

DIARY DATES

**GETTING THE DEAL THROUGH
AVIATION LAW NEWS CONFERENCE**
25 October 2017

London, United Kingdom
Laura Pierallini, speaker

IBA ANNUAL CONFERENCE

8-13 October 2017

Sydney, Australia
Laura Pierallini, speaker

**THE 7TH ST. PETERSBURG AIR LAW
CONFERENCE**

6 October 2017

St. Petersburg, Russia
Laura Pierallini, speaker

**INTERNATIONAL INSTITUTE
OF AIR AND SPACE LAW
LECTURE - ICAO SECRETARY GENERAL**

5 September 2017

Leiden, The Netherlands

CONTENTS

**UPDATE ON THE EXTRAORDINARY
ADMINISTRATION PROCEDURE OF ALITALIA**

**ITALIAN TRANSPORT REGULATORY AUTHORITY
– ANNUAL REPORT**

BIRD STRIKE COMMITTEE ITALY



**UPDATE ON THE EXTRAORDINARY
ADMINISTRATION PROCEDURE OF ALITALIA**

By Laura Pierallini

Background: by Decree dated 2 May 2017 the Ministry for the Economic Development started the extraordinary administration procedure of Alitalia pursuant Law 39/2004 and appointed three commissioners to lead the company throughout the procedure.

The main purpose of the extraordinary administration is to implement a recovery plan meant to preserve the employment levels by way of three alternative solutions: (i) the financial restructuring of the company; (ii) the sale of the business as a whole, implying the continuation of the activity; (iii) the sale of the business, assets and contracts part by part, with the continuation of the activity as well.

Update: on 17 May 2017 the commissioners published a call for the expressions of interest from any prospective bidders, who shall at first comply with financial and honourability requirements to be eligible for the acquisition of Alitalia's business, as well as meet the EU nationality requirement set out by Regulation EC 1008/2008 (i.e. more than 50% of a EU licensed air carrier must be owned by nationals of a Member State).

The timeframe to submit expressions of interest

has expired on 5 June 2017 and, based on unofficial information from the Italian media, the Commissioners have received more than 30 expressions of interest, either for the entire aviation business or for a portion thereof (e.g. specific aircraft, contracts, slots etc.). According to rumours inside the air transport industry the prospective bidders may include major international airlines still being competitors of the target company at this time, such as Delta Air Lines, Air France, British Airways, Turkish Airlines, Air China and Ryanair, in addition to private equity firms like TPG, Cerberus and Indigo Partners.

Following a detailed evaluation of the various expressions of interest – with a main focus on the economic offer and proposed preservation of the employment levels – the Commissioners have selected 15 entities eligible to take part to the second phase of the procedure. Accordingly from 26 June to 21 July 2017 the selected entities have been granted access to a data room of Alitalia, in order to carry out the necessary due diligence and then decide as to whether a potential purchase may be of interest. The data room did not contain sensitive and confidential information that may bring undue advantages to Alitalia's competitors.

On 21 July 2017 the first part of the due diligence

process has come to a conclusion. Thereafter, on 1 August 2017 the Commissioners have issued a call for the submission of non-binding offers that shall relate either to: (a) the entire business of Alitalia (including aviation, maintenance and handling); or (b) the aviation business (including maintenance activities); or (c) the airport ground handling business. The call has also clarified that should there be a certain degree of equality of the conditions offered by the bidders, the commissioners will prefer those offers relating to the entire business of Alitalia. The deadline to submit non-binding offers will be on 15 September 2017. Afterwards, the next steps have been fixed as follows: (1) within 10 business days the commissioners will communicate the admitted bidder(s) to the second part of the due diligence; (2) within 2 October 2017 the binding offer(s), if any, shall be submitted to the commissioners; and (3) within 5 November 2017 the prospective final phase consisting of negotiating and/or enhancing the binding offers shall be concluded. Based on the above mentioned deadlines it appears that the purpose of the commissioners is to finalize the sale of Alitalia's business (either entirely or part by part) by the end of 2017.

ITALIAN TRANSPORT REGULATORY AUTHORITY – ANNUAL REPORT

By Francesco Paolo Ballirano

On 12 July 2017 the Italian Transport Regulatory Authority (“ITRA”) presented to the Italian Parliament the fourth annual report regarding the transport sector.

In particular, with regard to the air transport and the airport system, the ITRA explained the results of the experience gained in the first two years of application of the models for the regulation of airport charges, that in a free competition regime are based on the negotiation between airport managing companies and airport users (mainly airlines). To date around 90% of the Italian airports have started consultations with the stakeholders, thus confirming that the above mentioned models are an efficient instrument to ensure a common level playing field throughout the Italian airports. These regulatory models have allowed the airport managing companies, on the one hand, to obtain the economic resources necessary to implement the investment plans that should bring the Italian airports to the same level of quality and infrastructures offered by the main European and international airports. On the other hand, through an active role in the determination of the airport charges the relevant users can contribute to the application of specific conditions for the peculiar needs of each single airport.

Moreover, tariff regulation models have recently been

modified by the ITRA resolution no. 92 of 6 July 2017. The ITRA has deemed appropriate to make a few adjustments to the models, in order to improve their effectiveness. In particular, the authority has applied a mid-term revision to the models in order to adjust the value of the infrastructure investments made (or planned) by the airport managing companies to the market trend. Also, in response to the stakeholders' demand, the ITRA has changed some elements of the consultation process maintaining, however, a similar regulatory framework meant to ensure the system stability over the medium term.

BIRD STRIKE COMMITTEE ITALY

By Marco Marchegiani

The role of the Bird Strike Committee Italy (“BSCI”) and the monitoring of bird strike events over the Italian territory have acquired more importance following the recent decision of the European Court of Justice on the application of article 5 of Regulation EC 261/2004, according to which a carrier is not obliged to pay compensation if it can prove that a flight cancellation (or a delay of more than 3 hours) is caused by extraordinary circumstances which could not be avoided even if all reasonable measures had been taken. In other words, no liability arises under Reg. 261/2004 if the collision between an aircraft and a bird is beyond the actual control of the airline.

Among the main tasks of the BSCI, worth mentioning are the monitoring of airports and operators for the compliance with the sector rules, collecting, processing and forwarding to the ICAO the national statistics on wildlife strikes, supporting the Italian CAA (ENAC) and airport managing companies by way of educational sessions, on-site visits and coordination activities with local authorities and international institutions, such as the ICAO and the World Birdstrike Association (WBA).

The BSCI has recently published its annual report on bird strike events over the Italian territory. The report highlights that in 2016 the collisions have slightly increased since 2015 (+ 1,94%). Namely the number of notices regarding events below 300 feet were 315, whilst those over 300 feet were almost 1000.

According to the technicians the fact that the amount of relevant events has increased since 2015 may be due to the improvement of the monitoring activities and coordination between the various stakeholders, thus being in line with the trend observed in most of the ICAO countries worldwide. In addition to that, it is also remarkable the growing utilization the eEMOR system (electronic ENAC mandatory Occurrence Reporting) to collect notices about aviation events, also including wildlife strikes.