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MODERN TYPES OF ECONOMIC CONTRACTS IN THE FIELD OF AVIATION

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Purpose: *of the article is to make a comprehensive study of the legal essence of certain types of contracts which carriers enter into with other participants of transport services.* ***Research methods:*** *the dialectical method of cognition, general scientific and special methods are used in the work. In particular, structuralfunctional and deductive methods.* ***Results****: it is concluded that the attention of legal science and practice is most often focused on air carriage agreements, and many agreements concluded between participants to aviation relations remain insufficiently elaborated, and some aspects of air carriage agreements require further scientific research. The authors establishes the importance of scientific substantiation of contracts on the basis of which air carriers acquire the status of members of aviation alliances, since such alliances enable carriers to maintain legal independence and are also economically viable, and this, in turn, helps to achieve high efficiency of international cooperation in air transportation. The research paper lists the most famous international aviation alliances and analyses the matter of cooperation with public authorities of individual states and their associations and their specific features. The article considers the issue of joint operation of a flight by two or more airlines and its peculiarities. The authors analyses codeshare contracts under which airlines enter into a commercial partnership with each other, as a result of which transport services are considered as a single product that is effectively advertised and sold in the market. The importance of a scientific approach to the conclusion of contracts on airport ground handling and airport services between air carriers and relevant organisations providing these services is emphasised. Particular attention is paid to the contracts governing the relations between tour operators and air carriers. The authors identifies cases of concluding contracts for determining the quota of seats on scheduled flights. The key terms of interline contracts and related pro-rater contracts that establish the basis for commercial cooperation between air carriers are listed.* ***Discussion:*** *the importance of close cooperation between the states, the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA) in order to implement international legal norms governing the conclusion of contracts in the aviation industry in national legislation, as well as to expand the terminology through the adoption of the provisions of IATA acts.*

Key words: *codeshare contracts; airline alliances; interline contracts; contracts with tour operators; airport service contracts and airport ground handling contracts.*

Problem statement and its relevance. At the current stage of development of air transport, there are many advantages, including a wide network of delivery points and extremely high speed of transportation in today's environment. In the course of their activities, air transport companies enter into a large number of agreements with various travel companies, airports, transport organisations and other entities.

Analysis of recent research and publications. The most commonly studied contracts in the scientific literature are those for the carriage of passengers and their baggage, as well as various cargoes. An important contribution to the development of this area of research was made by such scholars as: V. Luts, V. Vitryansky, I. Dikovska, O. Dzer, N. Kuznetsova. At the same time, the interaction of air carriers and active international cooperation leads not only to the conclusion of carriage agreements, but also to other types of contracts which are not well studied from the point of view of legal science.

The purpose of the article is to make a comprehensive study of the legal essence of certain types of contracts which carriers enter into with other participants of transport services.

Presentation of basic material of the research. According to the classical approach, all obligations in the aviation sector are expressed in the form of contracts. The analysis of the subject area of application of contractual relations in the aviation sector allows us to state that, in general terms, such agreements are concluded in the field of international cooperation in the organization of air transport and the use of civil aviation, in the field of economic activity of aviation enterprises, in the field of their provision of services and connection by the use of hired labour [1, p. 642].

In modern conditions, it is common for air carriers to form aviation unions or alliances based on contractual obligations. These associations allow airlines to maintain their legal independence and, at the same time, have the right to demand a whole range of rules regarding flight schedules, loyalty programmes, ticket sales, and many others. An airline alliance is a partnership association of airlines aimed at achieving the highest level of international cooperation in commercial air transport.

Joining such alliances is based on mutual benefits for all participants and reduced costs during transportation. This is primarily due to the ability of airlines to operate flights with one or more stopovers, i.e. complex routes. Different stages of this complex route will be performed not only by the air carrier, but also by its alliance partners. For various reasons, the carrier cannot always expand its route network to the maximum, primarily for economic reasons, but thanks to its partners, it will be able to be present on many routes.

All airline alliances establish common operating rules and regulations, organise joint staff work, and use similar booking systems. Alliance members jointly purchase and use equipment. In turn, passengers are granted various privileges and bonus programmes, i.e. alliances act as a marketing tool, the effectiveness of which becomes better when participating in global strategic alliances.

Each airline alliance creates the same operating rules, uses similar booking systems, organises the work of joint personnel, and its members jointly purchase and operate equipment. Various bonus programmes are created for passengers, which is why airline alliances are becoming a kind of marketing tool, the effectiveness of which increases with the involvement in global strategic alliances. The function of the bonus programme is that when flying with an airline that is a member of the alliance, the passenger's personal account is increased depending on the class of carriage and in proportion to the distance, rarely in proportion to the ticket price. There are two types of such programmes: the first provides a free flight for every tenth or eleventh flight on domestic flights, or the sixth flight on international flights; the other type of bonus programme allows you to use your points to improve flight conditions and receive additional amenities. Airlines, together with their partners, implement various models of bonus programmes, including the development of a gradation for awarding points and miles to be credited to special accounts of programme participants. It is also common for some countries to interact with bonus programmes in other industries, expanding the opportunities to exchange "conventional units" for partner services, such as car rental, hotel accommodation, and the

purchase of goods, rather than just for free flights or improved flight conditions.

Joining aviation alliances allows airlines to avoid restrictions imposed by national legislation of some countries on certain routes that can be operated only by national carriers or carriers of countries with which the relevant intergovernmental aviation agreements have been concluded.

On 14 May 1997, the first airline alliance was established, which included such airlines as United Airlines, Scandinavian Airlines, Air Canada, Thai Airways International and Lufthansa. It was the first large-scale alliance in the world and was called the Star Alliance. Immediately after its creation, the European Union decided to thoroughly check the conditions for the formation and operation of this alliance. This review was motivated by the European Union's concern about the impact of the alliance's activities on the national interests of other countries and the possible monopolisation of the air transport market. The European Union has taken a series of steps to avoid negative trends in this area, including banning airline mergers within the alliance and retaining the possibility of domestic carriers to have preference for domestic flights [2].

Over time, other alliances emerged. For instance, in 1998, Oneworld was created with the following airlines as its founders: Qantas Airways, American Airlines, Cathay Pacific, Canadian Airlines and British Airways. This association was the first to create a unified management system with an elected chairman of the board. "SkyTeam is another alliance created in 2000 by the following airlines: Air France, Aeroméxico, Korean Air and Delta Air Lines. Other alliances have also existed at different times, such as the Arabesk Airline Alliance and the Qualifier Group [3].

The creation of such alliances has many positive aspects, in particular, airlines seek to cooperate to expand their route network and optimise transportation costs. Within the framework of alliances, there are two models of air transport business: low-fare (low-cost) and classic, and they complement each other. In today's environment, practice shows that this model is competitive. It also opens up prospects for other transport sectors, such as road and rail. For instance, everyone knows the positive results of cooperation between the Deutsche Bahn (DB) and Oneworld alliances, the former being one of the largest railway operators in Europe. These examples of interaction between carriers of different modes of transport show that an integrated chain of transport services for customers is being formed, which leads to attracting more passengers and providing them with expanded transport and related services [4].

There are numerous reasons why the establishment and operation of airline alliances have become a trend in the modern development of transportation: cooperation between airlines leads to lower costs and increased efficiency of their operations; passengers are more satisfied with the benefits provided by airline alliances; a significant number of passengers want to fly more easily to more countries and continents, but existing restrictions and economic feasibility do not always allow this opportunity to be realised with the help of one airline. The practice shows that it is economically advantageous to share an airline or flight between two or more airlines. These contracts are often referred to as "code-sharing" or "flagging" agreements, which means "sharing the code". The essence of a codeshare contract is that the airlines entering into such a contract establish a commercial partnership with each other, where their product is treated as a single product, sold and advertised in the airline market. The International Air Transport Association assigns a 2-letter code to all airlines. Thus, Ukraine International Airlines is assigned two such letters - PS. This is the basis for the joint use of the airline and the flight on the established route by Partners and Operators, and the flight is marked with the joint code of the Parties. Today, this experience has become widespread.

Under codeshare contracts, several flights on the same route may appear on the flight schedule, but the partner companies sell tickets under their own names. In reality, only one airline operator actually carries out air transportation on such a route, while all the others have the opportunity to market, sometimes seat quotas, to sell tickets under their own name. At the same time, the passenger who purchases the ticket must be informed of the name of the airline that will actually carry out the transportation. This form of cooperation between airlines leads to cost savings and efficient organisation of

transportation, while avoiding unnecessary duplication of routes.

Ukrainian legislation does not regulate in detail the terms of code-share agreements, but at the same time, there are no direct prohibitions on carriers entering into such agreements under an agreement between the actual carrier. These types of transportation are subject to the general requirements and rules set out in the applicable legislation. As practice shows, aviation companies use contracts for air transport, which, as a general rule, are concluded by the Civil Code of Ukraine and the Economic Code of Ukraine. However, the conclusion of some contracts is directly provided for by the Air Code of Ukraine. Thus, Clause 1 of Article 1 of the Air Code of Ukraine provides for a contract on the operation (exchange) of an aircraft or crew. According to Article 36 of the Air Code of Ukraine, contracts for the technical operation of ground means of communication, navigation and surveillance are concluded. It is worth noting that Article 36 of the Air Code of Ukraine provides for the conclusion of contracts by the Convention on International Civil Aviation. According to Article 65 of the Air Code of Ukraine, the conclusion of contracts related to the operation of airfields is provided for. The conclusion of such agreements is one of the conditions for the certification of airfields. Article 72 of the Air Code of Ukraine also indicates the need to conclude contracts for the operation of airfields and airports, as well as contracts for the provision of services on their territory. According to Article 73 of the Air Code of Ukraine, the conclusion of lease, concession and management contracts, particularly an airport management contract, is provided for in the aviation sector. Article 98 of the Air Code of Ukraine directly provides for the conclusion of an air transportation contract in the aviation sphere. At the same time, the principle of freedom of contract allows concluding a wide range of contracts in the aviation industry, including code-sharing contracts [1, c. 642-643; 5].

In 1961, the Guadalajara Convention introduced the concept of the "actual carrier" for the first time. According to the Guadalajara Convention, the actual carrier is an airline that provides an aircraft under a charter, lease or other legal basis. The actions of the actual carrier are treated as the actions of the principal carrier under the agreement, and vice versa. The cargo owner may file orders and claims against both the contractual carrier and the actual carrier. The activities of the carrier and the actual carrier are regulated by the Warsaw Convention, which was adopted in 1929, and later these provisions were adopted by the Montreal Convention in 1999.

The Ukrainian laws and regulations governing this issue do not require that the carrier who has entered into the contract is obliged to carry out the carriage personally. Therefore, it may transfer these obligations to the passengers to another carrier. This is in line with civil law, which allows a debtor to delegate the performance of obligations to a third party while maintaining the debtor’s liability under the contract. However, there is currently no specific legal provision in Ukraine that would regulate codeshare agreements.

These contracts also provide airlines with an opportunity to increase the number of offers for passengers by covering airports that are part of their partners’ route network. In such cases, a passenger can fly between different airports with an intermediate stopover using aircraft of two different airlines. As set out in the rules of the Guadalajara Convention, both companies are responsible for air transportation in these cases. Actions or omissions of the actual carrier within the framework of joint carriage are treated as actions or omissions of the contract carrier and vice versa. Thus, lawsuits and claims may be brought against the carrier or the actual carrier under the contract, but the carriers are allowed to share their liability depending on the degree of fault and other circumstances.

Additionally, the contract sets out and defines an agreement on seat blocking. The work of all partners is aimed at working together to fill the flight. Thus, in such circumstances, the airline operating the flight receives all the revenue and bears all the costs. The second airline receives a certain number of seats for passengers, and almost 90% of the cost of transportation remains with this company. Scientists believe that the established seat blocking is a kind of compensation for the right to fly on a particular route.

Transport practice defines several types of codeshare contracts. In unilateral transaction. this contract, the airline does not operate a specific route either through connections or directly. Here, an airline tries to use the name of another airline only so that passengers can fly with them. In connection operation one airline agrees to use its code with another airline that does not operate in the same sector but provides connections to other flights. The distinction is better defined when selling tickets for connecting flights, where only one carrier is listed on the ticket, although passengers may not know that they have purchased a ticket for code sharing. The name of the other carrier that will operate the flight after the connection will be indicated in small print. Under Parallel operation contract, two airlines operate the same route. The code sharing takes place in parallel with each airline's own operations [6].

Antitrust authorities conduct a detailed study of the subject matter of codeshare agreements, both at the level of individual states and at the international level. For example, in 2001, the European Union Commission considered a case related to the joint activities of Maersk and SAS Airlines. These carriers informed the Commission of a series of cooperation contracts, i.e. agreements where they jointly use a code. However, the Commission found that these contracts actually created arrangements for the complete division of the air transport market, which is expressly prohibited by the Antimonopoly Committee and is a violation of the law. Therefore, based on the above, certain countries have added additional conditions to their legislation for entering into codeshare agreements. For instance, air carriers wishing to operate under a common code with US airlines must first obtain permission from the US Department of Transportation and submit an application for authorisation. If the permit does not violate the competitive principles of transportation, the ministry will issue the relevant document.

Codeshare contracts are directly related to intergovernmental agreements on air services, under which countries usually agree on the same number of flights that airlines of each state are entitled to operate. However, it is also possible for the parties to trade these frequencies, with the value of such an exchange determined by the amount of air navigation fees paid by the party transferring the frequency.

A substantial part of the contracts are concluded in the field of aircraft ground handling and airport services at the airport. The standard ground handling contract is a key document in this area. In this case, contracts are concluded between airlines that operate contractual routes and organisations that provide ground-handling services directly at a particular airport. The main purpose of these contracts is to fully provide all the necessary commercial and technical services for the aircraft involved in such operations.

The contracts contain a collection of several mandatory and standard services, as well as services that can be provided as additional services at the request of the carrier and, accordingly, for an additional fee. The contract provides for the possibility of involving the carrier's and subagent's personnel in the course of the service and defines the responsibilities of the aircraft commander in controlling the performance of these works. Additionally, the agreement sets out tariffs for the provision of services such as maintenance, the nature and time of maintenance, and the procedure for settlements and dispute resolution. The contract defines the area of liability for possible damage to an aircraft during the maintenance process by concluding insurance agreements in case of damage at foreign airports, which makes it possible to reduce the liability of the parties in such cases.

The contract provides for a fairly wide range of services, such as operation and maintenance of the aerodrome, provision of runways, aprons, steering tracks, lighting, allocation of aircraft parking spaces, dispatch services, meteorological support, provision of radio equipment, ornithological support for flight safety in the airport area, and provision of lighting.

Within the framework of the contract, the parties set fees for providing aviation security, including the protection of the airport territory, fuel supply facilities and aircraft parking, the implementation of a special airport access control regime, as well as control over the security of passengers and their baggage, mail and other cargo, onboard catering, crew members and aircraft.

In the contract, the parties also agree on what types of ground handling services will be provided, such as cargo, baggage or mail handling, and customer service. However, most of the services are focused on check-in and boarding of departing passengers and meeting and escorting arriving passengers. The parties determine the price for each adult passenger, but the service for persons under 12 years of age is provided at a reduced price. The price includes all services required for passenger check-in, disembarkation and embarkation from the aircraft, passing all types of control, as well as loading and unloading baggage.

Therefore, prices are set to cover aircraft maintenance and cargo handling. If special equipment is used to perform the above tasks, the prices for their use will be determined additionally.

As a rule, the main contract is accompanied by two annexes. Annex A "Description of Ground Handling Services" and Annex B "Place of Service and Agreed Services and Rates", using the terms and wording adopted by the International Air Transport Association (IATA) [7].

Another category of contracts is agreements that regulate the relationship between tour operators and airlines. In order to transport tourists, an air carrier and a tour operator enter into a contract that specifies the number of seats for regular flights and the signing of a charter contract. The content of the contract is formed by the capabilities of the transport companies and the needs of the companies organising tourist recreation in the designated territories.

A contract between a tour operator and an air carrier to set a seat limit on scheduled flights includes the possibility and procedures for returning purchased tickets, types of ticket fares, terms of refusal of ticket applications without penalties, terms of application and redemption of seats, determination of a quota of seats for each flight, a schedule of round-trip and return tours with indication of destinations. Under the contract, the parties may use both a "hard" and "soft" seat quota, but this is directly defined in the text of the agreement.

The agency contract sets a limit on the sale of seats. This contract addresses the following issues: who provides the equipment for issuing tickets and ticket forms, if necessary; who trains the specialists who will operate the equipment; the volume of ticket sales; the price of transportation; the price and tariffs for the sale of tickets; the terms of payment for tickets (prepayment, etc.); the regularity of the tour operator’s report on ticket sales.

Air carriers actively cooperate with travel agencies to transport large groups of tourists to holiday destinations. Charter contracts are usually concluded, which can be divided into three main categories: round-trip charters, charter cruises and special charters. The most common type of charter is a round trip charter, where the transportation takes place according to a specific schedule to certain airports.

Basically, all the terms of the contract are determined by agreement between the tour operator and the airline. In addition, a number of other parameters are determined, such as the duration of the contract, the route, including departure and arrival airports, the price of the aircraft, the number of available seats in the aircraft, the type of aircraft, the regularity of flights, details of payment for flights, which is usually preliminary and made several days before the flight, usually the air carrier requires payment for the first and last flight, conditions regarding the possibility and restrictions on cancellation of the flight and the application of penalties and other conditions of such transportation. Charter agreements may be concluded for a period of one year, quarter, month or season, and the minimum commercial load is calculated, under which the flight will be operated. Charter agreements may be concluded for a period of one year, a quarter, a month or a season, and the minimum commercial load under which the flight will be operated is calculated.

The International Air Transport Association (IATA) includes a special division known as the International Airline Agents’ Organisation, which provides travel agencies with the opportunity to join IATA’s work.

Travel agencies also receive a special number and have to undergo accreditation.

Another fairly common and simplest type of cooperation between airlines is "interline contracts". These contracts recognise the

transportation documents of one airline as being accepted by another. On such grounds, the carrier has the right to make out on its forms such as the international and domestic transportation as the interline partner performs. These opportunities are agreed upon in advance as part of commercial cooperation contracts between the two airlines, which may represent one or two countries. These contracts define the scope of services that the partners will provide to each other, including the terms and conditions for issuing various transport documents, such as airline tickets, air waybills, miscellaneous charges orders (MCOs), and so on.

As part of interline contracts, it is possible to enter into special prorate contracts (Special Prorate Agreement), which form the basis for determining tariffs to ensure targeted sales of transportation by all carriers. Prorate contracts are multilateral agreements between airlines on passenger and cargo transportation.

IATA has a specialised agency, the Airline Fare Agency, which develops multilateral fare agreements that address several issues, such as common payment rates, multiple charges, fare coefficients, ticket validity periods, international distribution of fares and charges, and other aspects [7].

All airlines that regularly carry passengers and cargo can participate in a multilateral prorate agreement. This agreement forms the basis for the distribution of revenues received from the provision of passenger and cargo transportation services proportionally among the parties to the agreement. For this purpose, a pro-rata coefficient is determined, which is calculated by the pro-rata factor published in the Pro-Rate Guidelines.

Conclusions. To attract attention and ensure equal cooperation between Ukrainian and foreign air carriers, it is important to enshrine the main provisions of different types of aviation agreements in Ukrainian legislation. It is also important to establish closer cooperation with the International Civil Aviation Organisation (ICAO) and the International Air Transport Association (IATA) to obtain advice and recommendations on the content of international legal acts and their implementation in national regulations. Further attention should be paid to improving the national terminology in the field of international air transport in general and aviation contract law in particular, under international practice.

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СУЧАСНІ ВИДИ ГОСПОДАРСЬКИХ ДОГОВОРІВ У ГАЛУЗІ АВІАЦІЇ

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Мета *статті спрямована на аналіз проблем у сфері правового регулювання угод, пов'язаних із міжнародними авіаційними перевезеннями.* ***Методи дослідження:*** *у роботі використано діалектичний метод пізнання, загальнонаукові та спеціальні методи дослідження. Зокрема, структурно-функціональний, дедуктивний методи та порівняльно-правовий метод.* ***Результати:*** *у статті обгрунтовано важливість наукового дослідження договорів, на основі яких авіаперевізники набувають статусу учасників авіаційних альянсів, розглянуто питання спільної експлуатації авіарейсу двома або більше авіакомпаніями та його особливості, проаналізовано договори код-шерингу, особливу увагу приділено угодам, які регулюють відносини між туристичними операторами та авіаперевізниками, визначено випадки укладання угод про визначення квоти місць на регулярних перевезеннях, а також перераховано ключові умови інтерлайн-угод та пов'язаних з ними прорейтерських угод, які встановлюють основи комерційної співпраці між авіаперевізниками.* ***Обговорення:*** *важливість тісної взаємодії між державами, Міжнародною організацією цивільної авіації (ІКАО) та Міжнародною асоціацією повітряного транспорту (ІАТА) з метою впровадження міжнародно-правових норм регулюючих питання укладання договорів в авіаційній галузі у національне законодавство, а також розширення термінологічного апарату через прийняття положень актів ІАТА.*

Ключові слова: *угоди код-шерингу; авіаційні альянси; інтерлайн-угоди; угоди з туристичними операторами; угоди про аеропортове обслуговування та наземне обслуговування в аеропорту.*

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