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NOTE

1. Obviously I come to this party from a construction and infrastructure background and dispute resolution in that context. So far as Heathrow itself is concerned, it seems likely that problems with the physical construction of the runway are well in the future. Indeed by then, Gatwick may have managed to get their project up and running; and I think that it was the CEO of Ryan that remarked the other day that what was needed was extra runway capacity at all three of Heathrow, Gatwick and Stansted. But I doubt that there is anything like the necessary political will for anything as wide ranging as that.

2. Also in what I think of as construction is the need, like ships, for aircraft to be designed. built and maintained. That seems to me to come within the general field of resolving disputes on how physical entities come into existence. From that basis it is a short if very occasional stretch into leasing aircraft – their suitability and so forth – and in servicing – and the problems that go with servicing on the basis of power by the hour.

3. In that context and not surprisingly I see arbitration as an effective means of resolving the disputes that are bound to occur across the huge range of the aviation and aerospace industry – and the related and expanding related space activities. The criticisms of arbitration are that it is lengthy and expensive. And indeed it can be. While everybody not actually involved in an arbitration at the time holds up their hands in horror at the time that is sometimes taken and the cost that is sometimes run up, it is the case – as you will know – that parties sometimes agree to act in a way that seems designed to lengthen the time and increase the costs. If the parties are genuinely determined to progress matters quickly then they can go quickly – in the process building in a time for the production of the

award. But if they are agreed on taking things at a steady pace and on adjusting the timetable late in the process, it is going to be difficult to avoid the expenditure of time and money.

4. Of course a strong point for arbitration is that many of the disputes that arise in the industry will be transnational, and there is no question but that arbitration – despite its faults – is potentially an effective means of resolution in cross border arguments.

5. There is also the relative privacy. I say relative because of course all forms of arbitration are coming under public scrutiny, driven by concerns which spring from WTO provisions and ICSID arbitrations. Those concerns touch upon environmental and social policies in particular and anything to do with aviation is likely to trigger the environmental lobby. Nonetheless an arbitral proceeding is normally confidential to some degree.

6. Having said that I should admit that the only motivated dissent that I have ever written was on a power by the hour dispute. That dissent certainly helped to drive the case into the commercial court although, given the events that had taken place, I think that it would have got there anyway. That was in 2004, in a case called Cameroon v Transnet when the Commercial Court did not automatically offer confidentiality on challenges to arbitral awards. (The Court did intervene but the case settled before the tribunal could address the points made by the Court.)

7. I obtain some comfort for the role of arbitration in the recent setting up by the AAA – admittedly a body with a serious interest in arbitration – of a specific panel for aviation and aerospace disputes – presumably with the idea – at least in part - of enhancing New York's profile in the area.

8. If however there is a problem with arbitration, then – at least in long term contracts, such as that for the construction of a runway – there is the admirable option of dispute boards, whether they are ones that simply seek to smooth the path, encourage meetings of minds, make

recommendations or whether they are ones that have the power to make decisions.

9. In either role it seems to me that they provide a very valuable mechanism for dispute avoidance – as much as anything simply because they are grappling with the problems at a very early stage and before the difficulties have had time to fester and grow.

10. The long term board – involved from the beginning – seems to be a better bet than the board that is only called on when a dispute has crystallised. In this latter situation, the opportunity has been missed to see off the problem at the earliest possible stage and thus to avoid the risk of positions becoming entrenched.

11. But with luck – all will go smoothly and there will be no need of dispute resolution at all.

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