

DIARY DATES

**ANNUAL CONFERENCE
OF THE INTERNATIONAL BAR ASSOCIATION**
19-24 October 2014
Tokyo, Japan
Laura Pierallini, Chair and Speaker

**NBAA TAX, REGULATORY
& RISK MANAGEMENT CONFERENCE**
19-20 October 2014
Orlando, Florida (US)
Francesco Grassetti, Speaker

INTERNATIONAL AIR LAW CONFERENCE
85 Anniversary of Warsaw Convention
24 October 2014
Warsaw, Poland
Laura Pierallini, Speaker

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DEAL ALITALIA – ETIHAD AIRWAYS
By Caterina Pesci

Following months of stop-and-go negotiations (involving the Italian Government, unions and many others as well as relevant stakeholders) on 8 August 2014 Alitalia and Etihad Airways announced that they finalized an investment deal that will strategically enable the Italian airline to be strengthened and the Abu Dhabi airline to increase its European network through the access to Europe's fourth-largest travel market and 25 million passengers.

As part of the 1.76 billion euro rescue plan, Etihad Airways' investment of 560 million euro will be provided through a combination of equity injections, asset purchases and other financing facilities and funding arrangement to re-structure the airline's balance sheet. An important role in the deal is also played by financial institutions and existing bank shareholders for up to 898 million euro, through financial restructuring of short and medium term debt and new loan facilities. According to the deal, Etihad will (i) take a 49 percent shareholding in Alitalia, for an investment of 387.5 euro, (ii) acquire a 75 percent

interest in Alitalia Loyalty S.p.A., the managing company of MilleMiglia (i.e. the Italian airline's frequent flier program) and (iii) purchase five pairs of slots at London's Heathrow Airport valued 60 million euro. The plan includes new destinations and increased frequencies for the long-haul flights from Fiumicino and Malpensa airports as well as an enhancement of the network between Italy and the UAE, introducing new flights departing from Fiumicino (FCO) - from five per week to a daily service - and a new daily service from Malpensa (MXP). Starting from the summer of 2015, new connections will be available between other Italian cities (such as Venice, Catania and Bologna) and Abu Dhabi. Alitalia's fleet should grow by a third and significant enhancements are foreseen for Fiumicino (as a larger European Intercontinental hub) and Malpensa (which will more than double to 25 long-haul flights a week by 2018). The new alliance between the two air carriers will soon have the chance to show its plans and play a supporting role for the Expo Milan 2015, as they were both named as Official Global Airline Carriers of such remarkable global event, to be held in Milan from May to October 2015. The deal clinched by Alitalia and Etihad was notified

to the European Commission on 29 September 2014 and is now waiting for the final regulatory approvals as a phase-one review by the EU Antitrust Authority will come in the next weeks. The effective closing of the deal and the starting of the new Alitalia operations are expected for the beginning of 2015.

NEW GUIDELINES ON STATE AID TO AIRPORTS AND AIRLINES

By Marco Marchegiani

Based on the European Commission Communication 2014/C 99/03, the Italian Ministry of Transport has published the guidelines to set out the conditions under which the public authorities can grant state aid to airports and airlines in Italy, pursuant to art. 13 of Law Decree no. 145/2014, as amended by Law no. 9/2014. The new guidelines for State aid promote sound use of public resources for growth-oriented initiatives. At the same time, they limit distortions of competition in particular by avoiding overcapacity and the duplication of unprofitable airports. Key features are: (i) State aid for investment in airport infrastructure is allowed if there is a genuine transport need and the public support is necessary to ensure the accessibility of a region. The new guidelines define maximum permissible aid intensities depending on the size of an airport, in order to ensure the right mix between public and private investment. The possibilities to grant aid are therefore higher for smaller airports than for larger ones; (ii) operating aid to regional airports (with less than 3 million passengers a year) will be allowed for a transitional period of 10 years under certain conditions, in order to give airports time to adjust their business model. To receive operating aid, airports need to work out a business plan paving the way towards full coverage of operating costs at the end of the transitional period. As airports with passenger traffic below 700.000 per year may face increased difficulties in achieving full cost coverage during the transitional period, the guidelines include a special regime for those airports, with higher aid intensities and a reassessment of the situation after 5 years; (iii) start-up aid to airlines to launch new air routes is permitted provided it remains limited in time. The compatibility conditions for start-up aid to airlines have been streamlined and adapted to recent market developments.

PROSPECTIVE REVISION OF ENAC CIRCULAR ON DESIGNATION OF CARRIERS FOR EXTRA-EU SCHEDULED FLIGHTS

By Francesco Grassetti

On 14 August 2014 ENAC issued a first draft of the revised Circular EAL-14A, ruling the designation procedure of carriers (both Italian and European

based in Italy) for the operation of extra-EU scheduled flights according to the international air transport agreements signed by the Italian Government. The subject revision increases and clarifies the role of ENAC in supporting the Italian Ministry of Transport to negotiate and conclude air transport agreements with extra-EU countries, providing that the said Aviation Authority shall represent to the Ministry the peculiar needs of the of the aviation industry and market, by examining: (i) the air traffic flows and the business statistics related to the involved geographical markets; (ii) the demands of the aviation operators; (iii) the traffic rights' utilization index; (iv) the views and guidelines of the international institutions (such as IATA and ICAO) and of the European Union. The revised Circular clarifies also the requirements for an EU air carrier to be designated for extra-Eu routes operated from and to Italy. Namely, any EU carrier shall have the status of "established carrier", therefore holding a valid Air Operator Certificate and Air Carrier License compliant with Regulation (EC) no. 1008/2008, in addition to a permanent establishment in the Italian territory (implying a stable organization, a branch duly recognized by the Italian Authorities, such as the Tax Agency and the Chamber of Commerce, one or more operational bases and the filing of a Security Program along with the appointment of a Safety Manager). The existence of the mentioned requirements is assessed by ENAC on a case by case basis. Furthermore, ENAC explained the general criteria for the selection procedure of the applicant carriers and the subsequent granting of traffic rights, which are mainly intended to: (a) maximize the benefits for the consumers, (ii) increase the business and touristic exchanges between countries; (iii) develop the civil aviation system and in particular the air transport industry and the airport infrastructures; (iv) promote a fair competition between the applicant carriers.

In the last month ENAC has collected comments and remarks to the draft revision among the aviation industry, and the issuance of the new Circular is expected to come in the next weeks.

EUROPEAN AIR PASSENGER RIGHTS, 10 YEARS ON

On 26-27 September 2014 lawyers, practitioners and officials from the various EU member States rounded up at the College of Europe in Bruges, to present reports on the implementation level of Regulation (EC) no. 261/2004 across the European Union after 10 years since its effectiveness. Our firm was represented by Laura Pierallini who presented the report related to Italy. The results of the work-shop will be shortly published by the College of Bruges.