

BUSINESS JETS – SELLING YOUR AIRCRAFT

One of a series of papers for business jet owners

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OVERVIEW

Selling an aircraft can take several months and will likely see offers well below a quoted asking price. Some aircraft are on the market for an extended period as price is too high or there are competing aircraft easier to view or easier to buy.

Typically, irrespective of quoted figures which typically range from 5% to 10%, perhaps 20-25% of the global fleet will be for sale at any time, either officially 'on market' or on a more discrete basis. Many will be for sale as owners transition to new or larger aircraft. Low figures are often quoted indicating a tighter supply, though average ownership times of 4-5 years clearly indicate a higher figure on the market at any time even if not advertised, promoted or otherwise visible. Of course, global events, such as a major recession, tightening of credit, under or over production, or, for example, the Covid-19 pandemic, can dramatically change activity in a particular period and may affect one type or segment and not another.

A typical business jet will have depreciated during the period of ownership and its general condition and maintenance status will likely be significantly different from when it was originally purchased, however, as continually maintained in accordance with strict maintenance schedules, it will be as reliable and airworthy as ever. As any mature operator will know, it doesn't matter how old or new an aircraft is in terms of age or hours, it is rather how it has been operated and maintained throughout its history.

TRADE-IN

An OEM in agreeing to sell a new-build aircraft will usually be prepared to offer terms for a trade-in so as to close a purchase transaction. Most will consider aircraft of their own product line as well as those of competitors.

A trade-in clause in a new aircraft purchase agreement will typically require that the aircraft to be traded in has no history of damage or repair, is fully compliant with the model's Type Certificate and current United States FAA requirements, has all Airworthiness Directives and Recommended Service Bulletins complied with, has all due maintenance completed, has all systems operating normally, and has records back to birth. Such an aircraft will be required to undergo a full Pre-Purchase Inspection (PPI) and engine/APU borescope inspection. The paint and interior condition will also be closely scrutinised and assessed for required refurbishment.

A trade-in value will be determined, likely based on an agreed split between 'Bluebook' wholesale and retail pricing on a given date, with an adjustment for total recorded flying hours, and engine hours and cycles. An OEM will normally negotiate this figure to achieve a new aircraft sale. In the event of disputed value, an appraiser or list of appraisers may be agreed in advance within a structured trade-in agreement.

While such a trade-in value may not on the surface appear to reflect a market sales price, the OEM is taking on a risk, holding the aircraft while preparing for an onward sale. Meanwhile, the owner making use of the facility is avoiding having two aircraft at once and thus not committed to paying unnecessary ongoing finance, insurance, hangarage, maintenance and brokerage fees.

In the case of a preowned aircraft, an inventory dealer may be able and also be willing to accept a trade-in on a similar basis. A broker offering an aircraft for sale as agent is most unlikely to have the capability or the inclination to accept a trade-in to support a transaction.

PRICING

The final price at which an aircraft trades will inevitably be that determined by a *willing buyer* and *willing seller*, ideally in an arms-length transaction.

A guideline price may be determined by reference to an industry guide, the two principal versions of which are *Aircraft Bluebook* and *VRef*. Both will provide an indicative value for a given year and number of hours, assuming that the aircraft is in excellent condition cosmetically, has all due maintenance completed, is on engine programs and has no history of damage. Guideline price will include both retail and wholesale values.

Target pricing should consider price guidelines, but also fairly assess competing aircraft and relative desirability. Prospective buyers will typically make offers, rarely paying an ask price, so a reduced ask price is likely to result in reduced offers. Buyers will seek the best aircraft for the price, rather than the cheapest, so it is important to understand the relative merits and positioning of competing aircraft.

DO I NEED A BROKER?

The knowledgeable broker will know how to market your aircraft, placing details and photographs on the two principal industry portals to alert the wider trade and possibly also advertising selectively in key publications to alert potential retail buyers. Most will have developed databases of aircraft owners globally who undoubtedly represent the most likely buyers of an aircraft coming to market, whom they will contact directly by 'phone, mail or e-mail.

In return for a negotiated percentage of the final sales price, the broker will use its considerable market knowledge and expertise to price and position your aircraft against competition.

The broker and its team will field calls from interested parties, answer questions, and support viewings. A good broker will also assist a prospective buyer with its own trade-in or sale options, introduce financing for the purchase, and help with any required avionics upgrades, repainting and refurbishment. The broker's intimate knowledge of the current market and buyer expectations is likely to save the seller time and stress in managing the sales process, routinely leaving the seller to focus on other more important matters personal to him or her.

APPOINTING A BROKER

The aircraft brokerage sector is not regulated and cost of entry is nominal. It is a glamorous profession and there is a lot of money involved, so is highly attractive. It is awash with a lack of control, questionable technical knowledge and professionalism, lack of procedure, debatable integrity, and, often, a clear conflict of interest. Take independent and professional (legal) advice before selecting a broker; weight and score competing proposals; negotiate brokerage agreements.

Many brokers will attempt to control competing aircraft so as to limit competition for their existing offerings. This may not be in a seller's interests, as prospective buyers can be steered to a particular aircraft that the broker might wish to sell in preference (perhaps as its exclusive mandate is about to expire, or perhaps because it can achieve a greater margin on one aircraft over another).

A broker needs to have integrity, working solely for the seller in achieving a sale of the seller's aircraft at the optimum price and within a reasonable timeframe, and also needs to have a detailed understanding of the particular model and the precise market for the model. A good broker will be invaluable. A poor broker will undeniably leave a bad taste in the seller's mouth and a hole in its wallet. Some brokers will properly refuse to act as broker for or actively promote competing aircraft, and this can be expressly included within a brokerage agreement.

A brokerage agreement should not necessarily be entered into with an entity solely recommended by a management company, chief pilot or department head, as this may well result in secret agreements to facilitate commissions or other payments without your knowledge or agreement. The industry is full of such understandings behind the scenes and even the big brokers may have such arrangements in place or capable of being quickly agreed. Some well-known global sales companies have been recorded as having made phone calls offering six figure sums to influencers and decision-makers, while other transactions have been found to have been set up with a significant pre-agreed margin behind the scenes.

EXCLUSIVE OR NON-EXCLUSIVE

It is generally better to have a single exclusive agreement with a good broker, as they will expend the agreed effort in promoting a single aircraft over the competition. However there are many successful cases of aircraft selling where a brokerage is not exclusive and a broker with a standing buyer relationship completes the transaction. Most brokers today have a global reach.

In the case of an exclusive brokerage, a sale is extremely likely indeed to involve more than one broker and combined fees can quickly mount up. In return for granting an exclusive brokerage, the agreement should provide for the broker to cover any third-party brokerage as opposed to being passed on as an additional cost to the seller.

THE BROKERAGE AGREEMENT

There is no such thing as a 'standard' brokerage agreement. An agreement should be negotiated and with an understanding that an agreement draft provided by a broker will be written solely to its advantage.

A brokerage agreement should ideally prohibit a broker from offering two or more competing aircraft, i.e. of the same model, at the same time.

It should also clearly and expressly prohibit a broker having an interest in any buyer of the aircraft, directly or indirectly, through a subsidiary or associated entity having any common beneficial shareholding, common officers or attorneys-in-fact, and thus restrict its ability to back-to-back a deal to the detriment of the seller whom it purports to represent in good faith. The owner/seller of the aircraft should thus be identified in resulting sales documentation and remain the legal seller.

In the event that another broker is involved in a transaction, then the retained broker should be responsible for any split in commission unless expressly agreed within a brokerage agreement.

An agreement should have a target price for the aircraft and a requirement that any and all offers made to the broker for the aircraft in writing are submitted to the seller for consideration. There must be no opportunity for a broker to hold offers back.

The brokerage agreement should be for a defined term, for a minimum period of at least six months, with a hard drop-dead date, extendable only by mutual agreement. Any ability for a broker to earn commissions from a subsequent transaction should be restricted to named end-users with whom the broker has had a material exchange of correspondence and expressly exclude the registration of other brokers as potential clients. Data is widely available in the market in respect of any aircraft for sale, it being a common practice for brokers to name all their competitors as their prospects and as potential buyers. It is rare these days for a broker to produce individual brochures or photographs for an aircraft being marketed, as most information is transmitted digitally. If there is a genuine understanding, the brokers will work together anyway.

Ideally, the Seller should have copies of broker communications, as these cannot realistically be viewed as commercially sensitive if a broker is representing only its client's aircraft.

Any material default by the broker of any of the agreement's clauses should be the basis for immediate termination without recourse, in order to eliminate the possibility of spurious or contested claims for commission where the relationship becomes frustrated for example as a consequence of misleading or knowingly false statements.

ON-MARKET OR OFF-MARKET

Aircraft have historically been offered '*on market*', being visible in both the principal trade portals as for sale and with year of build and entry-into-service, registration marks, serial number, owner name, broker name, key specifications and photographs visible to global brokers on-line. A broker looking for a particular type, model aircraft will then compare individual aircraft by age, hours, specification, programs, etc., easily identifying an individual or small group of alternative target aircraft on which to make an offer.

Any prospective buyer will naturally wish to have the same information, so the only advantage for a seller in offering an aircraft '*off market*' will be to retain anonymity and to avoid receiving any phone calls or emails seeking information on the aircraft. A broker, or chain of brokers, may prefer an '*off market*'

aircraft to allow manipulation of price and margin, the subject aircraft being identifiable to fewer people. If anonymity is not an over-riding issue, then a seller's aircraft will be viewed by more potential buyers if openly '*on market*'.

BACK-TO-BACK TRANSACTIONS

So-called back-to-back transactions, in many cases when not disclosed representing a clear breach of ethics and arguably to the detriment of both buyers and sellers, are something that has become commonplace if not the norm in recent years. It has frequently replaced a simple commission fee agreement where a broker achieves a transparent sale on behalf of an owner as its agent and has become the basis of many legal disputes. However, having an eye on a potential conflict of interest, the players involved are usually wise to having distinct agreements: one with a seller to buy an aircraft as principal and another with a buyer to sell an aircraft as principal, thus becoming a dealer not a broker, but with all of the financial risk often being viewed as and legally transferred to the ultimate buyer.

A special vehicle company perhaps secretly related to the appointed broker may endeavour to buy an aircraft for a low-net price from an owner, often misleading a seller to the identity of the SPV buyer and the aircraft's real value or market interest, only to sell it on to a willing buyer at a price that same buyer may already have offered – invariably a much higher price than that disclosed to the real owner.

In this case, the appointed broker sets the market, sets the price, takes a pre-agreed commission from the real seller, and '*backs to back*' the transaction to achieve a larger margin for itself. The result is that a seller and buyer may be prejudiced, and both may unknowingly facilitate a middleman being able to pocket hundreds of thousands or even millions of dollars. Of course, if the middleman is not an appointee, broker or retained adviser of the buyer or seller, then it has a right to be a trader, but is definitely not a broker genuinely acting honourably on behalf of either party. A significant over-payment may not be noticed until a buyer comes to try to sell the aircraft perhaps years later, by which time the market will inevitably have deteriorated for any aircraft.

Many well-known brokers employ this tactic to enhance their margin, having first secured an exclusive listing and agreed a percentage commission. Some larger brokers use their own money placed on account with a selected escrow agent and others make use of the buyer's own deposit to fund the activity. Beware of non-identifiable companies incorporated in, for example, Delaware, Belize, the British Virgin Islands and other jurisdictions providing any degree of secrecy as to true ownership. Ask for details of ownership in writing, at the very minimum clear written statements confirming that a connected broker (including its shareholders and officers) has no related interest in the entity, either directly or indirectly. Beware of transaction documents changing the status of a deposit. Carefully scrutinise all signature pages, which should, in any event, remain in escrow until the final transfer of title and delivery. At the very least, perform a comprehensive 'KYC' process on all parties involved in a transaction, noting that some lawyers and escrow agents are particularly well known for facilitating such arguably dubious back-to-back transactions.

Back-to-back transactions are often used to cover up not only true margins well beyond those disclosed, being to the clear detriment and manipulation of both buyer and seller, but also possible incentivisation fees or other inducements to a chief pilot, department head, management company or other introducer or 'adviser' which may in themselves represent a six-figure sum and may be illegal with potential serious consequences even years later. Many involved in a transaction believe it is their right to take a significant cut, routinely unbeknown to a seller or buyer, and this is frequently facilitated by a middleman broker.

An aircraft should not be changing hands between several parties on the same day, this being highly suspicious. A letter of intent and purchase agreement should be written so as to negate this possibility, ideally addressed solely to the recorded owner/seller, and for a true broker, acting solely in that capacity, its agreed percentage fee will be protected in any event.

PHOTOGRAPHS & VIDEOS

Photographs, perhaps extending to walk-through videos, will be commissioned by a broker to show an aircraft. Brokers may ask that a seller pays for these.

Ownership of the photos and videos, and therefore copyright, should be with the seller if it pays. Obviously, should the broker meet these costs, then ownership will rest with the broker concerned. A brokerage agreement should not be silent on this point.

SALES SPECIFICATION

The technical description of the aircraft, avionics, options, programs, and maintenance status will be made available to the broker by the seller's crew or management company as appropriate. The data is attributable to the aircraft and will not 'belong' to a broker.

CMP/CAMP REPORT

Prospective buyers or their respective technical advisers will seek a copy of the aircraft's computerised maintenance records as available. This report, for which the owner pays a subscription, will identify the aircraft, serial number, owner and operator, together with a summary of maintenance due and component times and lives. Any serious prospect will wish to review this data and it should not be held back. The report should not be doctored by a broker to hide true ownership or identity; if this is suggested or permitted, it may be a sign of something dubious.

SHOWING THE AIRCRAFT

The broker will attend to showings of the aircraft, accompanying a prospect and explaining the aircraft's attributes. An alternative would be for a member of the aircraft's crew to show the aircraft.

The seller may incur charges associated with the provision of, for example, ground power, cleaning and preparation, towing and required ground transport facilities.

DEMONSTRATION FLIGHTS

Prospects may reasonably request demonstration flights, though this is more common with new entrants into the sector who might never have previously owned such an aircraft.

There is therefore an obvious risk of abuse, with a legal ability for the private seller to only recover actual costs in order to not to be viewed as holding out for charter. A commercial operator may properly charge charter rates.

Demonstration flights other than from and to the same point must be viewed with some suspicion as to real intent. Any request for a demonstration therefore needs to be viewed on its respective merits, with the seller requesting and knowing as much as possible about the ability of the prospect to buy the aircraft, effectively a KYC process.

PRIVATE SALE

Many aircraft are traded between parties knowing each other personally, through an acquaintance, or through mutual business contacts. Most brokerage agreements require that, whatever the connection, any sale during the period of brokerage, if exclusive, will require the brokerage fee to be paid to the broker in return for its wider marketing efforts.

It has been known for sellers to argue that, because they know a buyer, they should not be required to pay a brokerage fee – indeed lawyers often quote this as a major cause of dispute between a seller and its appointed broker. A seller should be prepared to honour its agreement in this regard.

TERMINATING A BROKERAGE AGREEMENT

Where a broker fails to perform and is in clear default of its contractual obligations, a brokerage agreement should be capable of immediate termination without recourse.

A terminated broker should not be able to register blanket prospects and benefit from a consequential sale to a party with whom it has no prior material engagement. Any ability for a terminated broker to register prospects without demonstrating engagement may hinder a new broker in its efforts or limit its ability to receive a proper reward for its activities.

In the event of a broker not being in default and demonstrating best endeavours, however not having been successful in achieving a satisfactory offer during the term of a brokerage agreement, then they should be able to register prospects with whom they have been genuinely engaged in detailed negotiation. In this case, they will likely provide every assistance to the new broker in effecting a trouble-free transfer of responsibilities.

NEGOTIATION

Expect offers. Each will be conditional. Carefully review the value of competing offers and associated risks. Bear in mind that the broker will achieve its percentage on the gross sales price, irrespective of the true net value of an offer accepted. Score and weigh competing offers. Be prepared to negotiate a final sales agreement.

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