

‘The revitalisation of the Vietnamese air transport market: legal and policy perspectives’



**International Conference
on the Future of Aviation:
Challenges and
Opportunities,
organized by the Vietnam
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cooperation with NACO
Presentation made by
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'How to create a future proof aviation for Vietnam'

- Growth of the Vietnamese air transport and aviation market in the past few years, as illustrated by:
 - Figures (IATA), showing that Vietnam is “indisputably one of the fastest-growing aviation markets in the world” which is not going to stop, because its domestic airlines will expand, whereas new airlines will be created.
 - Vietnam is one of the 5 airway markets with the largest increase in passenger volume after China, the US, India and Indonesia, also caused by tourism
 - COVID-19 has, temporarily, interrupted these developments and predictions, but the trend is clear – and is it, or can it be further stimulated?
 - The broader picture is also helping to create an optimistic image: the economic development in Vietnam, in the region and in the Association of South East Asian Nations (ASEAN), supporting liberalisation of air services in the region (ASEAN) and with other regions such as the EU.
 - This dynamic picture could be further coloured by other instruments, such as the governance of the aviation sector by the State of Vietnam and its bodies, the evolution of the market for airlines, and the competitive conditions in that market, as well as improving airline – airport relations, and the position of airports, including privatization of such airports.

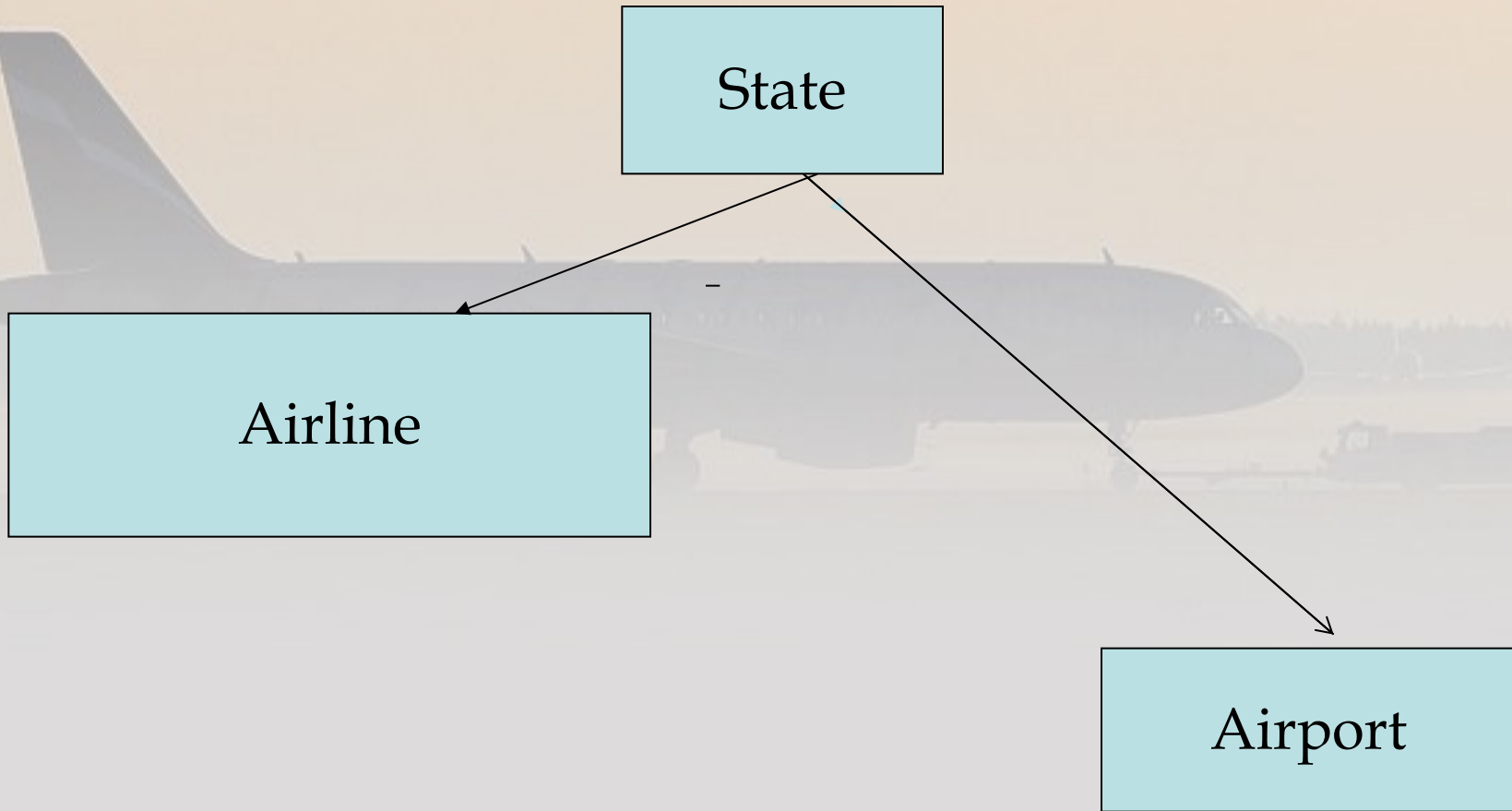
Trends regarding the position of airports

Airports – from public facility, a ‘station’ to an undertaking with a hybrid character – between a public entity and a private undertaking

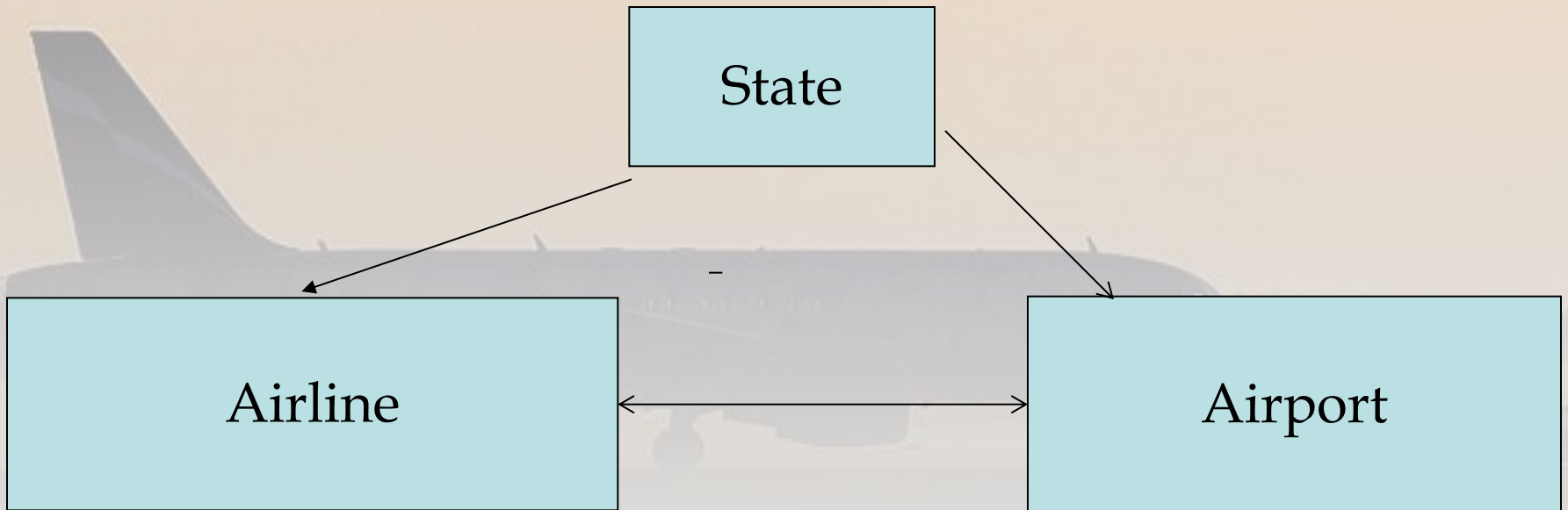
Under international air law:

- No recognition of the ‘undertaking’ aspect: access to airports is governed by public law and policy, rather than by market conditions.
- Airports had to be there, ‘sit on the ground’ and serve traffic, and airlines
- Changes from the 1990’s onwards: airports considered as ‘undertakings’ which may abuse their dominant positions under competition law regimes.
- Congestion – new avenues were needed: the sea, secondary airports, selection criteria for access, and of course slot allocation
- Sustainability of airports, in terms of economics – avoidance of bankruptcies of precious pieces of infrastructure, and protection of the environment, that is, reduction of noise and emissions

Governance State - airline - airport (1)



Governance State - airline - airport (2)



'Stakeholders'



Governance and financing of airports

- Governance – airports as public or corporatised bodies, part of the national administration, or private, perhaps even commercial, and independent undertakings? See national administrative and corporate law, see also ‘airport alliances’ – by way of mutual investments
- Financing of airports:
 - Charges paid by airlines, which are subject to international rules made by ICAO, as implemented in Air Services Agreements with other States, ASEAN regulations and the domestic law of Vietnam;
 - Public procurement procedures in tenders set up by the State, in this case Vietnam;
 - Investments from private parties, that is, banks, sometimes airlines (US), hedge funds etc. – which are encouraged to make investments in the dynamic environment (see slide 2) if there is a *transparent* and *clear* investment regime in place, including supervision and enforcement by the State and competent authorities

The development of airport – airline relations

Next to the aforementioned factors, airport - airline relations heavily impact on the future of airports because of:

- Discussions between the two on *financing* activities of airports, such as paying for security services, noise abatement, attribution of income from tax free shops, via single or dual till methods;
- Airport – airline relations:
 - Arrangements on service provision (private agreements), on the availability of rooms for crew, use of terminal, provision of aid for handicapped passengers
 - Ground handling, consisting of a variety of activities;
 - Slot allocation, based on IATA rules, as implemented in national and local regulations – and, again, EU law
 - Liability for damages – for instance, damage caused by noise, collisions between aircraft and equipment using the airport's platform, etc.

Concluding remarks

- Despite the current COVID-19 pandemic, Vietnam is located in an area of growth of air transport, and other economic activities.
- International trade needs international air transport for carrying persons and goods cross border, efficiently and swiftly.
- While airlines have been, and are the main actors in these processes, airports are claiming their own position.
- Moving from State bodies to private, if not commercial undertakings requires careful attention from a governance and rule making perspective.
- Financing of airport activities is a multifaceted task, which must be analysed from a variety of angles, involving all stakeholders, as to which see also: Collaborative Decision making between airport; airlines, and Air Navigation Service Providers (ANSPs)
- Investments must be underpinned by diligent, transparent and clear rules, accompanied by adequate supervision.

Final observations



The establishment of aviation infrastructure rests on a fascinating tension between public and private interests

The aforementioned, and other considerations, may have to be picked up in this very important conference → loads of inspiration and success for all of you, hoping to meet you one day in person !!!!