

# EU COMMERCIAL & REGULATORY UPDATE

Alan Meneghetti, Partner

# The year in numbers...

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- Revenue:            2015:            \$718B  
                             2016E:            \$701B  
                             2017F:            \$736B
- Pax                    2015:            \$518B            3.568M  
                             2016E:            \$504B            3.773M  
                             2017F:            \$530B            3.959M
- Expenses trending downwards

# The year in numbers...

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■ No. of Flights:	2015:	34.8M	
	2016E:	36.6M	
	2017F:	38.4M	
■ Fuel costs:	2014:	\$224B	31.3%
	2015:	\$180B	27.3%
	2016E:	\$124B	19.2%
	2017F:	\$129B	18.7%

# The year in numbers...

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- Net Profit:

2015:	4.9%
2016E:	5.1%
2017F:	4.1%
  
- Net Profit per departing pax:

2015:	9.9%
2016E:	9.4%
2017F:	7.5%

# The year in numbers...

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- Airbus' Global Market Forecast for 2016-2035
- Increase in air traffic of 4.5 % p.a.
- What does this mean over the next 20 years?
  - 33,000 new passenger & freighter aircraft - US\$ 5.2 trillion
  - MRO business: US\$1.8 trillion
  - > 500,000 new pilots

# And some more (local) numbers...

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- 2011 HMG: 2030 LHR = 85m pax p.a. (cf. 65m 2016)
- All 5 airports = max of 185m pax by 2040
- IATA – Brexit...decrease in number of up to 25m pax p.a.
- Less certain but likely decrease in freight demand
- IATA: even if “hard Brexit” – 20 year forecast = 45% increase in pax by 2035

# EU General Data Protection Regulation

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- Agreed text – EP Vote H1 2016
- **Direct Effect** – 2 years + 20 days from OJEU publication: 25 May 2018
- Member States may impose stricter laws

# So what is causing airlines a...

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# Data portability (Article 20)

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- A new right
- Right to transfer personal data – “*in a structured and commonly used machine-readable format*” – from one controller to another controller
- Either via data subject or, where “*technically feasible*”, from controller to controller
- No requirement for interoperability of data – “structured, commonly used and machine-readable format”

# Transparency (Articles 12 & 14)

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- Information to be provided to data subject extended
- Includes:
  - Identity of data controller
  - Purpose and legal basis for processing
  - Recipients of data
  - International transfers?
  - Right to request access to/rectification/erasure of personal data
  - Data portability
  - Right to complain to supervisory authority

# Breach Notification (Articles 31 and 32)

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- Data controllers to notify supervisory authority:
  - “*without undue delay and, where feasible, not later than 72 hours after having become aware of it*”
  - Unless unlikely to result in risk to rights and freedoms of individuals
  - Data subject to be notified **but there are carve-outs**



# Administrative Fines (Article 79)

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- Depends on the infringement - greater of
  - (i) €10,000,000 / 2% of undertaking's worldwide turnover of preceding year and
  - (ii) €20,000,000 euros / 4% of undertaking's total worldwide turnover for preceding financial year
- Member States to deal with penalties not covered by Administrative Fines...
  - Effective
  - Proportionate
  - Dissuasive



# Data protection officers (Article 37 - 39)

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- DC and DP to designate DPO where:
  - processing is carried out by a public authority/body
  - ***core activities of DC/DP consist of processing operations that require regular & systematic monitoring of data subjects on a large scale***
  - ***core activities of DC/DP consist of processing on a large scale of "special categories" of data (Art. 9) and data relating to criminal convictions.***
  - Most medium to large scale organisations affected
  - Group of undertakings may appoint a single DPO –DPO to be “easily accessible” from each organisation
  - 39(3) *The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.*

# Tasks of the DPO (Article 39(1))

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The data protection officer shall have at least the following tasks:

- (a) to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;
- (b) to monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
- (c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
- (d) to cooperate with the supervisory authority;
- (e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36 [IAs], and to consult, where appropriate, with regard to any other matter.

# Passenger Name Records

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- Directive 2016/681/EC on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime
- 27 April 2016





# What is PNR?

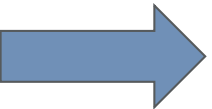

- Data about pax collected at reservation and check-in
  - Airlines
  - T/As
  - Tour operators
- Includes:
  - Name
  - Contact details
  - Travel dates
  - Travel itinerary
  - Ticket information
  - Baggage information
  - Payment information





# PNR Directive

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- No pan European system in place
- All flights to/from EU from/to a 3<sup>rd</sup> country
- Member States can apply to intra-EU flights
-  PIU  designated national authority
- Retention: 5 years



# Want can PNR be used for?

- Prevention )
- Detection ) of terrorist offences
- Investigation ) and serious crime
- Protection )
- 2 year implementation deadline
- EC review 2 years after transposition into national law



# Package Travel Directive 2015/2302

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- 31/12/2015  1/1/2018  1/7/2018
- Scope of package extended:
  - Advertised as package
  - booked within same process
  - total/inclusive price

# Package Travel Directive 2015/2302

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- Applies to 3 different travel combos:
- **Pre-arranged packages**
  - ready-made holidays from tour operator
  - at least 2 elements: transport, accommodation or other services, e.g. car rental
- **Customised packages**
  - selection of components for the same trip/holiday
  - bought from a single business online/offline
- **Linked travel arrangements**
  - book 1 travel service on 1 website and another on a 2nd within 24 hours.

# Package Travel Directive 2015/2302

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- New information requirements
- More predictable prices - 8% cancellation cap on price increases
- Stronger cancellation rights - natural disasters, war etc. + reasonable cancellation fee (+ transfer of package to another pax).
- Clear identification of the liable party
- Clear liability for booking errors
- Clarification on essential consumer rights (e.g. medical)
- Money-back guarantee and repatriation for insolvencies

# Single European Sky

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# Some Facts & Figures

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- EU airspace:
  - 10.8M km<sup>2</sup>
  - 60 control centres
- 37 ANSPs
- €8.6B p.a. with:
  - 57,000 staff
  - 16,900 air traffic controllers (cf. 13,000 in USA)



# Functional Airspace Blocks – Europe





# Global Distribution Systems

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- *US Airways, Inc. v. Sabre*
  - Federal jury 20/12/2016
  - Full content and related terms violate U.S. antitrust laws
  - Market power abused
  - No collusion with 1G and 1A
  
- *Deutsche Lufthansa AG and Ors. v Sabre*
  - DCC
  - 1S counterclaim
  - + 2 more LH Claims – breach + tortious interference

# A third runway for LHR...

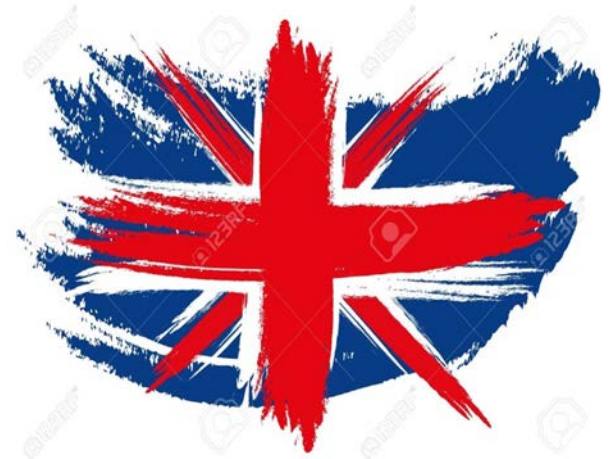
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- October 2016: HMG approved plans for 3<sup>rd</sup> runway at LHR
- Draft 'National Policy Statement on Heathrow' - 2017– to include the details of proposed scheme.
- Policy Statement subject to public consultation followed by period of Parliamentary Scrutiny.
- Vote in Parliament
- Once approved LHR can submit detailed planning application.
- Commencement 2020?
- Completion 2025?

# Brexit...

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- Impact on the Aviation Sector
  - Directives vs. Regulations
- Air traffic rights?
- ECAA and EU-US Open Skies?
- Access to European sky?
- Operating bases?
- Re-join ECAA?
- UK-EU bilateral? cf. Switzerland
- Other bilaterals: USA, Canada, Brazil, Serbia
- Traffic rights distribution
- EU carrier status



# Conclusion/Q&A

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