

# Air Transport

*Contributing editors*

John Balfour and Mark Bisset



2016

GETTING THE  
DEAL THROUGH 

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# Air Transport 2016

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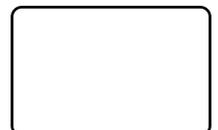


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# Netherlands

Jeroen Timmermans, Laetitia Kunst-den Teuling and Ruben Elkerbout

Stek

## General

### 1 Which bodies regulate aviation in your country, under what basic laws?

The main regulatory body for aviation in the Netherlands is the Human Environment and Transport Inspectorate, a division of the Ministry of Infrastructure and the Environment. The Inspectorate is responsible for the supervision of compliance with Netherlands aviation legislation. Air traffic control in the Netherlands is carried out by Air Traffic Control the Netherlands. The principal national legislation regulating aviation consists of the Aviation Act and the Act on Aviation, the latter replacing the Aviation Act in phases.

## Regulation of aviation operations

### 2 How is air transport regulated in terms of safety?

The Netherlands is a party to the Chicago Convention and must therefore comply with International Civil Aviation Organization (ICAO) standards. Furthermore, EU legislation (in which, among others, ICAO regulation is implemented) applies. The European Aviation Safety Agency (EASA) plays an important role in the field of safety of European civil aviation, among others in advising the European Commission on the drafting of EU legislation. The international legislation mentioned above has, where required, been implemented in national aviation legislation. The Aviation Act and the Act on Aviation contain general provisions relating to the safety of air transport and air traffic, which are specified in further regulation based thereon, such as:

- the Aircraft Decree 2008, the Aviation Licences Decree, the Air Operation Decree, the Regulations on Air Operation and the Regulations on Aircraft Maintenance, containing provisions in respect of airworthiness, operators, operations and maintenance of aircraft; and
- the Air Traffic Decree 2014, containing provisions in respect of air traffic control.

### 3 What safety regulation is provided for air operations that do not constitute public or commercial transport and how is the distinction made?

In principle, non-commercial air operations fall under the same general safety regulation as commercial air operations. However, Netherlands law does make a distinction between commercial and non-commercial air operations. The Air Operation Decree and certain provisions of the Act on Aviation specifically relate to commercial air operations, whereas the Regulations on Air Operation, implementing Annex 6 to the Chicago Convention (to the extent relating to 'general aviation'), contain provisions applicable to private air operations and corporate air operations. Aerial work, although not covered by Annex 6 to the Chicago Convention, falls under the scope of the Regulations on Air Operation as well.

### 4 Is access to the market for the provision of air transport services regulated and, if so, how?

Yes, access to the market for the provision of air transport services is regulated. EC Regulation No. 1008/2008 is directly applicable in the Netherlands. If an air carrier does not fall under the scope of EC Regulation No. 1008/2008 (ie, for example, an air carrier not established in the European Economic Area (EEA), or an air carrier operating local flights),

article 16 of the Aviation Act applies, stating that air carriers, unless otherwise provided by an international agreement, are prohibited from operating aircraft in, to or from the Netherlands without an operating licence granted by the Minister for Infrastructure and the Environment.

### 5 What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

Under EC Regulation No. 1008/2008, applicable to air carriers established in the EEA, the Minister for Infrastructure and the Environment may grant an operating licence to an air carrier whose principal place of business is located in the Netherlands, provided said air carrier meets the requirements set forth in EC Regulation No. 1008/2008. As to financial fitness, EC Regulation No. 1008/2008 provides that an air carrier applying for an operating licence for the first time must provide evidence that it is able to:

- meet, at any time, its actual and potential obligations for a period of 24 months from the start of operations; and
- cover its operational costs according to its business plan for a period of three months from the start of operations, without taking into account any income from its operations.

As to nationality of ownership, EC Regulation No. 1008/2008 provides that, in order for an operating licence to be granted to an air carrier, EEA member states or nationals of EEA member states must own more than 50 per cent of said air carrier, and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the EU is a party.

### 6 What procedures are there to obtain licences or other rights to operate particular routes?

In principle, an air carrier having been granted an operating licence in accordance with EC Regulation No. 1008/2008 is entitled to operate air services within the EEA. The operation of routes between an EEA member state and a non-EEA member state is regulated by bilateral agreements between the EU and said non-EEA member state. Where the operation of a certain route between the Netherlands and a non-EEA member state is not governed by a bilateral agreement between the EU and the relevant non-EEA member state, the air carrier must be designated by the Minister for Infrastructure and the Environment pursuant to the applicable bilateral agreement between the Netherlands and said non-EEA member state.

### 7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

An air carrier or other interested party can file with the Minister for Infrastructure and the Environment a notice of objection to the Minister's decision in respect of an application for a licence to operate particular routes. Against the decision on such objection, appeal can be filed with the court and against the judgment of the court, appeal can be filed with the Administrative Law Division of the Council of State.

### 8 Is there a declared policy on airline access or competition and, if so, what is it?

According to the Policy Document on Aviation, containing the government's vision on and ambition in respect of aviation in the Netherlands, the government aims to contribute to the development of an open and

competitive an aviation market as possible. Other important policy documents on aviation are the Licensing Policy Document on Aviation and the Policy Regulations on Licences for Scheduled and Non-scheduled Air Transport (both published in May 2014), through which the government aims to establish a level playing field, especially in light of increased consolidation of air carriers.

**9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?**

To operate commercial flights to or from the Netherlands, a foreign, EEA-established air carrier must be in the possession of an operating licence issued in accordance with EC Regulation No. 1008/2008 by the competent licensing authority of the member state in which the air carrier's principal place of business is located. Air carriers not established in the EEA must be designated pursuant to the applicable bilateral agreement between the Netherlands and the relevant country (or must be granted an operating licence in accordance with article 16 of the Aviation Act; see question 4).

Furthermore, the Act on Aviation provides that any air carrier operating flights for remuneration within the Amsterdam flight information region must be in the possession of an air operator's certificate (AOC) granted by the Minister for Infrastructure and the Environment (ie, the Human Environment and Transport Inspectorate), unless provided otherwise by international agreement. Under EC Regulation No. 1008/2008, an operating licence shall only be granted provided that the air carrier applying for such licence holds a valid AOC issued by the competent authority of the member state concerned. Technical requirements for an AOC to be granted are laid down in EU Regulation No. 965/2012 (said Regulation (Part I through V) being applicable in the Netherlands as from 28 October 2014 owing to the use of the opt-out possibilities provided therein).

**10 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?**

Under EC Regulation No. 1008/2008, public service obligations may be imposed by a member state in respect of scheduled air services between an EU airport and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory, any such route being considered vital for the economic and social development of the region which the airport serves. Public service obligations shall be imposed only following consultations with the other member states concerned and after having informed the European Commission, the airports concerned and the air carriers operating on the relevant route, and only to the extent necessary to ensure on that route the minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest. In the Netherlands, no specific rules on public service obligations exist.

**11 Are charter services specially regulated?**

EC Regulation No. 1008/2008 applies to both scheduled services and charter services. Pursuant to article 3 of the Decree on Non-scheduled Air Transport, the operation of non-scheduled flights between the Netherlands and a non-EEA member state that are not governed by a bilateral agreement between the EU or the Netherlands on the one hand and the relevant non-EEA member state on the other, must be authorised by the Minister for Infrastructure and the Environment.

**12 Are airfares regulated and, if so, how?**

Pursuant to EC Regulation No. 1008/2008, air carriers established in the EEA, and, on the basis of reciprocity, air carriers established in third countries, may freely determine airfares for air services within the EEA (although certain restrictions may apply in case of public service obligations). Notwithstanding the provisions of bilateral agreements between EEA member states, EEA member states may not discriminate on grounds of nationality or identity of air carriers in allowing EEA-established air carriers to set fares and rates for air services between their territory and a third country.

Pursuant to the Tariff Decree on Scheduled Air Transport, airfares for scheduled air transport services between the Netherlands and destinations outside the EEA require prior consent from the Minister for Infrastructure and the Environment, but only to the extent the international agreement between the Netherlands and the relevant non-EEA country so requires.

Such international agreements with third countries often contain liberal tariff regimes, under which any designated air carrier may, under supervision of the contracting states, freely determine its tariffs. The necessary criteria for the granting of consent (to the extent still required) have been included in policy regulations.

**Aircraft**

**13 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?**

According to the Act on Aviation and the Regulations on the Registration of Netherlands Civil Aircraft, in the nationality register the holder of the aircraft (typically the lessee) is registered, as well as the owner if this is a natural person or legal entity other than the holder. Pursuant to the Aircraft Decree 2008, the holder of the aircraft should be a national or resident of an EEA member state, or a legal entity incorporated under the laws of, and having its corporate seat or actual place of business in, an EEA member state or Bonaire, St Eustatius or Saba (Caribbean islands forming part of the Netherlands). If the holder of the aircraft is not the owner as well, it is additionally required that the owner is not a national of, or a legal entity established in, a state with which the Netherlands no longer maintain diplomatic relations.

**14 Is there a register of aircraft mortgages or charges and, if so, how does it function?**

Yes, pursuant to the 1948 Geneva Convention on the International Recognition of Rights in Aircraft there is a public register for the registration of mortgages and other rights on aircraft, which is held by the Land Registry. Rules pertaining to the registration of aircraft in the public register can be found in the Netherlands Civil Code, the Rules on Registered Aircraft 1996 and the Regulations on Registered Aircraft 2005. An aircraft can only be registered with the public register if said aircraft has a maximum take-off mass of at least 450 kilograms, has been registered with the Netherlands nationality register, has not been registered with the nationality register of another state, and if the court has approved the request for registration.

**15 What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?**

In the Netherlands, there are no specific rights to detain aircraft in respect of unpaid airport or air navigation charges. In general, the provisions of the Netherlands Code of Civil Procedure on seizure of aircraft apply in respect of unpaid charges or other debts. Under Netherlands law, an asset can be detained by a creditor holding said asset (eg, a repairman) until the related amount owed to it is paid in full. In principle, this right of detention also exists in respect of aircraft, with the understanding that with respect to aircraft registered with the Netherlands public register, or any other public register within the meaning of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft, special rules apply. The Netherlands Civil Code provides that a right of detention can be exercised in respect of such registered aircraft but that the same shall not entail a right of priority over such aircraft, so that it merely serves as a pressure tool.

**16 Do specific rules regulate the maintenance of aircraft?**

At a European level, EU Regulation No. 1321/2014 applies. At a national level, the maintenance of aircraft is regulated by the Act on Aviation, the Aircraft Decree 2008, the Regulations on Aircraft Maintenance, the Regulations on Recognitions of Airworthiness 2008 and the Air Operation Decree.

**Airports**

**17 Who owns the airports?**

Amsterdam Airport Schiphol, Rotterdam The Hague Airport and Lelystad Airport are all owned by NV Luchthaven Schiphol (through Schiphol Nederland BV, Rotterdam Airport BV and NV Luchthaven Lelystad, respectively). NV Luchthaven Schiphol in its turn is owned by the state of the Netherlands (69.77 per cent), the municipality of Amsterdam (20.03 per cent), Aéroports de Paris SA (8 per cent) and the municipality of Rotterdam (2.2 per cent). Schiphol Nederland BV owns 51 per cent, and the municipality of Eindhoven and the province of Noord-Brabant each own 24.5 per

cent, of Eindhoven Airport (through Eindhoven Airport NV). Maastricht Aachen Airport is owned by the province of Limburg (through Maastricht Aachen Airport BV). Groningen Airport Eelde is owned by the provinces of Groningen (30 per cent) and Drenthe (30 per cent), and the municipalities of Groningen (26 per cent), Assen (10 per cent) and Tynaarlo (4 per cent), through Groningen Airport Eelde NV. Enschede Airport Twente is out of operation.

#### **18 What system is there for the licensing of airports?**

Pursuant to the Act on Aviation, the operation of Amsterdam Airport Schiphol is subject to a licence (which has been granted to Schiphol Nederland BV). According to the Act on Aviation, the licence is granted for an indefinite period of time, but can be revoked by the Minister for Infrastructure and the Environment, among others, in the event of mismanagement by the airport operator endangering the continuity of the airport. In case of a serious presumption of impending mismanagement by the airport operator, the Minister for Infrastructure and the Environment may give binding instructions in order to avoid said mismanagement. The Regulations on Civil and Military Airports contain provisions for civil and military airports other than Amsterdam Airport Schiphol.

In March 2014 EU Regulation No. 139/2014 entered into force, regulating the certification of airports on a European level. Airports falling under the scope of said Regulation must be in the possession of a European certificate granted in accordance therewith before 31 December 2017.

#### **19 Is there a system of economic regulation of airports and, if so, how does it function?**

The Act on Aviation complies with EC Directive 2009/12, which applies to Amsterdam Airport Schiphol and aims to create a common framework for the regulation of airport charges (ie, a levy paid by air carriers for the use of facilities and services related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight). At least once a year, the operator of Amsterdam Airport Schiphol must determine the tariffs and conditions relating to its activities for the benefit of the use of the airport by air carriers. Said tariffs and conditions must be reasonable and non-discriminatory between air carriers. Tariffs may be modulated in the public and general interest, including environmental issues. The criteria used for such a modulation shall be relevant, objective and transparent. The Authority for Consumers and Markets (ACM) is responsible for the enforcement of compliance with the relevant tariff regulations under or pursuant to the Act on Aviation.

#### **20 Are there laws or rules restricting or qualifying access to airports?**

The Act on Aviation provides that access to the airport is to be ensured by the airport operator in accordance with the Act on Aviation and further regulations based thereon. Said further regulations contain restrictions with a view to noise, safety, the environment, etc. Furthermore, access to airports may be limited pursuant to regulations on slot allocation (see question 21). Pursuant to EC Regulation No. 1008/2008 the regulation of distribution of air traffic rights between EU airports are to be non-discriminatory among destinations inside the EEA or on grounds of nationality or identity of EU air carriers.

#### **21 How are slots allocated at congested airports?**

In accordance with the Decree on Slot Allocation, based on EC Regulation No. 95/93 (as amended by EC Regulation No. 793/2004 and most recently by EC Regulation No. 545/2009), slots at coordinated airports (ie, Amsterdam Airport Schiphol, Eindhoven Airport and Rotterdam The Hague Airport) are allocated by Stichting Airport Coordination Netherlands (SACN). Air carriers having been allocated slots from the pool are allowed to use the airport infrastructure for the purposes of take-off and landing at particular times and during a particular season. An air carrier has the right to retain the series of slots allocated to it in a particular season for the next corresponding season, but only if such air carrier has operated the relevant slots for at least 80 per cent of the time. These rights are known as 'grandfather rights'. If said 80 per cent usage cannot be evidenced, the relevant slots are returned to the pool. SACN must act in a neutral, non-discriminatory and transparent way.

#### **22 Are there any laws or rules specifically relating to ground handling?**

The Regulations on Ground Handling Airports, based on the Act on Aviation and EC Directive 96/67 (in respect of which EC Directive replacing legislation has been proposed and, in March 2015, withdrawn), apply to all types of ground handling services on airports open to commercial traffic whose annual traffic is no less than 2 million passenger movements or 50,000 tonnes of cargo.

In principle, access to the market by suppliers of ground handling services is free. However, the Regulations on Ground Handling Airports provide that the Minister for Infrastructure and the Environment may limit the number of providers for certain categories of ground handling services to no less than two per such category, whereby at least one of these suppliers should be entirely independent from the airport and the dominant air carrier at that airport. The Minister for Infrastructure and the Environment may also limit the number of users of self-handling services (meaning that air carriers provide the services in question for themselves) to no less than two. Furthermore, the Minister for Infrastructure and the Environment may impose certain conditions (relating to, for example, financial fitness and safety) on ground handling service providers or users of self-handling services.

#### **23 Who provides air traffic control services? And how are they regulated?**

Up to flight level 245 (24,500 feet), air traffic control services are provided by Air Traffic Control the Netherlands, an agency existing under the Act on Aviation and reporting to the Minister for Infrastructure and the Environment (while air traffic control services for the upper airspace above 24,500 feet are provided by the Maastricht Upper Area Control Centre, an agency operated by Eurocontrol). The tasks, structure and (operational and financial) management of Air Traffic Control the Netherlands are governed by the Act on Aviation. In respect of air traffic control, reference should also be made to the Single European Sky II (and the proposed but slowly progressing Single European Sky II+) legislation, the aim and purpose of which is to ensure a harmonised regulatory framework for air traffic management in the EU.

#### **Liability and accidents**

#### **24 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?**

Air carrier liability for passengers and their baggage is governed by EC Regulation No. 2027/97, which has been amended by EC Regulation No. 889/2002 in order to implement the relevant provisions of the Montreal Convention regarding the carriage of passengers and their baggage by air, and which applies to domestic carriage as well. EC Regulation No. 2027/97 lays down the obligations of EU air carriers in relation to liability in the event of accidents to passengers for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage took place on board an aircraft or in the course of any of the operations of embarking or disembarking. The air carrier is liable for damage sustained in case of damage to, or destruction or loss of, checked baggage, provided that the event which caused said damage, destruction or loss took place on board the aircraft or during any period within which the checked baggage was in the charge of the air carrier. However, the air carrier is not liable if and to the extent the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, the air carrier is liable if the damage resulted from its fault or that of its servants or agents. In order to strengthen passengers' position, a revision of EC Regulation 2027/97 is under preparation.

At a national level, provisions relating to air carrier liability (based on the Montreal Convention), have been included in Chapter 8 of the Netherlands Civil Code.

#### **25 Are there any special rules about the liability of aircraft operators for surface damage?**

EC Regulation No. 785/2004, as amended by EC Regulation No. 1137/2008 and EU Regulation No. 285/2010, contains the minimum insurance requirements for all air carriers and all aircraft operators flying within, into, out of, or over the territory of a member state. See also question 40.

## 26 What system and procedures are in place for the investigation of air accidents?

EU Regulation No. 996/2010, taking into account Annex 13 to the Chicago Convention, lays down international standards and recommended practices for aircraft accident and incident investigation. Said Regulation applies to safety investigations into accidents and serious incidents which occur:

- within the EU;
- outside the EU, but involve aircraft registered in a member state or operated by an undertaking established in a member state; or
- in territories where a member state may, according to international standards and recommended practices, appoint a representative or has a special interest by virtue of fatalities or serious injuries to its citizens.

Pursuant to EU Regulation No. 996/2010, a member state is obligated to investigate every aircraft accident or serious incident which occurs on its territory. The Annex to EU Regulation No. 996/2010 contains a list of examples of serious incidents. Each member state must ensure that safety investigations are conducted or supervised by a permanent, independent national civil aviation safety investigation authority. In the Netherlands, this is the Dutch Safety Board. Also, EU Regulation No. 996/2010 establishes a European Network of Civil Aviation Safety Investigation Authorities, formed of all member states' national safety investigation authorities, in order to improve the quality of investigations conducted by safety investigation authorities and strengthen their independence. EASA is closely involved in the investigations referred to above; an EASA representative must be invited to participate in said investigations as an adviser.

With effect as of 15 November 2015, EU Regulation No. 996/2010 shall be amended by EU Regulation No. 376/2014 to the extent it concerns the reporting of occurrences in civil aviation (see question 27).

## 27 Is there a mandatory accident and incident reporting system and, if so, how does it operate?

Pursuant to EU Regulation No. 996/2010, which contains detailed provisions on safety investigations following aircraft accidents or serious incidents, any person involved who has knowledge of the occurrence of such accident or serious incident shall notify without delay the competent safety investigation authority of the member state in which the accident or serious incident has occurred. In the Netherlands this is the Dutch Safety Board. The Dutch Safety Board has the obligation to notify without delay the European Commission, EASA, ICAO, the member states and any third parties involved. Each safety investigation shall be concluded with a report in a form appropriate to the type and seriousness of the accident or serious incident. Such report shall contain, where appropriate, safety recommendations.

EC Directive 2003/42, regarding the reporting system in respect of occurrences (operational interruptions, defects, faults or other irregular circumstances) that have or may have influenced flight safety but that have not resulted in an accident or serious incident, has been implemented in the Act on Aviation and further regulation (ie, the Decree on Occurrence Reporting in Civil Aviation and the Regulations on Occurrence Reporting in Civil Aviation). Such occurrences must be notified to the Aviation Incident Occurrence Reporting Bureau of the Human Environment and Transport Inspectorate by the natural persons and legal entities referred to in article 4, paragraph 1 of EC Directive 2003/42 (eg, the operator or commander of a public transport aircraft, maintenance providers, air traffic controllers, etc) within 72 hours following the discovery of any such occurrence.

As per 15 November 2015, EU Regulation No. 376/2014, amending EU Regulation No. 996/2010 and repealing EC Directive 2003/42, shall apply. Said Regulation establishes more proactive rules on the reporting, collecting, storing, protecting and disseminating of safety incident information in order to identify potential safety hazards before they result in an accident. Moreover, EU Regulation No. 376/2014 aims to create a 'Just Culture' environment by introducing provisions relating to the inappropriate use of safety information and the protection of occurrence reporters. The Netherlands is preparing a legislative proposal with the purpose of implementing EU Regulation No. 376/2014 in Netherlands aviation legislation.

## Competition law

### 28 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

In the Netherlands, sector-specific competition rules apply to Amsterdam Airport Schiphol because Amsterdam Airport Schiphol has a dominant position on the national market. On the basis of these rules, Amsterdam Airport Schiphol is required to hold separate accounts for its aviation and non-aviation activities. The ACM regulates the tariffs and conditions for aviation activities provided to airlines by Amsterdam Airport Schiphol. This concerns tariffs and conditions for landing, take off, parking of aircraft, baggage transport and security measures. The ACM ensures that tariffs and conditions are cost-based and are not unreasonable or discriminatory. Amsterdam Airport Schiphol will also base its tariffs on an attributive system of costs and benefits that requires the approval of the ACM.

The general competition law rules as laid down in the Dutch Competition Act apply to the aviation sector as a whole.

### 29 Is there a sector-specific regulator or are competition rules applied by the general competition authority?

The ACM is entrusted with the enforcement of the competition rules. This includes both the sector-specific rules applicable to Amsterdam Airport Schiphol as well as the general competition rules in the Dutch Competition Act.

### 30 How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

In its decisional practice, the ACM has defined two separate product markets (ie, the sale of airline capacity for transport of cargo and the sale of airline capacity for transport of persons).

The ACM has, on the basis of the decisional practice of the European Commission, considered that the market for the sale of airline capacity for transport of persons could be divided into medium-haul and long-haul flights. The ACM has left open whether or not this results in the existence of separate product markets, but has considered that if there is a separate product market for long-haul flights, it will in any event include both scheduled flights and charter flights. The ACM has considered the geographical market for sale of airline capacity for transport of persons to be national.

The ACM has considered the purchase of blocks of seats by tour operators and travel agencies to be a separate product market as well. Also, the market for the purchase of blocks of seats is considered to be national, since tour operators focus all of their promotional activities on the national market and purchase seats for flights departing from said national market.

### 31 What are the main standards for assessing the competitive effect of a transaction?

If a notified transaction significantly impedes competition in the Netherlands market or part thereof, the ACM may prohibit this transaction. In particular, this will be the case if the transaction results in the strengthening or creation of a dominant position of a party on a given market.

To assess the competitive effects of a transaction, the ACM determines the position of the undertakings on the relevant markets. Market shares form the most important indication of dominance, but the ACM will also take into account other factors, such as the structure of the markets concerned, buyer power and barriers to entry.

### 32 What types of remedies have been imposed to remedy concerns identified by the competition authorities?

The ACM may impose behavioural or structural remedies if a certain transaction raises concerns. It must be noted that the ACM favours the imposition of structural remedies over the imposition of behavioural remedies. However, to date, the ACM has not required any remedies in the aviation sector.

## Financial support and state aid

### 33 Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?

Both general and sector-specific EU state aid rules apply in the aviation sector. Commission Communication 2014/C 99/03 contains guidelines

specifically for state aid in the aviation sector. The objective of the guidelines is to preserve the accessibility of regions, whilst avoiding the duplication of unprofitable airports, a waste of public resources and undue distortions of competition. The guidelines, for example, clearly specify that when setting up agreements with an airline, the airport needs to ensure that the expected costs generated by the agreements will be covered by the corresponding expected revenues. If this is not the case, the airline benefits from an undue advantage which in principle constitutes incompatible state aid. The European Commission recently adopted several decisions, based on the guidelines on state aid to airports and airlines, concerning public support granted to airports and airlines in France and Germany.

Besides the general and sector-specific EU state aid rules, national sector-specific rules apply to Amsterdam Airport Schiphol in view of its dominant position. On the basis of these rules, Amsterdam Airport Schiphol is required to hold separate accounts for its aviation and non-aviation activities.

#### **34 What are the main principles of the state aid rules applicable to the aviation sector?**

According to article 107(1) of the Treaty on the Functioning of the European Union (TFEU), any aid granted by a member state that distorts or threatens to distort competition by favouring certain undertakings shall be incompatible with the internal market, insofar as it affects trade between member states. The European Commission applies the 'market economy investor principle' to determine the legality of aid granted by a member state or another public authority. Under this principle, the European Commission assesses whether a private investor would have made the investment under normal market conditions.

#### **35 Are there exemptions from the state aid rules or situations in which they do not apply?**

Section 107(2) and (3) TFEU list specific situations in which state aid shall be compatible with the common market. Section 107(2) TFEU states the type of state aid considered to be in line with the internal market, namely state aids that have a social character granted to individual consumers, state aids to make good the damage caused by national disasters or exceptional occurrences, and state aids granted to certain areas of Germany affected by the division of that country. Section 107(3) TFEU allows the Commission to permit a number of categories of state aid for which any anti-competitive effects are outweighed by other benefits.

Furthermore, Block Exemption Regulation No. 651/2014 ('Block Exemption Regulation') applies. The Block Exemption Regulation exempts the Netherlands and the other member states from the obligation to notify the grant of state aid, as long as all the Block Exemption Regulation criteria are fulfilled.

#### **36 Must clearance from the competition authorities be obtained before state aid may be granted?**

According to section 108(3) TFEU clearance from the European Commission must be obtained in order to grant state aid. Section 108(3) TFEU determines that the European Commission must be notified of any plans to grant or alter state aid in order to enable the European Commission to submit comments on the plans.

State aid that fulfils all conditions laid down in the Block Exemption Regulation, both general and specific, to the relevant categories of state aid is exempted from the notification obligation laid down in section 108(3) TFEU.

#### **37 If so, what are the main procedural steps to obtain clearance?**

EC Regulation No. 659/1999, as implemented by EC Regulation No. 794/2004 describes, in detail, the procedural steps necessary to obtain clearance from the European Commission.

#### **38 If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?**

In the event of unlawfully granted state aid, a member state must take all appropriate measures to recover the aid, including interest at an appropriate rate. In the Netherlands, a legislative bill is pending in the Dutch parliament regarding the recovery of unlawfully granted state aid. Currently, there is no particular legislation that provides for a procedure to recover unlawfully granted state aid. Unlawfully granted state aid

#### **Update and trends**

Lelystad Airport is gradually developed into an airport handling up to 45,000 air transport movements per year (providing alternative air traffic capacity for, and supporting the growth of, Amsterdam Airport Schiphol). Eindhoven Airport is growing in phases as well. This year, the airport is allowed to increase its flight movements from 19,000 to 29,000.

Plans to turn Enschede Airport Twente (which has been out of operation since 2008) into a commercial civil airport have failed. In the coming years, the airport will be turned into a technology base.

The provincial authorities of Limburg have proposed to the European Commission a support package worth €45 million for the recovery of Maastricht Aachen Airport. Investigations whether providing said support package results in unlawful state aid are ongoing. The province of Limburg is in the process of selecting an airport operator for Maastricht Aachen Airport.

The fine of €370,000 imposed in March 2013 by the ACM on Irish airline Ryanair for four violations of consumer protection regulations that were found in its online booking system, has largely been upheld by the court of Rotterdam. The court lowered said fine to €324,000.

should be recovered by using the general provisions in the Dutch General Administrative Law Act.

#### **Miscellaneous**

#### **39 Is there any aviation-specific passenger protection legislation?**

EC Regulation No. 261/2004 establishes minimum rights for passengers in case of denied boarding against the passenger's will, flight cancellations and long delays by providing rules pertaining to reimbursement of costs of tickets, care (eg, meals, hotel accommodation, etc) and compensation. The Human Environment and Transport Inspectorate is responsible for the enforcement of compliance with EC Regulation No. 261/2004. On 17 September 2011 a policy regulation on the enforcement of said EC Regulation, issued by the State Secretary for Infrastructure and the Environment, entered into force (which policy regulation was last amended as per 23 September 2013). To strengthen passengers' position, a revision of EC Regulation No. 261/2004 is generally deemed necessary, but progress is slow.

EC Regulation No. 1107/2006 contains provisions for the protection of, and provision of assistance to, disabled persons and persons with reduced mobility travelling by air. In principle, disabled persons and persons with reduced mobility cannot be refused reservations or boarding on grounds of their disability. Exceptions can be made on the basis of applicable safety requirements and physical impossibility of embarkation or carriage.

In respect of computerised reservation systems (CRS), EC Regulation No. 80/2009 applies, establishing a harmonised code of conduct regarding the use of CRS, in order to protect consumers' interests.

EC Regulation No. 1008/2008 deals with passengers' rights regarding airfares (see question 12).

#### **40 Are there mandatory insurance requirements for the operators of aircraft?**

Yes, there are mandatory insurance requirements for the operators of aircraft, laid down in EC Regulation No. 785/2004, as amended by EC Regulation No. 1137/2008 and EU Regulation No. 285/2010. EC Regulation No. 785/2004 contains minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties, for both commercial and private flights. Under EC Regulation No. 785/2004, air carriers and aircraft operators are required to be insured to cover the risks associated with aviation-specific liability (including acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion).

#### **41 What legal requirements are there with regard to aviation security?**

EC Regulation No. 300/2008 on common rules in the field of civil aviation security (as supplemented by EC Regulation No. 272/2009, EC Regulation No. 1254/2009 and EU Regulation No. 18/2010) provides rules relating to aviation security. It provides the basis for a common interpretation

of Annex 17 to the Chicago Convention regarding security issues. In the Netherlands, the Aviation Act, the Civil Aviation Security Decree and the Regulations on Implementation of Civil Aviation Security 2010 provide for rules regarding security officers and security measures of airports, passenger and baggage control and control of goods.

#### 42 What serious crimes exist with regard to aviation?

Examples of serious crimes regarding aviation are equipping or rental of an aircraft to be used for violent acts, violence against any person on

board an aircraft, deliberate reporting of incorrect flight information while knowing the same jeopardises the safe operation of an aircraft, acts of violence against any person on airports and trespassing on airports. Said crimes have been identified in the Netherlands Criminal Code. Besides these provisions, the Netherlands is also a party to certain international instruments providing for rules against hijacking of aircraft, offences and crimes committed on board an aircraft and sabotage, such as the 1963 Tokyo Convention, the 1970 Hague Convention and the 1971 Montreal Convention.

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