

AUTUMN 2023 BUSINESS JET MARKET REVIEW

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Along with transaction-specific factors such as pricing of an aircraft and the technical condition of that aircraft, the broader market environment in which any transaction is agreed will also affect the balance of power reflected in the terms of a letter of intent ("LOI") and, ultimately, the agreed aircraft purchase agreement ("APA"). Aside from the sanctions-related transactions seen in the past 18 months, the buyer/seller dynamic hasn't changed to a significant degree. It is nevertheless interesting to reflect upon how the current market conditions are affecting the trends we see when negotiating and agreeing APAs for both buyers and sellers.

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In recent months, we've witnessed a gradual shift in the temperature of the large and mid-size business jet market, a trend which is echoed by other market participants. As a generalisation (which doesn't apply to all aircraft models), valuations for these classes of jet, whilst still at historically high levels, have gently declined. The appetite for business jet transactions hasn't been immune to the influence of global economic and geopolitical factors, including increased consumer price inflation, rising interest rates, a real estate slowdown in some markets, bearish forecasts for some major economies and the ongoing conflict in Ukraine.

Against this backdrop, the oft repeated saying "time kills deals," becomes especially pertinent. Ideally, business jet transactions, assuming a smooth process and no discrepancies which require extensive repair are found during the pre-buy inspection, can be completed within six to eight weeks from the signing of the LOI, thus reducing the likelihood that the transaction might be impacted by broader market shifts.

However, instances where problematic discrepancies are identified during pre-buy inspections can often lead to significant delays and extended timelines. The longer a deal takes, the more likely it becomes vulnerable to market changes. The current market slowdown has, in some instances, challenged sellers, creating hurdles for transactions and tripping up deals.

In a declining market, a slow or hesitant buyer can shop around for a better deal and, despite having signed an LOI, or even an APA, find a different jet at a lower cost. To safeguard against this scenario, APAs require buyers place a deposit in escrow, which becomes payable to the seller if the former defaults under the APA by, for example, backing out of the deal without contractual justification. The deposit acts as compensation for default and should be of sufficient value to discourage a buyer from failing to follow through with a transaction.

However, if market conditions shift sufficiently quickly and an alternative aircraft with similar specifications becomes available at a lower price than the purchase price, a buyer might choose the lower-priced option, saving money even if the deposit is forfeited and inspection costs are taken into account.

As noted, there hasn't been a fundamental shift in the buyer/seller dynamic – the average seller can expect to be able to insist upon "hard" APAs requiring buyers to commit to buy, i.e. without an unfettered right for to allow the buyer to reject an aircraft following the inspection.

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DELAYS

Most transactions are pegged to an agreed timeline since, from a buyer's perspective, it's unreasonable to be held to a deal for an unexpectedly long period of time. An aircraft purchase is motivated by a need for the asset, and asset values also fluctuate over time so, if an unexpectedly long delay is encountered, a buyer ought to be able to walk. A delay in putting an aircraft in the agreed delivery condition would eventually trigger a seller default, providing grounds for the buyer to

terminate the deal, have the deposit returned and potentially be reimbursed for out-of-pocket expenses incurred. The cause of the delay could be disputed and delays in carrying out repairs are increasingly being argued as grounds to invoke a *force majeure* provision.

In the current market environment, it is especially important for buyers to agree a reasonable cut-off date, by which time the aircraft must be put in the delivery condition. Sellers can help themselves by ensuring that when they go to market, aircraft are presented with up-to-date maintenance or, better still, a recently completed heavy check, thereby increasing the likelihood that a short list of discrepancies will be identified during the pre-buy inspection and a closing will be possible without encountering any unexpected hurdles.

CONCLUSION

Taking into account the current market trends, we flag the following key points:

- recognise the variable nature of market conditions and how this may impact a transaction. Rather than engaging in arguments over repair responsibility or inspection findings, sellers might be better served by pushing ahead with repairs to prioritise a quick transaction;
- exercise caution when agreeing delivery conditions. Loosely worded conditions might not be enforceable or are more likely to be misinterpreted; and

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- engage aviation experts and legal counsel to ensure a well-drafted APA which provides adequate protection against specific exposures which may be more pronounced in the prevailing market conditions.

If you have any questions, please contact Oliver Tebbit or your regular Watson Farley & Williams contact.

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