



Legal Update: Aviation Law

February 2021

Dear Clients and Colleagues,

We are pleased to provide you with important aviation law updates.

1. A motion to certify a claim as a class action was dismissed following the amendment to the Aviation Service Law

Summary C.A. 17594-04-20 Ginzburg v. Transavia Airlines C.V. (Netherlands)

Our firm successfully represented Transavia Airlines (Netherlands) ("**Transavia**") in a class action submitted against it to the Central District Court. In the certification motion, the Applicant argued that Transavia did not provide its passengers with refunds following flight cancellations occurred due to the outbreak of Covid-19 pandemic, and therefore allegedly breached the provisions of the Aviation Services Law ("**ASL**"). The Applicant further argued that Transavia allegedly breached its notification obligations pursuant to the ASL.

Following the submission of the certification motion, our firm contacted the Applicant's attorney and rejected the arguments raised within the framework of the class action. among other arguments, we advised that Transavia is indeed complying with the provisions of the ASL and that the Israeli legislator is about to amend the ASL and provide air carriers with retroactive extensions to provide refunds for eligible passengers (relating to flights which were schedule to depart on March 1, 2020 and onwards).

Shortly after our firm contacted the Applicant's attorney, the above-mentioned amendment to the ASL was passed and the period for providing refunds to passengers was extended retroactively. Following the amendment to the ASL, we argued that the certification motion does not raise any valid cause of action and that there are no grounds for the alleged damages argued by the Applicant.

The parties negotiated an arrangement and eventually a consensual motion for the dismissal of the claim was submitted and approved by the Court, which acknowledged the retroactive amendment of the ASL. The Court also ruled that under the circumstances, the Applicant and the Applicant's attorney shall not be entitled to receive reward and attorney fees.

We anticipate that the Judgment approving the dismissal of the claim would have widespread implications on pending proceedings which were commenced prior to the said Amendment.

2. The District Court rejected a motion for disclosure of documents submitted within the framework of class action

Summary of Court Decision in Class Action 15427-05-18 Gorshomov v. Wizz Air

Our firm represents the airline Wizz Air in a class action submitted against it (and two other airlines) (hereinafter: "**Respondents**") relating to the matter of unrefunded airport taxes. Recently our firm successfully represented Wizz Air with respect to a motion for disclosure of documents which was submitted against it within the framework of the above class action.

The Applicants submitted a motion for disclosure of documents and for answering a questionnaire, in which they requested data and information regarding flights operated by each of the Respondents between the years 2018-2020, and regarding the amount of airport taxes refunded and not refunded to passengers who did not use their flight for any reason.

The Applicants argued that the requested data and information are necessary to enable the Applicants to obtain a sample that would provide them with an estimation as to the ratio between the number of passengers who did not use their flights, and the amount of airport taxes that allegedly should have been refunded to such passengers.

In response, we argued that the details sought to be disclosed are, at most, related to the scope of the class and the assessment of the alleged damages, and therefore such details are not relevant to the early stage of the discussion regarding the certification of the class action.

We further argued that the motion to certify did not meet the requirements of the initial evidentiary infrastructure as required and that the Applicants did not approach Wizz Air in advance before requesting the disclosure of the data and documents. Additionally, we argued that the requested disclosure will create an unreasonable burden on Wizz Air.

After hearing the parties' arguments, the court ruled that although the requested documents appear to be important in order for the Applicants to prove the claim, they are not required and are not relevant to the certification stage.

Following the above, the Court rejected the Applicants' motion for disclosure.

3. The Israeli Competition Authority recommends adopting regulations to govern the relations between online platforms and business users under Israeli Law, and calls for the public's comments

The Israeli Competition Authority published a position paper supporting the adoption of EU regulation governing the relationship between online platforms and their business users. Below is a summary of the Authority's position paper:

Online platforms organize the activities of millions of businesses and consumers in a variety of sectors and provide business users with extensive possibilities to reach consumers quickly and efficiently; these platforms create great value, and they enable the business users to reach new and large audiences.

However, as a platform becomes more central in a particular business sector, the business users' (and the private individuals') dependence on it increases. The capabilities of the online platforms and the dependence on them give them a clear advantage over the business users which may manifest in unfair practices in the agreed terms and conditions and may cause harm to the potential for economic growth and the social welfare that commercial digital activity can offer.

In July 2020, the European Union enacted regulations aimed to establish rules on transparency and fairness for the business users of online platforms. The idea underlying the regulations was to deal with the disparities of power between the online platforms and their business users through the creation of rules on fair commercial terms and conditions which would improve the users' bargaining power, reduce the information gaps with the online platforms and increase commercial certainty.

The EU regulations created direct prohibitions on unfair practices, such as: a duty to provide advance notice regarding changes in terms of use; a prohibition on applying changes retroactively; a duty to provide advance notice of termination or suspension of a user, and the provision of an opportunity for the user to cure its defect prior to the suspension coming into effect.

In addition, the EU regulations established rules on disclosure, transparency and the creation of certainty, regarding: the presentation of the terms of use in a plain and intelligible manner to facilitate understanding of a variety of subjects; the disclosure of the principal parameters for ranking on the online platform and on the search engines; a description of any preferential treatment provided to a product or service which the platform controls; disclosure on access to data and the transfer of the user's commercial data to a third party; and advice regarding any limitations on third parties such as a MFN clause. In addition, the regulations established a three-stage dispute resolution

mechanism – the obligation to maintain an internal system for handling complaints, the identification of two external mediators, and the option to initiate private legal actions against the online platforms for failing to comply with the regulations.

In view of the above, The Competition Authority (the "Authority") recommends adopting legislation in Israel that is similar to the EU regulations and to apply all of the provisions on fairness and transparency in the EU regulations. The Authority calls for the public's comments on the following matters:

- (a) To which online platforms should the Israeli regulations apply? The Authority's initial assessment is that higher thresholds than those set in Europe should apply with respect to the applicability of the Israeli regulations. Thresholds could be based, for example, on the sales turnovers, balance sheet, number of employees, or the number of private or business users of the platforms.
- (b) Which rules from the EU regulation should be applied in Israel? At this stage, the Authority's recommendation is to apply all of the provisions in the EU regulations that relate to fairness and transparency.
- (c) What is the appropriate enforcement mechanism in Israel? The Authority's recommendation is not to apply the obligation to engage external mediators as provided in the EU regulations. Currently, the Authority does not have a recommendation regarding this matter. The Authority calls for the public's comments on whether enforcement should be carried out through private lawsuits in the courts or through the enforcement of a regulator.

The Authority will accept comments on the forgoing matters and others in relation to the Authority's recommendation, until February 28, 2021.

Sincerely,

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