefore, was the need to effectively police affinity group charters. The blatant impossibility of satisfactorily controlling these charters merely hastened the United States moves towards a re-definition of the differences between various types of air traveller.

Similar problems were being faced by the UK and Canada and this commonality ensured that joint trilateral action was inevitable. A pre-requisite for such action, however, was a re-organised and improved UK regulatory system having as its principle feature a central authority capable of acting independently in all aspects of international air transport negotiations.

14.3 Restructuring the British System

By 1969 the weaknesses in the British air transport legislation had become self evident and serious. Three particular failures of the 1960 Act may be determined.

First, was the untenable position of the licensing authority, the ATLB. Set up ostensibly to regulate British civil aviation it had in fact been stripped of authority and effectiveness by the retention of Government interference with its decisions through the operation of the appeals system. Second and following

on from this first point, was a clear difference of opinion between the ATLB and the Board of Trade as to the direction of British international air transport policy, particularly in the mass travel market. Finally, as a result of these open conflicts and of other undesirable features of the system, the 1960 Act had clearly failed to create a stable working environment for the British Independent operators. Though the Act had tried to solve the intractable problem of the competitive relationship between the State Corporations and the Independents, it had patently failed to do so.

Recognising these unsatisfactory features of the system, the Edwards Report⁽¹⁶⁾ reached some firm conclusions as to what was necessary to improve the position. Of particular importance to this thesis are the Report's findings on the role of the Independents and the future policy towards charter operations.

The prime recommendation of the Report in this respect was that there should be clear Government direction of future policy so that the authority conducting the day to day licensing business could sensibly relate this work to long term objectives.

Significantly, the Report saw that objective as being:

"The primary long term objective should be to satisfy the individual customer at the lowest price consistent with an economic return on the investment and a level of safety equal to the best in the world". (16.13)

A further conclusion of the Report indicated an essential commonality between British and American thinking which was soon to achieve great significance. In terms of the division of the industry into the traditional categories of scheduled and non-scheduled, Edwards believed the existing sector definition to be outmoded and inappropriate. Consequently, though it was admitted that their principle activity should remain the provision of scheduled services, the Report saw no reason, per se, why the State Corporations should not enter the charter and inclusive tour markets.

If the United States policy review was to be noted for its directness of intention, the British document was significant for the extent to which it spelt out the course of action required to achieve the aim it recommended. Thus, at the centre of the new British system was to be a Civil Aviation Authority having the responsibility and the authority to conduct, independent of Government, the daily licensing and regulating business of the industry. Any division of responsibility which then existed was to be removed by the Civil Aviation Authority's (CAA) responsibility for:

"...the economic and safety regulatory functions at present dispersed between the ATLB, the Board of Trade and the Air Registration Board". (16.14)

Perhaps the most significant comment made the Edwards on the CAA was that an essential feature of the Authority's conduct of

its affairs was to be, "flexibility and experiment". Here at least was one indication of a rekindling of British innovatory activity in international civil aviation.

The Edwards Report was undoubtedly a masterful analysis of the problems of the British air travel industry. Its conclusions were clear and considerable guidance was given on the measures required to achieve the proposed goals. The translation of the recommendations into reality, however, required action by the Government and this considerably slowed the likely pace of implementation. Throughout 1969, therefore, while British Independent operators faced growing financial difficulties and the ATLB struggled with an impossible licensing task, the Labour Government considered the Edwards Report. The Government's proposals for implementing Edwards, published eventually in November 1969,⁽¹⁸³⁾ were thorough and complete and represented an almost complete acceptance of the Edwards recommendations. One major weakness remained, however, and this was that the Board of Trade:

"...should be empowered to suspend actions on a case, in a matter of air service licensing, on giving notice that it presented issues of policy which they wished to consider. This power would be exercisable either before or after the Authority had reached its decision and even though the Authority's decision, if reached was within the terms of the policy then in force". (183.2).

Evidently the Labour Government had been unable to accept that

the Authority could function as an independent body for the inclusion of the above clause indicated a fundamental refusal to relinquish Government direction of air service licensing policy.

On a more positive note, there were two features of the White Paper which were to become important later. First was the desire to see a more forceful relationship with IATA and second was the indication that the CAA would be encouraged to carry out tariff experiments treating each route in isolation rather than by the blanket imposition of any single policy.

In the event, the White Paper was never implemented owing to the impending General Election, however, in a manner almost identical to that of 1945 it transpired that Conservative intentions for the introduction of new legislation differed little from the Socialist proposals. Perhaps the most significant feature of the Conservatives' policy was that the CAA was very definitely to take on the completely independent role as originally envisaged by Edwards. Whether or not the result was a new Party in power, the General Election of 1970 came at a critical moment and, for a while, severely damaged the industry. Although policies had been formulated the lack of implementing action created a growing crisis. As one observer put it:

"...questions are now academic. What is quite clear is that the point has been reached when the future of British air transport depends on a fairly urgent political decision. If a licensing authority is established with rational and constructive terms

of reference, and which cannot lightly be overuled to suit political convenience,...the British share can be increased; or quite inevitably the independent carriers will be eliminated and a completely monolithic structure will emerge. The choice still exists but it may not do so for very much longer". (199)

The return of the Conservative Government in June 1970 and the subsequent publication of proposals for new air transport legislation was an event of extraordinary similarity to what had occurred in 1951. Just as before, it quickly transpired that Conservative policies for civil aviation were little different from those of the Socialists. Indeed, the Conservative proposals were poorly stated and left considerable doubt as to their real intention particularly so far as the powers of the CAA were concerned. Neither was the situation improved when the Civil Aviation Bill was first introduced in March 1971. It immediately became clear that far from establishing the CAA as an independent body the new Act would in practice place even more control over its activities than currently existed over the ATLB. The Act allowed for the Secretary of State for Trade and Industry to:

1. Control international fares.
2. Control international traffic rights.
3. Issue policy directives to the CAA.
4. Decide appeals.

Thus, all of the bad features which had brought the 1960 Act into such disrepute and had undermined the ATLB, were now included in the proposed new legislation.

In the event, it became evident while the Bill was passing through Committee stages, that the Conservatives did indeed wish the CAA to be an autonomous body and willingly made concessions to those who sought to limit the opportunity for Government interference in the Authority's licensing decisions.

In August the Civil Aviation Act 1971 came into effect and in April 1972, guided by the Government's "Civil Aviation Policy Guidance",⁽²⁰⁰⁾ the new Civil Aviation Authority began its work. With the administrative crisis resolved, the United Kingdom was once again equipped to restate its position in international air transport matters.

14.4 The Influence of British Air Transport Policy

14.41 Introduction

Previous chapters have emphasised the leading role of British policies in international air transport. In particular, liberal treatment of transatlantic charters encouraged the United States to seek major new opportunities for the Supplemental carriers on this route. The consequences for Europe of this increased liberalisation were considerably less desirable than those for the British Independents who stood to gain from entry into a largely undeveloped market. Of all the European States, the UK was

perhaps the only one with a sufficiently large non-scheduled sector to be able to expect some benefit from the general expansion of the transatlantic charter industry.

British influence therefore, may be seen to have directly encouraged US expansionist policies. The dilemma created by the need balance national requirements against European interests was amply illustrated by the clash between the Board of Trade and the ATLB concerning British transatlantic charter policy.

More than any other single country, therefore, Britain represented the middle road between European defensiveness and American aggressiveness. For a period when the essential restructuring of the British air transport system was taking place, the initiative was lost and the resolution of the question of where her true interests lay became virtually impossible. Apart from during this transient period, however, the UK thus found itself in the role of a quasi-mediator between opposing views on either side of the North Atlantic.

A second stage in British policy development may also be determined. This followed the establishment of the Civil Aviation Authority and was characterised by its gradual disentanglement from collective European policies and establishment of more positive national goals.

A major element in the resurgence of British independent policy formulation was the existence of cabotage routes. These assumed

considerable importance in the UK's moves towards encouraging international reassessment of the role of civil aviation. In particular they allowed the UK to have considerable influence on tariff policies within IATA.

The interaction of British policies with those of IATA, European Governments and the US therefore emerges as being of essential importance to the restructuring of international civil aviation.

14.42 British Adoption of the European View

The collapse of the British regulatory system in the late 1960's and the patent impotency of the ATLB made the determination and implementation of a British independent policy in international air transport virtually unattainable. The increased influence of the Board of Trade ensured that the ATLB became steadily less able to act in a manner, as it saw it, calculated to further the development of British civil aviation. Instead, the influence of international relations could be seen to be playing a paramount role.

As has been shown, the erosion of the ATLB's power of independent action was a steady rather than sudden process. The Board was therefore able to pursue, for a time, policies encouraged by the Ministerial Policy Statement of 1965. Consequently it was liberal in its charter licensing decisions. The encouragement which this

gave to the United States was instrumental in opening up the transatlantic route to ITC operations and it was the prospect of this which directly created alarm and defensiveness within Europe. Since the characteristics of US ITCs were such that a stop was mandatory in three different places, no European State could formulate its regulatory policies in isolation. The consideration of the effects on international relations, therefore, encouraged the Board of Trade to concur with the European position.

In consequence of this division of interest an extraordinary situation developed in which the ATLB in the interests of British civil aviation recommended:

"...no restriction should, in our view, be placed on the operation of United States carriers into the United Kingdom on (ITC) charters of this kind....the participation of British carriers in this business should be fostered...." (171.4)

The BoT, however, signalled its intention to follow the highly restrictive approach of ECAC. Nowhere is the clash of interests better illustrated, for, in following ECAC philosophy the BoT effectively decided to further the interests of only one section of British air transport - the State-owned scheduled carriers. ECAC's defensive policies were almost entirely directed towards the protection of scheduled carriers and by supporting ECAC policies the BoT gave its tacit approval to such a philosophy.

Though the question of transatlantic ITCs was responsible for encouraging collective European attitudes, there were in fact two quite separate issues in the controversy. The first of these was the need for control of ITCs and their impact on scheduled services and the second was the less developed problem of closed group charters. Despite the fact that it was ITCs which generated ECAC concern, closed groups or affinity charters in fact became much more significant. It was a very similar situation to that in the UK immediately prior to the introduction of the 1960 Act. Then, preoccupation with ITCs had placed these services under considerable scrutiny while at the same time leaving closed-group charters virtually outside the regulatory system. Initially, therefore, the charter "problem" experienced by European States was simply an awareness of the competitive impact of ITCs and the inability of European non-scheduled operators to match the US Supplementals.

Despite earlier conclusions by ECAC that:

"...inclusive tours in Europe make a contribution to the economy of the countries to which they are operated...and...are not therefore necessarily detrimental to the scheduled carriers and have, on the contrary, in some cases at least, been the forerunner of new scheduled services, thus generating new traffic for the scheduled carriers". (195.6)

by 1969 the wider implications of transatlantic ITCs were forcing more thoughtful attitudes.

"...since 1966 the financial situation of all the European scheduled airlines operating on the North Atlantic had deteriorated considerably....
...traffic development was particularly disappointing.. load factors decreased...This decline is due not to inclusive tour charter flights but to a more active penetration by the American supplemental carriers. The above finding calls for caution with regard to the uncontrolled admission of new airlines, whether supplemental or independent European carriers, into the North Atlantic inclusive tour charter market. It is of prime concern to national administrations to safeguard the sound economy of the operators designated to perform scheduled services which might be jeopardised by intercontinental IT charter flights by operators who do not have the obligations imposed on the scheduled carriers....This consideration alone justified a control on the activities of independent of supplemental carriers engaged in ITC operations....." (202)

In effect, the problem facing regulatory authorities was, as ever, that of accurately categorising ITCs . Affinity charters were easily and correctly identified as constituting a service not normally available from scheduled carriers. Although abuse of the system created difficulties it may be argued that there should never have been any direct competition between normal scheduled services and affinity charters. No such argument may be extended on behalf of ITCs which were fundamentally similar to scheduled services in that they were an individually ticketed form of transport.

Therefore the question of the complementary relationship between ITCs and scheduled services was less easily resolved. This inherent difficulty was reflected in ECAC's attitude to impending Supplemental activity and the BoT's cautious approval of

American ITC programmes. If defensive restrictionism was an effective counter to the transatlantic ITC problem, however, affinity group charters represented a fundamentally different question. This was no more or less than the nature of the fundamental distinction between scheduled and non-scheduled operations.

The size of affinity charter operations by 1969 makes it clear that they satisfied a considerable market demand. Since that demand was demonstrably not being met by the scheduled carriers it is evident there was a weakness in the IATA tariff structure. The role of IATA in creating opportunity for affinity charters must, therefore, be considered.

14.43 IATA Tariff Policies

Throughout the 1950's the absence of serious charter competition had allowed IATA tariff structures to remain relatively simple. As the impact of non-scheduled operations became more acute, however, it was necessary for IATA to react with promotional fares of its own. Unfortunately the need for unanimity at Traffic Conferences inevitably made compromise solutions essential. Consequently there developed an extraordinarily complex tariff structure as the scheduled carriers attempted to stimulate new markets without fully understanding the elasticities of demand of them.

The culmination of these problems was to be seen in the North Atlantic fares package due for implementation in October 1969. It was abundantly clear that the long gestation period of these proposed fares had done little to make them more realistic. In addition to their complexity they appeared to be based on a doctrine of reducing promotional fares at the same time as increasing normal ones. Such discriminatory policies were guaranteed to antagonise IATA's traditional critic, the CAB, as indeed was immediately the case.

Though the fares package included the CBIT fares which considerably alarmed non-scheduled carriers, the effect of these tariffs was in practice limited. As an attempt to enter the mass travel market, therefore, the 1969 North Atlantic fares package may only be considered as a partial success. Its weakness was that it failed to recognise the need for fundamental change. Ironically it was the complexity of the compromise reached which led directly to IATA's first serious attempt to re-direct tariff policy towards making air travel more attractive to the mass market.

14.44 Re-assessment of Traditional Roles

The fares package discussed above was never implemented because the Italian airline Alitalia withdrew from the agreement and precipitated an open rate situation. In the ensuing discussions

the essential features of IATA's difficulty became clear; scheduled carriers could not compete directly with charter operators for the same traffic.

This was not simply a regulatory difficulty since it could be overcome by the creation of a non-IATA charter subsidiary. Such a device, however unethical, was at least a practical method of directly combatting charter operations. The real problem was that IATA airlines were, by definition, scheduled, and therefore had to devise promotional tariffs suited to scheduled operations. Such an objective placed enormous importance on the achievement of break even load factors. The determination of these was a question of delicate balance between increased traffic volume and reduced individual tariffs. IATA's problem, therefore, was not simply to erode the charter carriers' market. What it really had to do was to develop low-fare scheduled services which catered for an as-yet untapped section of the mass-travel market.

The open-rate situation on the North Atlantic failed to produce the predicted price war. In practice there was considerable commonality of fare offered by the major carriers. This in itself indicated that charter competition and declining finances combined to make scheduled carriers extremely cautious.

Despite this, the open-rate situation allowed airlines to test their hypotheses in the open market. Response from the public was varied, and impossible to monitor if only because the tariff

structure was thereby made even more complex than ever.

Of all the experimental tariffs, that of Air Canada was undoubtedly the most revolutionary since it sought nothing less than the abandonment of the affinity regulations and the opening of group charters to any group over a certain minimum size. Such a concept was too advanced for general acceptance and Governments were universal in their rejection of it. Despite this resistance, the airline continued to press its proposal throughout the Traffic Conference convened to seek agreement on North Atlantic fares. In the face of the need for unanimity and compromise, however, many of the more radical experimental tariffs - including Air Canada's - were found to be unacceptable. When the open-rate situation was once again closed, therefore, the IATA fares package was seen to be once again conservative and complex.

Valid reasons for such reactionary behaviour may, of course, be suggested. Speaking at the time, however, Knut Hammarskjöld the IATA Director General pinpointed the essential cause of both the problem and IATA's response to it. The real difficulty, as he saw it, was that the established and accepted relationship between scheduled and non-scheduled carriers was based on the false premise that the distinction between the two sectors was both correct and realistic.⁽²⁰¹⁾

So long as some effective regulation of charter operations could be devised and implemented the distinction between the two sectors had some chance of sensible application. Once the regulation of charters broke down, however, it was patently clear that their clientel could come from the same market as that of the scheduled carriers. The impact of group charters on scheduled services was therefore largely the result of fraudulent composition of the group. Now the legality of such groups was itself an artificial concept based on IATA resolution 045. This had been designed to restrict affinity charters and that restraint had no reason to be imposed other than to protect scheduled carriers.

Two principle features of the desirable relationship between scheduled and non-scheduled carriers may be determined. First the opportunity for continued development of service orientated traffic and, second, a means whereby scheduled and non-scheduled operators could complement each others' activities in the mass-travel market.

The existing system and the 1969 IATA fares package patently failed to satisfy these requirements. Much of the traditional scheduled traffic was being diverted to illegal charters and scheduled carriers could not compete in the mass-travel market without themselves establishing non-IATA charter subsidiaries to circumvent IATA regulations.

14.45 British Independent Action

Despite the general concurrence with European policies Britain had a singular advantage of opportunity for independent action. The many cabotage routes available to UK carriers provided ample scope for the implementation of experimental tariffs. In the past the cabotage routes had been under-used in this role and fares structures on them had been IATA orientated. By 1969, however, it was recognised that a counter to group charter operations was urgently required and that policing of the existing regulations was unlikely to be effective. Furthermore the need for some positive action was also becoming evident in view of IATA's continuing failure to evolve the necessary policies. Responding to this need the ATLB authorised BOAC to introduce low-fare individual ticketed services to the Caribbean in 1970.

Marketed under the promotional name of "Earlybird" the BOAC scheme may be recognised as the first serious attempt to restructure international tariffs to reflect the new understanding of the true differences between traffic types.

Earlybird tariffs were characterised by having one major constraint; the need for a firm, non-refundable booking three months in advance. The concept was simple and went to the heart of the problem. In contrast to other promotional devices which could be described as discriminatory, the Earlybird tariffs were

completely equitable. They recognised the need for co-existence of two markets, the one price - orientated and the other service-orientated. Consequently passengers were presented with a clear choice which merely required them to place a value on flexibility of travel arrangements.

From the airlines' point of view the success of such a concept, indeed, its very introduction in the first place, depended on the ability to balance demand from the two sectors. Furthermore, that balance would vary between different routes. The aim as always, was to avoid the overall dilution of revenue and to ensure that the scheduled services on which "Earlybird" passengers travelled, retained all the necessary characteristics of a traditional scheduled operation and thereby remained attractive to the service orientated passenger. The complexity of the task is self evident and it is significant that only the introduction of the on-line computer reservation system BOADICEA allowed the airline to monitor route traffic characteristics to the required level of accuracy.

Despite the encouraging results of the "Earlybird" tariffs it was no easy matter for BOAC to persuade other IATA airlines of the soundness of the so-called "Advance Purchase" concept. Thus, by mid-1971 the continued resistance of other IATA airlines to BOAC proposals was creating an untenable situation. Falling yields indicated a growing urgency for some type of action and the British were more than convinced that they had the key to

the problem.⁽²⁰⁴⁾ However certain they were, their operational experience of the new concept was unique. It was hardly surprising, therefore, that the general acceptance of Advance Purchase (APEX) tariffs was slow. Additionally it caused open-rate situations and strained the IATA machinery to the limits. Inevitably, however, the APEX concept was finally accepted and in December 1971, IATA airlines adopted the BOAC proposals.

In promoting APEX tariff experiments on cabotage routes, the British made a singular contribution to the necessary restructuring of IATA tariffs. These fares allowed scheduled carriers to re-enter the leisure travel market and went some way towards encouraging the co-existence of two travel sectors which had previously been incompatible.

Complete resolution of the problem, however, depended on the ability to replace the existing group charter regulations with a more equitable and simple control.

14.46 Rejection of the Affinity Concept

It was impossible to claim that IATA's failure to match the charter operators' expansion of interest was simply an indication of the Association's lack of competitiveness. Fair competition from charter operations could undoubtedly have been met. What was

impossible was for IATA scheduled carriers to combat the fraudulent use of affinity group regulations.

It was this problem - how to re-write the regulations governing charter flights - which now exercised the minds of regulating authorities. It was not enough to simply to ban charters since the public's willingness to take part in "illegal" group charters indicated the extent of the market demand. A rise in consumer awareness in the early 1970's increased the pressure for replacement of affinity charters with an alternative rather than the abandonment of the whole concept.

The first move towards the removal of affinity constraints came from the British who, it must be admitted, were seeking to protect their interests. The sequence of events was further indication of a renewed determination to protect British air transport generally. To achieve this aim it was clear that independent action and bilateral agreement would have to take precedence over the desire for unified European action.

World wide non-conformity of affinity regulations meant there was considerable scope for evasion of the standard Resolution 045 provisions. Some Governments placed no restriction whatever on affinity charters. By mid-1971 the continued resistance of the Australian Government to increased legal group charter activity from Europe, had encouraged many charter operators to circumvent the problem. The lax attitude of the Singapore and Malaysian

Governments to affinity regulations allowed non-affinity group charters to operate freely. Connections with short distance scheduled flights at either end of the charter flight provided low fare travel between Europe and Australia.

Alarmed at the incursion made by such charter services, the BOT authorised BOAC and Caledonian (the newly formed "second force" airline) to fly non-affinity group charters directly between the UK and the Far East. These exemptions from the affinity group rules in what became known as the Australian "indirect charter market" had an immediate effect on the whole air travel industry. BOAC's scheduled service traffic losses to Australia were at least off-set by charter operations by the non-IATA subsidiary BOA Charter Ltd. The Australian carrier QANTAS, however, suffered heavily and in consequence made a unilateral fare reduction outside the IATA Traffic Conference machinery in order to retrench its position in the scheduled market.

As a low-fare scheme the temporary exemption from affinity rules had little to commend it since it placed little if any constraint on the charter passenger. Consequently it was not a concept which in general use would have created equitable conditions of competition between scheduled and non-scheduled carriers. Nevertheless it was yet a further indication of British determination to act independently if necessary to achieve the goals felt desirable.

The affinity exemptions in the indirect Australian charter market was one of the last acts of the old British regulatory system. The exemptions were still in force in March 1972 when the Civil Aviation Authority was established and although there was a temporary extension of the dispensation it was clear that the CAA had other plans for the resolution of the affinity charter problem.

It was inevitable that any British plans for the replacement of the affinity group charter concept could not be implemented without reference to policies of other regulatory bodies. Nevertheless, Britain had now demonstrated a new determination to pursue independent policies. Furthermore, the CAA was established with sufficient powers to act without further reference to Government. All that was now needed to translate the British initiative into positive action was the emergence of a foreign Government prepared to co-operate in the replacement of group charters with more equitable operations. It was, perhaps, inevitable that the necessary favourable response should have come from North America.

14.47 The Final Phase - The Coincidence of British and North American Policy.

In April 1972, the inherent difficulties of policing affinity charters had merely served to increase the CAB's determination to

curtail illegal transatlantic charter abuses.⁽²⁰⁵⁾ In the UK there was similar determination to solve the problem but the CAA was intent on a fundamental re-appraisal of policy rather than simple sanctions against illegal groups. In the words of the Authority's chairman, turning passengers off illegal charter flights was "not a very civilised way of operating a system".⁽²⁰⁶⁾ This indeed was the essence of the new approach for the CAA. Passengers should not be penalised simply because they made use of services not provided by scheduled airlines, or for that matter, because those services detracted from the economic performance of scheduled carriers. Similar conclusions were being reached in the United States where the CAB began to question whether there was an essential anomaly in a system which penalised the public for travelling by non-IATA carrier on a flight which broke the IATA rules.

By June 1972, the individual conclusions of European and American authorities had coalesced around the CAA's proposals for replacement of affinity regulations with an extension of the APEX concept. The variations on the CAA's theme were numerous but all had one common feature. This was the requirement for a firm advance booking by any passenger seeking a low fare. Such a simple constraint was evidence of recognition that the air travel market had two equally important sectors which could co-exist quite happily provided the essential motivating characteristics of the traffic were understood and used as a means of self regulation.

Despite this general acceptance of the British proposals in mid-1972, there was little evidence at the time to indicate that rapid progress would be made in implementing them. Europe, through ECAC, had in mind a period of some years for continued discussions and refinement. In view of this, it is surprising that, in fact, a decision to introduce the new concept of Advanced Booking Charter (ABC) was taken in October 1972.

The speed with which the agreement was reached was entirely due to a new aggressiveness evident in British air transport policy. It was a determination on the part of the British, to introduce ABC - type tariffs which forced the pace. The UK always made it clear that failure to reach multilateral agreement would only result in unilateral action on her part. There can be no doubt that the seriousness of the British intention to pursue an independent course of action was instrumental in encouraging the other European Governments to accept the new concept.

CONCLUSIONS

1. Civil aviation in the United Kingdom has been divided into two sectors - private and public. The legislative Acts which created this situation consistently reserved scheduled services for the State Corporations. Private operators were forced to concentrate on non-scheduled services. This division of activity was not based on aviation considerations.
2. The legislation of international air services has been similarly based on largely non-aviation considerations. Regulations governing non-scheduled commercial activity were ill-conceived and by default gave much opportunity for expansion. British Independent airlines have been responsible for the major exploitation of this facility for growth and gained considerable support from the British Government. The principle initial motive of the Government was to maintain a strategic transport reserve without eroding the traditional market of the State Corporations.
3. The military value of the Independents was responsible for their early survival in the face of unsympathetic legislation. Few of them accepted their non-scheduled status, however, and the majority preferred to consider themselves as potential scheduled operators. This attitude limited their initial contribution to the refinement of inclusive tour techniques.

4. European countries remained ignorant of the size and the rapid expansion of inclusive tour operations until the mid-1960's. Their failure to appreciate the nature of the problem stemmed from a lack of statistical data. This, in turn, was a symptom of the inappropriate definitions of "scheduled" and "non-scheduled" services. The United Kingdom profitted from the general lack of understanding by European Government and encouraged the growth of inclusive tours by British Independent operators.
5. In 1965 the Labour Government altered the course of development of British civil aviation licensing policy. For the first time the Independents were forced to recognise that their non-scheduled role was likely to become permanent. The Government offered strong support for non-scheduled activity as a consolation. This encouraged the expansion of the Independents into long-range charter operations.
6. Interest by the United States in international non-scheduled services was limited until its own civil aviation industry was threatened by the adverse effects of the Bermuda Principles. Three factors then combined to force reappraisal of policy
 1. A poor balance of trade situation
 2. A steady weakening of the American position in international scheduled services.
 3. The prospect of excess Supplemental capacity being released by the ending of the Vietnam War.
7. The entry of the United States into the transatlantic charter market was responsible for forcing a more realistic view of the scheduled/non-scheduled relationship. ECAC and IATA were faced with the

the reality of an untenable situation.

8. Consistently constructive pressure was brought to bear by the British. The pace of tariff restructuring and of reassessment of traditional concepts has been mainly the result of the effects of British air transport policy.

Books and periodicals

"Harvard",

"Flight International",

"Aviation Week",

"Interview",

"The Aeroplane",

"The Economist",

"The Times",

"The Journal of the International Institute of Statistics",

"The Board of Trade Journal",

Miscellaneous statistical information and comment on

developments has been obtained from publications

Europe

BIBLIOGRAPHY

General

In addition to the specific references shown below much general background information has been obtained from the following journals and periodicals:-

"Hansard".

"Flight International".

"Aviation Week".

"Intervavia".

"The Aeroplane and Commercial Aviation News".

"The Economist".

"The Times".

"The Journal of the Chartered Institute of Transport".

"The Board of Trade Journal".

Miscellaneous statistical information and comment on air transport developments has been obtained from publications of the following bodies:-

The Civil Aeronautics Board (CAB).

The International Air Transport Association (IATA).

The International Civil Aviation Organisation (ICAO).

The Insitiut du Transport Aerien (ITA).

European Airlines Research Bureau (EARB).

1. AIR TRANSPORT ASSOCIATION OF AMERICA, "To Many Flights?", Washington (1969)
2. COOPER, J.C., "The Right to Fly", Henry Holt & Co., New York (1947), Ch.7.
 - 2.1 op.cit. pp. 28-36
 - 2.2 op.cit. pp. 153-156.
3. FAUCHILLE, "Annuaire de l'Institut de Droit International", 19 (1902) pp. 19-114.
4. AERIAL NAVIGATION ACT, 1911, 1 & 2 George V, Chapter 4.
5. AERIAL NAVIGATION ACT, 1913, 2 & 3 George V, Chapter 22.
6. CIVIL AERIAL TRANSPORT COMMITTEE, "Final Reports", Cmnd 9218, HMSO, London (1918).
 - 6.1 op.cit. p.5, p.17.
 - 6.2 op.cit. p.17.
7. THOMAS, A.J., "Economic Regulation of Scheduled Air Transport", Dennis & Co., New York (1951), Ch.4.
8. PARIS PEACE CONFERENCE, "Convention Relating to the Regulation of Aerial Navigation", Paris (1919), Ch.1. Article 1.
9. COOPER, J.C., "Some Historic Phases of British International Civil Aviation Policy", 'International Affairs', April 1947, pp.189-201.
10. 'FLIGHT INTERNATIONAL', 25 December 1919, "Editorial: What others are doing".
11. LISSITZYN, O.J., "International Air Transport and National Policy", Council on Foreign Relations, New York (1942).
 - 11.1 op.cit. p.5.
12. CHERINGTON, C.R., "The Essential Role of Large Irregular Air Carriers", 'Journal of Air Law and Commerce', (1952), xix, p.411.

13. H.M. GOVERNMENT, "British Air Services", Cmnd 6712, HMSO, London (1945), para 27.
- 13.1 op.cit. paras 1-3.
- 13.2 op.cit. para. 16
- 13.3 op.cit. para. 5
- 13.4 op.cit. para. 30
- 13.5 op.cit. para. 27
14. BRITISH EUROPEAN AIRWAYS CORPORATION, "Annual Report and Accounts 1962 - 63", HMSO, London (1963), p.13.
15. 'THE TIMES', 6 February 1964, "Transcript of a letter from the Minister of Civil Aviation to the Chairman of BOAC", p.16.
16. COMMITTEE OF INQUIRY INTO CIVIL AIR TRANSPORT, "British Air Transport in the Seventies", Cmnd 4018, HMSO, London (1969), para. 809.
- 16.1 op.cit. para. 818
- 16.2 op.cit. para. 13
- 16.3 op.cit. para. 53
- 16.4 op.cit. paras. 859-865
- 16.5 op.cit. paras. 95, 102
- 16.6 op.cit. para 98
- 16.7 op.cit. paras. 626-655
- 16.8 op.cit. para. 726
- 16.9 op.cit. para. 631
- 16.10 op.cit. Table 3.3, p.22
- 16.11 op.cit. paras. 704-719
- 16.12 op.cit. para. 718.
- 16.13 op.cit. p.xii.
- 16.14 op.cit. p.xiii.
17. 'THE ECONOMIST', 14 August 1954, "Five Dozen Viscounts", p.537.
18. GOEDHUIS, D. "Idea and Interest in International Aviation", Nijhoff, The Hague (1947).
19. THURNTON, R.L., "International Airlines and Politics", Michigan International Business Studies, University of Michigan Press. (1970).
- 19.1 op.cit. p. 165.
20. 'THE TIMES', 3 September 1964, p.10.

21. STRASZHEIM, M.R., "The International Airline Industry",
The Brookings Institution, Washington (1969)
p.9.
22. CIVIL AERONAUTICS BOARD, "The Impact on the Balance of
Payments of the Air Transport and Aircraft
Industries", Washington (1965) p.2.
22.1 op.cit. p.3.
22.2 op.cit. p.32
22.3 op.cit. p.26.
23. BURNS, R., "What are Airlines for?", 26th Brancker
Memorial Lecture, The Chartered Institute of
Transport, London, (1969).
24. 'FLIGHT INTERNATIONAL', 31 August 1967, Letters, "In
Defence of the Independents". p.344.
25. BOARD OF TRADE, "The Safety Performance of UK Operators:
Special Review", HMSO, London (1968), para.164.
25.1 op.cit. para. 17
25.2 op.cit. para. 162
26. BEVERIDGE, W.H., Lord. "Social Insurance and Allied
Services", Cmnd 6404, HMSO, London (1942).
27. WILLIAMS, J.E.D., "Holiday Traffic by Air", 'Journal of
the Chartered Institute of Transport', May 1968.
27.1 op.cit. p.375
27.2 op.cit. p.372.
28. WHEATCROFT, S.F., "Air Transport Policy", Joseph, London
(1964), p.46.
28.1 op.cit.
28.2 op.cit. p.80.
29. RICHMOND, S.B., "Regulation and Competition in Air
Transportation", Columbia University Press
(1961), p.14.
29.1 op.cit. p.7.

30. H.M. GOVERNMENT, "International Air Transport", Cmnd 6561, HMSO, London (1944), para. 6(i).
- 30.1 op.cit. para 14.
- 30.2 op.cit. para. 6(iii)
- 30.3 op.cit. para 7(iv)
- 30.4 op.cit. para 4.
31. CIVIL AVIATION CONFERENCE HELD AT BERMUDA, Jan 15 to Feb 11, 1946, "Final Act and Agreement Between the Government of the United Kingdom and the Government of the United States of America relating to Air Services between their respective Territories, Bermuda, Feb 11, 1946. Cmnd 6747, HMSO, London (1946), para 1.
- 31.1 op.cit. Resolution 6.
- 31.2 op.cit. Annex II (b)
- 31.3 op.cit. Appendix 1, Article II.
- 31.4 op.cit. Resolutions 3,4.
- 31.5 op.cit. Annex II, para (e).
- 31.6 op.cit. Annex II, para (j).
- 31.7 op.cit. Annex II, paras (a), (b),
32. CIVIL AERONAUTICS ACT 1938, "Policy guidance for the Civil Aeronautics Board", Title 1(c).
33. 'HANSARD', 126 H.C. Deb 5s. 1622.
34. TILLINGHAST, C., "Evidence to the US Senate Sub-Committee on Aviation", Reported in: 'Flight International' 11 February 1971, p.185.
35. HALABY, N., Reported in: 'Flight International', 13 May 1971, p.669.
36. AIR TRANSPORT LICENSING BOARD, "Twelfth Report", HMSO, London (1972), para 11.
37. 'Flight International', 6 July 1972, p.3.
38. O'CONNOR, W.E., "Economic Regulation of the World's airlines", Praeger (1971), p.19
- 38.1 op.cit. pp.37-39
- 38.2 op.cit. p.46.

39. HALL, M., and PECK, W., "Wings for the Trojan Horse",
'Foreign Affairs', (1941), January, xix, p.347.
40. COOPER, J.C., "Some Historic Phases of British International
Civil Aviation Policy", op.cit. p.196.
41. INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO 1944,
'The Final Act', Section 8, "Standard form
of Agreement for Provisional Air Routes".
- 41.1 op.cit. 'The Final Act', Resolution viii
42. INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO 1944,
Conference Document 49, I/6/ Operation of
Air Services on Prescribed International
Trunk Routes".
43. INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO 1944,
Conference Document 48, I/5/ "Revised Preliminary
Draft of an International Air Convention".
44. INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO 1944,
'Convention on International Civil Aviation,
Chapter II, "Flight over Territory of
Contracting States", Articles 5,6.
45. KEENAN, P.B., LESTER, A., McMAHON, J.F., (eds),
"Showcross and Beaumont on Air Law",
Butterworths, London (1974), Volume 2,
Appendix A, pp.12-16.
- 45.1 op.cit. Volume 1. p.157
- 45.2 op.cit. Volume 1, pp. 208-209
- 45.3 op.cit. Volume 1, p. 313.
46. INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO 1944.
"International Air Services Transit Agreement.
- 46.1 op.cit. Article 1. Section 1.
- 46.2 op.cit. Article 1. Section 5.
Article 2. Section 1.
47. US. DEPARTMENT OF STATE, "Joint Statement by the US and
British Governments, 19 September 1946",
DEPARTMENT OF STATE BULLETIN', Volume 15,
(378) (1946), p.577-578.

48. LITTLE, V. "Control of International Air Transport",
'International Organisation', February 1949, p.31.
49. INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO 1944.
"International Air Transport Agreement".
50. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Report of the
Conference on Co-ordination of Air Transport
in Europe, Strasbourg, April-May 1954",
ICAO DOC 7575-CATE/1, Annex 3, paras 4-6.
- 50.1 op.cit. Part 1, paras. 13-15
- 50.2 op.cit. Part V, Recommendation 28.
- 50.3 op.cit. Part 1, Recommendations 5,6.
51. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European
Civil Aviation Conference, Second Session,
- Records of the Sessions", ICAO DOC 7799-
ECAC/2, (1957), Volume 1, para.51.
- 51.1 op.cit. Volume 2, Working Paper 7.
- 51.2 op.cit. Volume 3, "Minutes of the 2nd Meeting
of commission 1 - Sub Committee A - Commercial
rights.
- 51.3 op.cit. Volume 2, Working Paper 50.
- 51.4 op.cit. Volume 1, Recommendation 30.
52. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European
Civil Aviation Conference, Third Session,
Records of the Session", ICAO DOC 7977 -
ECAC/3, Paris (1959), Volume 2, Working Paper 75.
- 52.1 op.cit. Volume 2, Working Paper 94.
- 52.2 op.cit. Volume 2, Working Paper 62,
- 52.3 op.cit. Volume 2, Working Paper 56.
- 52.4 op.cit. Volume 2, Working Paper 92.
- 52.5 op.cit. Volume 1, Part iv Recommendation 41.
- 52.6 op.cit. Volume 1, Part iv, Recommendation 44.
53. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Multilateral
Agreement on the Commercial Rights of Non-
Scheduled Air Services in Europe, 1956".
- 53.1 op.cit. Article 2, para 1.
- 53.2 op.cit. Article 2, para 2,
- 53.3 op.cit. Article 3,
54. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Annual Reports
of the Council to the Assembly for 1955", ICAO
DOC 7636, p.11, para 6.

55. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European Civil Aviation Conference, Records of the First Session, Strasbourg, 1955", ICAO DOC 7676, (1956), "Exchange of views on the Multilateral Agreement for Non-Scheduled Services", paras, 34-35.
- 55.1 op.cit.
- 55.2 op.cit.
56. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Discussions of Commission No.3 of the First Assembly", ICAO DOC 4522, (1947), Volume 3, "Distinction between Scheduled and Non-Scheduled Operations in International Civil Air Transport", p.18, para 12.
- 56.1 op.cit. p.38.
- 56.2 op.cit. p.40
- 56.3 op.cit. p.42.
- 56.4 op.cit. p.16, para 10.
- 56.5 op.cit. p.20, para 24.
- 56.6 op.cit. p.25, para 50.
57. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Report of the Council to the Assembly on the Activities of the Organisation in 1952", ICAO DOC 7367, p.26.
58. AIR TRANSPORT ADVISORY COUNCIL, "Report for the year ended 31 March, 1955", HMSO, London (1955), para 15.
- 58.1 op.cit. para 16.
59. AIR TRANSPORT ADVISORY COUNCIL, "Report for the year ended 31 March, 1956", HMSO, London (1956), paras 7,11.
- 59.1 op.cit. para.22.
- 59.2 op.cit. "Statement by the Minister of Transport and Civil Aviation", p.4.
60. THE WHITE HOUSE, "Statement on International Air Transport Policy, 24 April 1963", 'Journal of Air Law and Commerce', (1964), xxx, p.76.
- 60.1 op.cit.
61. 'INTERAVIA', Vol xii, No.10, 1957, p.1059.
62. H.M. GOVERNMENT, "International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services. Paris, July 10, 1967", Cmnd 3746, HMSO, London (1968).

63. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Definition of a Scheduled International Air Service", ICAO DOC 7278, (1952), Part 1, p.3.
63.1 op.cit. p.6, para.11.
64. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Inclusive Tour Services in International Air Transport", ICAO DOC 8244, (1962), para.31.
64.1 op.cit. Appendix 3, pp.38-39.
64.2 op.cit. para. 18.
65. INTERNATIONAL CIVIL AVIATION ORGANISATION, ICAO DOC 4522, op.cit. p.42.
66. COHEN, R.S., "IATA, the first three decades", 'IATA Bulletin', July 1949, pp.11-51.
67. TOMBS, L.C., "International Organisation in European Air Transport", Columbia University Press: New York (1936).
68. GAZDIK, J.G., "Rate making and the IATA Traffic Conferences", 'Journal of Air Law and Commerce', (1949), XVI, p.298.
69. BEBCHICK, L., "The International Air Transport Association and the CAB", 'Journal of Air Law and Commerce', (1958), XXV, p.11.
69.1 op.cit. p.27.
70. GOODWIN, R.A., "The Role of the United States in the 1963 Transatlantic Air Fare Crisis", 'Journal of Air Law and Commerce', (1964), XXX, p.87.
71. PILLAI, K.E., "The Air Net", Grossman, New York (1969).
71.1 op.cit.
71.2 op.cit.
72. CHUANG, R.Y., "The International Air Transport Association", A.W. Sythoff, Leiden (1972).
73. COOPER, M., & MAYNARD, A, "The Price of Air Travel", Institute of Economic Affairs, London (1971).
73.1 op.cit.

74. ROSENBERG, A, "Air Travel Within Europe", National Swedish Consumer Council, Stockholm (1970).
74.1 op.cit. p.92.
75. H.M. GOVERNMENT, "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ghana for Air Services between and beyond their respective Territories. London Sept. 24, 1958", Cmnd 567, HMSO, London (1958), Article 7, paras.1,2.
76. 'THE TIMES', 16 October 1967, p.6.
77. 'THE AEROPLANE AND COMMERCIAL AVIATION NEWS', 21 October 1965, "Inside IATA", p.4.
77.1 op.cit. p.6.
78. 'THE TIMES', 21. May 1964, p.11.
79. 'FLIGHT INTERNATIONAL', 27 April 1973, p.577.
80. 'FLIGHT INTERNATIONAL', 2 December 1971, p.881.
81. DEICHLER, R.E.S., "Chairman of the IATA Traffic Conference's Report to the IATA Annual General Meeting, London 1951", 'IATA BULLETIN' (1951).
82. 'AVIATION WEEK', 13 August 1951, p.17.
83. 'AVIATION WEEK', 31 December 1951, p.44.
84. 'AVIATION WEEK', 29 October 1951, p.15.
85. 'HANSARD' 496, H.C. Deb 5s. 1139.
86. LONGHURST, J., "IATA's new complexion", 'THE AEROPLANE', 7 September 1951. p.278.
87. THE DOUGLAS AIRCRAFT COMPANY, "The European Charter Airlines", Market Research Report No. CL-804-1873, (1970), p.45.

88. 'HANSARD', 142.H.L. Deb. 5s. 830.
89. H.M. GOVERNMENT, "British Air Transport", Cmnd 6605,
HMSO, London (1945).
89.1 op.cit. para.17.
89.2 op.cit. para. 6.
89.3 op.cit. para.22.
89.4 op.cit. para.17.
89.5 op.cit. para.18.
90. LONGHURST, J., "Nationalisation in Practice", Temple Press:
London (1950).
91. COMMITTEE OF INQUIRY INTO CIVIL AVIATION, "Report and
the observations of H.M. Government thereon.
February 8, 1938", Cmnd 5685, HMSO, London (1938).
91.1 op.cit. p.7, para. 10.
92. 'HANSARD', 409 H.C. Deb 5s. 669-670.
93. 'THE TIMES', 14 March 1945, p.8.
94. 'THE ECONOMIST', 17 March 1945, "Policy for Aviation", p.337.
95. 'ROUND TABLE', June 1945, "Air Transport and the Dead Hand",
pp.240-247.
96. 'THE ECONOMIST', 6 October 1945, "Air Transport", p.477.
97. 'THE TIMES', 30 November 1945, p.2.
98. 'THE TIMES', 20 December 1945, p.5.
99. 'HANSARD', 142. H.L. Deb. 5s. 463.
100. 'HANSARD', 142. H.L. Deb. 5s. 760-764.
101. 'HANSARD', 142. H.L. Deb. 5s. 804.
102. 'HANSARD', 142. H.L. Deb 5s. 815.

103. THE BRITISH INDEPENDENT AIR CHARTER ASSOCIATION, "A
Case for the Independent Air Transport
Companies in the United Kingdom", (1950), p.5.
103.1 op.cit. p.6.
103.2 op.cit. p.9.
104. 'HANSARD', 142. H.L. Deb 5s. 518.
105. 'THE AEROPLANE', 14 March 1952, "The British Independent
Operators", p.305.
106. 'THE TIMES', 29 June 1949, "Letter from the Secretary of
the British Air Charter Association", p.5.
107. CIVIL AVIATION ACT, 1946, Section 14(4).
107.1. op.cit. Section 23 (1).
107.2. op.cit. Section 23 (2).
107.3. op.cit. Section 23 (3)c.
107.4. op.cit. Section 14 (4).
107.5. op.cit. Section 14 (4)a, 6.
107.6. op.cit. Preamble.
107.7. op.cit. Section 2 (1).
107.8. op.cit. Section 23 (1).
107.9. op.cit. Section 36 (3).
108. 'HANSARD', 169 H.L. Deb. 5s. 795.
109. AIR TRANSPORT ADVISORY COUNCIL, "Report for the Period,
1 January, 1949 to 31 December, 1949",
HMSO, London (1950), Appendix C.
109.1. op.cit. Appendix C.
109.2. op.cit. Appendix C. paras V,X,XI.
109.3. op.cit. para. 10.
109.4. op.cit. para. 5.
109.5. op.cit. para. 21.
109.6. op.cit. para. 20 (iv).
110. 'THE AEROPLANE', 3 March 1950. p.250.
111. 'HANSARD', 477 H.C. Deb 5s. 780.

112. AIR TRANSPORT ADVISORY COUNCIL, "Report for the period
1 January, 1949, to 31 December, 1950", HMSO,
London (1951), Appendix D.
- 112.1. op.cit. para. 21.
112.2. op.cit. para. 22.
112.3. op.cit. para. 16(ix).
112.4. op.cit. para. 13.
113. 'HANSARD', 169. H.L. Deb.5s. 796.
114. 'THE TIMES', 3 November 1950, p.3.
115. 'HANSARD', 169. H.L. Deb 5s. 781.
116. 'HANSARD', 433. H.C. Deb 5s. 1595.
117. AIR TRANSPORT ADVISORY COUNCIL; "Report for the Period,
1 January, 1950 to 31 December, 1951", HMSO,
London (1952), para. 19.
- 117.1 op.cit. "Statement by the Minister of Civil
Aviation", p.3.
117.2. op.cit. para. 18 (i).
117.3. op.cit. para. 22
117.4. op.cit. para. 13.
118. 'THE TIMES', 15 September 1951, p.4.
119. 'HANSARD', 501. H.C. Deb 5s. 1152
120. 'HANSARD', 501. H.C. Deb 5s. 1158.
121. AIR TRANSPORT ADVISORY COUNCIL, "Report for the Period
1 January, 1952 to 31 March, 1953", HMSO,
London (1953), "Statement by the Minister
of Civil Aviation", p.4, para. 5.
- 121.1. op.cit. Appendix E. para. 4(vi).
121.2. op.cit. para. 2.
121.3. op.cit. para. 4.
121.4. op.cit. para. 35.
121.5. op.cit. para. 3 (v) (b).
121.6. op.cit. para. 3 (vi).
121.7. op.cit. para. 29.

122. 'THE AEROPLANE', 6 June 1952, "The New Civil Aviation Policy", p.704.
123. 'HANSARD', 177. H.L. Deb 5s. 198.
124. 'THE TIMES', 1 July 1952, "Letter from the Secretary, BIATA", p.7.
125. 'HANSARD', 142. H.L. Deb 5s. 453.
126. AIR TRANSPORT ADVISORY COUNCIL, "Report for the year ended 31 March 1960", HMSO, London (1960), para 15.
127. 'HANSARD', 135 H.L. Deb 5s. 613.
128. 'HANSARD', 142 H.L. Deb 5s. 805-831.
129. 'HANSARD', 142 H.L. Deb 5s. 815.
130. 'HANSARD', 169 H.L. Deb 5s. 795.
131. 'THE TIMES', 28 November 1951, p.3.
132. 'HANSARD', 142 H.L. Deb 5s. 473.
133. AIR TRANSPORT ADVISORY COUNCIL, "Report for the year ended 31 March 1954", HMSO, London (1954), para. 8.
134. 'HANSARD', 177 H.L. Deb 5s. 209.
135. AIR TRANSPORT ADVISORY COUNCIL, "Report for the year ended 31 March 1958", HMSO, London (1958), para 9.

136. AIR TRANSPORT ADVISORY COUNCIL, "Report for the year ended 31 March 1959", HMSO, London (1959), para 16.
136.1 op.cit. para. 19.
136.2. op.cit. para. 17.
137. WYATT, M., "British Independent Aviation - past and future", 'Journal of the Chartered Institute of Transport', May 1963, p.110.
137.1. op.cit. p.111.
137.2. op.cit. p.113.
138. 'HANSARD', 177. H.L. Deb 5s. 221.
138.1 'HANSARD', 505. H.C. Deb 5s. 1947.
139. 'THE TIMES', 30 December 1952, "Letter from the Secretary, BIATA", p.7.
140. BRICE, D., "Holidays by Air", 'Aeronautics', May 1960, pp. 21-23.
141. 'HANSARD', 135. H.L. Deb 5s. 613.
142. 'HANSARD', 418. H.C. Deb 5s. 326.
143. 'THE TIMES', 2 November 1945, p.5.
144. RYLANDS, J.E., "Statement issued by the British Independent Air Transport Association", 'The Times', 28 May 1953, p.6.
145. BRITISH INDEPENDENT AIR TRANSPORT ASSOCIATION, "ANNUAL REPORT", London (1955).
146. 'THE ECONOMIST', 23 February 1957, "Non-U Airlines", p.657
146.1. op.cit.
147. WHEATCROFT, S.F., "Licensing British Air Transport", 'Journal of the Royal Aeronautical Society', 68, (1964), p.169.
148. GWILLIAM, K.M., "The Regulation of Air Transport", 'Yorkshire Bulletin', (1966), May 18, pp.20-33.

149. AIR TRANSPORT LICENSING BOARD, "Report for the period ended 31 March 1962", HMSO, London (1962), para 10.
- 149.1. op.cit. para. 49.
- 149.2. op.cit. para. 6.
- 149.3. op.cit.
150. CIVIL AVIATION (LICENSING) ACT, 1960, Section 1 (i).
- 150.1. op.cit. Section 2 (2) (f).
- 150.2. op.cit. Section 2 (7) (b).
151. 'THE SHIPPING WORLD', 25 February 1965, p.378.
151. 'THE SHIPPING WORLD', 10 January 1962, "Air Charter Market - a Year of Change", p.56.
152. AIR TRANSPORT LICENSING BOARD, "Fifth Report", HMSO, London (1965), para 9.
- 152.1. AIR TRANSPORT LICENSING BOARD, "Third Report", HMSO, London (1963), para 8.
- 152.1. op.cit. para 94.
- 152.2. op.cit. para 8.
- 152.3. AIR TRANSPORT LICENSING BOARD, "Eleventh Report", HMSO, London (1971), paras. 8 & 9.
153. NSIT STUDY GROUP, "Report", 'European Civil Aviation Conference, Fifth Session, Strasbourg - Air Charter Market', 6-18 July 1964', ICAO DOC 8445, ECAC/5, International Civil Aviation Organisation (1964), Appendix 5, p.7, para. 19 (1) (c).
154. 'THE ECONOMIST', 5 March 1960, "The Airline Mergers", p.926.
155. 'THE AEROPLANE', 14 November 1952, "The Dilema before the Independents", p.669.
156. AIR TRANSPORT LICENSING BOARD, "Annual Report", HMSO, London (1964), para 14.
- 156.1. op.cit. paras. 14-17.
- 156.2. op.cit. para. 63.
157. 'THE ECONOMIST', 20 February 1954, "P & O Becomes Airborne", p. 564.
158. 'THE ECONOMIST', 16 February 1957, "Frustrated Airlines", p.588.
159. 'THE ECONOMIST', 13 July 1957, "Very Imperfect Competition", p.149.

160. 'HANSARD', 706. H.C. Deb 5s. 1186.
160.1. op.cit. 1187.
160.2. op.cit. 1187.
160.3. op.cit. 1187 - 1188.
160.4. op.cit. 1187.
160.5. op.cit. 1187.
160.6. op.cit. 1187.
161. 'FLIGHT INTERNATIONAL', 21 January 1965, p.84.
162. 'FLIGHT INTERNATIONAL', 25 February 1965, p.278.
163. AIR TRANSPORT LICENSING BOARD, "Fifth Report", HMSO,
London (1965), para 9.
163.1. op.cit. para. 12.
163.2. op.cit. para. 8.
164. AIR TRANSPORT LICENSING BOARD, "Eleventh Report",
HMSO, London (1971), paras. 8 - 9.
165. 'THE SHIPPING WORLD', 14 February 1962, "Air Charter Market",
p.207.
166. 'FLIGHT INTERNATIONAL', 21 January 1965, p.81.
167. SEEKINGS, J., "Too Many Charters?", 'The Aeroplane and
Commercial Aviation News', 5 November 1964, p.4.
168. BRITISH EUROPEAN AIRWAYS CORPORATION, "Annual Report and
Accounts, 1963-64P, HMSO, London (1964), p.27.
169. BRITISH EUROPEAN AIRWAYS CORPORATION "Annual Report and
Accounts, 1964-65P, HMSO, London (1965), p.26.
170. CIVIL AVIATION AUTHORITY, "OFFICIAL RECORD", Series 1,
Schedule 5, March 1972. London.
171. AIR TRANSPORT LICENSING BOARD, "Seventh Report", HMSO,
London (1967), paras. 47-58.
171.1. op.cit. paras. 57 - 58.
171.2. op.cit. para. 43.
171.3. op.cit. para. 64.
171.4. op.cit. paras. 60 - 61.

172. BRITISH INDEPENDENT AIR TRANSPORT ASSOCIATION, "ANNUAL REPORT", London (1965).
173. AIR TRANSPORT LICENSING BOARD, "Civil Aviation Licensing Notices", London, 3 August 1966, Part VIII
174. 'FLIGHT INTERNATIONAL', 11 August 1966, "Stalemate over Inclusive Tour Rates?", p.212.
175. AIR TRANSPORT LICENSING BOARD, "Eighth Report", HMSO, London (1968), paras 65.
175.1. op.cit. para. 72.
176. AIR TRANSPORT LICENSING BOARD, "Ninth Report" HMSO, London (1969), para. 41.
176.1. op.cit. para. 40.
176.2. op.cit. para. 41.
177. 'FLIGHT INTERNATIONAL', 10 April 1969, p.537.
178. AIR TRANSPORT LICENSING BOARD, "Sixth Report", HMSO, London (1966), para. 23.
179. 'FLIGHT INTERNATIONAL', 6 May 1965, p.690.
180. AIR TRANSPORT LICENSING BOARD, "Statement on Tour Operators Profits and Losses, 16 September 1971", 'Twelfth Report', HMSO, London (1972), Appendix E. p.14.
181. 'HANSARD', 745. H.C. Deb 5s. 1582.
182. 'FLIGHT INTERNATIONAL', 13 March 1969, "Atlantic ITs : Quiet Beginning", p.391.
183. H.M. GOVERNMENT, THE BOARD OF TRADE, "Civil Aviation Policy", Cmnd 4213, HMSO, London (1969).
183.1. op.cit. para. 62.
183.2. op.cit. para. 106.
184. CIVIL AERONAUTICS ACT, 1938. Washington.

185. CIVIL AERONAUTICS BOARD, "Large Irregular Air Carrier Investigation", 22 CAB, Washington (1955).
185.1. op.cit.
185.2. op.cit. p.845.
186. INSTITUT DU TRANSPORT AERIEN, "United States International Aviation Policy", ITA, Paris (1962), ITA study 62/17, pp. 27-33.
186.1. op.cit. pp. 35-42.
186.2. op.cit. p. 42.
187. (US) PUBLIC LAW 90 - 514, 90th US Congress September 1968, Section 1.
188. EUROPEAN AIRLINES RESEARCH BUREAU, "Air Travel and Commerce, a Study of North Atlantic Relations", EARB, Brussels (1967).
189. COMMITTEE ON COMMERCE, "Supplemental Air Transportation", US Senate Report No. 1354, 90th Congress, 1 July 1968, p.4.
190. CIVIL AERONAUTICS BOARD, "Opinion on the role of Supplemental Carriers in the Transatlantic Inclusive Tour Charter Market", Washington, 9 January 1969.
191. THOMAS, M., "President's Address to the 7th Annual General Meeting of IATA, London. September 1951", IATA Bulletin' (1951).
192. INTERNATIONAL CIVIL AVIATION ORGANISATION, "Some Trends in Civil Aviation in the Three Years 1962 - 64", ICAO DOC 8497, Montreal (1965), pp. 12-13.
193. BRITISH OVERSEAS AIRWAYS CORPORATION, "Annual Report and Accounts, 1966/67", HMSO, London (1968).
194. INSTITUT DU TRANSPORT AERIEN, "Inclusive Tours in Western Europe", ITA, Paris (1958), ITA Study 58/10.

195. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European Civil Aviation Conference, Fourth Session, Records of the Session", ICAO DOC 8185 - ECAC/4, Paris (1961), Volume 3, p.60, para.5.
- 195.1. op.cit. Volume 2, Working Paper 60, Appendix 1, para. 2.
- 195.2. op.cit. Volume 2, Working Paper 60, Appendix 1, para. 3.
- 195.3. op.cit. Volume 3, para 26.
- 195.4. op.cit. Volume 3, para 29.
- 195.5. op.cit. Volume 3, para 28.
- 195.6. op.cit. Volume 1, Part II, Recommendation 6.
196. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European Civil Aviation Conference, Sixth Session - Report", ICAO DOC 8694 - ECAC/6, Paris (1967), Appendix 5, para 17.
- 197.1. op.cit. Appendix 4, para. 164.
- 197.2. op.cit. Part II, Recommendation No. 1.
- 197.3. op.cit. Appendix 4, para. 159.
- 197.4. op.cit. Appendix 5, para. 160.
- 197.5. op.cit. Appendix 5, para. 34.
- 197.6. op.cit. Appendix 10, page 21.
- 197.7. op.cit. Appendix 10, page 28.
- 197.8. op.cit. Appendix 10. page 11.
198. BROWN, S.D., Symposium on the Air Charter Market and the Restrictive Effects of Current Bilateral Agreements, "The International Angle", 'Aeronautical Journal', January 1973, p.32.
199. BRANCKER, J.W.S., "Air Transport : a Time for Decision", 'Flight International', 30 April 1970, p.727.
200. DEPARTMENT OF TRADE AND INDUSTRY, "Civil Aviation Policy Guidance", Cmnd 4899, HMSO, London (1972).
201. HAMMARSKJOLD, K., "27th Branker Memorial Lecture", 'Journal of the Chartered Institute of Transport', May 1970, p.437.
202. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European Civil Aviation Conference - Second Intermediate Session - Report", Paris (1969), paras. 1 - 10.
203. INTERNATIONAL CIVIL AVIATION ORGANISATION, "European Civil Aviation Conference Seventh Triennial Session - Report", ICAO DOC 8887 - ECAC/7, Paris (1970), Appendix 6, para. 36.

204. COLEGATE, R., "Symposium on mass air travel in Europe",
Gottlieb Duttweiler Institute, Zurich, May 1970.
205. O'MELIA, R.J., Reported in 'Flight International',
20 April 1972, p. 522.
206. LORD BOYD-CARPENTER, Reported in : 'Flight International'
11 May 1972, p. 656.