

DIARY DATES

**THE 8TH ST PETERSBURG
AIR LAW CONFERENCE**
26 October 2018
St Petersburg, Russia
Laura Pierallini, speaker

**SHANGHAI INTERNATIONAL
AIR LAW FORUM**
5 December 2018
Shanghai, China
Laura Pierallini, speaker

**ALIS 2019 - AVIATION LAW AND INSURANCE
SYMPOSIUM**
EMBRY-RIDDLE AERONAUTICAL UNIVERSITY
16-18 January 2019
Orlando, USA
Francesco Grassetto, speaker

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**ITALIAN ANTITRUST PROCEDURE IN
RELATION TO AIRLINES' NEW HAND
BAGGAGE POLICY**

By Marco Marchegiani

On 31 October 2018 the Italian Antitrust Authority (AGCM) has ordered the EU carriers Ryanair and Wizz Air to suspend the implementation of a new hand baggage policy that would have provided the payment of a surcharge to bring on board a standard trolley (i.e. up 55x40x23 cm) for flights departing from 1 November 2018. In practice, the two airlines would have allowed to bring on board for free only a "small" hand baggage (i.e. up to 40x30x20 cm) to be stored exclusively under the passenger seat, while for larger hand baggage customers would have paid an extra-fee between Euro 5 and 25 (based on the various booking options).

The AGCM has held that the mentioned new policy would cause a misleading representation of the actual price of airfares, because the operators would exclude a predictable and non-avoidable charge from the final price of the air transport service, namely the cost for bringing on board

a trolley of standard dimensions that should otherwise be included in the so called 'basic fare'. The result of this practice would affect the decision-making of average consumers since they would not be able to figure out the real price offered to the public, nor to make a comparison with fares proposed by other carriers on the same routes. Following this line of reasoning, the AGCM has found a breach of Article 20, 21 and 22 of the Italian Consumers Code (regarding unfair commercial actions and omissions against consumers) and has resolved to suspend the new hand baggage policy of Ryanair and Wizzair. On such basis the foreign carriers have also been ordered to refrain from any increase of costs for the "large" hand baggage transport and to make available to all passengers a suitable space for the storage of the same either on board or in the cargo hold.

Both airlines have decided to challenge the AGCM decision before the Italian Administrative Court (TAR), asking for its precautionary suspension and then revocation on the merits. The arguments submitted by the claimants to support their position are basically the same and can be summarized as follows: (i) the possibility for each

passenger to bring on board a standard trolley is often prevented by limited space availability in the cabin of aircraft used for short and medium-haul routes, thus consequently causing at least half of the passengers' hand baggage to be stored in the cargo hold during the embarking procedures. On the contrary, under the new hand baggage policy, each passenger is allowed to carry on board one trolley for free, plus a bag or personal belonging (such as a laptop case), and a surcharge is requested only to bring a second trolley of larger dimensions; (ii) the new hand baggage is compliant with article 23 of Regulation (EC) 1008/2008 in terms of information and non-discrimination to the public, because it gives a clear indication of the final prices applied by the carriers and so it does not exist any "prior separation from the fare of a predictable and non-avoidable charge", as otherwise deemed by the AGCM. Indeed passengers are informed with full transparency about the new policy since the first approach on the airlines' website, before the start of the online booking process. The new policy is also carefully described under the general conditions of transport of the airlines; (iii) the suspension of the new hand baggage policy for all flights departing from Italian airports to International destinations (booked on the airlines' Italian website) would have an immediate and direct impact on thousands of flights operated by the carriers every week. As a consequence passengers would be exposed to a serious inconsistency and different treatment between various regimes, depending on the country of departure and the nationality of the website used to book the ticket. With separate decisions taken on 22 November 2018 (Ryanair) and 6 December 2018 (Wizzair), the Italian Administrative Court (TAR) upheld the challenge of both airlines and, accordingly, suspended the AGCM decisions by way of precautionary measures. The merits of the two cases will be discussed at the public hearing to be held before TAR on 27 February 2019.

UPDATE ON ALITALIA'S MOST RECENT DEVELOPMENTS

By Francesco Grassetti

As broadly known in the aviation sector, Alitalia is a leading Italian airline that has faced financial troubles difficulties and related restructuring projects over the years. In May 2017 the Ministry for the Economic Development, upon

Alitalia's application, has resolved to open the special insolvency procedure (extraordinary administration) pursuant to Law 39/2004. The Procedure is provided for large insolvent companies and its main purpose is to preserve the employment levels and production assets by implementing a recovery plan that can imply either the financial restructuring of the company or the sale of the business with the continuation of the activity. In turn the sale of the business can be made either as a whole or part by part.

The extraordinary commissioners of Alitalia have received several expressions of interest from prospective investors, either for the acquisition of the entire aviation business or for a portion of the same (e.g. specific aircraft, slots, contracts etc.), while the financial restructuring option has seemed not to be taken into consideration so far. Three prospective investors have recently presented more structured offers, namely the Italian railway company Trenitalia, the UK carrier EasyJet and the US carrier Delta Air Lines. The offers are subject to strict confidentiality commitments and certain investment conditions. In particular, according to the press, Trenitalia would invest in the airline only by way of a joint venture with other companies, while EasyJet would be interested in a 'restructured' business only.

At the end of November 2018, Trenitalia's offer received a preliminary go ahead, and, according to the information publicly available, Trenitalia is at present negotiating with other potential partners to set up the joint venture for the investment in Alitalia. The sale would most likely happen through an asset deal (sale/contribution of Alitalia's business and assets) rather than a shares deal. In particular, always according to the information reported by the press, the awarded investors would set up a newco, to which the concerned Alitalia's material and immaterial assets would be transferred. The newco would also succeed in the contracts and agreements of Alitalia, which are part of the transferred business. In the meantime the business and operations of Alitalia continue to run under the EA rules. In particular: outstanding agreements continue in full force and effect, although the commissioners are at any time entitled to early terminate in light of the needs arising from the recovery plan; credits against the airline accrued prior to the start of the Procedure (2 May 2017) can be admitted to the insolvency table and repaid on a "par condicio creditorum" basis; the airline is committed to regularly perform its obligations accrued after 2 May 2017, including payment of lease rents and supply services.