

AIR COMMERCE...

THE BRITISH EAGLE APPEAL

(Continued from page 1022 of last week's issue)

TO an observer, the well ordered and unhurried three and a half day British Eagle appeal against the Air Transport Licensing Board's refusal to grant any of their domestic trunk route applications was in striking contrast to the unfortunate haste and procedural confusion of the Board's hearing in August. Sir Arthur Hutchinson, who was appointed by the Minister of Aviation to hear the appeal, is now an experienced Commissioner with a knowledge of the basic technicalities, and he brings a sharp and alert mind to bear on evidence presented. To some of those present, the proceedings were a reminder of the advantages of having an examiner's hearing first and only a Board hearing afterwards if necessary—a procedure evolved by the American CAB where the Board compares the presented evidence with its own independently prepared study of the situation.

The cornerstone of the ATLB's decision to refuse British Eagle a truly competitive licence on the domestic trunk routes was the financial plight of BEA's domestic services. Mr S. B. R. Cooke, QC, for British Eagle, argued that the alleged losses had not been proved, and that if they did exist it was a situation calling for the widest possible enquiry.

Following the British Eagle case, which was reported fully in last week's issue, Mr A. J. Lucking presented a case in support of the appeal because he had been heard by the ATLB at the original hearing. Mr Lucking, speaking as a private citizen and a business user of air transport, said that the Board had recognized its duty to investigate the adequacy of the services, but had been wrong not to recognise the different degrees of seat availability from the travelling public's point of view: "The present situation on domestic air services is more akin to that on long-distance coaches whereas it should be more like that existing on trains." In Mr Lucking's view, rather than accept BEA's assertions the Board should have examined the actual flight-by-flight load factors. Although the BEA exhibits had shown a falling load factor up to 1962, these had become out of date by last summer when the situation was sharply reversed. The reason for this was a reduction in scheduled capacity on the Belfast and Manchester routes, a fact which, according to Mr Lucking, BEA attempted to obscure by quoting figures for empty seats.

Mr Lucking repeated his view that a 53 per cent average load factor meant no problems of seat availability from the traveller's point of view, and that 80 per cent average a "complete lack of bookable seats on occasion." He went on to claim that inadequacy and unprofitability were the "two sides of a single coin," and supported Mr Cooke's call for the widest possible enquiry into the alleged losses. The Commissioner had earlier ruled out evidence on the cause of the losses which Mr Lucking had sought to introduce.

Before beginning his presentation of the BEA case for rejecting the appeal, Mr Marking erected a special lectern which made it clear that he had a lengthy task ahead of him, with a lot of reference to words contained in the transcripts of previous hearings. He said that surprisingly little new evidence had been put forward.

Commenting on the first ground of appeal—that the Board had been inconsistent with their wish to introduce effective competition on to UK trunk routes by not granting British Eagle's application for more frequency, Mr Marking quoted extensively from the Board's findings in both 1961 and 1963. One of the important principles to emerge was that the Board favoured the established operator when his economic health was threatened by a newcomer. Ground two was that the Board had not fully considered the extra traffic that would be generated by a second operator. Eagle had claimed that of their traffic about half would be new and generated by them. According to Mr Marking, who was quoting from the August hearing, "these figures were plucked from the air." He similarly attempted to dismiss Mr Gotch's figures, saying they could be explained by the fact that the CAB would tend to licence competition where market growth was faster and justified it.

Ground three of the appeal had been that the Board were wrong in saying that British Eagle could have arranged a contract with BOAC for the purchase of Britannias that would have a release clause in the event of Eagle's not getting the necessary traffic licences. Mr Marking said that British Eagle could have obtained an option, and he presented a letter from BOAC which stated that they did

grant options for aircraft sales against payment, though confirming that a sale would not be made subject to grant of a licence.

Ground four concerned the suitability of the Britannia for these routes, and Mr Marking pointed out that British Eagle's own figures had shown that on the Glasgow route a 64-seat Viscount would have achieved a 28 per cent load factor in the first month of operations (16 per cent achieved in the Britannias) instead of the 25 per cent anticipated in a 1961 document. Mr Curtis had testified that the Britannia was the best aircraft for British Eagle's diverse operating pattern, and yet, Mr Marking said, he clearly did not know what British Eagle's trooping contracts were, and thus his assertion was valueless.

Ground five of British Eagle's appeal concerned BEA's capital investment in domestic services in the form of operating losses incurred since 1961. To justify lumping much of the heavy Vanguard development expenditure on to these services, Mr Marking said, the aircraft had been specially developed for short-range high density traffic routes, and that it was now widely used on the UK domestic trunk routes. Ground six was that even with effective British Eagle competition, BEA would still have their present level of traffic, plus a substantial proportion of the growth. Mr Marking said that on the Belfast and Dublin routes this was clearly wrong on British Eagle's own estimates, and that with regard to the other routes a distinction must be drawn between the Board's principle developed for the international routes and that applied to the domestic routes. It could not simply be said that 38.9 per cent diversion or less was permissible; this was demonstrated by the fact that the Manchester route calculation gave only 19.8 per cent diversion.

Ground seven of British Eagle's appeal was the Board's acceptance of BEA's four main arguments. Additional comments by Mr Marking were that in the first place BEA's traffic estimates in the 1961 hearing had been high rather than low, the exception being Dublin where BEA had secured a higher proportion of the traffic than forecast; secondly that British Eagle would divert more traffic than anticipated by the Board because they were using Britannias instead of Viscounts; thirdly, that the financial position had improved but was not yet on the credit side; fourthly, the adequacy of service, which Mr Marking said had not been convincingly disproved.

Ground eight concerned the advantages to the public of a second operator which Mr Marking thought was a philosophical argument. He referred to the limited evidence tabled and to the Board's findings in the fares case that BEA's operating efficiency was above rather than below average.

Ground nine referred to the swamping and sandwiching of British Eagle's daily service on each route. Mr Marking said: "BEA had perfectly good reasons for operating services at substantially the same times as British Eagle, who incidentally, did not consult BEA before publishing their timetables. Mr Milward's offer of collaboration remains open and there is no reason why the silly dispute which has blown up cannot be settled in a business-like way. In any event British Eagle seem to be carrying as much traffic as they originally expected." With regard to swamping and the allegations made by both British Eagle and Mr Lucking, counsel for BEA thought it was unreasonable to complain that the corporation were putting on too much capacity. Competition meant that the competitors took every legitimate move they could to succeed.

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In review, the BEA reply can be seen as a careful underlining of the evidence which they had already put to the Board, and reference to the complimentary remarks on the corporation's efficiency contained in the Board's fare decision. Although there were plenty of evidence showing the high load factors on all BEA domestic services, there was still some dispute whether they were high enough to cause significant inadequacy. The Board found the BEA services "reasonably adequate"; probably the strongest point of contrary evidence was the unprecedented action of the chairmen of the two civil aviation advisory councils in giving evidence in support of British Eagle.