BRUSSELS AIR TRANSPORT BRIEF: NOVEMBER 2018

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European Regulatory / UK Regulatory Newsletter

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AVIATION REGULATORY AND POLICY

Air Services Regulation: Council reaches agreement on amendment regarding wet-lease agreements with third countries

On 21 September 2018, the European Council agreed to an amendment of Regulation (EC) 1008/2008 on common rules for the operation of air services in the Community. This amendment aims to ensure consistency between EU legislation and air transport agreements with third countries, in particular the provisions on wet-leases. In its position, the Council indicated that the amendment should be limited, to align the Regulation with the relevant international obligations of the Air Transport Agreement between the EU and the US. Furthermore, the Council added that any international agreement on wet-leases should include reciprocal rights and obligations for both parties and should be based on an existing Air Transport Agreement.

Single European Sky: European Commission answer to MEP question on the fragmentation of the European airspace and disruptions to the air transport system

In an answer given on 14 September 2018 to a parliamentary question raised by MEP Deirdre Clune on the fragmentation of the European airspace and disruptions to the air transport system, Transport Commissioner Bulc responded that such issues require an evolution of the Single European Sky (SES) to better manage the European airspace, an improved approach to SESAR deployment, measures on continuity of services and reforming the SES legal framework (SES2+). Commissioner Bulc further indicated that the Commission is currently undertaking different initiatives to review the SES framework, including (i) an update of the European ATM Master Plan, to achieve the performance objectives of the Single European Sky, and (ii) a pilot project on a new architecture for the European airspace that will provide important elements for the implementation of the European Upper Flight Information Region (EUIR).

Drones: European Commission launches the European Network of U-space Demonstrators

On 19 October 2018, EU Transport Commissioner Violeta Bulc

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the European network for drone demonstration projects. The network will become a forum to share knowledge on how to keep drone operations safe, secure and green. It will focus on the so-called U-space: a system that connects all drones flying in the air and that makes all drones visible for authorities and citizens.

ANTITRUST AND COMPETITION

Joint-Venture: European Commission clears the creation of a Boeing-Safran joint venture by for the production of auxiliary power units

On 28 September 2018, the Commission approved, under the EU Merger Regulation, the creation of a joint venture by Boeing and Safran for the manufacture of auxiliary power units (APUs) that provide electrical power to the aircraft while the engines are shut down. The Commission concluded that the proposed transaction would raise no competition concerns, since (i) the overlaps between Safran and the joint venture are limited as Safran manufactures APUs for military aircraft and helicopters while the joint venture will manufacture APUs mainly for large commercial aircraft, and (ii) despite Boeing's strong position in the manufacturing of large commercial aircraft, the transaction is unlikely to lead to competing APU suppliers being shut out from the commercial aircraft APUs market.

Merger: European Commission publishes its 2018 Ryanair-LaudaMotion merger clearance decision

On 4 October 2018, the Commission published the full text of its July 2018 decision to unconditionally approve, under the EU Merger Regulation, the proposed acquisition of LaudaMotion by Ryanair. The Commission's investigation found that the increase in the slot portfolio of Ryanair is unlikely to have a negative effect on passengers. Ryanair will also continue to face strong competition from other carriers on the routes to and from airports where the activities of both airlines overlap. The Commission concluded that the transaction would not raise competition concerns in the EEA.

Acquisition of Joint Control: European Commission clears acquisition of control over Avolon by ORIX Aviation Systems and Bohai

On 19 October 2018, the Commission approved, under the EU Merger Regulation, the acquisition of joint control over Avolon by ORIX Aviation Systems (OAS). Avolon is a subsidiary of Bohai and is active in aircraft leasing services. OAS is an investor aircraft and asset manager. The Commission concluded that the proposed acquisition would raise no competition concerns as the companies' shares of the markets in which Avolon is active would remain limited. The transaction was examined under the simplified merger review procedure.

State Aid: Airline bodies file state aid complaint to European Commission about Portuguese airport fees

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On 4 October 2018, Airlines for Europe (A4E) and the International Air Transport Association (IATA) announced that they had filed a joint complaint to the Commission's Directorate General for Competition seeking to establish alleged violations of State Aid rules by Portugal to Portuguese airport operator ANA. A4E and IATA argue that the fact that airport charges at Lisbon Airport are set according to a pre-determined formula, rather than in accordance with its costs, is contrary to the principles set by the UN International Civil Aviation Organization, leading to higher than necessary airport fees for airlines and passengers. The complaint requests the Commission to open a formal State Aid investigation within the meaning of Article 108(2) TFEU and to issue a decision declaring the existence of illegal and incompatible aid.

State Aid: European Commission publishes its 2017 decision on illegal Belgian state aid

On 4 October 2018, the Commission published the full text of its 2017 decision on illegal Belgian state aid support for Brussels Airlines, TUI Airlines and Thomas Cook. According to the Commission, Brussels Airlines, TUI Airlines and Thomas Cook received illegal support from the Belgian Government in the form of subsidies to support security-related infrastructure, paid by the Brussels Airport operator (BAC) from funds received from the Belgian Federal Government. The scheme was set up as a subsidy to BAC for the support of activities to ensure the safety of passengers and the security of airport facilities (such as the screening of passengers and their baggage upon entering the airport's restricted area for the purpose of detecting any explosives, weapons or other dangerous items). The subsidy would then be redistributed by BAC to airport users having carried more than 400,000 departing passengers, in proportion to the amount they paid for services to ensure the safety of passengers and the security of airport facilities during the previous year.Belgium has since withdrawn the scheme and recovered the aid and corresponding interest.

AIR TRAVEL - PASSENGERS' RIGHTS

Travel Security: European Commission reports on progress made on travel document security

The Commission is reviewing measures implemented under the 2016 Action Plan to improve security of travel documents in the EU. The Report issued on 16 October 2018 highlights the progress made under the Action Plan with 16 measures completed. This includes the April 2018 Commission proposal to improve the security of ID cards and residence permits for EU citizens and their non-EU family members.

Passengers' Rights: the European Court of Justice clarifies the scope of the reimbursement in case of flight cancellation

In its judgment of 12 September 2018 on Case C-601/17 Dirk Harms and others v Vueling, the European Court of Justice responded to a request for a preliminary ruling from the Hamburg Local Court regarding Article 8(1)(a) of Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

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The ECJ found that, in the event of cancellation of a flight, the price of the ticket to be taken into consideration for the purposes of reimbursement includes the difference between the amount paid by that passenger and the amount received by the air carrier corresponding to a commission collected by an intermediary, unless that commission was set without the knowledge of the air carrier.

INTERNATIONAL TRADE - BREXIT

Brexit: AESA starts processing applications for Third Country approvals

In a statement published on 2 October 2018, the European Air Safety Agency (AESA) has announced that, in the ongoing process of preparing for the United Kindom's withdrawal from the Union, it will start processing applications for Third Country approvals from existing UK approval holders.

Aviation Agreement: European Commission concludes Horizontal Aviation Agreement with the Republic of Korea

On 12 October 2018, the Commission announced the conclusion of a Horizontal Aviation Agreement on certain aspects of air services with the Republic of Korea concluded a Horizontal Aviation Agreement on certain aspects of air services. This agreement, which the Commission expects to be signed in early 2019, aims to restore legal certainty to all the bilateral air services agreements that the Republic of Korea has with 22 EU Member States by bringing these into conformity with EU law and will allow the two sides to discuss closer cooperation in other fields of aviation and transport of common interest.

PUBLIC CONSULTATIONS AND EVENTS

CRS: Public consultation on the evaluation of the regulation on a code of conduct for computerized reservation systems

In the context of the EU's 2015 Aviation Strategy, the objective of this public consultation is to ensure that, in addition to the organizations directly involved in the implementation or subject to the requirements of the CRS Code of Conduct, wider stakeholder groups and the general public are provided with the possibility to express their opinion about the topic.

The consultation period started on 17 September 2018 and will end on 10 December 2018

Airline Retailing: IATA Airline Industry Retailing Symposium

From 23 to 25 October 2018, IATA held its Airline Industry Retailing Symposium (former World Passenger

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Symposium) in Rome (Italy). This symposium focused on how changes in distribution and payment are paving the way for a new era of airline retailing.

EASA Annual Safety Conference

This years' EASA Annual Safety Conference took place place in Vienna (Austria) between 6-7 November, 2018 and focused on 'A Vision for the Future of GA.'

Multimodal Sustainable transport: Which role for the internalization of external costs?

European Commissioner for Transport Violeta Bulc and the Directorate-General for Transport and Mobility (DG MOVE) are inviting transport stakeholders to discuss first insights from a study on sustainable transport infrastructure charging and the internalisation of transport externalities. The conference will be held in Brussels on 17 December 2018.

Multimodal transport: Delivering EU-wide multimodal travel information, planning and ticketing services

The conference, which aims at revealing key actors' thoughts on the future of multimodal transport, will be held in Brussels on 19 November 2018.

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