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## **Report on the 2024 IATA World Legal Symposium in Vancouver, Canada, on 22-23 february 2024**

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# Report on the 2024 IATA World Legal Symposium in Vancouver, Canada, on 22–23 February 2024

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*Between 21 and 23 February 2024, the International Air Transport Association, which represents 320 airlines worldwide, hosted its annual World Legal Symposium in Vancouver, Canada. After a confidential briefing to its members on 21 February 2024, the legal symposium convened discussions on the topic of ‘Environmental Sustainability and Aviation Law for two days’ between 22 and 23 February 2024. The Symposium attracted about 400 aviation legal professionals and fifty speakers in eleven panel discussions.*

**Keywords:** Conference report, IATA, Legal Symposium, Sustainability, Compliance

## 1 DAY 1 ENVIRONMENT SUSTAINABILITY AND AVIATION LAW

### 1.1 WELCOME ADDRESSES

The welcome addresses focused on insights and perspectives on overcoming challenges, sustainability, and the role of law and cooperation in the aviation sector.

**Mr Kendal Netmaker** shared a narrative grounded in his cultural teachings about perseverance, overcoming obstacles, and the importance of moving forward, encapsulated by the word ‘*akamemo*’. Drawing from his personal journey, he highlighted the transformative power of challenges and the role of supportive figures in fostering resilience. Through his story of growth from a childhood marked by poverty and challenges on a First Nations reserve, Mr Netmaker emphasized the universal lessons of resilience, the value of nurturing potential in adversity, and the importance of decisions that shape future generations.

**Ms Leslie MacIntosh (IATA)** focused on three critical areas where success is imperative: environment and sustainability, fostering inclusive growth for aviation

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professionals, and ensuring all voices are heard. She demonstrated how aviation faced legal and compliance challenges in achieving sustainability goals with the sector's responsibility to future generations. Ms Macintosh Leslie also celebrated progress in gender diversity within aviation and underscored the importance of supporting young lawyers and the next generation of aviation professionals, drawing inspiration from historical figures and initiatives of the International Air Transport Association (IATA) initiatives to promote diversity and inclusion.

**Mr Michael Gill (ICAO)** addressed the themes of compliance, sustainability, and the challenges presented by a turbulent international landscape from the perspective of International Civil Aviation Organization (CAO). He stressed the indispensability of a rules-based system and the rule of law for tackling these challenges effectively. Stressing ICAO's role in setting global standards for a safe, secure, sustainable, and resilient aviation sector, Mr Gill indicated the importance of cooperation between states, the industry, and various stakeholders to meet sustainability goals and navigate the complexities of international aviation law and relations in a period marked by numerous external threats.

## 1.2 BREAKING THROUGH THE CLOUDS: LEGAL CHALLENGES IN AVIATION'S QUEST FOR NET-ZERO CARBON EMISSIONS BY 2050

The first session of Day 1 started with an in-depth discussion on achieving net-zero emissions by 2050. As a moderator, **Mr Ali Uzun (Pegasus Airlines)** initiated the conversation, setting the stage for discussing the challenges of delivering on the 2050 net-zero promise from a regulator's perspective and the complexity of integrating various viewpoints and technologies to achieve this goal.

**Ms Marie-Claude Day (Transport Canada/Department of Justice Canada)** focused on the role of regulators and lawyers in this transition, highlighting the importance of cooperative efforts, innovation, and the regulatory framework's adaptation to support aviation's shift towards sustainability. She emphasized the complex balance regulators must strike between environmental stewardship and other factors like safety, security, and economic prosperity. She discussed the need for phased legislative and regulatory initiatives to accommodate new green technologies and sustainable aviation fuels (SAF).

**Mr Kevin Welsh (A4A)** elaborated on the intersection of policy, law, and sustainability, addressing the impact of carbon emissions taxes, SAF, information disclosure, and non-CO2 emissions. He stressed the critical nature of SAF for the decarbonization goals and the challenges of ensuring robust accounting and chain of custody for these fuels. Mr Welsh also touched on the evolving legal landscape

and the importance of managing risks and liabilities to achieve sustainability objectives.

**Ms Mildred Troegeler (Boeing)** provided an industry perspective, asserting manufacturers' commitment to net-zero goals and the imperative of increasing aircraft efficiency and sustainability. She detailed the challenges of SAF availability and pricing, which led to the need for supportive policies and regulations. Ms Troegeler also discussed operational efficiency, advanced technologies, and the significance of infrastructure in accommodating new types of aircraft to achieve the goal.

**Prof. Vincent Correia (McGill University)** addressed the global challenges of coordinating environmental goals across different jurisdictions and the complexities introduced by varying approaches to emissions reduction and SAF eligibility. He highlighted the competition and legal uncertainties arising from these disparities and expressed skepticism regarding the reliance on alternative fuels as a singular solution.

The session emphasized the multifaceted challenges of achieving net-zero emissions in aviation. It highlighted the importance of international cooperation, regulatory adaptation, technological innovation, and the careful management of legal and economic implications.

### 1.3 ESG LITIGATION: GREENWASHING AND BEYOND

The speakers comprehensively discussed different jurisdictions' approaches to climate litigation, greenwashing, and the aviation industry's approach to sustainability.

As a moderator, **Ms Thera Adam (Partner IP, Marketing and Advertising, Eversheds Sutherland)** opened the discussion by emphasizing the significance of addressing climate litigation and greenwashing within various jurisdictions. She provided an overview of global climate litigation trends, noting that most cases have been brought against states or governments to enforce climate obligations. Ms Adam highlighted the shift towards suing corporates, including airlines, for not adequately addressing or misrepresenting their environmental impact. She also touched on the regulatory frameworks in Europe dealing with misleading advertising and the emergence of new directives focused on environmental claims, emphasizing the importance of substantiation, communication, and verification of green claims.

**Ms Claudia Hess (Urwantschky Dangel Borst)** focused on the European Union (EU) and German perspectives, discussing the actions of consumer protection organizations against airlines for alleged greenwashing. She explained how

these organizations challenge carbon offset programs and SAF initiatives, arguing that they mislead consumers about the sustainability of air travel. Hess also mentioned the regulatory framework in Germany, including the significant fines for non-compliance and the importance of transparent and accurate sustainability claims to avoid legal repercussions.

**Mr Tom van der Wijngaart (Clyde & Co.)** provided insight into the UK's greenwashing and climate litigation approach. He highlighted the detailed guidance provided by the UK's Competition and Markets Authority and the Advertising Standards Authority, focusing on the importance of clear, truthful, and substantiated environmental claims. Mr Van der Wijngaart also discussed various enforcement mechanisms and litigation trends in the UK, noting a growing diversity of entities using novel litigation tactics to influence corporate behaviour on environmental issues.

**Ms Olivia Warwick (Minster Ellison)** covered the Australian context, detailing the types of litigation against airlines and focusing on environmental litigation and the regulatory emphasis on consumer protection against misleading environmental claims. She noted significant cases that have shaped the legal landscape regarding environmental concerns in Australia and highlighted the potential for the Australian Competition and Consumer Commission to use consumer protection laws to target greenwashing practices in the aviation industry.

**Ms Averil Edwards (United Airlines)** offered an in-house perspective, discussing United Airlines' approach to sustainability and the importance of collaboration with partners to advance the aviation industry towards sustainability. She emphasized the need for transparency, engagement, and education about sustainable practices and the challenges of navigating the legal and regulatory frameworks concerning green claims. Edwards provided practical suggestions for airlines to balance the risks associated with greenwashing while still communicating their sustainability efforts.

Each speaker emphasized the complexity of the legal and regulatory landscape surrounding green claims and climate litigation. They highlighted the need for airlines to be transparent, accurate, and substantiated in their environmental claims to navigate the increasing scrutiny from regulators, consumer protection organizations, and the public.

#### 1.4 CONSTANCE O'KEEFE WRITING AWARD PRESENTATION

**Ms Laura Pierallini (Studio Pierallini)** awarded **Mr Connor Haffey (Mississippi University)** with the Constance O'keefe Writing Award. Mr Haffey briefed his essay on the potential capacity expansion strategies of airlines

involving Latin America and Canada through wet leasing and paper companies outside the air services agreements and whether countries with less dominant airlines could compete more effectively on the global stage.

1.5 'NATIONAL NOISE LAWS WITHOUT CONFLICT' EXPLORED VARIOUS PERSPECTIVES ON AVIATION NOISE, HIGHLIGHTING DIFFERENT APPROACHES TO MANAGING AND MITIGATING ITS IMPACT

**Mr Doug Mullen (A4A)** started moderating by stating that aviation noise is a persistent issue that fluctuates in public and industry focus. He outlined the panel's aim to share knowledge and experience regarding noise management, indicating a mix of viewpoints from industry stakeholders and legal experts.

**Ms Renee Martin-Nagel (Eckert Seamans)** provided a comprehensive overview of aviation noise sources, their impacts, US noise limits and laws, funding for noise mitigation, and airport initiatives. She differentiated between sound and noise based on perception and discussed how various aircraft operations contribute to noise levels. Ms Martin-Nagel emphasized the significance of engine technology advancements in reducing noise and touched on the subjective nature of noise annoyance. She also explained the US regulatory framework governing airport noise and discussed airport initiatives to manage noise impacts, highlighting the balance between noise reduction and operational efficiency.

**Mr Erik van Goor (KLM)** shared insights on noise management in the Netherlands, specifically around Amsterdam Schiphol Airport. In his discussion on the legal, political, and geographical dimensions influencing noise issues and the region's historical and recent approaches to noise mitigation, Mr Van Goor highlighted the challenges arising from the COVID-19 related temporary reduction in air traffic and the subsequent public and governmental pressure to limit aviation operations for noise reduction. He stressed the importance of a balanced, collaborative approach to addressing aviation noise while considering the broader European aviation market.

**Mr Robert van Galen (Nauta Dutilh)** focused on the legal aspects of aviation noise management in the Netherlands, particularly the case involving Schiphol Airport's operation restrictions. He detailed the legal challenges against the Dutch government's plan to reduce airport movements without following the balanced approach prescribed by EU regulation. Mr Van Galen outlined the procedural and substantive legal arguments involved, including the applicability of the balanced approach regulation and the government's failure to assess noise levels adequately.

**Mr Kim Murray (New Zealand)** shared a resident's perspective on noise issues at Wellington Airport, which is a city airport in New Zealand, detailing his pro bono work representing residents affected by noise. He shared his view on the technical and regulatory aspects of noise management, together with the operational need for compliance with safety legislation and meaningful community engagement. Mr Murray highlighted the discrepancies between objective noise measurements and subjective experiences, calling for adherence to international guidance on noise mitigation.

The session illustrated the need for multi-faceted approaches toward noise management, which is complex from the legal, technical, and community perspectives. The discussion highlighted ongoing efforts to balance the environmental impacts of aviation noise with operational efficiency and economic benefits.

#### 1.6 COMPETITION LAW AND SUSTAINABILITY

The session delved into the complicated relationship between sustainability initiatives, competition law, and the airline industry's efforts toward decarbonization.

The moderator, **Mr Daniel Kanter (IATA)**, opened the session by emphasizing the cooperation and collaboration within the industry to achieve net-zero emissions, which would bring unique challenges. According to him, there is a dichotomy between the necessity of cooperation for environmental goals and the constraints imposed by antitrust laws, suggesting that collective action may be vital in overcoming sustainability challenges despite potential legal risks.

**Mr Marc Wiesner (Lufthansa)** discussed about the efforts of the IATA Working Group on Sustainability and Competition. He focused on representing the airline industry in global discussions on sustainability within the framework of competition law. He stressed the importance of developing global standards and legislation to support the industry's sustainability goals, acknowledging the varied approaches to sustainability and competition law across different jurisdictions.

**Ms Miranda Cole (Norton Rose)** discussed the EU's approach to competition law in the context of sustainability, highlighting the inclusion of sustainability arrangements in the latest version of the horizontal guidelines. She outlined the collaboration criteria to advance sustainability goals, emphasizing the necessity for such collaborations to contribute to efficiency gains, include indispensable restrictions, and ensure a fair share of consumer benefits.

**Prof. Steven Truxal (Leiden University)** focused on the nuanced relationship between sustainability goals and competition law in the EU, underlining the evolving legal frameworks that accommodate environmental objectives within the competitive legal landscape. Highlighting the innovative approach of EU Member

States outside the aviation sector, such as the collaboration between Shell and Total on a carbon capture and storage project in the Netherlands, he illustrated how competition authorities would begin to permit cooperative efforts that significantly contribute to sustainability goals, provided they align with broader consumer welfare. Prof. Truxal also touched upon the influence of broader policy initiatives like the European Green Deal and the European Climate Law, which reshape how competition law is interpreted in the context of sustainability efforts.

**Ms Kathy O'Neill (Cooley)** contrasted the US approach, where there is no explicit exemption for Environmental, Social and Governance (ESG) initiatives from antitrust laws. She discussed the risk profile associated with collaborations among competitors, even when aimed at socially desirable goals like sustainability. Ms O'Neill highlighted the active stance of state and federal regulators in scrutinizing such initiatives for compliance with antitrust laws.

The session illustrated the complex interplay between sustainability initiatives aimed at decarbonizing the aviation industry and the regulatory landscape shaped by competition laws. While there is a clear trend towards recognizing the importance of sustainability in the EU, the US maintains a more cautious approach. There is a need for industry-wide collaboration and innovative solutions within the legal boundaries.

## 2 DAY 2 COMPLIANCE

Ms MacIntosh opened the second day of the symposium with a call to action for greater cooperation among global aviation law associations. She acknowledged the unfortunate scheduling conflict with an American Bar Association (ABA) event and intended to avoid future overlaps. She further encouraged participation in these associations to foster a shared passion for air law and thanked the IATA's team for their efforts in organizing the event.

### 2.1 LITIGATION AND LIABILITY SNAPSHOT

The first session of Day 2, 'Litigation and Liability Snapshot', provided a global perspective on the latest trends and developments in air carrier liability litigation, featuring insights from experts across various jurisdictions.

**Mr Bartholomew Banino (Cordon & Forsyth LLP)** moderated the panel, introducing the theme of air carrier liability under the Montreal Convention. He highlighted the variance in legal interpretations across jurisdictions despite the Convention's aim for uniformity. Mr Banino raised concerns about the erosion of certainty in the Convention, particularly regarding psychological and mental



damages, and the trend towards expanding liability beyond physical injuries, as seen in various cases across the US and Europe.

**Ms Kathryn Ward (DLA Piper)** discussed recent European cases that challenged the principles of the Montreal Convention, particularly the allowance of claims for purely psychological damage and the broad interpretation of what constitutes an ‘accident’. She contrasted the European Court of Justice’s approach with more stringent applications by national courts, noting the evolving landscape of air carrier liability in Europe.

**Mr Clay Hunter (Paterson McDougall LLP)** shared insights from the Canadian legal perspective, including a pivotal case under Article 21 of the Montreal Convention and the unique challenges of class actions in air carrier liability cases. He expressed concerns about ‘nuclear verdicts’ and the impact of class actions on the legal system, emphasizing the need for a more efficient resolution process.

**Mr Ricardo Bernardi (Bernardi & Schnapp Advogados)** offered a landscape of air carrier liability cases in Brazil, highlighting the conflicts between the Montreal Convention and the Brazilian Consumer Code, especially regarding moral damages and the presumption of liability. He discussed legal and precedential solutions to these challenges, stressing the importance of educating courts and strategically litigating to shape favourable precedents.

The session underscored the complexities and challenges of navigating air carrier liability across different legal systems, highlighting the need for continued dialogue and cooperation among legal professionals to address these issues effectively.

## 2.2 BEST PRACTICE IN AIRLINE LEGAL DEPARTMENT

The session showcased an insightful look into best practices for managing compliance and risk within legal departments, particularly focusing on the challenges and opportunities presented by new technology and the significance of establishing a robust compliance program.

As a moderator, **Mr Sterling Miller (Hilgers Graben PLLC)** introduced the session by emphasizing the importance of understanding and managing legal and business risks, distinguishing between the two, and how they often overlap. He highlighted the role of legal departments as the guardians of the company, tasked with maximizing value creation and minimizing value destruction. Mr Miller stressed the need for legal departments to be proactive rather than reactive, to have a clear understanding of the company’s compliance status, and to ensure the compliance function is well-integrated throughout the organization.

**Ms Jennifer Coyne (project 44)** spoke about the necessity of having deep knowledge of the business to manage risk effectively. She pointed out the importance of personal interactions and relationships in ensuring the success of risk management efforts. Ms Coyne also discussed the critical role of the tone at the top for a successful compliance program and how legal departments should position themselves as business partners to facilitate this. She shared insights on leveraging technology and data for compliance. She highlighted the challenges Artificial Intelligence (AI) might pose to compliance functions, suggesting a proactive approach to understanding and integrating AI's impact on business processes.

**Mr Patrick Wilson (Antifragile Limited)** focused on overcoming perceptions of the legal department as the 'department of NO' and instead fostering a culture of problem-solving and partnership with the business. He addressed the challenges of compliance and risk management, emphasizing the importance of prioritizing issues based on their potential impact on the organization. Wilson also discussed the value of technology in streamlining compliance functions and the need for legal departments to adapt and innovate to manage compliance effectively in the face of evolving technological landscapes.

The session's highlight is the complexity of compliance and risk management in today's fast-paced and technologically advanced environment, like aviation. Legal departments must be strategic, proactive, and deeply integrated with the business to navigate these challenges effectively. The discussion also underlined the growing importance of understanding and leveraging technology, such as AI, to enhance compliance efforts while being mindful of the new risks such technologies may introduce.

### 2.3 DATA PRIVACY AND AIRLINE OPERATIONS

The session delved into the complexities of data privacy and the implications of cross-border data flows in the aviation industry, particularly under varying regional privacy laws.

As a moderator, **Mr Jeremy Moreton (IAG)** opened the session by setting the stage for a discussion on the critical importance of digital connectivity and the data flow between all parties involved in aviation. He introduced the concept of an entire airline created for the session to work through various issues related to data privacy and cross-border data flows.

**Mr Daniel Nazar (American Airlines)** presented a scenario illustrating airlines' practical challenges with data privacy, focusing on a fictional airline navigating customer data through various jurisdictions. This scenario

underscored the complexities of managing passenger information, consent for data processing, and the transfer of sensitive data across borders. Nazar highlighted the logistical nightmare of ensuring compliance with disparate privacy laws when data flows internationally. This scenario vividly highlighted the challenges of obtaining and managing consent, the implications of data transfer across jurisdictions, and the operational difficulties airlines face in maintaining privacy compliance.

**Ms Kirsten Thompson (Dentons Canada LLP)** discussed the evolving patchwork of privacy laws in Canada, highlighting the country's complex privacy law landscape that includes federal, provincial, and sectoral regulations. She pointed out the challenges of navigating this multifaceted legal framework, especially for entities like airlines that operate across different jurisdictions. Ms Thompson's insights shed light on the intricacies of compliance within Canada, emphasizing the need for airlines to understand and adapt to both the broad strokes and the nuances of applicable privacy regulations.

**Mr Shahreyar Nawabi (Emirates)** explored the privacy law landscape in the Middle East, specifically the extraterritorial application of laws and the challenge of aligning business practices with multiple, sometimes conflicting, legal frameworks. He discussed the practical implications of complying with the General Data Protection Regulation (GDPR) alongside regional laws, such as those in the United Arab Emirates and Saudi Arabia, with unique requirements for data processing and cross-border data flows. Mr Nawabi's discussion highlighted the operational challenges airlines face in navigating the patchwork of global privacy laws, especially when transferring passenger data across borders.

**Ms Paula Barrett (Eversheds Sutherland)** discussed the complexities of the GDPR, focusing on the requirements for data collection, processing, and cross-border transfers within the aviation sector. She emphasized the stringent consent standards and the necessity for a legitimate processing basis under GDPR. Ms Barrett also highlighted the role of mechanisms like standard contractual clauses in enabling GDPR-compliant data transfers. Further, she explored the impact of adequacy decisions and the Schrems II judgment on data flows between the EU and the US, underscoring the increased challenges and scrutiny faced by companies managing transatlantic data.

The session demonstrated the difficulties airlines and their legal departments face in managing passenger data while complying with an increasingly complex and fragmented global privacy law landscape. The speakers stressed the importance of international cooperation, the development of unified legal frameworks, and the role of industry bodies in advocating for standards that recognize sector-specific challenges.

## 2.4 PARALLEL SESSIONS – CONSUMER PROTECTION AND ECONOMIC SANCTIONS

### 2.4.1 *Track 1 Consumer Protection*

Track 1 speakers examined the growth of consumer protection rules worldwide. The discussion was rooted in Regulation (EC) No 261/2004 (EU Regulation 261/2004) and how it has become a template for other jurisdictions to regulate delays, cancellations, and denied boarding. **Ms Martine De Serres (Air Canada)** moderated the panel.

**Ms Shereena Rai (British Airways)** gave an overview of the history and background of EU Regulation 261/2004 to show how it became the most litigated EU Regulation before the Court of Justice of the European Union. Further, she elaborated on the situation in the UK, where it was phrased that the UK had an opportunity to divert from the EU but followed it.

**Mr Cedric Newcombe (Emirates)** reflected on the goals of Regulation 261/2004 and whether they were achieved. In analysing the number of flight delays and cancellations, before and after the entry into force of Regulation 261/2004, he stated that the numbers do not suggest that the Regulation has achieved its goal in making airlines more punctual.

**Mr Michael Dery (Alexander Holburn Beaudin & Lang LLP)** discussed the situation in Canada, focusing on how amendments to Canadian law created uncertainty.

Finally, Mr **Andrew Harakas (Clyde & Co)** focused on the development of rules in the US, which have not yet been actualized, and whether they would follow the EU approach or take another road. Therefore, the panel offered an up-to-date comparative analysis of consumer protection covering both policy and practice, including how this links to the Montreal Convention 1999, as well as how national courts interpreted the Convention in a number of areas.

### 2.4.2 *Track 2 Economic Sanctions*

The discussion on Economic Sanctions, moderated by **Ms Rachael Nazarin (IATA)**, dealt with sanctions in Canada, the UK, the EU, and the US and the practical challenges of compliance, enforcement, and their impacts on the aviation industry.

**Mr John W. Boscariol (McCarthy Tétrault LLP)** focused on the broad and often more extensive sanctions framework of Canada, highlighting the country's aggressive stance on sanctions enforcement, which sometimes surpasses those of the US, UK, and EU. He emphasized the unique challenges posed by Canada's lack of general licenses and more narrow exceptions compared to other

jurisdictions. Mr Boscariol also critiqued the Canadian government's immature sanctions administration, pointing out the lack of guidance and the backlog of permit applications, which creates operational challenges for companies navigating the sanctions landscape.

**Mr Zia Ullah (Eversheds Sutherland)** provided a comprehensive overview of the UK and EU sanctions regimes, noting the UK's establishment of its own autonomous sanctions regime post-Brexit. He discussed the application of sanctions to UK persons and entities, both domestically and extraterritorially, and highlighted the complexity of dealing with multiple regulators within the UK. Mr Ullah also addressed the EU's direct effect mechanism for implementing sanctions across Member States and the forthcoming harmonized criminal sanctions, which aim to standardize enforcement across the EU.

**Mr Jack Shane (Wiley Rein LLP)** gave an in-depth analysis of the US sanctions framework, administered primarily by the Office of Foreign Assets Control (OFAC). He outlined the broad jurisdiction of the OFAC and the aggressive enforcement of both primary and secondary sanctions. Jack detailed the prohibitions against dealing with certain countries and entities and the extensive restrictions on exporting goods and services to sanctioned targets. He also highlighted unique challenges, such as the '50 percent rule' for determining entity control and the specific exemptions and licensing options available under OFAC regulations.

The session illuminated the critical need for companies to stay informed and compliant amidst evolving international regulations. The discussions also pointed to the increasing complexity of navigating sanctions in a globalized world, where legal, operational, and ethical considerations often intersect.

### 3 MISCELLANEOUS

The last session of the World Legal Symposium 2024 was a closed grand debate on *deregulation in aviation* among panelists **Dr Alejandro Piera (GHP Abogados)**, **Ms Anita M. Mosner (Holland & Knight LLP)**, **Ms Charlotte Thijssen (KLM Royal Dutch Airlines)**, **Ms Louise-Hélène Sénécal (Air Canada)**, **Mr Pierre Frühling (HFW)** and **Mr Roy Goldberg (Stinson LLP)**. **Mr Auguste Hocking (IATA)** adjudicated the debate, where participants of the Symposium voted affirmative to the deregulation of the aviation industry.

The Symposium ended with announcing next year's venue: Shanghai, China.