

# Netherlands

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Stek

## REGULATORY FRAMEWORK

### Regulators and primary legislation

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 Water Management. The Inspectorate is responsible for the supervision of compliance with Dutch 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.

## AVIATION OPERATIONS

### Safety regulations

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 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 following:

- 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.

Currently a new Act, the Regulations on Aircraft Safety, is being prepared for aircraft that are not covered by European legislation (ultralights, historical aircraft).

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, Dutch 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.

In August 2016 in the Netherlands, European legislation on non-commercial air operations became applicable (ie, Annex VI and Annex VII to Regulation (EU) No. 965/2012, which are laid down in Regulation (EU) No. 800/2013). Annex VIII (specialised operations, eg, aerial work) to Regulation (EU) No. 965/2012, which is laid down in Regulation (EU) No. 379/2014, became applicable in April 2017.

### Market access

4 | How is access to the market for the provision of air transport services regulated?

Regulation (EC) No. 1008/2008 (on the application of which, in June 2017, interpretative guidelines were adopted) is directly applicable in the Netherlands. If an air carrier does not fall under the scope of Regulation (EC) 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 unless otherwise provided by an international agreement, operating aircraft in, to or from the Netherlands, or with the Netherlands as transit location, may solely be done by air carriers having been granted an operating licence by the Minister for Infrastructure and Water Management.

### Ownership and control

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

Under Regulation (EC) No. 1008/2008, applicable to air carriers established in the EEA, the Minister for Infrastructure and Water Management 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 Regulation (EC) No. 1008/2008. As to financial fitness, Regulation (EC) 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
- meet its fixed and operational costs incurred by operations according to its business plan and established under realistic assumptions, 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, Regulation (EC) No. 1008/2008 provides that, for an operating licence to be granted to an air carrier, EEA member states, nationals of EEA member states or both must own more than 50 per cent of that 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. Here, reference must be made to the interpretative guidelines on Regulation (EC) No. 1008/2008, which specifically pertain to ownership and control of EU air carriers.

## Licensing

### 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 Regulation (EC) 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 Water Management 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 Water Management 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.

## Competition policy

### 8 | Is there a declared policy on airline access or competition? What is it?

The Netherlands government is currently preparing a Policy Document on Aviation for the period 2020–2050, which is expected to be adopted by parliament in December 2020. This policy document focuses on development of aviation in balance with other interests, such as safety, sustainability and quality of life.

## Requirements for foreign carriers

### 9 | What requirements must a foreign air carrier satisfy to operate in 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 Regulation (EC) 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).

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 Water Management (ie, the Human Environment and Transport Inspectorate), unless provided otherwise by international agreement. Under Regulation (EC) 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 Regulation (EU) No. 965/2012.

## Public service obligations

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

Under Regulation (EC) 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. Here, reference must be made to the interpretative guidelines on Regulation (EC) No. 1008/2008, which specifically pertain to public service obligations.

In the Netherlands, no specific rules on public service obligations exist.

## Charter services

### 11 | How are charter services specifically regulated?

Regulation (EC) 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 Water Management.

## Regulation of airfares

### 12 | How are airfares regulated?

Pursuant to Regulation (EC) No. 1008/2008, air carriers established in the EEA, and, on the basis of reciprocity, air carriers established in third countries, may freely set air fares and air rates for air services within the EEA. 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, air fares for scheduled air transport services between the Netherlands and destinations outside the EEA require prior consent from the Minister for Infrastructure and Water Management, 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.

### Drones

13 | How is the operation of unmanned aircraft systems (drones) regulated?

The non-commercial operation of drones falls under the scope of the Regulations on Model Aircraft Flying, while the commercial operation of drones falls under the scope of the Regulations on Remotely Piloted Aircraft. At the European level, a regulatory framework on the operation of drones is being developed. Regulation (EU) No. 1139/2018 contains rules on civil drones, laying down basic principles to ensure safety, security, privacy, data protection and environmental protection. The rules establish a registration threshold for drone operators: operators must be registered if their drones are capable of transferring more than 80 joules of kinetic energy upon impact with a person. Regulation (EU) No. 945/2019 contains rules relating to the design, manufacture and certification of drones, and Regulation (EU) No. 947/2019 sets out requirements relating to the operation of drones.

In April 2020, EASA published the first view worldwide on the use and control of drones in an urban environment, balancing the desire to maximise the commercial and convenience benefits of drones against the need to ensure the safety and privacy of citizens and the potential environmental impact on European cities.

## AIRCRAFT

### Aircraft register

14 | Who is entitled to be mentioned in the aircraft register? What 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 a European Economic Area (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 also 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.

### Mortgage register

15 | Is there a register of aircraft mortgages or charges? 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 Dutch 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 450kg, 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.

### Detention

16 | 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 Dutch Code of Civil Procedure on seizure of aircraft apply in respect of unpaid charges or other debts. Under Dutch 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, specific rules apply. The Dutch 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.

### Maintenance

17 | Do specific rules regulate the maintenance of aircraft? What are they?

At a European level, Regulation (EU) 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

### Ownership

18 | Who owns the airports?

Amsterdam Airport Schiphol, Rotterdam The Hague Airport and Lelystad Airport are all owned by Royal Schiphol Group NV (through Schiphol Nederland BV, Rotterdam Airport BV and NV Luchthaven Lelystad, respectively). Royal Schiphol Group NV in its turn is owned by the state of the Netherlands (69.77 per cent), the municipality of Amsterdam (20.03 per cent), Groupe ADP (8 per cent) and the municipality of Rotterdam (2.20 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), Stichting FB Oranjewoud (26 per cent), and the municipalities of Assen (10 per cent) and Tynaarlo (4 per cent), through Groningen Airport Eelde NV. Enschede Airport Twente, which was out of operation for several years and is now allowed to handle a small number of flight movements per year, mainly focuses on the storage and maintenance of aircraft.

### Licensing

19 | 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 NV Luchthaven Schiphol). 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 Water Management, 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 Water Management may give binding instructions to avoid this mismanagement.

Regulation (EU) No. 139/2014 regulates the certification of airports at the European level. Airports falling under the scope of this regulation must be in the possession of a European 'aerodrome certificate' granted in accordance therewith.

### Economic regulation

**20** | Is there a system of economic regulation of airports? How does it function?

The Act on Aviation complies with Directive 2009/12/EC, 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). Pursuant to the Act on Aviation, once every three years, for the coming three years, 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 (to be updated on a yearly basis) 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 objective and transparent. The Authority for Consumers and Markets is responsible for the enforcement of compliance with the relevant tariff regulations under or pursuant to the Act on Aviation.

### Access

**21** | 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. Pursuant to Regulation (EC) 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.

### Slot allocation

**22** | How are slots allocated at congested airports?

In accordance with the Decree on Slot Allocation (recently amended and updated), based on Regulation (EEC) No. 95/93 (as amended by Regulation (EC) No. 793/2004 and Regulation (EC) No. 545/2009), slots at coordinated airports (ie, Amsterdam Airport Schiphol, Eindhoven Airport and Rotterdam The Hague Airport) are allocated by airport slot coordinator Airport Coordination Netherlands (ACNL), an independent non-profit organisation. 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. ACNL must act in a neutral, non-discriminatory and transparent way.

### Ground handling

**23** | Are there any laws or rules specifically relating to ground handling. What are they?

The Regulations on Ground Handling Airports, based on the Act on Aviation and Directive 96/67/EC, apply to all types of ground handling services on airports open to commercial traffic whose annual traffic is no less than two 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 Water Management 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 Water Management 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 Water Management may impose certain conditions (relating to, for example, financial fitness and safety) on ground handling service providers or users of self-handling services.

### Air traffic control

**24** | Who provides air traffic control services? And how are they regulated?

Up to flight level 245 (24,500ft), air traffic control services are provided by Air Traffic Control the Netherlands (LVNL), an agency existing under the Act on Aviation and reporting to the Minister for Infrastructure and Water Management (while air traffic control services for the upper airspace above 24,500ft are provided by the Maastricht Upper Area Control Centre, an agency operated by Eurocontrol). The tasks, structure and (operational and financial) management of LVNL 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

### Passengers, baggage and cargo

**25** | What rules apply 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 Regulation (EC) No. 2027/97, which has been amended by Regulation (EC) No. 889/2002 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. The Montreal Convention provides for a regime of unlimited liability in the case of death or injury of air passengers. In order to strengthen passengers' position, a revision of Regulation (EC) No. 2027/97 is deemed necessary, but progress is slow.

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

## Surface damage

### 26 | Are there any special rules about the liability of aircraft operators for surface damage? What are they?

Regulation (EC) No. 785/2004, as amended by among others Regulation (EC) No. 1137/2008 and Regulation (EU) 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.

## Accident investigation

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

Regulation (EU) No. 996/2010, as amended pursuant to Regulation (EU) No. 1139/2018, lays down international standards and recommended practices for aircraft accident and incident investigation. The Regulation applies to safety investigations into accidents and serious incidents occurring:

- within the EU;
- outside the EU, but involving 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 Regulation (EU) No. 996/2010, a member state is obliged to investigate every aircraft accident or serious incident that involves aircraft to which Regulation (EU) No. 1139/2018 applies and which occurs in its territory. The Annex to Regulation (EU) 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, Regulation (EU) 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. The European Aviation Safety Agency (EASA) is closely involved in the investigations referred to above; an EASA representative must be invited to participate in said investigations as an adviser.

In 2015, Regulation (EU) No. 996/2010 was amended by Regulation (EU) No. 376/2014 to the extent it concerns the reporting of occurrences in civil aviation.

## Accident reporting

### 28 | Is there a mandatory accident and incident reporting system? How does it operate?

Pursuant to Regulation (EU) 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 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. In 2015,

Regulation (EU) No. 996/2010 was amended by Regulation (EU) No. 376/2014, the latter establishing 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, Regulation (EU) 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.

## COMPETITION LAW

### Competition law

#### 29 | Do sector-specific or general competition rules apply to aviation?

In the Netherlands, sector-specific competition rules apply to Amsterdam Airport Schiphol because it occupies a dominant position in the national market. On the basis of these rules, said airport 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 said airport; 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. The airport will also base its tariffs on an attributive system of costs and benefits that requires the approval of the ACM. Other airports in the Netherlands that handle more than five million passengers per year are under an obligation to apply reasonable and non-discriminatory tariffs. Currently, this applies to Eindhoven Airport.

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

### Regulator

#### 30 | 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 and Eindhoven Airport as well as the general competition rules in the Dutch Competition Act.

### Market definition

#### 31 | 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, namely 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.

## Code-sharing and joint ventures

### 32 | How have the competition authorities regulated code-sharing and air-carrier joint ventures?

There are no specific rules for code-sharing and joint ventures between air carriers. The general competition rules in the Dutch Competition Act apply to both types of cooperation between air carriers. To date, the ACM has not investigated code-sharing or joint ventures between air carriers.

## Assessing competitive effect

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

If a notified transaction significantly impedes competition in the Dutch 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.

## Remedies

### 34 | 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. 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

### Rules and principles

#### 35 | 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? Is state aid regulated generally?

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, while 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. In recent years, the European Commission adopted several decisions, based on the guidelines on state aid to airports and airlines, concerning public support granted to airports and airlines in France, Germany and other member states.

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.

#### 36 | 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.

## Exemptions

#### 37 | 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 anticompetitive effects are outweighed by other benefits.

Furthermore, Block Exemption Regulation (EU) 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. In 2017, the European Commission introduced two exemptions for state aid to airports in the Block Exemption Regulation. First, investment aid for airports handling up to three million passengers per year is exempt from the obligation to notify if the conditions in the Block Exemption Regulation are met. Second, the Block Exemption Regulation now contains more flexible rules for investment aid for small airports handling up to 200,000 passengers and also allows aid to cover operating losses.

Commission Regulation (EU) No. 1407/2013 (de minimis Regulation) also applies to state aid granted in the aviation sector. The de minimis Regulation exempts aid measures from the notification requirement in section 108(3) TFEU if the total amount of aid granted per member state to a single undertaking does not exceed €200,000 over any period of three fiscal years, provided that all the other criteria laid down in the de minimis Regulation are fulfilled.

## Clearance of state aid

#### 38 | Must clearance from the competition authorities be obtained before state aid may be granted? What are the main procedural steps for doing so?

According to section 108(3) TFEU, clearance from the European Commission must be obtained 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. State aid that fulfils all the conditions laid down in the de minimis Regulation is also exempted from

the notification obligation laid down in section 108(3) TFEU. Regulation (EU) No. 1589/2015 describes in detail the procedural steps necessary to obtain clearance from the European Commission.

### Recovery of unlawful state aid

39 | If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

The procedures for the recovery of unlawfully granted state aid are laid down in the Dutch State Aid Recovery Act, which entered into force on 1 July 2018.

## CONSUMER PROTECTION

### Passengers

40 | What rules regulate denied boarding, cancellation or (tarmac) delay?

Regulation (EC) 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 Regulation (EC) No. 261/2004. To strengthen passengers' position, a revision of Regulation (EC) No. 261/2004 is generally deemed necessary, but progress is slow.

### Package holidays

41 | What rules apply to the sale of package holiday products?

Directive 2015/2302/EC contains rules regarding package holiday products. The Directive, applicable since 1 July 2018, has been implemented in Netherlands law.

The Directive aims to provide a high and uniform level of consumer protection with respect to package holidays, taking into account the increased use of online bookings. Among others, the Directive covers the information to be provided to the consumer, limitations of price increases and consumer protection as regards package holiday organisers' insolvency.

### Other consumer legislation

42 | Is there any other aviation-specific consumer legislation?

Regulation (EC) 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), Regulation (EC) No. 80/2009 applies, establishing a harmonised code of conduct regarding the use of CRS, to protect consumers' interests.

Regulation (EC) No. 1008/2008 deals with passengers' rights regarding air fares.

## INSURANCE AND SECURITY

### Insurance for operators

43 | What mandatory insurance requirements apply to the operation of aircraft?

Mandatory insurance requirements for the operation of aircraft are laid down in Regulation (EC) No. 785/2004, as amended by among others

Regulation (EC) No. 1137/2008 and Regulation (EU) No. 285/2010. Regulation (EC) 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 Regulation (EC) 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).

### Aviation security

44 | What legal requirements are there with regard to aviation security?

Regulation (EC) No. 300/2008 on common rules in the field of civil aviation security (as supplemented by EC Regulation Nos. 272/2009 and 1254/2009 and Regulation (EU) No. 18/2010) provides common rules and basic standards relating to aviation security. It provides the basis for a common interpretation of Annex 17 to the Chicago Convention regarding security issues. In November 2015, the European Commission adopted Regulation (EU) No. 1998/2015, which lays down detailed measures for the implementation of said rules and standards. 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.

### Serious crimes

45 | What serious crimes exist with regard to aviation?

Examples of serious crimes regarding aviation are the following:

- equipping or renting of an aircraft 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.

These crimes have been identified in the Dutch 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.

## UPDATE AND TRENDS

### Emerging trends

46 | Are there any emerging trends or hot topics in air transport regulation in your jurisdiction?

KLM, facing severe financial difficulties due to the covid-19 pandemic, will be granted financial support (in the form of a government loan and guarantees of bank loans) in the amount of €3.4 billion. The Dutch flag carrier has seen passenger traffic collapse since the start of the global pandemic and is currently working on a reorganisation to effect a decrease of labour cost. In the meantime, KLM and other air carriers have announced a rapid increase of flights during the summer of 2020.

The reopening of Lelystad Airport, which was originally scheduled for April 2019, has been further delayed until November 2021. However, owing to the heavy decline of flight movements as a result of covid-19, relieving Schiphol Airport and creating alternative air traffic capacity at Lelystad Airport seems to have become less urgent, so that

stakeholders are already arguing that the reopening of Lelystad Airport should be further postponed.

Various protest committees have pressed charges against senior government officials of the Ministry of Infrastructure and Water Management, the management of Schiphol Airport and consultancy agencies, who, allegedly, deliberately have used incorrect data and hidden information pertaining to nitrogen emission calculations for Lelystad Airport.

### Coronavirus

47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Dutch government is currently preparing a new act, the Corona Emergency Act, containing emergency measures addressing the covid-19 pandemic.

It has already been announced that air carriers are permitted to use all seats in an aircraft. Where keeping 1.5 metres distance is practically impossible (on board the aircraft and during check-in, airport security and boarding procedures) passengers are obligated to wear (non-medical) masks. Passengers suffering from corona-related symptoms are not permitted onboard. The Dutch government has indicated that no further measures are necessary at this point.

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