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FAA Confirms Airport Sponsor's Right to Offer Aeronautical Services in Competition with Private Sector

October 9, 2013 |

The Chattanooga Metropolitan Airport Authority ("CMAA"), represented by Pablo Nüesch and Katie Mapes, successfully defended a challenge brought by a privately-owned fixed base operator ("FBO") regarding the CMAA's ability to build and operate its own FBO facility at the airport. In *Truman Arnold Companies d/b/a TAC Air v. Chattanooga Metropolitan Airport Authority*, FAA Docket No. 16-11-08, Director's Determination at 47 (Oct. 4, 2013), FAA held that

> [t]here is no grant assurance or law that prevents an airport sponsor from making the business decision to construct FBO facilities on its airport and hire a third party to operate the facility on its behalf. This holds true even if such actions cause the airport sponsor to be in direct competition with a private commercial aeronautical service provider.

In reaching it decision, FAA cautioned that

> when the sponsor owns an FBO and hires a third party to operate its FBO, the FBO must "provide the same level of service" required of other FBOs, as required by Grant Assurance 22(g). In addition, if a sponsor-owned FBO is competing with a private FBO and fails to be profitable, the sponsor is prohibited from recovering the costs associated with its FBO through its airfield rate base. . . .
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> . . . .
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> Should a Sponsor's losses from such an FBO operation begin to impact its ability to meet Grant Assurance 19, Operation and Maintenance, the airport may be found in violation of its obligations for that reason. . . .

Id. at 48; *id*. at 49 n.33. However, none of these cautionary factors were found to be at issue in the CMAA case. In fact, in rejecting the notion that an airport sponsor may not offer aeronautical services in competition with the private interest, FAA expressly found that

> [i]n the instant complaint, the record shows that the sponsor's rationale for developing a second FBO was to promote competition in an effort to improve FBO services and reduce fuel prices at the airport. Such actions are consistent with

> an airport sponsor's obligations and well within the realm of reasonableness. Since 1938, Congress has prohibited the granting of exclusive rights on federally-funded landing areas. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally-obligated airports. The Complainant enjoyed a competition-free environment on the airport for years. There is nothing wrong with the sponsor choosing to promote fair competition on the airport by setting up a competing FBO.

Id. at 48.

This was a big win for the CMAA in particular, and for all public airport sponsors in general.

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