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IATA Legal Symposium 2019 – Addressing Relevant and Pressing Aviation Matters.

by Juan Manuel Estrada

MARCH NEWS on Mexican Aviation



COELUM: Pronunciation: 'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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IATA Legal Symposium 2019 – Addressing Relevant and Pressing Aviation Matters.

by Juan Manuel Estrada.

The eternal city of Rome was this year's venue for the 2019 IATA Legal Symposium, where in-house counsel, government attorneys and private practitioners from all around the globe had the opportunity to once again discuss, share thoughts and tackle different legal matters such as prospective liability and safety issues arising from the misuse of drones, the advent of new technologies aimed at enhancing passenger experience, the future of alliances and the rising of metal-neutral joint ventures as well as many other topics of interest, relevant to the aviation industry.

Like in previous years, our firm under the leadership of Carlos Sierra, had the pleasure of sponsoring the world's most relevant annual aviation law event.

"The existing regulatory hurdles, operational safety and the impact that drones and other new models of air transport services have on airspace management were discussed by a panel of experts..."

The purpose of this article is to address and provide an insight of the relevant topics discussed during this year's symposium, most of which are now at the forefront of the interest of stockholders and policymakers around the globe as a consequence of the enormous present and future impact and implications that such can have on the prosperity and wellbeing of our industry.

a) The future of aviation - drones and new model air transport services

The rise of new technological developments has always been a positive note in an ever-evolving industry. However, the advent of new technologies comes with its fair share of possible risks as well as on going challenges which cannot be unattended by the likes of policymakers and industry stakeholders. Some relevant challenges which are currently being faced by the industry derive specifically from the negligent use of technologies, which has given rise to the need of developing and integrating a new aviation regulatory system which provides for a legal framework that oversees, amongst others, the relevant implications of operational safety as well as airspace management while new technologies are integrated within our day-to-day operations.

The existing regulatory hurdles, operational safety and the impact that drones and other new models of air transport services have on airspace management were discussed by a panel of experts during the session on **"The future of aviation - drones and new model air transport services"**, who provided thorough insight on the current issue and prospective solutions for future integration of drones within the general scope of civil aviation.

Thus, one of main concerns that has arisen is the increasing sighting of drones near airports, particularly those which occurred at relevant airports such as Gatwick¹, Newark², Dubai³ and more recently Dublin⁴, all of which have resulted in significant operative disruptions and considerable negative economic effects. Consequently, airlines and airport operators from all over the world have raised valid operational and safety concerns which are currently at the centerstage of many regulatory discussions not only at a national level but also before the International Civil Aviation Organization ("ICAO")⁵, which has received several requests from Member States to act as the global facilitator to assess this growing concern.

1- "Gatwick Airport: Drones ground flights", <https://www.bbc.com/news/uk-england-sussex-46623754>

2- "Reports of drone disrupt flights at Newark Airport" <https://edition.cnn.com/2019/01/22/us/newark-drone-sightings/index.html>

3- Dubai airport disrupted after reported drone sightings" <https://www.aljazeera.com/news/2019/02/dubai-airport-disrupted-reported-drone-sightings-190215073550613.html>

4- Flights Were Grounded At Dublin Airport After Another Drone 'Sighting' <https://dronelife.com/2019/02/22/flights-were-grounded-at-dublin-airport-after-another-drone-sighting/>

5- "ICAO, drones and the threat of differing national regulations and gaps in standards"

<http://www.unmannedairspace.info/commentary/icao-drones-threat-differing-national-regulations-gaps-standards/>

While certain countries have opted to adopt stringent national regulations, to set or expand no-fly zones for drone operations and the imposition of heavy fines, all of which are aimed to tackle this growing concern, as suggested by Kathryn McCulloch, lawmakers are now facing the complex challenge of creating rules which enable operations to take place within the most rigorous safety standards while also allowing drones to fly within our current airspace management system thus also promoting an environment that encourages technological advances.

This of course comes along with the need to develop and integrate a new aviation regulatory system which provides for internationalized standards and global harmonization on the matter.

“Biometrics technology is expected to play a key role in helping to enhance passenger experience ...”

b) Data privacy and emerging technologies aimed at enhancing the passenger experience

The development of new technologies has not only resulted in operational concerns but has further resulted in the enhancements of passenger experience and reached the realm of the data privacy and its protection. Some examples of technological advances that are either currently implemented or in the process of being implemented, include artificial intelligence, machine learning, and biometrics, however, with the existing growing awareness of the impermanence of data protection, we must sit back and ask us the question of where can the balance between developing technologies and data protection can be set when enhancing passenger experience?

Biometrics technology is expected to play a key role in helping to enhance passenger experience by facilitating passenger processing, while also strengthening security. During the **“Data privacy and emerging technologies aimed at enhancing the passenger experience”**, it was discussed that over the past few years, airports and airlines, government agencies and technology vendors have been investing more and more in the technology.

While biometrics technology has reached a point where it can transform travel experiences, stakeholders and policymakers are currently discussing the general implications regarding sensitive matters such as liability, data protection, security of biometrics and many other relevant aspects that will certainly arise the deployment of this technology.

From a regulatory standpoint, the use of biometrics will have to face and comply with the complex data protection regulations around the globe, such as the General Data Protection Regulation (GDPR) issued by the European Union⁶, which is widely referred to as one of the most robust privacy protection regulations in the world and certainly an expected model to be followed by other jurisdictions.

c) The Future of Airline Competition: Mergers, Alliances, Antitrust Immunity, and Entry

From their inception, airline cooperative agreements emerged as a response from the aviation industry against the strict regulatory constraints that stifle their ability to engage as a global industry⁷. Contrary to common perception⁸, the international airline industry is far from being truly global as a consequence of the restrictive trade barriers which arise in the form of rigid ownership and control rules, limitations on foreign market access and nationality-based safety oversight requirements⁹. These constraints have resulted in an inevitable reduction of airlines’ ability to enhance their global networks.

As a consequence of the United States domestic market deregulation processes which began in 1978 and the subsequent liberalization of the European Union’s (‘EU’) internal aviation market¹⁰, airlines have been able to develop

6.- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

7.- Timothy F Hannegan and Francis P Mulvey, ‘International airline alliances: An analysis of code-sharing’s impact on airlines and consumers’, (1995) *Journal of Air Transport Management* Vol. 2, No. 2, 131-132.

8.- Paul F Mifsudi, ‘Metal Neutrality and the Nation-Bound Airline Industry’, 36(2) *Air & Space L.* 117.

9.- *Idem*.

10.- Diederiks-Verschoor, IH P, Pablo M Leon, and MA Butler, “An Introduction to Air Law”, (2012) 9th ed Kluwer Law International, 16.

sophisticated commercial strategies to overcome traditional restrictions found within the sector. These strategies, which in practice have been generally referred to as ‘airline alliances’¹¹, take many forms and entail a wide spectrum of cooperation and integration between partners¹².

“...airline alliances and cooperative agreements tend to polarize the opinion of the public.”

Nowadays, and just like any other topic of interest, airline alliances and cooperative agreements tend to polarize the opinion of the public. These divergent opinions were addressed during the panel on **“The Future of Airline Competition: Mergers, Alliances, Antitrust Immunity, and Entry”**, whereby we were fortunate to witness an interesting debate between top legal leadership at major legacy carriers such as Delta Airlines Inc, American Airlines Inc and Deutsche Lufthansa AG in contraposition of JetBlue Airways Corp, representing younger new-entrants such as Norwegian Air and WOW Air.

In practice American, Delta and United airlines have allegedly used international alliances with antitrust protection to maximize the opportunity for pro-competitive efficiency gains from density economies. In simple terms this means that passengers benefit from airlines commercial freedom and thus enjoy the offering of air transport services ‘from anywhere to everywhere’ at an allegedly lower fare. This benefit derives from the possibility of airlines of reducing risk and maximizing their profit thus generating positive externalities which benefit the customer on a scale higher than that offered by competition.

On the contrary, the position of Brandon Nelson JetBlue Airways Corp was that the current international legal regime that regulates antitrust has favored different levels of airline integration and cooperative agreements which has allowed big airlines groups to dominate the market thanks to the possibility of consolidation and market control. He further urged the U.S. and European regulators to review approved joint ventures that have allowed big airlines control market access, deter new competitors and allow passengers to face the risk of being subject to high fares because of legacy transatlantic partnerships.

Concluding remarks

As it is expected, the closing of the 2019 IATA Legal Symposium left us with exciting topics and opened our eyes to current and future challenges that we as legal practitioners should bear closely in mind. The only thing that is left certain in our industry is that technological advances will continue to develop in favor of consumers and industry stakeholders, and this will require us lawyers to continue working restlessly to anticipate and in most cases catchup with the future challenges that may lay ahead.

Until we meet again in New York for the 2020 IATA Legal Symposium.

11.- Brian Pearce & Gary Doernhoefer, ‘The Economic Benefits generated by Alliances and Joint Ventures’, IATA economic briefing, online: <http://www.iata.org/whatwedo/Documents/economics/Economics%20of%20JVs_Jan2012L.pdf> at 4.

12.- Paul F Mifsud, ‘Branded Global Alliance Competition in the New Era of Metal Neutrality’, (2010) Airneth Column online: <<http://www.airneth.nl/activities/details/article/branded-global-alliance-competition-in-the-new-era-of-metal-neutrality/>>.

IATA Warns of Aviation Security Risks, Calls for Better Collaboration with Governments.

At the IATA Aviation Security Conference (AVSEC World) in Miami, FL, IATA Director General and CEO, Alexandre de Juniac asked for a bigger contribution in a governmental level for aviation security to ensure a greater coordination on critical security matters, this was exemplified with the time that certain electronic devices were a threat for aviation security inside the aircraft. <https://www.forbes.com/sites/marisagarcia/2019/02/27/iata-warns-of-aviation-security-risks-calls-for-better-collaboration-with-governments/#544e16c736e2> February 27, 2019.

The anticipation of future challenges of the aviation industry in Mexico.

The CEO of Bank of América México, Emilio Romano, stated the importance of Mexico in evaluating the next fifty years in matters and deviations in the aviation sector. Our country, must be able to meet future demands, be at the forefront regarding aeronautical issues and of course, maximize the capacity of connectivity with the world. Since aviation, not only concerns tourism, but commerce, education and familiar relations as well. So, in order to enable this, it is essential the dialogue and long-term agreements between authorities, airports, airlines and other actors involved in aviation matters. <https://a21.com.mx/index.php/aeronautica/2019/03/06/anticipacion-la-demanda-futura-el-reto-de-la-aviacion-bank-america> March 06, 2019.

Airlines need the support of the Government to grow.

At the Aviation Summit held in Mexico City, representatives of national and international airlines requested to the Mexican government to let them know about the roles that will have the airports of CDMX, Toluca and Santa Lucia. The air industry wants to work with the government to find the best solutions, provide ideas and tools to operate more efficiently. The air industry needs to collaborate between industry, government and society to accomplish the same goal, Mexico's successful growth. <http://www.antair.com.mx/no-podemos-crecer-sin-apoyo-del-gobierno-aerolineas/> March 06, 2019.

FAMEX will present its first women congress.

The First Women Congress Leaders in the Aerospace Sector will be presented at the Aerospace Expo (FAMEX) later this year. The aim of the congress will be to generate a space in which women are projected as a fundamental actresses in the development processes of the industrial and aerospace academic sectors. The forum will be a platform in which women involved in the aerospace industry can transmit their experiences to new generations and recognize the work they have and continue to do for the development of different areas of the aviation and space industry. <https://a21.com.mx/fuerza-aerea/2019/03/07/famex-presentara-su-primer-congreso-de-mujeres> March 07, 2019.

Migratory personal will be renewed in different Mexican airports.

A process of restructuring of migrant personnel is being carried out at the country's ports of entry including personnel of diverse Mexican airports, said the interior Minister Olga Sánchez Cordero, who affirmed that the renovation has already begun at the customs offices of Cancún, Chetumal and Mexico City, and subsequently continue with Guadalajara and the north of the country. <https://a21.com.mx/aeropuertos/2019/03/19/renovaran-personal-migratorio-gobierno-ve-corrupcion> March 19, 2019.

Judge authorizes payment for 101.5 mdp to former employees of Mexicana de Aviación.

The federal judge who runs the commercial bankruptcy of the Mexican airline authorized the call to grant the payment of up to 101.5 million pesos to the former employees of the airline, which has not operated for more than eight years. The foregoing, as a follow-up to the resources previously granted by 138.4 mdp and 115.6 mdp, on April 17, 2017 and June 25, 2018, respectively, details a statement sent Wednesday by the Federal Judicial Council. Once the third dispersion is carried out, 355.2 mp have been delivered. The payments will be made in two ways: if the employees had previously provided their interbank debit, they will be deposited the proportional amount corresponding to this third stage in this way from April 1 through an electronic transfer. Those who have not granted it or who have done it but are illegible or have not appeared in the first or second payment phase, that same day will begin the process of assigning the personalized confidential collection sheet, according to a calendar provided by the Judicial power of the Federation. <https://expansion.mx/empresas/2019/03/20/juez-autoriza-pago-por-101-5-mdp-a-exempleados-de-mexicana-de-aviacion> March 20, 2019.

Aeronautics and Automotive lead investments in Queretaro.

During this year, seven investment projects have been completed in the state, representing a capital sum of 872.3 million pesos, at the end of the first half of March. This number of projects represents 22% of the 32 investments that were made during 2018, confirmed the secretary of Sustainable Development, Marco Antonio Del Prete Tercero. These are mainly projects related to the automotive and aerospace industry, which have injected capital into the entity, both of Mexican and American origin. The state has a portfolio of 44 investment projects, which would amount to an investment of 18,000 million pesos and the creation of 15,000 new jobs. In coming weeks, said the official, the investment announcements that are already defined to be carried out in the entity will be officialized. <https://www.economista.com.mx/estados/Automotriz-y-aeronautica-lideran-inversiones-en-Qro-20190322-0032.html> March 22, 2019.

Santa Lucía's airport master plan made by a French company.

Federal government decided to increase the studies made for the developing airport in Santa Lucía. Javier Jiménez Espriú announced that working together with companies Navblue and Paris Airports will be bringing a large list of benefits such as environmental impact and decreasing costs.

<http://www.eluniversal.com.mx/carera/empresa-francesa-realizara-plan-maestro-del-aeropuerto-de-santa-lucia> March 23, 2019.

For the third consecutive year, the Mexico City International Airport surpasses Guarulhos airport as the airport with the most passengers in Latin America.

A total of 44,697,541 passengers passed through the Mexican airport during 2018, 6.6% higher than the previous year. By the airport of Guarulhos, 42,230,432 passengers were mobilized, a significant jump of 11.7%, the highest since 2013, still not enough to surpass the amount that Mexican airport nowadays has with the passenger's mobility. It's the third year in a row that Mexico City's International Airport turns into the airport with biggest passenger mobility in Latin America. <https://aviacionline.com/2019/03/por-tercer-ano-consecutivo-el-aicm-supera-a-guarulhos-como-el-aeropuerto-con-mas-pasajeros-de-latinoamerica/> March 26, 2019.

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