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Investing in Mid-Life Aviation Assets

K&L Gates LLP

Philip Perrotta



1. Introduction/Historical Context

One of the enduring features of aircraft procurement in the commercial aviation sector is the publicity surrounding, and therefore broad interest in, new aircraft technologies, large volume new aircraft orders and the increasingly diverse customer base for new aircraft.

Significant attention is given to events as the two global aircraft manufacturing behemoths dominating the industry, Airbus and Boeing, compete directly and constantly scramble to announce news of their latest successes mostly in and around the series of ‘air shows’ during the calendar year. This is particularly true when the bi-annual events at Farnborough (near London, in the United Kingdom) and Paris (in France) become the focal points for everyone and anything connected to aviation and aerospace and the inevitable series of new aircraft orders makes the headlines.

In many respects, this also reflects the vast amounts of capital investment and therefore risk involved in the relevant aircraft programmes, as well as the way in which air travel is now fundamentally integrated into the economies and daily lives of the world’s population. In other words, “Airbus”, “Boeing” and “new aircraft” have become concepts owned and appreciated by the general public at large, as well as for many informed observers including certain professionals and a swathe of industry participants who view new aircraft and their placement as the only genuine indicator of vibrancy and trends in the sector.

This myopic approach does, however, neglect another aircraft industry segment which has become increasingly relevant over a significant period of time, enduring through several of the inevitable industry cycles for which aviation and aerospace is famed, and actually set to become arguably even more apparent going forward, namely the appetite for used aircraft of certain specific types and particularly when the airframe concerned is matched with certain specific engines (or “power plants”), as we shall consider in this general article.

In many respects, this appetite is of course directly related to the series of new aircraft orders and delivered to operators and leasing companies which are now so much a feature of the aviation landscape well into the 21st century.

Leaving aside the firm phenomenon, particularly in Asia, which is the growth from a position as a start-up of several low-cost carriers who are strongly backed by industrial conglomerate shareholders or simply mega-wealthy entrepreneurs, as new aircraft are absorbed into the airline’s fleet and enter into service they tend to replace, on a unit-by-unit basis, older aircraft types which are phased out and de-commissioned. This in turn creates a supply of often high-quality

stock of used aircraft and/or engines which the relevant operator or aircraft owner is motivated to re-deploy by way of a sale or another lease.

Of course, the complexities involved in this exercise are considerable and involve a high degree of advance planning by either the airline’s fleet development section or the remarketing capability of the individual aircraft owners, especially where several tens of aircraft are often involved, but nevertheless the waterfall effect of new aircraft creating a cascade of available aviation assets is well-established and well-understood by the market.

This aspect of activity rarely attracts the type of press-coverage, general interest and focus that is consistently enjoyed by an announcement that airline or lessor X has agreed with Airbus or Boeing (or sometimes both at the same time) to purchase Y number of Z-type aircraft. In many ways, however, it is of more fundamental importance to the functioning of the industry, the ability of operators to further embed air transport into communities and populations and thereby drive economic growth and social welfare, and to generate the type of forward momentum on a global industrial scale which perhaps, counter-intuitively, the original equipment manufacturers engaged in aircraft production so heavily rely on in their future forecasts and appetite for assuming increasing risk in the various aircraft programmes with which they are involved.

2. Trend/Development of the Phenomenon

As regards the historic development of this phenomenon which is effectively the ongoing demand for “old” aircraft, it is helpful to put some definition around the nature of the product which is the subject of so much interest and appetite on an ongoing basis, as well as the context in many (but not all) cases. It is also relevant to consider the opportunities this demand creates for suppliers to the industry, which in turn helps make the process more efficient and supportable and therefore enduring in its broadest sense.

The demand for old aircraft, or at least “non-new”, because the age of an aircraft is also relevant in relation to certain regulatory restrictions which apply in a number of jurisdictions as regards operation and safety, is driven by a number of factors not necessarily linked to the supply opportunities created by new aircraft orders. These factors themselves are partly inter-connected; however, to a greater extent they are a function of the individual requirements of an airline’s particular business plan and the financial circumstances which surround it.

As a general principle, first and foremost it is a truism as well as an industrial fact that not many airlines (in fact, statistically speaking, the majority of airlines globally) have the capital resources or indeed

the credit rating according to international standards to acquire new aircraft by way of purchase or lease, nor on an *ad hoc* or consistent basis as part of a cohesive and co-ordinated fleet expansion strategy. As a result, the operators concerned, which as noted above constitute the vast majority of the carriers worldwide, must simply get by with used, older aircraft to facilitate their fleet development plans in support of their business plans.

Secondly, there are certain macro-economic developments which tend to influence equipment acquisition decisions, and no greater example of that is the price of crude oil, or rather its tendency to fluctuate to sometimes surprising levels both upwards and downwards. Crude oil directly affects the cost to an operation of kerosene aviation fuel which represents one of the most significant expenses proportionally speaking for an airline. The oil industry itself is characterised by economic booms and busts which then inevitably pass on to the cost of fuel and directly to the bottom line of an aircraft operation.

It is of course possible, and not infrequent, for an airline to manage the associated risks and a negative financial impact on its fleet operations in this regard by utilising a series of financial instruments generally referred to as “hedging”, albeit this is with some upfront cost and therefore not within the economic possibilities for many operations. However, a general trend in any case over the most recent industry cycles has seen crude oil drop in price in overall terms as a result of a number of factors, including: an extremely strong US Dollar driving as always a fall in commodity pricing generally; a genuine resolution by OPEC (Organization of the Petroleum Exporting Countries) to stabilise the oil markets by not cutting production in a novel approach which has generally created an oversupply of crude oil; a widespread overall decline in demand for crude oil as a result of increased engine efficiency across a range of mobile assets including motor vehicles, ships and of course aircraft; along with China’s elected currency devaluation which left the world’s largest oil importer reducing its purchases on account of the increased cost to it of crude oil and a consequential wholesale dumping of oil shares by the trader community. As a result of all this and the associated relative cheapness of kerosene aviation fuel, many airlines which had previously pursued the savings available with new-technology, fuel-efficient aircraft are electing to either defer or even cancel their new aircraft orders and continue with their existing fleet composition or to target older equipment which can still sustain business plan profitability due to the price and wide availability of kerosene aviation fuel worldwide.

Thirdly, the aircraft original airframe manufacturers (inevitably led once again by Airbus and Boeing) working closely in conjunction with their industrial partners and counter-parties at the engine manufacturers (principally General Electric and its range of joint-venture guises such as CFM International with Safran, Pratt & Whitney and Rolls-Royce) have made significant investment in technology insertion packages into their existing products. While most well-known among this type of technology innovation is the NEO (New Engine Option) aircraft offered by Airbus across its very popular A320 and A321 aircraft range, a number of other design modifications from several manufacturers giving rise to features such as extended range fuel tanks, carbon-fibre fuselage components and enhanced winglets have had the effect of allowing older aircraft to operate more efficiently and relatively longer. This has led to an increase in interest from aircraft operators and leasing companies in the possibility of extending aircraft possibilities longer into their economic lives and the associated fleet management decisions which see non-new aircraft feature more prominently than before.

As a final example of the factors stimulating demand in used aircraft, historically rock-bottom interest rates over the recent historical period has generally made the costs of renting or leasing aircraft

incredibly cheap compared to previous eras in aviation. With the inevitable greater flexibility of aircraft supply solutions when it concerns used aircraft as opposed to new equipment which is generally a financed purchase or long lease (possibly combined with the option for the aircraft operator lessee to purchase the aircraft and the end of such lease by which time it has invested a considerable amount of capital by way of lease rental), the effectively greater supply of used aircraft at reduced lease rates has stiffened that segment of the market considerably, both as regards established operators and also new-entrant or start-up carriers whose sensitivity to costs and the need to manage them is probably the most of all, leading to an ability and willingness to commit to longer lease periods for used aircraft and engine equipment.

3. The Nature of the Demand

All of these things together, plus some other more bespoke developments in the case of individual carriers which affect their immediate environment and own markets as regards their aircraft equipment choices, have given rise to the market’s consistent and sustained mainstream interest in used aircraft, more particularly in so-called “mid-life” aircraft types.

The implication that the phenomenon is generally applicable to all used aircraft is (if it indeed arises) misleading in any case. For example, aircraft of a certain vintage (generally, with an age since its respective year of manufacturing of between 15 and 20 years) are very limited in their scope of operations regardless of the aircraft type and the support still provided by an aircraft original manufacturer. Several jurisdictions, and not just the (in aviation terms at least) established first world of USA, Europe and Australasia, have passed very effective legislation and regulation which prohibits the operation of certain vintage aircraft for safety and environmental reasons, principally in relation to air and noise pollution and the need to protect its population from the social and other effects arising.

Then, there is the perception of particular used aircraft types as regards characteristics such as their utility, passenger appeal, and operating history, which as regards the latter point unfortunately may include a somewhat chequered past as regards an accident record and pattern of technical unreliability, whether related to the airframe itself or its engines. Additionally, certain initially interesting used aircraft are no longer in production by their original aircraft manufacturer for a variety of reasons unconnected to the product itself (typically bankruptcy of the owning business) giving rise to the notion that they are part of an “orphan” fleet of aircraft which is therefore unsupported in terms of safety procedures, reliable spare parts and invested interest in their safe operation on behalf of its customer airlines and leasing companies, and in turn their own customers.

Finally, and possibly most critically of all given the significant sums of capital still required to be committed to a used aircraft whether by way of upfront acquisition costs of through the term of an operating lease which requires supplemental payments, not all used aircraft are viewed positively by the financing community generally; in fact, the opposite is more often than not the case. It is a significant hurdle to overcome, therefore, that there is this absence of available capital and/or an associated appetite for deploying what in many cases are quite eye-watering sums as an upfront financial commitment to the financing of used aircraft.

Financing in its simplest terms, especially asset-backed financing where the aircraft itself forms the risk that any loans advanced will be capable of repayment by way of security to the relevant financier, usually requires a solid and predictable view of residual

values without which most conventional banks will not proceed. This leads most prospective financiers to focus on predictable new aircraft trends and comfortable relationships with the relevant original aircraft manufacturers which they hope will act as a buffer in circumstances where their aircraft financing fails.

However, historical data is available to prove the fact in relation to certain used aircraft types that a strong residual value is maintainable due primarily to demand the ability to re-market the aircraft in case of default. Even where that is not the case, the relevant lease rates for certain used aircraft types in the future will, in all probability, sustain their current levels while the aircraft residual value depreciates, meaning that a combination of aircraft and lease security can sometimes sustain a lender's repayment risk. This analysis has led to a notably robust market for certain used aircraft as a financing instrument also, capable even of being pooled together with others being leased for a long period on good terms to operators of a certain quality and sold into the capital markets at a significant profit without disturbing the underlying leasing arrangements unduly in a so-called "securitisation" programme.

All of these things have collided in the marketplace to give rise to a strong and historical interest in so-called "mid-life" aircraft on the part of certain operators, certain leasing companies and certain financiers, which shows no sign of abating. On the contrary, new aircraft continue to proliferate as deliveries to airlines ramp up in support of the huge volume orders made in recent years. Furthermore, the top 10 companies continue to focus almost exclusively on new aircraft and long order streams leading to significant offloading of their older aircraft assets to either secondary lessors or operators with either or both a lack of a long operating history or an uneven credit rating.

"Mid-life" has become something of a term of art for this market phenomenon and, although as referenced elsewhere in this article it itself can relate to a number of different used aircraft types and ages, it generally (at least from the perspective of a leasing company, which tends to be a reliable gauge of market trends) refers to aircraft which are entering into their second lease since a leasing company took delivery from the original aircraft manufacturer. In other words, the aircraft will typically be around 12 years old and, with most accounting standards allocating long-life asset status to aircraft as regards depreciation, the aircraft will therefore be close to economic maturity at the end of its second lease (all things running smoothly as regards lease defaults and aircraft accidents, which is the nature of the business risk aircraft leasing companies assume in return for their projected investment returns at the outset). This essentially means that a purchaser of the aircraft "mid-life" is likely to obtain an aircraft generating significant lease returns and which is soon fully written down as regards its book value such that any subsequent sale generates a pure cash profit which market values (particularly for perennially attractive aircraft examples such as Airbus A320 CEO (Current Engine Option) and Boeing 737-700/800 aircraft) will very likely always sustain in view of the extensive demand factors described above.

This is particularly true in relation to the particular engines which may be fitted to the relevant aircraft, particularly in the latest years of an aircraft's depreciation programme such that engines can account in that period for as much as 80 per cent of the value of a mature aircraft type. Inevitably perhaps, this has given rise to a segmentation of the market for "mid-life" aircraft where speculators seek to obtain access to specific engine types (again, only specific engine types, and sometimes only specific derivatives of them, have the strong demand patterns which are of relevant interest) for on-sale or leasing as spare engines to operators looking to support their fleet operations with additional assets at an economic rate. These investor-types are prepared to acquire (in some cases very) mature

aircraft currently on lease to an aircraft operator, await the scheduled expiry of the lease and the planned return of the aircraft to its owner and then engage in a termination process which sees the engines removed for sale, the airframe scrapped for spare parts often in high-demand among a secondary and tertiary airline customer base and the opportunity to make a significant profit on the associated asset sales, all in circumstances where the existing airline operator has agreed to contribute in some way to the overall financial outcome for the new owner in exchange for relief on its lease redelivery obligations, such as allowing the new owner to retain in full and without any claims the amount of maintenance reserves which have been paid in parallel to rent throughout the relevant lease and allocated for scheduled and certain unscheduled maintenance events during the lease.

As can be seen, the types of profit which are attainable in this market which does not enjoy anything like the publicity or general interest of the new aircraft world can be more than significant and have reliably and consistently been obtained by those willing to invest time as well as money in the process.

4. Typical Transaction Structure and Legal Issues and Risks (A Flavour)

As referenced above, the typical transaction structure in an acquisition of a mid-life aircraft generally works as follows (although clearly there will be variations depending on the circumstances of the opportunity involved and the particular motivations of all the parties involved for looking to transact the particular business).

A used aircraft will be currently on lease from its owner to an aircraft operator and entering its later years as regards its book value for accounting purposes, hence the aircraft will be depreciating at a faster rate than the lease rental rates it is able to generate. The aircraft itself will be something which an operator is viewing increasingly as a disproportionate cost where it is obliged at the end of the relevant lease term to carry out a significant amount of engineering work on the owner's property pursuant to the relevant lease agreement in order to comply the so-called contractual "redelivery conditions". The current aircraft owner is likely on the other hand to be concerned at the inherent risk it now has in an older aircraft asset which it may view as difficult to re-market given its focus on new aircraft and primary airlines and other aircraft operators.

Once the relevant commercial negotiations are completed, typically through the vehicle of a partially-binding commitment agreement such as a "letter of intent" or "term sheet" signed by the existing owner and the prospective new owner, the transaction contracts typically prepared by the existing owner become the subject of much further focus and preparation with the aid of professional advisers. The existing aircraft operator in possession of the aircraft will be obliged to participate in the sale and acquisition process and broadly agree to it by virtue of the terms of the existing lease agreement (subject to one or two conditions, which usually revolve around there being no extra obligations arising to the new owner when compared with the existing owner as its lessor).

In parallel, the new owner's technical team spends several long days and nights examining the aircraft records and inspecting the aircraft itself to ensure that there is nothing significant in terms of omissions, irregularities or outright damage which would affect the value of the investment it is about to make. It is a truism that the value of an aircraft is directly connected to the quality of the records which are associated with it, and any discrepancy, omission or inconsistency going "back to birth" when the aircraft was delivered from the factory by the original aircraft equipment manufacturer can have a material impact on the value of the aircraft and therefore the

motivation of the new owner to proceed with its investment and acquire the aircraft. At that stage therefore, the pressure and focus is very much on the expertise and experience of the personnel who are conducting the relevant inspections and broader technical due diligence on behalf of the prospective new owner.

The product of all of this effort should then manifest itself in a binding sale contract between the existing owner and the new owner and a connected lease novation contract whereby the existing lease is transferred from an arrangement between the existing owner and the operator to one between the new owner and the operator. Both contracts will stipulate the conditions to be fulfilled and the procedures involved before the respective sale and lease novation is completed.

By way of further context and illustration, a flavour of the typical concerns of the three parties involved and which they will strive very hard to negotiate and include in the relevant binding agreement in order to risk-manage effectively might therefore include the following as a non-exhaustive list:

4.1 Existing Owner

- (a) Unconditional receipt of purchase price for the aircraft/engines.
- (b) No trailing obligations whatsoever as regards the aircraft/engines and the lease to the aircraft operator.

4.2 Prospective New Owner

- (a)
 - (i) Fully effective and unconditional good title to the aircraft/engines.
 - (ii) Full set of uninterrupted bills of sale or other title documents “back to birth”.
 - (iii) No liens or third party interests; for example mortgage, unpaid landing charges or Eurocontrol fees.
- (b)
 - (i) No adverse tax consequences connected with the aircraft/engines purchase.
 - (ii) Location of airframe and engines (if different) at the point of sale to be tax-optimised.
 - (iii) Customs and import status of the aircraft and engines to be fully understood.
- (c)
 - (i) Technical integrity and the condition of the aircraft and associated records are satisfactory.
 - (ii) Statement by the existing owner that there has been no major incident as regards the aircraft or the engines historically.
 - (iii) Aircraft records are complete, intact and showing no material omissions or deviations.
 - (iv) The relevant Certificate of Airworthiness is valid, current and not showing any exceptions or derivations.
- (d)
 - (i) Registration of its ownership interests on the relevant aircraft register and (if relevant) the International Register established under the Cape Town Convention.

4.3 Aircraft Operator (Lessee)

- (a) No increased costs or obligations arising from the new arrangements with a new lessor.

- (b) No or minimal impact from the aircraft sale on its scheduled operations or maintenance programme.
- (c) No trailing obligations in relation to the aircraft/engines or lease to the existing owner.

It can be seen, therefore, that there are a number of elements to be drawn together in terms of the acquisition of a mid-life aircraft or engine asset and it is not an uncomplicated task to bring these together in a synchronised and co-ordinated fashion, particularly when as is often the case the parties involved and the aircraft and related engines themselves are located across jurisdictions and time zones a long way apart. As a result, it has become the case that a relatively small group of investor speculators have become prominent and recognised for their ability to identify mid-life aircraft opportunities and deploy the necessary project management and professional skills to complete the transactions quickly and efficiently while minimising the risks involved as an aircraft and engine owner. And it is that group that stands to benefit most from this market segment going forward, as opportunities arise and the number of competitors drawn away from relatively modest returns on investment in the real estate sector is likely to increase.

5. Lessons Drawn and a Crystal Ball

For the reasons analysed above, the interest in and around mid-life aircraft and other aviation assets is now very much a feature of the industry landscape. The relative lack of glamour and publicity connected with the acquisition and deployment of “older” aircraft should not detract at all from the fundamental role such aircraft play in the sustained growth of passenger numbers, worldwide economic development, and also in enhanced returns for investors prepared to risk extremely significant sums of capital in a segment of the market which is sometimes quite misunderstood.

It is true that a lot of learning has resulted from this type of transaction, some of which have caused new aircraft owners to lose significant sums of money on their original investment and projected rates of return. The reasons for those are multiple and probably the subject of a follow-up article; however, the ability to identify a particular aircraft or aircraft engine (or even a specific derivative of them) which will sustain its appeal in the long-term to owners and operators is paramount, as is the talent for managing aviation assets in sometimes difficult jurisdictions with not always cooperative aircraft operators and the initial ability to conduct deep but rapid due diligence on the condition of the aircraft, engines and aircraft records involved.

Clearly, an established contractual supply arrangement with aviation services providers to scrap in an environmentally-friendly fashion the relevant aircraft and/or assets and the end of their economic lives or lease termination, plus a connected distribution network for used aircraft components then completes the picture of an efficient project management process designed to maximise the returns, minimise the risks and all the while maintaining good relationships with an aircraft operator and leasing company base which will likely give rise to further similar opportunities going forward for the same reasons.

In summary, the embedded interest in and demand for mid-life aircraft will continue to be a major part of the aviation landscape worldwide and may increase going forward. The entrepreneurial eye of the new aircraft owner, the decision-making process of the existing aircraft owner, and the ability of the aircraft operator to deliver on its own business plan (all with the support and guidance of their expert professional advisors) are set to be tested and scrutinised even more in the future, which is surely a good thing.

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Philip acts for a broad range of significant aircraft lenders, lessors and operators globally, and has successfully concluded literally hundreds of transactions involving commercial and business aircraft, aero engines and other aviation assets in jurisdictions across all the continents.

He is a regular contributor at industry events, and is often requested to comment on relevant developments in a variety of segments of the aviation finance market.

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