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ENAC DECISION TO GRANT “FIFTH FREEDOM RIGHTS” TO EMIRATES FOR MILAN-NEW YORK FLIGHTS CHALLENGED BY THE ITALIAN AIR CARRIERS ASSOCIATION AND ALITALIA CAI

By Lorenzo Sperati

Emirates has requested to the Italian Civil Aviation Authority (ENAC) slots and traffic rights in order to be granted the right to extend one of its three daily flights from Dubai (DXB) to Milan Malpensa (MXP) onwards to New York’s John F. Kennedy International (JFK) from the 1st of October 2013.

On the 8th of April, ENAC has authorized the proposed services on an extra bilateral basis, thus granting the fast growing UAE carrier rights to land in Italian territory, and board passengers travelling on to a third state, the U.S., where the passengers disembark (also known as “beyond rights”).

This long-haul route, which allows Emirates to operate scheduled flights to pick up passengers in Italy and take them to the U.S. can be defined as an expression of the “fifth freedom” provided by the Chicago Convention of 1944.

On the 13th of June, the Italian air carriers association (Assaereo) and Alitalia CAI have challenged the authorization given by ENAC to Emirates before the

Administrative Court of Lazio (Rome), arguing – inter alia – that the above decision is in breach of the provisions set forth by the Bilateral Agreement in force between the Italian government and the United Arab Emirates government (i.e. Bilateral Agreement signed in Abu Dhabi on 3 April 1991). At the first hearing held on 9 July 2013, the Administrative Court of Lazio (Rome) has resolved not to suspend the ENAC’s authorization pending the challenge, and has immediately fixed – in consideration of the matter’s relevance – the hearing for discussing the merits of the challenge on 30 January 2014.

APPLICATION OF THE NEW ITALIAN TAX ON AIRCRAFT “NOISE” (“IRESA”) SUSPENDED BY LOMBARDIA REGION

By Gianluigi Ascenzi

Lombardia Region has proposed to suspend the application of the new tax on aircraft “noise” established by Italian Law No. 342/2000 and that had to be implemented by each Region of Italy with own regional law starting from January 2013. The above proposal of suspension will be then subject to formal ratification by the Regional Council of Lombardia. The decision has been welcomed by both the Italian air

carriers and the Italian airports association (namely, Assaereo and Assoaeroporti) who had raised complaints against the tax regime introduced by the IRESA, in particular objecting that the correlation among the incomes which will be generated by such a new tax and their use aimed at reducing the environmental impact caused by the aircraft is unclear.

REPUBLIC OF SAN MARINO

By Francesco Grassetti

There is an increasing of interest for the registration of aircraft in the Registry of the Republic of San Marino (the "Registry"). The local governmental agency holding the Registry is the San Marino Civil Aviation Authority ("CAA").

Any foreign individual or company owning an aircraft qualifies to register and maintain the same in the Registry subject to election of domicile with a local representative in the Republic of San Marino (by filing relevant form with the CAA). Such local representative will act as an address for service, being responsible to forward to the owner any notice/communication received from the CAA.

Aircraft registered in the Registry are exclusively intended for private, corporate and aerial work use. The aircraft registration fees are currently equal to Euro 250,00 (two hundred and fifty) for an indefinite validity period. Any further fees charged by the Registry are based on the specific record/certificate requested, in a range between Euro 30,00 (thirty) and 250,00 (two hundred and fifty) for each request.

The aircraft owner can elect to operate the aircraft directly or by an operating lessee, which can be either based in the Republic of San Marino or abroad. Please note that in both cases the operation will not be deemed as creation of a "permanent establishment" for tax purposes under the local laws. In both cases as well, if an event of default is occurred or the contract is terminated, the owner/lessor can unilaterally de-register a leased aircraft from the Registry, provided a self-declaration stating the lessee's default/lease termination be filed with the CAA. If the lessee is based in San Marino, a registration fee for the lease contract shall be paid to the San Marino Tax Authority, whose amount is equal to 1% (one percent) of the overall rents to be paid by the lessee to the owner/lessor during the lease term.

The subject fee must be shared equally between the owner/lessor and the lessee, unless otherwise agreed by the parties. Please also note that no VAT shall apply to rental payments due by the local lessee to the foreign owner/lessor.

As to custom duties related to the importation of the aircraft in the Republic of San Marino for registration and operation purposes, the owner shall pay an importation fee to the San Marino Tax Authority, whose amount is subject to the aircraft type, to the owner being an individual or a company and to the aircraft being new or used.

Referring to the registration process with the Registry, the CAA requires the following documentation to be filed by the aircraft owner (along with, and subject to, the satisfactory completion of a technical inspection of the aircraft):

1. application for electing the local representative;
2. a certificate of incorporation (or equivalent document), plus a list of the company directors;
3. application for issuance of the certificate of registration;
4. application for issuance of the certificate of airworthiness;
5. evidence of payment of the registration fees;
6. proof of ownership (i.e. notarized and apostilled, if applicable, Bill of Sale or Declaration of Property of the aircraft);
7. aircraft deregistration certificate from the previous registry or a statement of non-registration;
8. aircraft insurance certificate in accordance with EC Regulation No 785/2004;
9. export certificate of airworthiness, a valid certificate of airworthiness with a current ARC or equivalent document.

For additional information, please visit the official website of the San Marino Civil Aviation Authority: www.caa-mna.sm.

MISCELLANEOUS MATERIAL OF INTEREST

ITALIAN AUTHORITY OF TRANSPORTS

By Marco Marchegiani

On the 12th of July, the Italian Council of Ministers has appointed Mess.rs Andrea Camanzi, Barbara Marinali and Mario Valducci as – respectively – Chairman and Commissioners of the Italian Authority of Transports (namely Autorità dei Trasporti) established by Law Decree No 201/2011.

The appointment of the said three members represents the last step for the beginning of the activities to be carried out by the authority and enables the Italian government to bridge the gap that currently exists in the system of transports regulation.

The authority shall ensure and promote the development of the levels of competition in the Italian market of transport, as well as the development of fair and non-discriminatory conditions of access to the infrastructures, efficiency and quality of services, transparent fares and cost-oriented management.

The authority shall yearly report to the Italian Parliament about the levels of competition reached in the Italian market of transport.

BUCHAREST AIR TRANSPORT CONFERENCE 2013 TOWARDS ACHIEVING UNITY IN AIR TRANSPORT

By Giuditta Gori

On the 6th of June, the anniversary Air Transport Conference was held in Bucharest. The conference was aimed to engage professionals, both at national and international level, in the creative process and civil aviation research, honouring the contribution Professor Nicolas Mateesco Matte brought to civil aviation. Aviation experts discussed topic of current interests for the aviation industry and emphasized the importance of creating unity in this market.