

INTERNATIONAL CONFERENCE

Skyward Bound: Innovating the FUTURE OF AVIATION

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Room "Castoldi", Campus Sant'Agostino, Città Alta - Bergamo



UNIVERSITÀ
DEGLI STUDI
DI BERGAMO

Department
of Law



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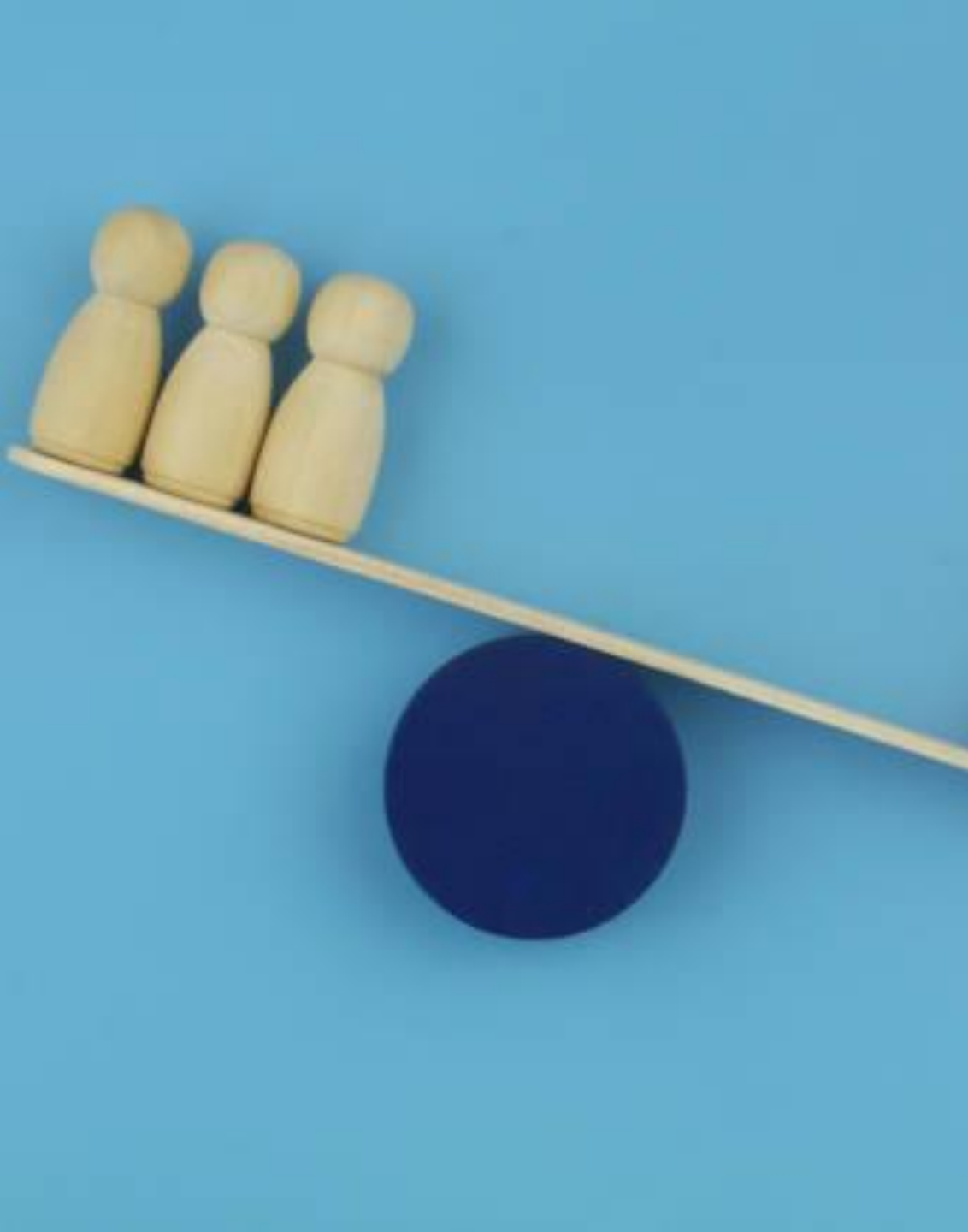


The 'Low-Cost' Approach

*Nicolas Anchetabehere
easyJet*

*Stefano Cardella
Ryanair*





“Unbalancing” decisions

C-549/07 Wallentin-Hermann

Events which, by their nature or origin, are not

1. inherent in the normal exercise of the activity of the air carrier concerned and are AND
 2. beyond its actual control
- Inherent means that anything within the airline environment may end up in a compensation liability for the airline
 - Inconsistent decisions as where the “Inherence” ends, where the “control” starts

The Re-legislation of the CJEU Case Law

- Joined Cases C-402/07 and C-432/07
Sturgeon: how we got to 3 hour?
Concepts of Cancellation/Delay
Newly made up basis for compensation
- C-156/22 TAP vs Flightright - Death
Pilot
- C-263/20 Airhelp vs Laudamotion -
OTA not passing on crucial information
- C-436/21 Flightright vs AA -
Connecting Flights combined by OTA
- Democratic process on EU261 Revision
with stakeholders involvement vs flat
CJEU decisions





And inconsistencies...

C-308/21 KU OP GC vs SATA International Azores Airlines SA

Tanking

C-659/21 Orbest vs CS QN OP e.a

Collision of a catering vehicle with an aircraft

→ *Contradiction with Siewerts v Condor C-394/144 (set mobile of stairs)*

C-411/23 D.S.A vs P.S.A

Technical manufacturing

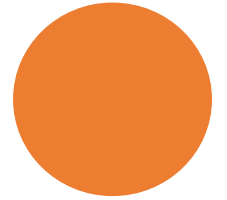
C-405/23 Touristic Aviation Service vs Flightright

Lack of airport staff for baggage handling

Reasonable measures

C-294/10 Eglītis

- reserve time to allow if possible, to operate the flight in its entirety once the extraordinary circumstances have come to an end.
- “intolerable sacrifices in the light of the capacities of its undertaking at the relevant time”



Low-Cost approach

- Model focused on maximization of aircrafts utilization
- Quick turnaround times
- Common policies on stand-by aircraft and crews
- Understanding operational realities
- Point-to-point in context of reasonable measures
- Air travel as consolidating commodity



C-74/19 L.E vs TAP

An operating air carrier may rely on an 'extraordinary circumstance' which affected a previous flight which it operated using the same aircraft, provided that there is a direct causal link between the occurrence of that circumstance and the delay or cancellation of the subsequent flight

Rec. (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft



C-74/19 L.E vs TAP

- Obligation to reroute on any direct or indirect re-routing by a flight operated by the airline or any other air carrier and arriving at a time which was not as late as the next flight of the air carrier concerned or unless the implementation of such re-routing constituted an intolerable sacrifice for that air carrier in the light of the capacities.

BUT

- **Art 8.1** Where reference is made to this Article, passengers shall be offered **the choice**
- **+ Guidelines** point 4.2 (2016 + 2024)
 - => *What about passengers that do no longer wish to be rerouted ?*
 - => *How do we prove availabilities ?*
- **Failure to reroute at earliest, even when the extraordinary circumstance exists, may lead to payment of compensation.**



Ripple effects of EU261 and reasonable measures

*Noise/curfew regulation in France (ACNUSA), and
Portugal (ANAC), SLOT enforcement in the
Netherlands (ILT)*

EXAMPLE

Nantes airport France - Order of September 28, 2021
restricting the operation of the Nantes airport

Art 1 IV.a

No aircraft may land or leave the parking point **between
00:00 and 06:00** for the purpose of take-off.

Art 1 IV.b

The provisions of a shall not prevent the landing and take-off
of aircraft carrying out:

-flights scheduled between 21:00 and 23:30 and which have
been delayed for reasons beyond the control of the carrier;

HOWEVER in its decisions, ACNUSA “*assesses whether the
carrier could, by adopting reasonable measures, counter the
consequences on the scheduling of its flights of the various
hazards which, by their nature or origin, are inherent to the
activity of an air carrier.*”



Claim Management Companies

- Lack of uniformity around their legal existence at European level
- Not transparent towards consumers
- Forum Shopping and driving overall case law into the wrong direction
- Unbalanced approach between EU countries on small value litigation
- Issues of legal fees and deductions
- Aggressive marketing/PR
- CJEU as a threat tool
- Intermediation that is not needed
- Consumer protection is the less important part of their business. Very little resources are invested (e.g. appeals)



The Future of EU261

- 2013 Revision still a valid starting point for evolution and improvement.
- Restoring the balance of EU261 by improving the law and not letting change via CJEU, which is currently generating unnecessary litigation.
- A balanced approach taking in consideration operational realities and *'reasonability of reasonable measures'*.
- Airlines to be an active and essential stakeholder of the democratic process.
- Safety as paramount of decision making.
- Recognize Pilots' decisions which should never be under scrutiny.