

# Air Transport

*Contributing editors*  
John Balfour and Mark Bisset



2019

GETTING THE  
DEAL THROUGH 

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*Contributing editors*  
**John Balfour and Mark Bisset**  
**Clyde & Co LLP**

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# Preface

## Air Transport 2019

Thirteenth edition

**Getting the Deal Through** is delighted to publish the thirteenth edition of *Air Transport*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, John Balfour and Mark Bisset of Clyde & Co LLP, for their continued assistance with this volume.

GETTING THE   
DEAL THROUGH 

London  
September 2018

# Poland

Krystyna Marut, Edyta Michalak and Anna Burchacińska-Mańko

MMMLegal Legal Counsels

## General

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

Civil aviation in Poland is subject to international, EU and national legislation. Poland applies the Chicago Convention and its annexes. Except for the actual Chicago Convention (binding directly as an international agreement), all ICAO documentation, including annexes, requires implementation in national law. Many ICAO documents that have not been implemented into national legislation (and therefore non-binding) are applied as good market practice. In the scope of EU legislation, both the Treaty on the Functioning of the European Union (TFEU) and secondary EU legislation are applied. All EU regulations are applied directly in Polish law. Other pieces of secondary law are implemented into national law. Further to EU Regulation No. 216/2008 and its implementing rules, the operation of civil aviation entities is also subject to European Aviation Safety Agency (EASA) legislation.

The main national rules of civil aviation are defined in the Aviation Act (consolidated text Journal of Laws 2018.1183, as amended) and implementing regulations issued by relevant ministers. Most regulations are issued by the minister responsible for transport. Significant regulatory powers are also vested in the president of the Civil Aviation Office (CAA) regarding guidelines and instructions. The CAA is the authority responsible for most practical decisions in the field of civil aviation. The concept of a central airport planned as a part of the Central Communication Port (CCP) (see 'Update and trends') is defined in separate legislation focusing on the CCP. Strategic matters connected with the CCP fall within the competence of the Prime Minister and the government.

## Regulation of aviation operations

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

In Poland the Chicago Convention with its Annexes as well as EU legislation regarding air safety apply. The main national act regulating all safety issues is the Aviation Act with numerous implementing regulations. Most important are those related to safety of aircraft and airport exploitation, construction requirements, certification, airworthiness, air accidents and search and rescue. The CAA issues guidelines and instructions as well as airworthiness directives.

EASA plays an important role in the scope of safety. Commercial air transport operators, aerodromes, personnel, aeronautical products, parts and appliances and air traffic management (ATM) and air navigation services and products are subject to the rules determined under EU Regulation No. 216/2008 and its implementing rules and EASA decisions. Some ICAO documents are implemented into national law and some are applied as market practice.

Both the State Safety Programme for Civil Aviation and the State Safety Plan for 2017–2020 have been approved.

Air safety is primarily administered and supervised by the CAA and the minister responsible for transport.

All air carriers are certified according to EU Regulation No. 965/2012. All major public use airports open to commercial passenger traffic have been certified according to the rules determined by EU Regulation No. 139/2014.

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

In general, the Aviation Act provides the same safety rules for all air operations. In the case of aircraft falling outside the scope of EASA supervision, the airworthiness falls under the supervision of the CAA.

In the case of aerodromes, in general, public use airports have to be fully certified in compliance with EU Regulation No. 139/2014 and ICAO Annex 14, whereas exclusive use airports (usable by those registered in the airport register) have to comply with national regulations. Some airports may apply to the CAA for a limited certification. For such airports the CAA determines the type of flights operated to and from the airport, the time when such flights can be operated as well as characteristics of aircraft that can be operated. Some exclusive use airports may become public use airports without certification unless required under EU Regulation No. 216/2008. Traffic to and from such public use airports is limited to the following domestic flights: charters operated with helicopters or aircraft with a maximum take-off mass (MTOM) of less than 1,000kg or with 20 or fewer seats and local flights or other non-commercial flights.

The certification process is conducted according to EU Regulation No. 139/2014, the Aviation Act and its implementing regulation on certification.

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

EU rules apply, particularly EU Regulation No. 1008/2008. The Aviation Act defines a system of licences and certificates enabling access to the market. As well as a certificate, an air carrier has to obtain the CAA's licence. Operating on particular routes may require the CAA's consent, authorisation or appointment. Third-country carriers require the CAA's consent for air carriage sales.

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

Poland applies EU Regulation No. 1008/2008. Under the regulation an undertaking may be granted with an operating licence by the Polish CAA if, inter alia, nationals of EU member states own more than 50 per cent of the undertaking and effectively control it, whether directly or indirectly, except as provided for in an agreement with a third country to which the Community is a party.

An undertaking applying to the Polish CAA for a licence shall submit a business plan for at least the first three years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. Requirements are to a certain extent modified in the case of carriers operating aircraft of less than 10 tonnes MTOM or with 20 or fewer seats.

Holders of an existing licence are obliged to notify the Polish CAA of any planned changes in their activities as well as any mergers or acquisitions that could influence their financial standing, attaching relevant documentation.

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

EU Regulation No. 1008/2008 applies. Polish and EU carriers are not required to obtain licences for operating intra-Community connections, for both scheduled and non-scheduled flights.

For connections outside the EU, Polish and Community air carriers shall apply to the CAA for a licence to operate on a particular route. Where required in international treaties or third country law, the CAA shall also appoint a carrier authorised to perform flights to a particular third country.

As regards third-country carriers, see question 9.

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

In practice, this problem concerns either extra-EU routes or third-country carrier applications, as intra-Community connections by Community carriers are not subject to licensing. Where there are two or more applicants for operating a particular route, the CAA shall organise a selection procedure, and the result shall be determined by the following criteria in particular:

- the air carriers' capacity to offer an adequate level of services and charges as well as competing effectively with third-country carriers; and
- previous expenditures for development of the connection in question and economic results achieved hitherto.

Licences, permits and appointments in the field of traffic rights are granted by the CAA in the form of an administrative decision. Such decisions can be appealed and in the case of unsuccessful appeal proceedings before administrative court can be instituted.

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

Again, the problem concerns extra-EU connections. The Aviation Act determines a list of circumstances when an application for a licence to operate routes outside the EU can be rejected. These are as follows:

- when it is essential under the limitations provided by international treaties or regulations;
- when it is justified in order to avoid serious limitation of effective competition among Polish, EU and third-country carriers;
- when it is justified by a need to ensure profitability of regular flights on a given route that is already being serviced, and where there is no need to increase carriage capacity; or
- when operating regular flights has already been entrusted to another carrier under public service obligation.

As regards third-country carrier access to connections to and from Poland, see question 9.

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

A foreign air carrier may operate to or from Poland provided that it obtains a permit issued by the CAA. The permit is granted upon the air carrier's request, taking into account the provisions of existing agreements and international law. A foreign air carrier may be granted the permit, in the following cases:

- it is in the public interest;
- Polish air carriers benefit from similar rights in the foreign air carrier's country or obtain other mutual benefits;
- flight service at Polish airports can be assured; and
- the rules of organisation of air transportation in terms of package tours and charter flights set by Polish law are fulfilled by the foreign air carrier operating from Poland.

The Aviation Act also lists circumstances when the CAA may decline an application for a permit, *inter alia*, as follows:

- when required by international treaties or regulations;
- when a carrier infringes aircraft safety or security regulations; and
- when a carrier has overdue liabilities towards Polish entities, in particular towards the state ATM body, airport operators or ground handlers.

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

There are two situations when public service obligation (PSO) can be imposed:

### PSO imposed on a specific route

The minister responsible for transport, in cooperation with the minister responsible for regional development, may impose a PSO on a specific route in respect of scheduled air services, determining its period as well as terms and conditions of service performance. PSO can be imposed between two airports located in Poland, or between an airport located in Poland and an airport located in any other country within the EU. The decision must be made taking into account state policy in respect of regional development and non-discriminatory rules among EU carriers. The procedures and the criteria in this matter are laid down in EU Regulation No. 1008/2008.

### PSO imposed on an airport authority

In a situation where an airport has relatively low air traffic, though is still important for a city or for a certain region, a local government unit can file a motion to the CAA to compensate the airport's loss or to grant other benefits. The CAA can conclude an agreement with the airport authority on PSO, specifying its requirements concerning regularity and continuity of the air traffic at this airport.

## 11 Are charter services specially regulated?

General regulations on aviation apply to air charter services, with minor changes, including the following.

When operating to or from Poland, an air carrier with its operating licence granted by the EU, Swiss Confederation, Iceland, Norway or Liechtenstein is obliged to communicate its flight programme to the CAA 14 days before the start of each traffic season.

A foreign air carrier aiming to perform charter services to or from Poland is obliged to file an application to the CAA in order to obtain authorisation to operate. Such application should be submitted, at the latest, 14 days before the series of non-scheduled commercial flights starts, where 'series' of flights means at least 10 flights (one flight includes an outbound and inbound operation).

The Aviation Act and the Regulation of the Polish Minister for Transport on the principal rules of organisation of air transport in terms of package tours and charter flights impose requirements regarding the documentation that should be submitted to the CAA together with the application. Additionally, the CAA is entitled to ask the air carrier to submit the charter agreement between the carrier and the tour operator.

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

Airfares for air services provided within the EU are fixed on the general basis of EU Regulation No. 1008/2008. This means that the rules of pricing freedom together with the informative obligations and non-discrimination rule apply.

However, as regards airfares applying to air services between Poland and a 'third country', when a bilateral agreement on airfares exists, there is an obligation to submit the airfares to the CAA. Procedures, as well as the detailed scope of information required from the carrier when assessing correctness of airfares, are described in the Regulation of the Minister for Transport.

## 13 Are there any rules regulating the operation of unmanned aircraft systems (drones)?

Yes. Flights of unmanned air vehicles (UAVs) in Polish airspace are generally permitted. However, international flights of foreign UAVs require the consent granted by CAA in agreement with competent military bodies. The UAVs generally should have the same equipment enabling flights, navigation and communication as manned air vehicles. Those that do not have such equipment can operate only in air zones separated from those accessible for aviation operations. Operators of UAVs used for purposes other than sport or recreation need a qualification certificate granted by the CAA. In certain circumstances, UAVs can be destroyed, immobilised or seized.

UAV operations are subject to the general rules of the Aviation Law, with certain exceptions laid down in the regulations of the minister responsible for transport, including the following:

- the Regulation of 26 March 2013 excluding application of certain provisions of the Aviation Law to certain types of aircraft and establishing conditions and requirements for the operations of such aircraft, which regulates, to a certain extent, principles of UAV flights in Poland, in particular relating to visual line of sight flights performed by UAVs with MTOM below 25kg for purposes other than recreation and sport as well as those under 150kg used for recreation and sport purposes only;
- the Regulation of 3 June 2013 on qualification certificates, which stipulates the qualification requirements of persons performing UAV flights; and
- the Regulation of 26 April 2013 on maintenance and exploitation rules concerning special category of aircraft, which are not subject to EASA supervision, which provides for regulations regarding UAVs of MTOM above 25kg.

Legislative works relating to detailed rules of UAV use as well as beyond visual line of sight UAV flights are ongoing.

## Aircraft

### 14 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?

An aircraft owner or another aircraft user (eg, operator) are entitled to be mentioned in the Aircraft Register.

An aircraft may be entered into the Polish Aircraft Register if it is owned or operated by the following:

- a Polish citizen;
- a Polish legal person;
- another Polish entity not possessing status of a legal person; or
- a citizen of another county permanently domiciled in Poland.

The CAA also exercises a discretionary right to enter an aircraft operated by other persons than listed above into the Polish Aircraft Register.

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

Aircraft mortgages are registered in a general mortgages register, kept by 11 courts in Poland (depending on the seat of the mortgagor). The mortgage registers are open, which means that the documents lodged in the register can be viewed by anyone. Once registered in the general mortgages register, aircraft mortgages are reflected in the Polish Aircraft Register *ex officio*.

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

The Aviation Act allows for temporary detention, retention or seizure of an aircraft, *inter alia*, as follows:

- by the CAA for breach of safety regulations;
- by the airport operator for securing claims for airport charges or damage caused at the airport;
- under the Convention for the Unification of Certain Rules relating to the Precautionary Arrest of Aircraft made in Rome on 29 May 1933;
- upon a court judgment or decision;
- by a court bailiff under enforcement proceedings; and
- as a security of reimbursement for expenditures or remedy for damage caused by the aircraft.

An aircraft may be required to be rendered for military purposes or in the case of natural calamities. Polish law is not clear on whether an aircraft can be detained by Eurocontrol for non-payment of navigation charges.

Under the Civil Code, an aircraft can be retained by, for example, maintenance providers until their claim for refund of outlays or for redress of damage caused by the aircraft is satisfied or secured.

### 17 Do specific rules regulate the maintenance of aircraft?

There are no specific national rules as regards maintenance of aircraft and its components. Common EU regulations should be adhered to. All operators are requested to follow EU Commission Regulation No. 1321/2014 including the relevant decisions of the EASA executive director. All tasks related to aircraft maintenance should be performed by appropriately approved Part 145 organisations with respect to the class and rating of their approval. Furthermore, personnel performing aircraft maintenance shall be certified as per Part 66 rules.

## Airports

### 18 Who owns the airports?

Airports in Poland can be state or privately owned. Requirements regarding airport establishment and the scope of ownership are defined in the Aviation Act. The division between an exclusive use airport and a public airport (usable by all air operators within the airport limits and relevant for commercial flights) is vital for ownership issues. Public airports can be established and managed by a municipal or private undertaking situated in Poland, another EU country, the Swiss Confederation or a member state of EFTA. Further ownership limitations would apply for airport owner and airport operator. There are also limitations on land ownership in the case of international airports where the state border is open consistently – only the state treasury, other state units, municipal units or commercial companies where such undertakings own at least 51 per cent of shares can own it.

The main public airport in Poland is Warsaw Chopin, operated by the Polish Airports State Enterprise. The major regional public airports are John Paul II Krakow, Gdańsk Lech Wałęsa, Katowice International, Warsaw Modlin, Wrocław Nicolaus Copernicus and Poznań-Ławica. Shares in those regional airports are owned mainly by Polish Airport State Enterprise, self-governing bodies (such as municipalities and provinces) or private entities.

### 19 What system is there for the licensing of airports?

The licensing system depends on the type of airport (*ie*, whether it is a public use airport or an exclusive use airport). Commercial flights, in general, may be operated from and to certified public use airports only. In order to establish and operate such an airport it is necessary to obtain permission from the CAA. Each public use airport open for commercial international traffic has to obtain a certificate and operating permission. Both of these are issued by the CAA. In order to operate a public use airport, the managing body has to elaborate on airport charges and tariff, which then have to be approved or published by the CAA.

Exclusive use airports transformed into non-certified public use airports are exempted from the obligation to obtain operating permission.

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

The economic side of airport operation is considered at the stage of airport establishment and later, during its operation. Airport capabilities in this regard are examined during the process of obtaining permission to establish an airport via a 'master plan'. Economic data related to present and future ownership structure, foreseen investment financing sources, profitability, airport charge amounts, etc, have to be included in the airport's master plan that has to be consulted with relevant municipalities, opined by the CAA and approved by the minister responsible for transport as well as the minister responsible for regional development.

Then, in order to manage a public use airport, in general, operating permission from the CAA is required. To obtain such permission, an applicant has to prove that it is able to fulfil its financial liabilities for at least 24 months from the commencement of activities. It also has to provide data on its capital structure, liquidity and financing sources, for example. A financial report has to be filed with the CAA each year after it is approved.

Public use airports are also limited in their economic freedom regarding airport charges, which are subject to the CAA's supervision. The CAA has the authority to order amendments to airport charges.

In certain cases, an airport operator is entitled to retain the aircraft. It can also deny its services to the aircraft if airport charges are not paid.

Airports can also require payment of fees for their services other than those paid in the form of airport charges (*ie*, not connected with take-off, landing, lighting or parking of aircraft and services with regard

to passengers, goods or freight). Airports can also require payment of passengers with reduced mobility charges (ie, charges for providing services required under EU Regulation No. 1107/2006).

Exemptions apply to exclusive use private airports transformed into non-certified public use airports.

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

Accessibility depends on the type of airport. Commercial flights can be operated from and to certified public use airports. Exclusive use airports can be used by their owner, users indicated in the aerodrome register and by other users with the airport operator's consent. The following flights are permitted to use an exclusive use airport: charter flights operated with aircraft of 10 tonnes or less MTOM and those with 20 or fewer passenger seats; local flights and other non-commercial flights. In the case of exclusive use airports transformed into non-certified public use airports traffic is limited to the following domestic flights: charters operated with helicopters or aircraft with an MTOM of less than 1,000kg or 20 or fewer seats and local flights or other non-commercial flights.

Accessibility is also limited by a particular airport's operational parameters and may be limited by slot coordination.

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

Congested airports become coordinated or schedule-facilitated according to the rules of EU Regulation No. 95/93. If an airport is designated as coordinated or schedule-facilitated, the CAA appoints a coordinator or a schedule facilitator. Slots are allocated according to the rules of EU Regulation No. 95/93. IATA Worldwide Scheduling Guidelines are not included directly in the legal system in Poland, but they are applied in the slot allocation process. Two airports are coordinated in Poland: Chopin and Poznań-Ławica. The latter is coordinated from 1 June to 30 September (8pm to 4am UTC). Both airports are coordinated by the UK-based slot coordinating company Airport Coordination Ltd.

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

Ground handling issues are governed by the Aviation Act and its implementing regulation on ground handling services in airports. In order to provide ground handling services at a given airport, an agent has to obtain CAA permission. This permission is not necessary in the case of self-handling. In the case of dangerous goods as well as fuel and oil handling, it is obligatory to obtain also a CAA certificate. The organisation of ground handling is based on EU Directive 96/67. In general, ground handling agents and self-handlers have freedom to operate. Such freedom for ground handling agents may be limited by the president of CAA (in the case of airports with at least 2 million passengers or 50,000 tonnes of goods) or by the airport operator (in other cases). In any case the amount of permissions can be limited to at least two agents. Self-handling can be limited by the CAA in the case of airports with at least 1 million passengers or 25,000 tonnes of goods. In the case of limitation, the permission is given to the entity chosen in a selection procedure.

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

Air traffic control (ATC) is provided by a state agency, the Polish Air Navigation Services Agency (PANSAs). The provision of ATC services and the functioning of PANSAs is governed by the Aviation Act, the Act concerning PANSAs as well as EU law. An air traffic services provider has to obtain a CAA certificate and it has to be designated, by the minister responsible for transport, to provide such services in the given area. Provision of air traffic control services is subject to EU regulations. ICAO documents are also commonly used, either as binding law or as market practice.

## **Liability and accidents**

### **25 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?**

Under the Aviation Act there are no specific rules in respect of death of, or injury to, a passenger or loss or damage to baggage or cargo in

respect of domestic carriage. Such damage is subject to the rules of the Montreal Convention, as envisaged by EU Regulation 889/2002 amending EC Regulation 2027/97 on air carrier liability in the event of accidents.

In matters not regulated by the convention, the rules of the Aviation Act and of the Civil Code may be applicable.

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

The liability of the aircraft operators for surface damage is regulated by the Aviation Act and the Polish Civil Code. Generally the rules provide for strict liability, with very limited exoneration possibilities. Poland has not ratified the 1952 Rome Convention. Two new international conventions on surface damage held in Montreal in 2009 – the Convention on Compensation for Damage Caused by Aircraft to Third Parties and the Convention on Compensation for Damage to Third Parties resulting from Acts of Unlawful Interference Involving Aircraft – have not entered into force due to the lack of a sufficient number of ratifications. Poland has not signed either of them.

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

The primary pieces of legislation governing the investigation of air accidents are EU Regulation Nos. 996/2010, 376/2014 and 2015/1018, the Aviation Act and the Regulation of the Minister of Transport on Aviation Accidents and Incidents. Generally, under the Aviation Act, an investigation into aviation accidents or serious incidents may be carried out by the Polish State Commission for Aircraft Accident Investigation (SCAAI) if an accident or serious incident took place on Polish territory or in Polish airspace. The purpose of the investigation carried out by SCAAI is the prevention of air accidents (SCAAI does not decide on fault or liability issues). Any access to the SCAAI files concerning aviation accidents is limited and requires consent from the regional court in Warsaw.

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

The requirements of EU Regulation No. 376/2014 and the Implementing EU Regulation No. 2015/1018 apply. Under national aviation law any events of malfunction, damage to aircraft or other circumstances which had or could have had influence on flight safety must be reported to SCAAI by, inter alia: an operator or pilot in command, an aircraft constructor, designer or manufacturer, an ATM authority, an airport operator or a ground handler. Reporting of air events shall be made immediately and not later than 72 hours from the occurrence. The computer database for mandatory occurrence reporting in civil aviation is maintained in accordance with the European system of central coordination of events notification in aviation (ie, that of the European Coordination Centre for Accident and Incident Reporting Systems).

## **Competition law**

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

General competition law rules apply. However, under the Aviation Act, certain agreements, decisions and other practices of air carriers concerning the use of traffic rights granted in international treaties or granted to Polish air carriers by third countries are permitted.

EU Council Regulation No. 487/2009 is also applicable in Poland.

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

The general competition authority, the CCPO, is responsible unless the matter falls within the approval competences of the President of CAA (eg, traffic rights, airport charges). Under EU regulations the European Commission also exercises significant powers.

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

There is no definition of the relevant market in the aviation sector. The definition of the Act on Protection of Competition and Consumers is



### Update and trends

In 2018 the Polish government decided to build the Central Communication Port (CCP), which includes a central airport and main multimodal railway station for Poland. A special legal act was implemented to enable and facilitate the investment. The project is still being fleshed out. According to the government's concept the airport is planned to be located in central Poland, approximately 40km from Warsaw. The airport is intended to replace Chopin Airport, which is said to have insufficient capacity for the growing aviation market. The CCP is to be planned as a hub and spoke system, enabling railway communication with most major cities in Poland within two hours. According to the media announcements airport construction works are planned to start in 2020 and continue until 2027. With an airport budget of approximately 37 billion zlotys, the government intends to make it one of the largest European transfer hubs, processing ultimately up to 100 million passengers. The government plans to extend the project with construction of a business city around the CCP, which would make a binary city with Warsaw, enabling competition with European metropolises. The project is the source of much controversy, particularly with regard to the extent of its costs, demand for such a

large airport, viability to achieve the goals of the CCP, particularly in the present climate, as well as regarding its potential impact on currently operating Polish airports.

In 2018 the government (the State Treasury) established a company, Polska Grupa Lotnicza SA (Polish Aviation Group - PAG) with a capital of 1.2 billion zlotys. PAG is intended to consolidate and control major aviation companies under the control of the State Treasury. Initially PAG is to control PLL LOT SA (LOT Polish Airlines), LOT Aircraft Maintenance Services Sp z o.o., LOT Airport Services SA (a ground handling company operating in all major airports in Poland) and LS Technics Sp z o.o. PAG is managed by the CEO of LOT Polish Airlines, who has announced the intention of establishing a separate company, Aviation Leasing Fund, aimed at purchasing and leasing aircraft. PAG has already applied for CCPO approval for the acquisition of PLL LOT SA.

Owing to the development of general aviation and amendments in the Aviation Act, most former sport aerodromes (owned or operated by aero clubs) were transformed into non-certified public use airports.

applicable. Further to the definition it is the market of goods, which, with regard to their destination, price and features, including quality, are considered by the purchasers as substitutes that are offered in an area, where, due to their type and features, barriers in accessing the market, consumers' preferences, significant price differences and transport costs, a similar competition environment exists.

Each case is examined individually by the CCPO on the basis of gathered evidence. The 'relevant markets' have a dynamic character. The decision of the CCPO defining the relevant market in one case cannot be treated as a precedent for future proceedings; it may merely be treated as a guideline.

There is not much Polish case law regarding mergers and acquisitions within the aviation industry.

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

The CCPO examines whether a transaction could limit the competition on a relevant market, in particular through creation or strengthening of a dominant position.

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

There is no relevant case law in the aviation industry in Poland. In general, the CCPO can, for example, in case of concentration, order the following:

- the sale of the whole, or part of, the enterprise of one or more undertakings;
- the disposal of a controlling stake in an enterprise; and
- the granting of a licence to a competitor.

In case of competition restricting practices, the CCPO can, for example, order the following:

- the granting of an IP licence on non-discriminatory terms;
- the access to infrastructure on non-discriminatory terms;
- the changing of an agreement; and
- the enabling of other entities to supply certain products or services under non-discriminatory terms.

### Financial support and state aid

#### 34 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?

There are no sector-specific rules on state aid in the aviation sector beside the Aviation Act, which allows support to airlines and airports or other aviation undertakings in the purchase of equipment necessary to ensure safety and airport development. PSOs, subject to remuneration, can be imposed on airports and airlines.

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

The rules applicable under EU law apply. This is mainly governed by the TFEU and EU guidelines on state aid to airports and airlines. In the case of state aid granted under national or regional aid schemes, the rules governing the given scheme apply. The Aviation Act and its implementing regulations govern the rules on state aid granted for performing safety tasks, public service obligation or investments in airport infrastructure used for services of general economic interest.

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

In general, EU rules apply, particularly EU Regulation No. 2015/1589. The procedure in Poland is governed by the Act on procedure in the field of state aid. No national rules have been elaborated for implementing EU guidelines on state aid to airports and airlines. In the cases defined in EU guidelines on state aid to airports and airlines the 'private investor' rule would apply.

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

In most cases the opinion of the CCPO is required before notification to the European Commission. Notification of a state aid scheme may require consent to be granted by the Council of Ministers. As regards PSO rules, see question 10.

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

See question 37. The steps depend on the type of state aid, that is whether it is individual aid, individual restructuring aid or an aid scheme as well as whether it is de minimis aid.

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

The European Commission obliges a beneficiary to return the state aid amount: the full amount has to be returned together with the interest determined under EU Regulation No. 2015/1589. If not returned voluntarily, the amount will be subject to a forced execution by administrative or civil court bodies.

### Miscellaneous

#### 40 Is there any aviation-specific passenger protection legislation?

European law, particularly EU Regulation No. 261/2004, EU Regulation No. 1107/2006 and EU Regulation 2111/2015 shall apply. General consumer protection rules may also apply.

There are no aviation-specific passenger protection rules on package holidays or bankruptcy protection. However, in the event of clear signs of financial problems of the carrier or in the event of opening insolvency proceedings against an air carrier, the CAA shall make a

detailed assessment of the financial situation of the carrier. At the request of the CAA, the air carrier shall present the financial statements and other required documents to the statutory auditor. The CAA may suspend or revoke the operating licence in the cases referred to in EU Regulation No. 1008/2008.

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

Under the Aviation Act air carriers and aircraft operators are required to conclude a contract of insurance civil liability for damages in connection with the business of air transport in accordance with EU Regulation No. 785/2004. In the case of non-commercial operation of aircraft with an MTOM not exceeding 2,700kg, the minimum amount of cover liability insurance in respect of each single passenger in a single flight from one event whose effects are covered by insurance is the equivalent of 100,000 special drawing rights. Air carriers are required to conclude a contract on liability insurance for damage caused by delay in the carriage of passengers, baggage or goods. Air carriers are required to conclude the insurance contract on civil liability for damage resulting from the carriage of mail by air, in accordance with the provisions of the EU concerning common rules for the operation of air services in the Community.

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

In general, international and EU law applies, in particular EU Regulation Nos. 300/2008 and 2015/1998. The Aviation Act provides implementing rules and the most important national regulations concern the National Civil Aviation Security Programme, the National Training Programme and the National Quality Control Programme. The protection of civil aviation against acts of unlawful interference threatening security and the safety of persons and property in connection with aviation business are subject to separate agreements, international laws and regulations and special provisions of the Aviation Act.

#### **43 What serious crimes exist with regard to aviation?**

The Polish Criminal Code and the Aviation Act provide for certain categories of crimes related to traffic, including aviation. For example, under the Criminal Code the following constitute criminal offences and are subject to imprisonment:

- causing a disaster to air traffic, and thereby endangering the life or health of many people, or property to a significant degree;
- unintentionally causing an accident in which another person suffers a bodily injury by violating, even unintentionally, the safety rules for air traffic; and
- allowing, in spite of a special duty, a vehicle to be operated in a condition that directly endangers the safety of air traffic.

The Aviation Act provides for certain penalising regulations, mostly in respect of regulatory offences. As regards non-regulatory offences under the Aviation Act, the following may be noted as examples of offences:

- breaching the provisions concerning air traffic in the area while performing a flight;
- destroying or seriously damaging aircraft located at the airport or causing an interruption in the activities of an airport;
- refusing to obey orders of the pilot in command during flight;
- carrying or using firearms, gas-based weapons or explosives on board;
- destroying airport facilities and air-traffic devices; and
- emitting or causing the emission of a laser light or light from other sources in the direction of an aircraft in a manner likely to cause blinding, and as a result posing a threat to the safety of an aircraft or health of crew and passengers on board.

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