

Study in focus: Competition in Air Transport

BACKGROUND

The aviation sector is characterised by a network of service interlinkages to provide connectivity between different destinations, countries and jurisdictions. Air carriers play a key role in providing these services. On the international level, the Chicago Convention of 1944 is the legal basis for bilateral agreements. On this basis, the International Civil Aviation Organization (ICAO) coordinates standards and practices to ensure safe and efficient civil air transport. However, the existing standards lack coherent rules on competition. Within the European Union the European rules ensure that air carriers are granted the same rights and opportunities of accessing related services. For this purpose three packages of measures covering intra-EU traffic, air carrier licensing, market access, full freedom with fares were adopted by the European Institutions, chronologically in 1987, 1990, and 1993.



FOCUS OF THE WORKSHOP

Against this background and an increase of competition in this sector caused by liberalisation and deregulation the European Commission aims to ensure that competition is based on openness, reciprocity and fairness and that it is not distorted by unfair practices. It has therefore proposed a regulation of the European Parliament and the Council on safeguarding competition in air transport, repealing regulation (EC) No. 868/2004 which aims to establish a defence mechanism that could be triggered in case EU air carriers suffer from unfair disadvantages caused by, for instance, discriminatory practices by third country providers. The workshop had a look at the potential impact of this proposal in the relevant market from an economic as well as from a legal perspective.

KEY FINDINGS

Economic perspective

Trade policies should be based on a broad understanding of Union interests.

Concerning the countries who are alleged to give State aids to their airlines, the EU is interested in a sound economic growth of these countries and in their integration into the world economy. The example of the East Asian countries demonstrated that such growth might entail aggressive or protective behaviour in selective branches for some time periods.

European citizens want to benefit from intense competition between several large and sustainable airline groups, which in the long run might require a market size larger than the EU market. Competitors from outside the EU are therefore in principle welcome.

International airline markets should not be distorted by massive and long-lasting government subsidies from any country. Eliminating such distortions is in the end beneficial to, both, the importing and the exporting countries.

However, in transport, government subsidies are generally much more accepted than in other branches. Subsidies may be justified by desirable investments in airport infrastructure, by considerations of regional mobility and regional development, and by considerations of general economic development.



Taken together, the watchword for trade policy in air transport should be: caution. Any claims against other countries and any countervailing measures should be well-justified and balanced, also with a view to EU's own practices in, for example, granting subsidies and grandfather rights for airport slots. Trade policies should be documented and scientifically evaluated in order to learn for future steps and for other markets.

Legal perspective

The scope of '*fair competition*' ought to be defined.

Competition principles and concepts cannot be easily aligned with the traditional aviation law regime as laid down in Air Services Agreements (ASAs).

'The reasons for which Regulation 868/2004 could not be applied do not only have internal causes – as identified by the EU Commission – but also external causes, that is, related to the regulatory and policy environment.'

While the proposed Regulation on safeguarding competition in international air transport attempts to reconcile the market-oriented approach of the EU with more traditional, public service-oriented regimes governing the operation of international air services, a number of questions remain as to the practicality, and perhaps also legality, of certain provisions of the proposed Regulation.

Airlines should be qualified as '*undertakings*' before being admitted to operate their services under provisions of ASAs. The EU Commission could table this premise qualifying airlines pursuant to its envisaged market approach in its negotiations with third countries.

Other solutions may be found on unilateral measures, such as the employment of the '*effects doctrine*', or multilateral measures, such as the involvement of international organisations, in particular the International Civil Aviation Organization (ICAO) which, however, also depends on more '*traditional*' jurisdictions.

International perspective

Air connectivity has acquired a new strategic relevance in the context of global economic shift and the growth of emerging economies. The emerging economies concerned have successfully integrated aviation into their economic development policies which enhance their competitive advantage.

International air transport today requires balanced regulation which supports a competitive aviation business environment that allows all air carriers irrespective of origin to compete and consistently improve their service quality for the benefit of the travelling public.

The proposed new regulation will be more efficient if it is perceived to foster and promote a level playing field rather than as a safeguard for EU carriers towards third country competitors. Moreover, it would be easier to implement if there were clear definitions of terminology or criteria which can be measured in a quantitative way.

The [full study](#) includes presentation slides, two briefing notes by Professor Kay Mitusch, University of Karlsruhe and Professor Pablo Mendes de Leon, University of Leiden, a written statement on selected questions discussed during the workshop by the International Civil Aviation Organization (ICAO) and a summary of the discussion.

Scan QR code to access the study:



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