



ICLG

The International Comparative Legal Guide to:

Aviation Law 2015

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A practical cross-border insight into aviation law

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Contributing Editors

Alan Meneghetti, Locke Lord Edwards LLP and Philip Perrotta, Kaye Scholer LLP

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Dror Levy

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Maria Lopez

Sales Support Manager

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Senior Editor

Suzie Levy

Sub Editor

Nicholas Catlin

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
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General Chapters:

1	The Use of Personal Data by the Commercial Aviation Industry – Alan Meneghetti, Locke Lord Edwards LLP	1
2	The Aviation Industry – Constant Change Leading to Tales of the Unexpected – Philip Perrotta, Kaye Scholer LLP	4
3	Recent Developments in U.S. Aviation Law – 2015 – Unmanned Aircraft Systems – Donald R. Andersen, Taylor English Duma LLP	8
4	The Cape Town Convention: An Evolving Process (with Side Notes on Selected Issues) – Erin M. Van Laanen & Maria E. Gonzalez, McAfee & Taft	11
5	The Need to Extend WALA's Presence in the Airport Industry – Alan Meneghetti & Michael Siebold, Worldwide Airports Lawyers Association (WALA)	16

Country Question and Answer Chapters:

6	Argentina	Maciel, Norman & Asociados: Rogelio N. Maciel & Maria Laura Maciel	19
7	Austria	Kubes Passeyrer Attorneys at Law: Dr. David Kubes	26
8	Bolivia	Salazar & Asociados: Sergio Salazar-Machicado & Ignacio Salazar-Machicado	32
9	Brazil	DDSA – De Luca, Derenusson, Schuttoff e Azevedo Advogados: Ana Luisa Castro Cunha Derenusson	38
10	Canada	Alexander Holburn Beaudin + Lang LLP: Darryl G. Pankratz & Michael Dery	45
11	Denmark	Kromann Reumert: Jakob Bernhoft & Julie Bak-Larsen	52
12	France	Cabinet BOPS – SCP Bouckaert Ormen Passemard: Aurélie Cadain	59
13	Germany	Arnecke Siebold Rechtsanwälte Partnerschaftsgesellschaft: Holger Bürskens & Ulrich Stepler	65
14	Greece	Bahas, Gramatidis & Partners: Betty Smyrniou	73
15	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Theodoor Bakker & Emir Nurmansyah	80
16	Italy	Studio Pierallini: Laura Pierallini & Francesco Grasseti	87
17	Kyrgyzstan	Arte Law Firm: Aisulu Chubarova & Liliia Kim	95
18	Malta	Dingli & Dingli Law Firm: Dr. Tonio Grech	101
19	Mexico	Chacón & Rodríguez, S.C.: Samuel Chacón & Kaynicté Pérez De Gante	107
20	Poland	MMMLegal - Legal Counsels: Krystyna Marut & Anna Burchacińska-Mańko	114
21	Portugal	NDR – Neville de Rougemont & Associates: Geoffrey Graham & Vicky Rodrigues	121
22	Slovenia	Rojs, Peljhan, Prelesnik & Partners: Alexander Uroš Košenina & Sonja Radošević	127
23	South Africa	Christodoulou & Mavrikis Inc.: Chris Christodoulou	135
24	Spain	Ventura Garcés & López-Ibor Abogados: Alfonso López-Ibor Aliño & Pablo Stöger Pérez	148
25	Switzerland	VISCHER AG: Urs Haegi & Dr. Thomas Weibel	156
26	Turkey	Ozturk & Partners: Yasar Ozturk	163
27	United Kingdom	Locke Lord Edwards LLP: Alan Meneghetti & Kaye Scholer LLP: Philip Perrotta	169
28	USA	Condon & Forsyth LLP: Bartholomew J. Banino & Nicole M. Smith	180

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USA



Bartholomew J. Banino



Nicole M. Smith

Condon & Forsyth LLP

1 General

1.1 Please list and briefly describe the principal legislation and regulatory bodies which apply to and/or regulate aviation in the USA.

Aviation in the U.S. is primarily regulated by:

- the Department of Transportation (“DOT”);
- the Federal Aviation Administration (“FAA”), which is an agency of the DOT; and
- the Department of Homeland Security’s Transportation Security Administration (“TSA”) and Customs and Border Protection (“CBP”).

The DOT regulates economic authority approval and consumer protection, and negotiates and implements international transportation agreements. The FAA regulates aviation safety, including but not limited to: minimum standards for manufacturing, operating and maintaining aircraft; air traffic control, and certification and registration of airports; and aircraft and their parts. The FAA also funds and regulates airport development. The TSA assists the FAA with aviation safety by screening airline passengers, baggage, and cargo. The CBP works to secure U.S. borders.

The principal aviation regulations and laws are: Title 14 of the Code of Federal Regulations (“CFR”), entitled Aeronautics and Space; Title 49 of the CFR, entitled Transportation; and Title 49 of the United States Code (“USC”), entitled Transportation.

1.2 What are the steps which air carriers need to take in order to obtain an operating licence?

In order to obtain an operating licence, an air carrier needs to obtain two separate authorisations.

The air carrier must obtain safety authority from the FAA. Both U.S. and foreign air carriers must file an application with the FAA, whereby the FAA determines if the air carrier meets certain safety regulations and standards. If the FAA is satisfied, it will issue a U.S. air carrier an Air Carrier Certificate and Operations Specifications (14 CFR Parts 121 and 135), and a foreign air carrier Operation Specifications only (14 CFR Part 129).

The air carrier also needs to obtain economic authority from the DOT. A U.S. air carrier must apply to receive a certificate for interstate or foreign passengers and/or cargo and mail authority, a certificate for interstate or foreign all-cargo authority, or authorisation as a commuter air carrier. The Air Carrier Fitness Division of the DOT analyses and evaluates all applications. Prospective carriers must be:

- owned and controlled by citizens of the U.S. (49 USC 40102);
- run by individuals with sufficient managerial competence and experience to conduct operations;
- run by individuals with a keen understanding of the financial requirements involved, who have access to the necessary capital to conduct operations; and
- likely to comply with the applicable laws, rules and regulations.

Air taxis or commuter air carriers, defined as having fewer than 60 seats in all aircraft, are exempt from this process and are, instead, regulated under 14 CFR Part 209.

Foreign air carriers must file an application with the DOT, as well as copies with U.S. air carriers that serve the applicant’s homeland, to receive a Foreign Air Carrier Permit. Prospective carriers must be:

- substantially owned and controlled by citizens of its claimed homeland;
- operationally and financially fit to conduct services; and
- covered by a bilateral aviation agreement with the applicant’s claimed homeland, or authorisation would be in the public interest.

The application procedures for European Union (EU) Member States, Iceland, and Norway are abbreviated because of the reciprocal recognition of fitness and citizenship between the U.S. and EU.

Upon receipt of an application, the DOT publishes a notice of the application for comment. If all of the criteria are met and there is no opposition, an application by a U.S. air carrier could be granted in 4 months, and an application by a foreign air carrier could be granted within 30-60 days.

Both U.S. and foreign air carriers may also seek an exemption allowing them to begin operations while awaiting the DOT’s decision.

1.3 What are the principal pieces of legislation in the USA which govern air safety, and who administers air safety?

The FAA administers air safety and the principal aviation regulations and laws are found in Title 14 of the CFR, Title 49 of the CFR, and 49 USC Chapters 441-453.

1.4 Is air safety regulated separately for commercial, cargo and private carriers?

14 CFR Parts 91, 121, 125 and 135 are the principal provisions regulating air safety. For the most part, each provision is applied separately to aircraft according to the aircraft’s size and type, rather than service. However, there are certain distinctions between passenger and cargo flights, as well as scheduled and charter transport.

14 CFR Part 129 regulates foreign air carriers and foreign operators of U.S.-registered aircraft engaged in common carriage.

1.5 Are air charters regulated separately for commercial, cargo and private carriers?

Depending on the size and type of the air charter, 14 CFR Parts 135, 212, 298, and 380 may apply. 14 CFR Parts 135 and 298 regulate on-demand air charters, for both passenger and cargo, with smaller aircraft. 14 CFR Part 212 regulates large aircraft charters. 14 CFR Part 380 regulates passenger public charters for both small and large aircraft.

1.6 As regards international air carriers operating in the USA, are there any particular limitations to be aware of, in particular when compared with 'domestic' or local operators? By way of example only, restrictions and taxes which apply to international but not domestic carriers.

Typically, bilateral aviation agreements prevent the U.S. from discriminating against foreign air carriers seeking to operate in the U.S. and, as a result, foreign air carriers are treated equally to domestic air carriers and are subject to similar regulations.

To ensure safety, foreign air carriers must meet certain additional requirements set out in 49 CFR Part 1546, the International Aviation Safety Assessment Program, and the Foreign Air Carrier Family Support Act of 1997. Furthermore, in determining whether to grant a foreign air carrier an operating licence, the FAA will consider the existence of an effective aviation security agreement between the U.S. and the applicant's homeland.

1.7 Are airports state or privately owned?

Airports in the U.S. are both privately and publicly owned. Almost all airports servicing commercial operations are owned by public entities. However, there are numerous small, private general aviation airports in the U.S. that are privately owned.

1.8 Do the airports impose requirements on carriers flying to and from the airports in the USA?

Airports have leeway in managing their operations as long as they provide access to all authorised carriers on reasonable terms and without discrimination. Accordingly, most airports maintain minimum standards of safety and efficiency. Enforcement of these standards is typically undertaken by the FAA.

Airports enter into lease agreements with air carriers, granting access to gates, facilities, and amenities in exchange for reasonable and non-discriminatory charges. Airports also often establish their own rules and regulations, including hours of operation, noise restrictions, baggage handling requirements, ground transportation, and fuelling requirements.

Additionally, airports may collect passenger facility charges of up to \$4.50 for every boarded passenger at commercial airports controlled by public agencies.

1.9 What legislative and/or regulatory regime applies to air accidents? For example, are there any particular rules, regulations, systems and procedures in place which need to be adhered to?

The National Transportation Safety Board ("NTSB") is responsible

for conducting investigations of all major transportation accidents in the U.S., including civil aviation accidents. The investigations are conducted to determine the probable cause of the accident and to issue safety recommendations to prevent similar accidents in the future, not for the purpose of determining liability. The Federal Bureau of Investigation and/or the Department of Justice ("DOJ") are responsible for aviation accidents that are likely the result of a criminal act.

Immediately after a civil aviation accident, the notification requirements set out in 49 CFR Part 830 must be followed. The NTSB then investigates the accident and prepares a final report for the public in accordance with the procedures and responsibilities noted in 49 CFR Parts 831 and 845, often with the help of the FAA and, if foreign individuals were on board, the Department of State. Additionally, both U.S. and foreign air carriers are required to have in place a Family Assistance Plan, which identifies how the air carrier will address the needs of families and passengers involved in any accident resulting in a major loss of life. (49 USC 41113 and 41313.)

1.10 Have there been any recent cases of note in the USA involving air operators and/or airports?

One recent case of note is *Northwest v. Ginsberg*, No. 12-462, 572 U.S. __, 2014 WL 1301865 (April 2, 2014). In *Ginsberg*, an airline customer who had his membership in the airline's frequent flyer program revoked brought a class action against the airline for misrepresentation, breach of contract, and breach of the implied covenant of good faith and fair dealing.

The case made its way to the U.S. Supreme Court, wherein the Court held that the plaintiff's claim for breach of implied covenant of good faith and fair dealing was pre-empted by the ADA. The Court first found that ADA pre-emption applies not only to codified legislation and regulations, but also to common law claims, because the ADA applies to state "provisions having the force and effect of law". The Court then concluded that Ginsberg's claim "relates to" airline rates, routes, or services because Northwest's frequent flyer program is connected to its rates in that mileage credits can be redeemed for tickets and upgrades, and is thus pre-empted. The *Ginsberg* decision clarifies the nature of claims that are pre-empted by the ADA and reinforces the pre-emptive reach of the ADA with respect to claims arising from state-imposed obligations that affect an airline's rates, routes, and services.

Another recent case of note is *Singh v. Caribbean Airlines*, No. 13-20639, 2014 WL 4953246 (S.D. Fla. 2014). In *Singh*, the plaintiff brought an action against Caribbean Airlines Limited ("CAL") to recover damages allegedly resulting from CAL's failure to divert the flight after the plaintiff experienced a stroke mid-flight. Under Article 17 of the Montreal Convention, a carrier is liable for an "accident" which causes a bodily injury on board the aircraft. In the case of a medical emergency, courts have held that a plaintiff must establish that a crew has responded to a passenger's medical emergency in an "unexpected or unusual" way to satisfy "accident" liability.

Here, the District Court for the Southern District of Florida held that "[w]hile there are certain deficiencies in how the flight and cockpit crew, including the Captain, responded to Mr. Singh's on-board medical emergency, those deficiencies, whether considered in isolation or collectively, do not support the basis of a claim under Article 17 of the Montreal Convention". Rather, the crew's response largely comported with CAL's policies and procedures. The *Singh* decision clarifies the standard of liability for airlines responding to medical emergencies on board aircraft: airlines are expected to substantially comply with their internal policies and procedures. The mere fact that a crew's response is inadequate in some ways cannot form the basis of liability under Article 17.

Finally, in *In re Air Crash Near Clarence Center, New York, On Feb. 12, 2009*, 44 Misc. 3d 724 (Sup. Ct. 2012), the survivors of passengers who died in an airplane crash sued the air carrier, alleging negligent hiring, training, and supervision of the pilot and co-pilot. Plaintiffs moved for an order imposing the federal general standard of care on the air carrier with respect to their claims. The New York Court previously held that the Federal Aviation Act of 1958 and its regulations pre-empt all state law standards of care. However, the precise nature of the federal standards of care derived from the Act and its corresponding regulations remained in dispute.

The Court here addressed the issue, holding that no general standard of care outside of the specific Federal Aviation Regulations applied to plaintiffs' negligence claims, and that "federal courts have rejected adoption of a federal common law to fill any alleged gaps in the Federal Aviation Regulations". The decision clarifies that air carriers are not subject to a higher standard of care beyond the Federal Aviation Regulations that control the hiring and training of pilots.

2 Aircraft Trading, Finance and Leasing

2.1 Does registration of ownership in the aircraft register constitute proof of ownership?

No. A certificate of registration does not constitute proof of ownership. 14 CFR Part 47 and 49 USC Chapter 441 note that a certificate is not evidence of ownership in a proceeding in which ownership is in issue, and it is not conclusive evidence of the nationality of an aircraft in a proceeding under the laws of the U.S.

The FAA issues a certificate to the person who appears to be the owner on the basis of the evidence submitted. An owner may include a buyer in possession, a bailee or lessee of an aircraft, and the assignee of that person. However, a bill of sale serves as proof of ownership.

2.2 Is there a register of aircraft mortgages and charges? Broadly speaking, what are the rules around the operation of this register?

Yes. The FAA Aircraft Registry maintains a public record of U.S. civil aircraft.

The rules for the registry are set forth in 14 CFR Parts 47 and 49 and 49 USC Chapter 441. All relevant documents must include the make, model, serial number, registration number, and necessary signatures. The document must then be mailed to the FAA Aircraft Registry office.

Additionally, the FAA Aircraft Registry serves as the entry point for registering with the International Registry of Mobile Assets pursuant to the Cape Town Convention and related Protocol on Aircraft Equipment.

2.3 Are there any particular regulatory requirements which a lessor or a financier needs to be aware of as regards aircraft operation?

Aircraft leases are regulated by the FAA and the DOT. Accordingly, a lessor or financier needs to ensure that the agreement complies with applicable regulatory requirements. For example, the agreement must be in accordance with U.S. restrictions regarding who can operate an aircraft and what type of operation the aircraft can be used for. The agreement should be clear on who has operational control, as this can differ among true, operational, and financing

leases, as well as wet and dry leases. In some instances, a lease agreement must contain a truth-in-leasing clause. (14 CFR Part 91.)

A lessor or financier also needs to ensure that the lessee will comply with the applicable regulatory requirements.

2.4 Is the USA a signatory to the main international Conventions (Montreal, Geneva and Cape Town)?

Yes. The U.S. is a signatory to the main international Conventions. The following Conventions were entered into force in the U.S. on the following dates:

- The Convention on International Civil Aviation (the "Chicago Convention") – 4 April 1947.
- The Geneva Convention – 17 September 1953.
- The Warsaw Convention – 29 October 1934.
- The 1955 Hague Protocol to the Warsaw Convention, and Montreal Protocol No. 4 – 14 December 2003.
- The Montreal Convention – 4 November 2003.
- The Cape Town Convention, and the Protocol to the Convention on Matters Specific to Aircraft Equipment – 1 March 2006.

2.5 How are the Conventions applied in the USA?

The Conventions are implemented in the U.S. pursuant to the procedures that govern the implementation of treaties, requiring ratification and in some instances, legislative implementation. If a treaty is self-executing, it becomes judicially enforceable upon ratification by the President. If a treaty is not self-executing, it requires legislative implementation by Congress, which authorises judicial enforcement. With the exception of the Chicago and Cape Town Conventions, international conventions have been self-executing and therefore did not require legislative implementation.

As treaties of the U.S., the Conventions supersede individual state laws and policy and are the supreme law of the land. Cases are decided and are enforced in U.S. courts pursuant to the terms of the Conventions and precedential case law interpreting them.

3 Litigation and Dispute Resolution

3.1 What rights of detention are available in relation to aircraft and unpaid debts?

Rights of detention are primarily governed by the law of individual states in the U.S. Accordingly, the rights of creditors vary depending on the type of lien and the attachment, perfection and priority laws of the relevant state.

Federal laws governing the rights of detention are limited to those situations where an aircraft is subject to a lien as a result of a civil penalty (49 USC 46304), and where bankruptcy court protection is required. Additionally, most liens, whether issued under state or federal law, may be filed with the FAA Aircraft Registry.

3.2 Is there a regime of self-help available to a lessor or a financier of aircraft if it needs to reacquire possession of the aircraft or enforce any of its rights under the lease/finance agreement?

The Uniform Commercial Code, which has been adopted in some form by all 50 states, allows a secured creditor, in the event of a default, to take possession of the aircraft and without removal, render it unusable as long as there is no breach of the peace. Whether

there is a breach of the peace depends on the definition of “breach of the peace” in the state where the repossession occurs. Upon seizure, the secured party may retain the collateral in satisfaction of the secured debt, or sell or otherwise dispose of it and apply the proceeds to satisfy the debt. However, a lessor or a financier’s right to repossession may also be limited by the terms of the underlying loan documents.

The Cape Town Convention also provides self-help to a lessor of an aircraft in the U.S.

3.3 Which courts are appropriate for aviation disputes? Does this depend on the value of the dispute? For example, is there a distinction in the USA regarding the courts in which civil and criminal cases are brought?

Most civil matters, including civil aviation disputes, can be heard in state or federal court, depending on the circumstances.

Civil claims may be filed in federal court under limited circumstances, including if there is an issue of federal question (i.e. under a treaty or federal regulation), or if the case is between citizens of different states and the amount in controversy exceeds \$75,000. Federal courts may also hear cases involving foreign sovereign entities.

State courts have broader jurisdiction and can hear almost any case, as long as it is not pre-empted by federal law. The only civil cases state courts are not allowed to hear are lawsuits against the U.S. and those involving antitrust, bankruptcy, copyright, patent, and maritime law. Many states also have small claims courts to resolve actions involving smaller amounts.

Criminal cases involving federal laws can be tried only in federal court, but most criminal cases involve violations of state law and are tried in state court.

3.4 What type of remedies are available from the courts or arbitral tribunals in the USA, both on an i) interim and a ii) final basis?

Depending on the circumstances surrounding the case, civil courts in the U.S. may order legal remedies (i.e. monetary damages) or equitable remedies (i.e. specific performance or injunctive relief). On an interim basis, civil courts may order provisional remedies (i.e. temporary injunctions).

The Federal Arbitration Act, the Revised Uniform Arbitration Act of 2000, and state laws, afford arbitrators wide latitude with regard to granting remedies. Typically, however, remedies available are set out in a contractual agreement between the parties and are often similar to those available to the courts.

3.5 Are there any rights of appeal to the courts from the decision of a court or arbitral tribunal, and, if so, in what circumstances do these rights arise?

In federal court, once a case is decided by a U.S. District Court, it may be appealed as a matter of right to the applicable Court of Appeals. Thereafter, a party may file a “writ of *certiorari*” requesting the Supreme Court of the United States hear the case, but the Court is not required to grant the writ and hear the case.

In state court, once a case is decided by a trial court, a party may appeal as a matter of right to the next level appellate court for review (either an intermediate court of appeal or the supreme court of that state). A party may appeal to the United States Supreme Court via “writ of *certiorari*” if the case dealt with a federal question.

The right to appeal a decision of an arbitral tribunal varies with regard to federal and state laws, but is typically allowed. On appeal, however, the grounds to vacate an arbitration decision are severely limited by the Federal Arbitration Act, and courts tend to grant deference to rulings of arbitrators in mutually agreed-upon arbitration.

4 Commercial and Regulatory

4.1 How does the USA approach and regulate joint ventures between airline competitors?

The DOT regulates joint ventures. State laws and the Federal Trade Commission (“FTC”) are pre-empted by federal law. (49 USC 41713 and 15 USC 45.)

The DOT is responsible for:

- determining whether a U.S. or foreign air carrier has engaged in an unfair or deceptive practice or an unfair method of competition under 49 USC 41712;
- reviewing joint venture agreements within the meaning of 49 USC 41712, including code sharing and joint frequent flyer programmes, to determine fairness under 49 USC 41712; and
- approving cooperative agreements and antitrust immunity under 49 USC 41308-41309, often sought by U.S. and foreign air carriers considering an alliance.

The DOT does not regulate full-function joint ventures. The DOT regulates joint ventures that result in only a sharing of services and/or revenue.

4.2 How do the competition authorities in the USA determine the “relevant market” for the purposes of mergers and acquisitions?

The “relevant market” is determined by looking at the relevant product and geographic markets to assess whether the desired merger or acquisition will substantially lessen competition and whether consumers in the relevant market can readily find a suitable alternative.

The relevant product market is typically defined by the line of commerce being offered, such as scheduled passenger or cargo flights. The relevant geographic market is typically defined by where the companies involved compete, often based on routes or city-pairs.

4.3 Does the USA have a notification system whereby parties to an agreement can obtain regulatory clearance/anti-trust immunity from regulatory agencies?

Yes. Depending on the size of the parties involved and the value of the proposed agreement, parties to an agreement must notify the FTC and the DOJ prior to closing. Section 7a of the Clayton Act, otherwise known as the Hart-Scott-Rodino Antitrust Improvement Acts (“HSR”) (15 USC 18a), outlines the procedure for notifying the regulatory agencies. The HSR is discussed more fully in question 4.5.

Parties seeking to form a cooperative agreement, or joint venture within the meaning of 49 USC 41720, or to obtain an exemption from antitrust laws for a proposed alliance, must submit an application to the DOT for clearance. (49 USC 41308-41309.) The DOT then follows specified guidelines to determine whether approval and/or exemption is warranted.

4.4 How does the USA approach mergers, acquisition mergers and full function joint ventures?

The DOJ is responsible for regulating mergers, acquisitions, and full function joint ventures under the Sherman Act and the Clayton Act, including Section 7a, the HSR. Horizontal Merger Guidelines provide insight into how the DOJ determines whether to challenge the transaction.

The DOT may analyse a proposed merger or acquisition and submit its findings to the DOJ for review and use in the decision-making process. State laws and the FTC are pre-empted by federal law pursuant to 49 USC 41713 and 15 USC 45, respectively.

Additionally, if a U.S. air carrier is formed as a result of the merger, acquisition, or full-function joint venture, the owner must be a citizen of the U.S. as defined under 49 USC 40102.

4.5 Please give an outline of the procedure, including time frames for clearance and details of any costs of notifications.

Section 7a of the Clayton Act requires parties to an agreement involving voting securities and non-corporate interests and/or assets of a significant value to notify the FTC and the DOJ prior to closing of the terms of the transaction and information about each party's business.

The parties must also submit a filing fee based on the value of the voting securities and non-corporate interests and/or assets. The agencies have approximately 30 days to review the information and determine whether additional time is needed or if they want to seek an injunction. (16 CFR Parts 801, 802, and 803.)

Parties seeking approval of a joint venture within the meaning of 49 USC 41720, or a cooperative agreement, and/or antitrust immunity for a proposed alliance, must submit an application to the DOT. The DOT shall grant approval and/or a request for an exemption where:

- it is not in violation of the laws of 49 USC 413;
- it is not adverse to the public interest; and
- it does not substantially reduce or eliminate competition, unless it is necessary to meet a serious transportation need or to achieve important public benefits.

The DOT must give the Attorney General and the Secretary of State notice and an opportunity to comment, and a hearing if required. The DOT must make a final decision within 6 months of receipt if there is no hearing, or 12 months if there is a hearing.

4.6 Are there any sector-specific rules which govern the aviation sector in relation to financial support for air operators and airports, including (without limitation) state aid?

The federal government does not provide financial support for air carriers, with the exception of the programmes described in question 4.7. The federal government does, however, provide financial support for airports, as described in question 4.13.

State or local governments may provide support to air carriers or airports, but the state would have to comply with related rules such as 49 USC 41713, which notes that a state may not enforce a law, regulation, or other provision related to a price, route, or service of an air carrier providing transportation pursuant to the statute. Federal law pre-empts any such state law.

4.7 Are state subsidies available in respect of particular routes? What criteria apply to obtaining these subsidies?

The Airline Deregulation Act allowed U.S. air carriers to choose which domestic markets to serve and what fares to charge. To ensure that air carriers continued to serve less-profitable, smaller markets, the federal government enacted the Essential Air Service ("EAS") program, allowing the DOT to subsidise air carriers serving such markets. Eligibility for these subsidies is outlined in 49 USC 41731-41732. Current annual non-Alaska subsidies range from \$340,000 to \$4.7 million, and total about \$240 million.

The Small Community Air Service Development Program is a grant programme designed to help small communities address air service and airfare issues (49 USC 41743), and the Alternative Essential Air Program allows communities to take the EAS money and spend it in ways that better suit the particular needs of the community.

4.8 What are the main regulatory instruments governing the acquisition, retention and use of passenger data, and what rights do passengers have in respect of their data which is held by airlines?

The Intelligence Reform and Terrorism Prevention Act ("IRTPA") requires all airlines who operate flights to and from the U.S. to collect passenger name records ("PNR data") and transmit them to the CBP or TSA. To assist in complying with the IRTPA, the TSA developed the Secure Flight Program. (49 USC 114, 49 CFR Parts 1544, 1546 and 1560.)

PNR data includes a passenger's full name, date of birth, and gender. Upon collection and comparison with watch lists, the TSA instructs the air carrier to proceed with the passenger as normal, perform enhanced screening, or deny transport.

The records of individuals who are not potential or confirmed matches are destroyed within 7 days of completion of travel. If the individual is a potential or confirmed match, the TSA will keep his or her record for at least 7 years after the completion of travel.

The TSA may only share PNR data with another government agency if it is in the interest of national security or for some other lawful purpose that doesn't violate the Privacy Act. The TSA procedures note that air carriers may only use the results for security purposes and they must appropriately safeguard any data obtained. Typically, air carriers have their own privacy policy and are subject to state privacy laws.

Under the Privacy Act of 1974, passengers may request a copy of or make a correction to their own PNR data, but they do not have the right to consent to particular uses of the information collected.

Additionally, the EU-US PNR Agreement identifies privacy rights for EU citizens.

4.9 In the event of a data loss by a carrier, what obligations are there on the airline which has lost the data and are there any applicable sanctions?

There are no federal laws regarding the loss of private consumer data within the aviation industry. Air carriers that lose private consumer data are subject to their own privacy policies and state privacy laws. State privacy laws often require, among other things, reasonable security procedures, data disposal procedures, and notification of security breach. States typically allow for private rights of action by individuals, and enforcement actions by state Attorneys General,

for civil penalties, damages, and/or injunctive relief, in the event of a data loss or breach.

EU citizens may have recourse through the EU-US PNR Agreement, which authorises the DHS to take action on behalf of EU citizens.

4.10 What are the mechanisms available for the protection of intellectual property (e.g. trademarks) and other assets and data of a proprietary nature?

To protect intellectual property and other assets and data of a proprietary nature, an air carrier may file a patent or register a trademark (or service mark) with the United States Patent and Trademark Office, or register a copyright with the United States Copyright office.

4.11 Is there any legislation governing the denial of boarding rights?

14 CFR Part 250 governs the denial of boarding rights in the event of an oversold flight. If a flight is oversold, the air carrier must first request volunteers to give up their seats, in exchange for compensation from the carrier in an amount of the carrier’s choosing. The carrier must inform volunteers if their ticket is one that may be denied boarding, and of the amount the carrier is obligated to pay should they be denied boarding involuntarily. Additionally, the carrier must inform volunteers of any material restrictions affecting the compensation. If there are not enough volunteers, the carrier may then deny boarding in accordance with its policies. The carrier must notify the DOT of all passengers involuntarily denied boarding. The DOT may enforce civil penalties against air carriers who improperly deny passengers boarding. (49 USC Chapters 461 and 463.)

4.12 What powers do the relevant authorities have in relation to the late arrival and departure of flights?

Federal rules require air carriers to establish a Customer Service Plan, which includes notifying passengers of known delays, cancellations, and diversions. (14 CFR 259.) Compensation is not required for the late arrival or departure of flights. Continuously making unrealistic flight schedules resulting in chronically delayed flights is considered a deceptive business practice and could result in civil penalties.

The Montreal Convention holds certain international air carriers liable to passengers for damages resulting from a delay unless the carrier took all reasonable measures to avoid damages. Nevertheless, liability of the carrier is limited pursuant to Article 22.

Federal rules also prohibit U.S. air carriers from allowing an aircraft to remain on the tarmac without deplaning passengers for more than 3 hours for domestic flights and 4 hours for international flights, with the exception of certain safety concerns and air traffic control requests. (14 CFR Part 259.) An air carrier that fails to comply with the aforementioned rules may be subject to monetary penalties levied by the DOT. (49 USC 46301.)

4.13 Are the airport authorities governed by particular legislation? If so, what obligations, broadly speaking, are imposed on the airport authorities?

Airport operators are primarily governed by the FAA. (49 USC 44706.) The FAA is responsible for issuing Airport Operating

Certificates, which ensure that safety and maintenance requirements are met.

Additionally, a majority of commercial airports in the U.S. seek development grants from the federal government. By accepting federal funding, airport operators agree to obligations of the applicable airport development programme, including the Airport Improvement Program (49 USC 47101-47142) and the Surplus Property Act of 1944 (49 USC 47151-47153).

Operators also must comply with security requirements imposed by the TSA and CBP.

4.14 To what extent does general consumer protection legislation apply to the relationship between the airport operator and the passenger?

As discussed in question 4.13, a majority of commercial airports in the U.S. seek grants from the federal government. In order to obtain approval for a grant, the airport operator must assure the DOT that the airport will be available for public use on reasonable conditions and without unjust discrimination. By preserving competition among the air carriers in this fashion, the airport operators are protecting consumer rights. (49 USC 47107.)

4.15 What global distribution suppliers (GDS) operate in the USA?

Amadeus, Sabre and Travelport, which includes Galileo, Worldspan and Apollo.

4.16 Are there any ownership requirements pertaining to GDSs operating in the USA?

No. There are no ownership requirements pertaining to GDSs operating in the U.S.

4.17 Is vertical integration permitted between air operators and airports (and, if so, under what conditions)?

A certain level of vertical integration is permitted. Air operators do not own equity in airports, but air operators and airports enter into long-term use and lease agreement, whereby the air operator agrees to financial obligations, terms of use, and other regulatory responsibilities in return for use of gates, ticket counters, and terminals, decision-making rights and control, and sometimes the creation of a “hub airport”.

These agreements have raised competition concerns with the FAA, causing it to closely monitor the transactions and require airports with dominant air operators to submit an outline for how the airport will promote airport access, entry, and competition.



Bartholomew J. Banino

Condon & Forsyth LLP
7 Times Square
New York, NY 10036
USA

Tel: +1 212 894 6818
Fax: +1 212 370 4453
Email: bbanino@condonlaw.com
URL: www.condonlaw.com

Bart Banino is a partner in Condon & Forsyth's New York office. He represents air carriers and other clients in cases involving mass air disasters, wrongful death, personal injury, cargo damage and loss, aircraft ground accidents, breach of contract, regulatory enforcement and employment issues. He has assisted air carriers in mass disaster and crisis management planning and also advised carriers and other clients on various commercial matters including contracts and leases. He is an author of numerous articles on aviation law and is a frequent lecturer on aviation issues.



Nicole M. Smith

Condon & Forsyth LLP
7 Times Square
New York, NY 10036
USA

Tel: +1 212 894 6773
Fax: +1 212 370 4453
Email: nsmith@condonlaw.com
URL: www.condonlaw.com

Nicole Smith is an associate in Condon & Forsyth's New York office. Her practice encompasses all aspects of aviation litigation and commercial matters. She has handled a variety of issues for the firm's aviation clients including personal injury, cargo damage and loss, commercial disputes, breach of contract actions, bankruptcy issues, and regulatory matters.



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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk