

Turkey

Upgrade nation



The rise of the Turkish aviation sector reflects a wider trend of prosperity

Margaret Taylor

The Turkish banking crisis of 2000/01 wreaked havoc on the country's economy: its currency crashed, interest rates rocketed and tens of thousands lost their jobs.

In the aftermath, however, banking sector reforms meant Turkey was far better prepared for the 2008 global financial crisis than many more developed nations, with the country seeing GDP growth of almost 110 per cent between 2004 and 2013. At the same time, with the Turkish government selling stakes in a number of state-owned enterprises after 2001 in a bid to eradicate some of its debt, certain industries were opened up to competition.

For the aviation industry in particular, this was transformative. While carriers such as Pegasus Airlines and Onur Air had existed since the early 1990s, until 2001 national carrier Turkish Airlines was essentially the only show in town.

Since the carrier was part-privatised and flight slots were opened up to other airlines, the sector has boomed, with the number of pas-

sengers travelling on all Turkish carriers increasing from 29.9 million to 97.7 million, a rise of 227 per cent, between 2003 and 2012.

"The reason for this is that half of Turkish Airlines' shares are now publicly tradable on the stock exchange. That process started 10 years ago," says **Bezen & Partners** lawyer Zekican Samli.

"The [Justice and Development Party] government has been in office for the past 12 years and one of their priorities was to privatise state-owned entities so the state became more of a regulator than an operator."

Another government incentive designed to increase competition in the sector was the lowering of airport taxes. While this allowed newcomers to challenge Turkish Airlines on price, the entry of low-cost competitors has led the national carrier to reassess its own strategy, helping strengthen its position in the process.

"The newcomers tried to develop price-related competition and this forced Turkish Airlines to change its approach – it tried to make more

In brief

The economic chaos of 2000/01 was a painful early warning for Turkey, which learned the lessons well and came through the 2008 crisis more strongly than most. The liberalisation of the airline industry in particular has proved a spur to growth.

investment in its image," says **Hergüner Bilgen Özeke** partner Senem İşmen. "That's helped it to benefit in the international arena."

As Turkish Airlines' image improved the positive impact rubbed off on the sector as a whole, particularly on the international stage.

"For Turkey's international ambitions to develop, they realised they needed to create a strong aviation industry," says **Gün & Partners** managing partner Mehmet Gün. "Turkey's ambition was to be able to export to difficult [emerging] markets as well as developed markets. For businesses to be able to reach difficult markets they needed a strong airline. Turkish Airlines can fly anywhere in the world from Ataturk Airport in Istanbul."

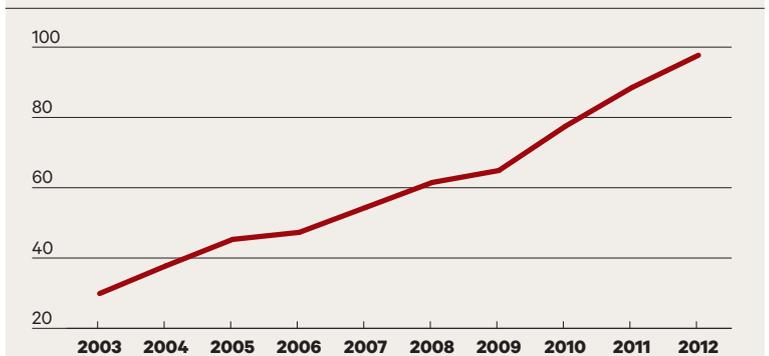
Indeed Turkish Airlines, which flies to more than 250 destinations, is now the sixth largest carrier in Europe and in 2013 was the third most profitable after Ryanair and easyJet, according to Capa Centre for Aviation.

Thanks to the country's position between the eastern and western worlds, journey times from Turkey



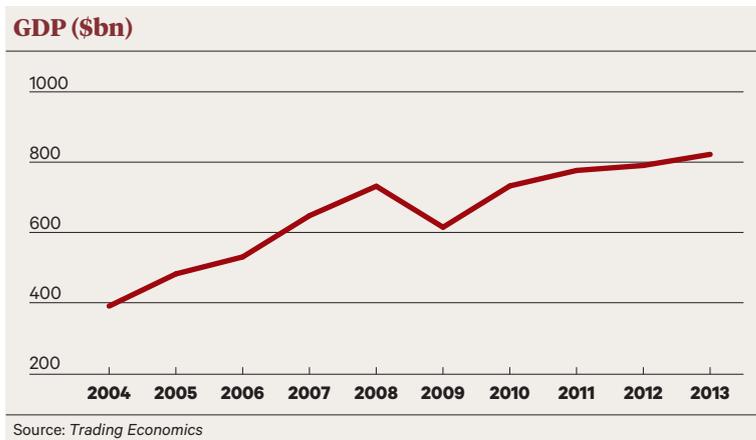
"We're central – you can go to Europe, the Middle East, Asia easily – and cargo companies come here to grow too"
Zekican Samli

Turkey air passenger numbers (millions)



Source: CAPA Centre for Aviation

Turkey



are short, making it an attractive location for companies to do business.

“You can fly to many nations from Turkey in three to four hours,” says Samli. “We’re central – you can go to Europe, the Middle East, Asia easily – and cargo companies come here to grow too.”

It is no surprise, then, that Turkey’s Directorate General of Civil Aviation (DGCA) is keen to establish the country as a regional MRO (maintenance, repair and overhaul) hub to rival Dubai. According to CAPA, MRO is a blanket term for all services relating to assuring aircraft safety and airworthiness, with the global market thought to be worth up to \$50bn.

In addition, the DGCA has been investing in its people to ensure their knowledge is such that it too can be exported around the region.

“The body has recently implemented critical changes in the regulatory framework to ensure the success of the growing Turkish civil aviation industry,” says **Herdem** managing partner Şafak Herdem. “It has signed a comprehensive collaboration protocol with the Higher Education Board of Turkey to meet the demand for better-educated, qualified staff in the aviation industry. By the pro-

ocol the board has pledged to establish departments and design a curriculum for the needs of the civilian aviation industry.”

Such investments in infrastructure have been vital for the Turkish aviation industry, with new airports in strategically important cities such as political capital Ankara and tourist capital Antalya helping revive the image of Turkish aviation.

“This changed how foreign passengers, particularly, viewed the make-up of the Turkish airport sector,” says İşmen at Hergüner.

“They’re beautiful and have good shopping centres, and that’s affected how people view them. Now some [Sabiha Gökçen International Airport Terminal, Istanbul and Dalaman Airport] are doing really well and have won international awards for their architectural style. This has helped with the brand image of Turkish Airlines, even though they’ve got nothing to do with the terminals but are just the main airline using these airports.”

Several other airports are under construction, with developments taking place across the country from the Black Sea to the Iraqi border. The boldest of these, which is being developed by the Cengiz-Kolin-Limak-Mapa-Kalyon consorti-



“Investment in aviation infrastructure has opened up capacity, while lower taxes have reduced prices to lower than bus fares”
Mehmet Gün

“Beneath the growth of the civil aviation industry is Turkey’s economic success story”
Şafak Herdem



um of Turkish-only companies, is a third airport for Istanbul. With building due to get under way in 2017, the airport will provide an initial capacity of 90 million passengers a year, rising to 150 million when its six planned runways are completed.

The effect that this, coupled with greater competition, has had on the wider economy has been positive. While tourism and construction are the most obvious beneficiaries, the ease with which people and goods can now move around the country means businesses outside Istanbul have a chance to thrive.

“Investment in infrastructure has opened capacity and seen new destinations in the country, while lower taxes have reduced prices for customers to lower than bus fares,” says Gün at Gün & Partners. “It would take seven hours to get from Istanbul to Ankara by bus, but it takes one hour by plane. To go close to the Iraqi border would take almost two days by bus but you can do it in two hours for the same cost by plane.

“When travelling became easier that started decentralising industry from Istanbul to other areas – industrial activity is shifting towards the east from the west thanks to the ease of transportation.”

Developing regions

Two areas in particular that have benefited from the investment in infrastructure are Konya in Anatolia, where a range of agricultural and machinery businesses have sprung up, and Kayseri, near Cappadocia, whose position as a centre for industrial activity has been revitalised thanks to its transport links.

While the strength of the aviation sector has had a positive knock-on effect on other segments of the economy, growth in the sector would not have been possible without growth in the wider economy.

The aviation sector has benefited from an increased demand for

Key figures: Turkey

GDP
\$820bn

Inflation
7.5%

Population
75m

Life expectancy at birth
70

Unemployment
9.6%

Source: World Bank

Special report

Turkey

flights for cargo and freight, but it is the sharp rise in passenger numbers that has had the biggest impact. That could only happen once the country's citizens started to have some disposable income.

"What lies beneath the fast growth of the civil aviation industry is the economic success story that the country shares with the BRIC [Brazil, Russia, India and China] countries," says Herdem.

"Civilian aviation is augmented by the introduction of millions of pas-

sengers as a result of a similar process in other emerging economies whereby the expanding middle class means an increased number of people with more disposable income to spend on items like flight tickets."

However, as with other emerging economies, the political situation in Turkey can be unstable, as was seen in 2013 when unrest over the perceived Islamisation of the country led to mass protests and subsequent police violence.

The success of the aviation sector

in the past decade has relied heavily on government intervention and former prime minister Recep Tayyip Erdoğan even used his government's record of building airports when drumming up support for his presidential campaign.

"It was seen during the campaign of Erdoğan that he used his new airports as a way to attract people," says Samli. "He said 'we've constructed an airport in your city, we're providing a service to your city, you should vote for us'. The air-

ports are being used as a tool of domestic politics."

Although Erdoğan won the presidential election in August, alleged plots to topple him have already come to light, with his plans to extend the country's presidential powers proving unpopular with his critics. How he handles these and other threats will be key for the aviation sector's continued success.

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Foreign law firms in Turkey

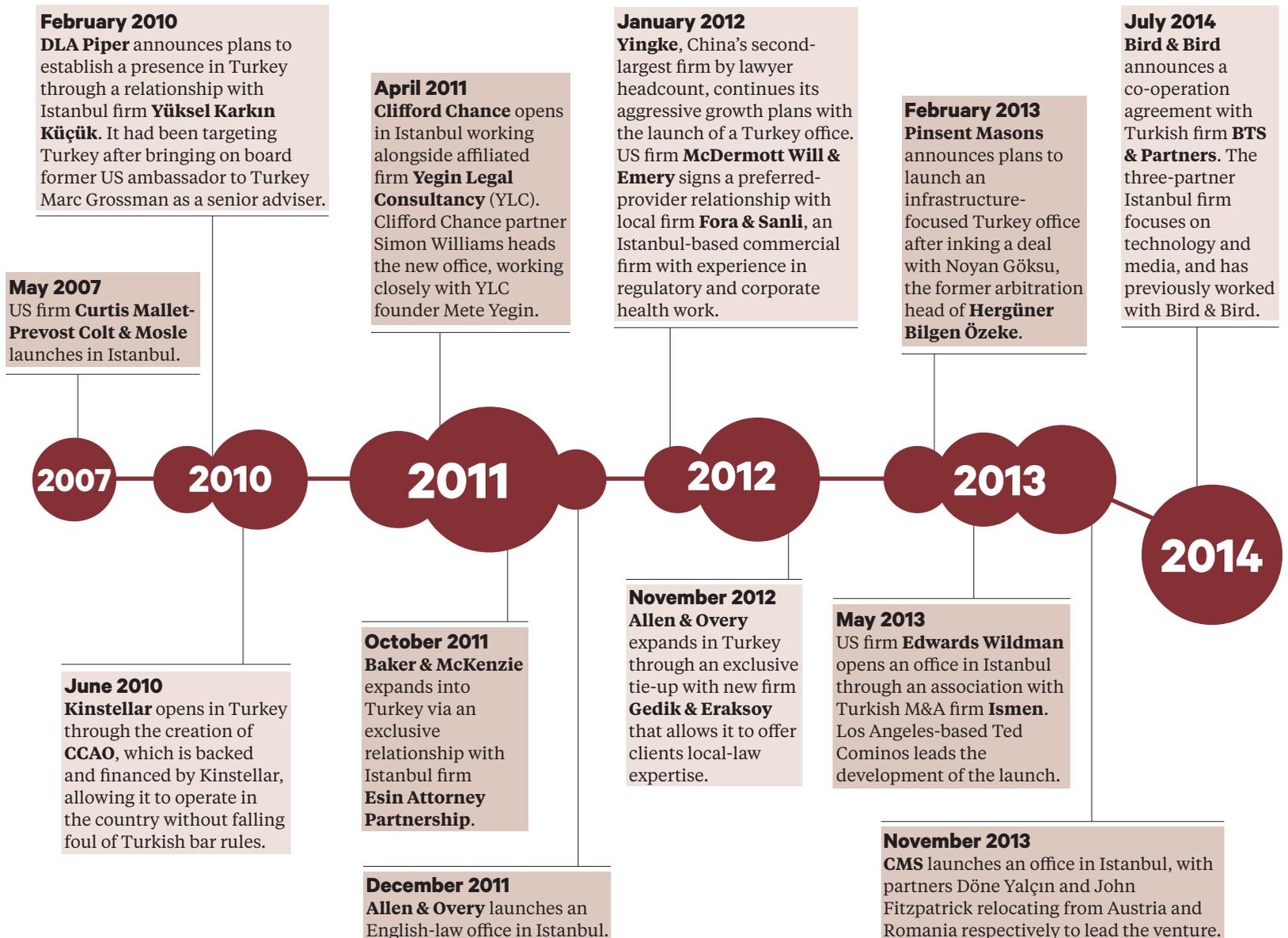
Foreign law firms have been able to practise in Turkey since 2001, when a law was passed allowing them to open in the country. As is the case in a number of jurisdictions, however, international firms can only offer

international advice, although they can offer local law if they set up a separate but associated Turkish firm.

In fact, foreign firms had been practising international law in Turkey for more than a decade

before the law changed, with **White & Case** setting up an office there in 1985, Chicago's **Alzheimer & Gray** opening in Istanbul in 1994 and France's **Gide Loyrette Nouel** having a presence since 1997.

As shown from the timeline below, international firms' interest in Turkey has grown in recent years, with the country's consistent growth during global recessionary times proving attractive.



THE LAWYER
BRIEFING
TURKEY



Transparency and accountability are required to reform Turkey's judicial system



By Mehmet Gün, senior partner, Gün & Partners Istanbul

DISPUTE RESOLUTION

A profession in irons

Since significant liberalisation of its national economy in the 1980s, Turkey, has become a pivotal part of the international economy and weathered the economic crises between the 1980s and 2000. Turkey's exports continue to break records, while trade deficit levels continue to drop. Commensurate with her unique strategic position, Turkey is busy enhancing her international diplomatic, economic and cultural relations, unleashing enormous opportunities, not only for the economy but also for global inward investors.

However, FDI and the GDP are not at desired levels. Economics minister Ali Babacan underlines that Turkey's further success and the exploitation of the country's vast potential, and to avoid the mid-income trap, depends on a thorough legal and judicial reform to counteract low levels of public confidence. According to daily newspaper Milliyet, in 2013 only 24 per cent of the population consider that the Turkish judiciary is independent and only 26 per cent trusts in the system.

Constitutional neglect

Turkey has grossly neglected its judiciary and its service capacity has increased very little compared to huge economic growth. The 2011 constitutional amendments introduced very limited improvement but recent changes in the law, reshuffling the Higher Board of Judges and Public Prosecutors, HSYK, reinstated the powers of the Ministry of Justice to previous levels.

Very hardworking judges delivering high levels of justice in traditional offences and average civil matters have earned Turkey relatively high judicial standards, distinguishing it from similar countries. However, extensive work overload causes considerable delays. Accurate delivery of justice is low and the ability to deliver justice is very much dependent on the parties' behaviour in the judicial process, voluntary cooperation and good faith. Yet, withholding the truth and evidence from the court is tolerated while perjury and obstruction of justice are not recognised offences.

However, political efforts to restrict the judiciary's independent function and to exert political influence avoids identifying the real causes of the problem, a lack of full transparency and proper accountability in all judicial bodies and their activities. On the other hand, the judiciary over relies on the independence of its members considering themselves immune from civil and criminal liability and they lack the requisite transparency and accountability towards Turkish society.

The Board for Judges and Prosecutors, HSYK, that deal with the management and allocation of the

country's judge and prosecutor resources according to the workload and statistics, lacks the professional skills to manage such large and dedicated organisation as well as being unable to appreciate society's expectations of the judiciary. On the other hand the Board is far from being transparent and accountable as it exercises absolute and formidable discretion on promotion, rotation and relocation, further training of judges and prosecutors. Because of this very fact it can be justified that the Board needs to be under the influence of the Ministry of Justice.

The court of appeal has led the first instance courts to effectively delegate judicial duties and authorities to the so-called 'court appointed experts', seen as an easy and a pragmatic solution to the workload. It is unconstitutional and illegal for them to take on judicial powers, however, they have become the main dispute adjudicators, as the judges often ask their opinion on disputes and then follow their recommendations. This has almost reduced the judges' role from adjudicating disputes to arbitrating the parties' struggle with unskilled, arbitrary and irresponsible experts. The majority of practising jurists consider experts corrupt, rotten and lacking proper scrutiny.

Particularly at the appeal level, the judiciary has failed to establish proper transparency. The appeal courts, complaining of heavy workload and insufficient capacity to deal with the number of appeals, fail to acknowledge that they effectively deprive the public of their appeal rights by rendering decisions without proper examination and reasoning. This can be taken as an admission that they merely rubber stamp appealed decisions, failing to properly carry out their duties. However members of the court of appeal are immune from liability for their negligence and omissions or miscarriages of justice.

Unshackle the judges

Turkey has developed a peculiar dispute resolution culture, charging judges with a duty to establish the truth while handcuffing them by a lack of proper disclosure rules. The new Civil Procedural Code introduces the obligation to act honestly but with no proper mechanism or sanction to ensure full and frank disclosure. This would ensure that the truth is established effectively and, more importantly, shifts the burden of workload in judicial processes from the courts to parties.

Turkey's long needed judicial reform can be achieved by only changing the dispute resolution culture, imposing transparency and accountability on all level of judicial activity and organs.

GÜN + PARTNERS
AVUKATLIK BÜROSU

Gün & Partners
Kore Sehıterı Cad 17, Zincırlıkuyu
Istanbul 34394, Turkey
Tel: 90 212 354 00 00
Fax: 90 212 274 20 95
Email: gun@gun.av.tr
Web: www.gun.av.tr