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*****I** **REPORT**

on the proposal for a European Parliament and Council regulation on protection against subsidisation and unfair pricing practices in the supply of airline services from countries not members of the European Community (COM (2002) 110 – C5-0133/2002 – 2002/0067(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Nicholas Clegg

Draftsman (*):

Sir Robert Atkins, Committee on Industry, External Trade, Research and Energy

(*): Hughes Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Hughes Procedure

PROCEDURAL PAGE

By letter of 13 March 2002 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 80(2) of the EC Treaty, the proposal for a European Parliament and Council regulation on protection against subsidisation and unfair pricing practices in the supply of airline services from countries not members of the European Community (COM (2002) 110 – 2002/0067 (COD)).

At the sitting of 8 April 2002 the President of Parliament announced that he had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Economic and Monetary Affairs and the Committee on Industry, External Trade, Research and Energy for their opinions (C5-0133/2002).

The Committee on Regional Policy, Transport and Tourism appointed Nicholas Clegg rapporteur at its meeting of 18 April 2002.

At the sitting of 4 July 2002 the President of Parliament announced that the Committee on Industry, External Trade, Research and Energy, which had been asked for its opinion, would be involved in drawing up the report, under the Hughes Procedure.

The Committee on Regional Policy, Transport and Tourism considered the Commission proposal and draft report at its meetings of 10 September, 5 November and 3 December 2002.

At the last meeting it adopted the draft legislative resolution by 35 votes to 1, with 0 abstentions.

The following were present for the vote: Luciano Caveri, chairman; Rijk van Dam and Gilles Savary, vice-chairmen; Nicholas Clegg, rapporteur; Emmanouil Bakopoulos, Rolf Berend, Philip Charles Bradbourn, Felipe Camisón Asensio, Nirj Deva (for Sérgio Marques), Den Dover (for Jacqueline Foster), Garrelt Duin, Markus Ferber (for Ingo Schmitt), Mathieu J.H. Grosch, Catherine Guy-Quint (for Bernard Poignant), Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Dieter-Lebrecht Koch, Giorgio Lisi, Emmanouil Mastorakis, Rosa Miguélez Ramos, Bill Miller (for Mark Francis Watts), James Nicholson, Karla M.H. Peijs, Wilhelm Ernst Piecyk, Samuli Pohjamo, Reinhard Rack, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Margie Sudre, Ari Vatanen, Dominique Vlasto (for Christine de Veyrac) and Brigitte Wenzel-Perillo (for José Javier Pomés Ruiz).

The opinions of the Committee on Economic and Monetary Affairs and the Committee on Industry, External Trade, Research and Energy are attached.

The report was tabled on 5 December 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on protection against subsidisation and unfair pricing practices in the supply of airline services from countries not members of the European Community (COM (2002) 110 – C5-0133/2002 – 2002/0067(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 110¹),
 - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0133/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Industry, External Trade, Research and Energy (A5-0439/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1

Title

Regulation of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices in the supply of airline services from countries not members of the European Community

Regulation of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices ***causing injury to Community air carriers*** in the supply of airline services from countries not members of the European Community

¹ OJ C 151 E, 25.6.2002, p. 285

Justification

The proposal is intended to provide protection against subsidisation and unfair pricing practices that cause injury to Community air carriers.

Amendment 2
Recital 1

(1) ***There is reason to believe that*** the competitive ***participation*** of Community air carriers ***in*** providing air services to or from the Community ***is*** adversely affected by ***certain*** unfair practices of non-Community air carriers providing like ***air*** services;

(1) The competitive ***position*** of Community air carriers ***when*** providing air services to, ***via*** or from the Community ***could be*** adversely affected by unfair ***and discriminatory*** practices of non-Community air carriers providing like services;

Justification

Normally, a Proposal would contain a factual and economic analysis of the issue. No such analysis has been made available. (1) “reason to believe” would not seem sufficient.

Amendment 3
Recital 2

(2) Such unfair practices may result from a subsidy granted by a government of a country ***which is not*** a member of the Community or from certain pricing practices by a non-Community air carrier which ***is*** state-controlled;

(2) Such unfair practices may result from a subsidy ***or subsidies or other forms of aid*** granted by a government, ***or regional body or other public organisation*** of a country ***not being*** a member of the Community or from certain pricing practices by a non-Community air carrier ***or carriers*** which ***are*** state-controlled;

Justification

Particularly, while the issue of subsidies may be an issue where clarity could exist or be

created, the issue under (2) of certain pricing practices by State controlled carriers is much more complicated, not least because most carriers in the world are state controlled, not least of which the European carriers.

Amendment 4
Recital 2a (new)

(2a) It is necessary to define the redressive measures to be taken against such unfair practices;

Justification

Self-explanatory. Connected to the addition of a new subparagraph to Article 1 of the regulation

Amendment 5
Recital 3

(3) Within the Community there are strict rules regarding the granting of government aid to airlines, and for Community airlines not to be placed at a competitive disadvantage there is a need for an instrument to offer protection against subsidised non-Community air carriers or those receiving other benefits from governments;

(3) Within the Community there are strict rules regarding the granting of government aid to airlines, and for Community airlines not to be placed at a competitive disadvantage ***and suffer injury*** there is a need for an instrument to offer protection against subsidised non-Community air carriers or those receiving other benefits from governments;

Justification

In addition to subsidisation and unfair pricing practices, the proposal also relates to the injury which such practices cause to Community air carriers.

Amendment 6
Recital 3a (new)

3a. It would be preferable for airline services to be included within the scope of the GATS process of the WTO, so that

***competition and subsidisation in the sector
could be regulated fairly on a global basis.***

Justification

Airline services are currently exempted from GATS. Their inclusion would provide a much better way of ensuring an internationally enforceable level playing field.

Amendment 7
Recital 4

4. The Community should be able to take action to redress such unfair practices resulting from subsidies granted by the government of a country which is not a member of the Community;

4. The Community should, ***in the meantime***, be able to take action to redress such unfair practices resulting from subsidies granted by the government of a country which is not a member of the Community;

Justification

As a consequence of Recital 3a(new).

Amendment 8
Recital 5a (new)

(5a) Effective action in this field can only be fully achieved within the context of a broader Community competence in external relations in the aviation transport sector;

Justification

Self explanatory.

Amendment 9
Recital 6

(6) It should be explained when a subsidy shall be deemed to exist and according to

(6) It should be explained when a subsidy shall be deemed to exist and according to

which principles it shall be countervailable **(in particular whether the subsidy has been targeted at certain enterprises or sectors or is contingent upon service supply to third countries)**;

which principles it shall be countervailable **(i.e. whether it is specific and discriminatory, trade-distorting and causes significant material injury to one or more Community air carriers)**;

Amendment 10

Recital 7

(7) In determining the existence of a subsidy, it is necessary to demonstrate that there has been a financial contribution by a government or that government revenue that **is** otherwise due **is** foregone or not collected, and that a benefit has thereby been conferred on the recipient enterprise;

(7) In determining the existence of a subsidy, it is necessary to demonstrate that there has been a financial contribution by a government **via a transfer of funds** or that **debts of any kind representing** government revenue that **are** otherwise due **are** foregone or not collected, and that a benefit has thereby been conferred on the recipient enterprise **and an injury inflicted on one or more Community carrier**;

Justification

Injury should be the focus, and not subsidies per se.

Amendment 11

Recital 8a (new)

(8a) It should be made clear that an unfair pricing practice can only be deemed to exist in cases where that practice is clearly distinguishable from normal competitive pricing practices, including promotions and other special offers.

Justification

Unfair pricing practices have to be clearly distinguishable from competitive pricing policies, which are a normal element of a free market.

Amendment 12

Recital 9

(9) It is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the subsidised or unfairly priced air services provided by non-Community air carriers have caused material injury or are threatening to cause injury; ***in demonstrating*** that the ***price levels*** of the supply of such air services ***are responsible for injury sustained by*** the Community industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Community;

(9) It is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the subsidised or unfairly priced air services provided by non-Community air carriers have caused material injury or are threatening to cause injury; ***in order to demonstrate*** that the ***subsidies and pricing practices*** of the supply of such air services ***cause injury to*** the Community industry, attention should be given to the effect of other factors, ***since consideration will be given to all relevant factors and economic indicators which influence the criteria for assessing the state of the industry***, and in particular prevailing market conditions in the Community;

Justification

To determine whether subsidies have caused injury, a number of objective, clear and uniform criteria have to be applied, including the impact of economic indicators in the sector concerned.

Amendment 13 Recital 10

(10) It is ***advisable*** to define the terms 'Community air carrier', 'Community industry', 'like air service' and 'state-controlled';

(10) It is ***essential*** to define the terms 'Community air carrier', 'Community industry', 'like air service' and 'state-controlled';

Justification

It is impossible to evaluate a sector or an allegedly unfair aid unless the basic concepts needed for analysis have been defined in advance.

Amendment 14
Recital 11

(11) It is necessary to **lay down** who may lodge a complaint, and the information **on countervailable subsidies or unfair pricing practice, injury and causation which** such complaint should contain;

(11) It is necessary to **specify** who may lodge a complaint, and the information **that** such **a** complaint should contain;

Justification

Overall, the scope of the Regulation must be enhanced to provide (a) more overall coverage of unfair practices and (b) align more with the Community acquis Communautaire on international air transport relations as this gradually develops.

Amendment 15
Recital 11 a (new)

(11a) It is necessary to determine that a complaint should be rejected where there is insufficient evidence of injury to proceed and that proceedings should be limited to third country air carriers whose services have a significant impact on the Community market;

Amendment 16
Recital 11 b (new)

(11b) It is desirable to lay down the procedure to be followed in the investigation of unfair practices by non-Community carriers. This procedure should be limited in time;

Amendment 17
Recital 12

(12) It is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require; and interested parties should have ample opportunity to present all relevant evidence and to defend their interests; it is also desirable to set out the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account; it is necessary to provide that, where parties do not cooperate satisfactorily, other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated;

(12) It is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require; and interested parties should have ample opportunity to present all relevant evidence and to defend their interests; it is also desirable to set out the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account; ***it is necessary to allow interested parties access to all information pertaining to the investigation which is relevant to the presentation of their case***; it is necessary to provide that, where parties do not cooperate satisfactorily, other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated;

Amendment 18
Recital 13

(13) It is necessary to lay down the conditions under which provisional measures may be imposed; such measures may in all cases be imposed by the Commission only for a six-month period;

(13) It is necessary to lay down the conditions under which provisional measures may be imposed; such measures may in all cases be imposed by the Commission ***normally no later than six months after the initiation of proceedings and*** only for a six-month period;

Amendment 19
Recital 14

(14) An investigation or proceeding should be terminated whenever there is no need to take measures, for example if the amount of subsidisation, the degree of unfair pricing or the injury is negligible; a proceeding shall not be terminated unless such a decision is duly motivated; that measures should be less than the amount of countervailable subsidies or the degree of unfair pricing if such lesser amount would remove the injury;

(14) An investigation or proceeding should be terminated whenever there is no need to take measures, for example if the amount of subsidisation or the degree of unfair pricing, **and the *resulting*** injury is negligible; a proceeding shall not be terminated unless such a decision is duly motivated; that measures should be less than the amount of countervailable subsidies or the degree of unfair pricing if such lesser amount would remove the injury;

Justification

To make a clearer link between the unfair practices and the injury caused to Community carriers.

Amendment 20
Recital 15

(15) It is necessary to provide that measures should not exceed the value of subsidies or the non-commercial advantages granted as the case may be;

(15) It is necessary to provide that measures should not exceed the value of subsidies or the non-commercial advantages granted as the case may be ***or the sum corresponding to the injury caused, where this is lower;***

Justification

In accordance with the Community commercial policy rules prohibiting subsidies, the amount of compensation payable once an investigation has concluded should be either equivalent to the degree of injury or equal to the subsidies paid to the airline industry, whichever is the lower.

Amendment 21
Recital 16a (new)

(16a) It is necessary to define sanctions to be taken in cases where non-Community carriers fail to meet the redressive measures imposed on them by virtue of this regulation;

Justification

See new Article 9a.

Amendment 22
Recital 16b (new)

(16b) It is necessary to provide for non-Community air carriers to be reimbursed in cases where the level of the redressive measure imposed on them exceeds the level of the injury caused to Community carriers by their unfair practices;

Justification

See new Article 9b.

Amendment 23
Recital 19

(19) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, measures for the implementation of this Regulation should be adopted by use of the ***advisory*** procedure provided for in ***Article 3*** of that Decision.

(19) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, measures for the implementation of this Regulation should be adopted by use of the ***safeguard*** procedure provided for in ***Article 6*** of that Decision.

Amendment 24
Recital 19a (new)

(19a) It is necessary to ensure that any measures taken by virtue of this regulation are in full accordance with the Community interest, with particular regard to the interests of the industry and of users and consumers of air transport services.

Justification

The recitals of this regulation should acknowledge the existence of Article 13, and reflect its importance.

Amendment 25
Article -1 (new)

Article -1

Objective

This Regulation lays down the procedure to be followed in order to respond to unfair practices by non-Community air carriers which operate in competition with Community air carriers on specific routes to or from the Community and, by virtue of these practices, cause significant material injury to Community air carriers on those routes, and to Community interests.

Amendment 26
Article 1, subparagraph 1 (2)

(2) Offsetting the unfair pricing practices by ***state controlled*** non-Community air carriers

(2) Offsetting the unfair pricing practices by ***state-controlled*** non-Community air carriers

concerning the supply of air services on certain routes to and from the Community which cause injury to the Community industry.

concerning the supply of air services on certain routes to and from the Community which cause *significant material* injury to the Community industry.

Amendment 27

Article 1, subparagraph 1 a (new)

1a. Redressive measures shall preferably take the form of duties imposed upon the offending non-Community carrier. In the event that further sanctions are deemed necessary, restrictions on take-off and landing rights may also be deployed.

Amendment 28

Article 2, paragraph 1 (a)(i)

(i) where a government practice involves a direct transfer of funds, potential direct transfer of funds *or liabilities*;

(i) where a government *or public body* practice involves a direct transfer of funds *(for example, grants, loans, equity infusion)*, potential direct transfer of funds *to the company or the assumption of liabilities of the company (for example, loan guarantees)*;

Justification

Clarifies the text by borrowing the wording used in Article 2 of Regulation (EEC) 2026/97 on protection against subsidised imports from countries not members of the European Community.

Amendment 29

Article 2, paragraph 1a (ii)

(ii) government revenue that *is* otherwise due *is* foregone or not collected;

(ii) debts representing government *or public body* revenue that *are* otherwise due

are foregone or not collected (*for example, fiscal incentives such as tax credits*);

Justification

Clarifies the text by borrowing the wording used in Article 2 of Regulation 2026/97 on protection against subsidised imports from countries not members of the European Community.

Amendment 30
Article 2, paragraph 1a (iii)

(iii) a government provides goods or services other than general infrastructure, or purchases goods or services;

(iii) a government **or public body** provides goods or services other than general infrastructure, or purchases goods or services **from the company**;

Justification

It is not only Governments that are involved here - there will also be regional bodies, municipalities, or other state controlled bodies.

Amendment 31
Article 2, paragraph 1, point (a)(iv)

(iv) a government makes payments **to** a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and, in practice, in no real sense, differs from practices **normally** followed by governments; and

(iv) a government **or public body** makes payments **via** a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government **or public body** and, in practice, in no real sense, differs from practices **which may be** followed by governments **or public bodies**; and

Justification

It is not only Governments that are involved here - there will also be regional bodies,

municipalities, or other state controlled bodies.

Amendment 32
Article 2, paragraph 2

2. Subsidies shall be subject to redressive measures only if the subsidies are limited, in law or in fact, to an enterprise or industry or group of enterprises or industries within the jurisdiction of the granting authority, including subsidies contingent upon export performance.

2. Subsidies shall be subject to redressive measures only if the subsidies:

(a) are specific and discriminatory;

(b) are trade-distorting; and

(c) cause significant material injury to Community air carriers.

Amendment 33
Article 3, paragraph 1

1. Unfair pricing practices shall be deemed to exist where *state controlled* non-Community air carriers *benefitting* from a non-commercial advantage continuously charge on a particular air service to or from *a* Community air fares which are ***lower than*** the normal fare rate.

1. Unfair pricing practices shall be deemed to exist where *state-controlled* non-Community air carriers *benefitting* from a non-commercial advantage continuously charge on a particular air service to or from *the* Community air fares which are ***sufficiently below*** the normal fare rate ***to cause sustained, significant material injury to competing Community air carriers.***

Amendment 34
Article 3, paragraph 1 a (new)

1a. Such practices must be clearly distinguishable from normal competitive pricing practices. To determine whether this is the case, account shall be taken of the following elements:

- *the actual price at which tickets are proposed for sale;*
- *the number of seats proposed at an allegedly unfair price out of the total number of seats available on the aircraft;*
- *the restrictions and conditions attached to the tickets sold at an allegedly unfair price; and*
- *the level of service proposed by all carriers providing the like air service in question.*

Amendment 35
Article 3, paragraph 2(a)

a) the comparable rate actually charged during a period of at least 6 months in the ordinary course of air transport for the like air service on the same or comparable route by an established and representative air carrier which is not a government controlled air carrier; or where such rate cannot be determined,

a) the comparable rate actually charged during a period of at least 6 months in the ordinary course of air transport for the like air service on the same or comparable route ***operated*** by an established and representative air carrier which is not a government controlled air carrier; or where such rate cannot be determined,

Justification

Self-explanatory.

Amendment 36
Article 3.2.b

b) the constructed rate which is determined by the costs of a comparable air carrier plus a reasonable margin of profit. ***This***

b) the constructed rate which is determined by the costs of a comparable air carrier plus a reasonable margin of profit. ***These***

cost shall be computed on the basis of all costs incurred in the ordinary course of trade, both fixed and variable, plus a reasonable amount for overhead expenses.

costs shall be computed on the basis of all costs incurred in the ordinary course of trade, both fixed and variable, plus a reasonable amount for overhead expenses.

Justification

Self-explanatory.

Amendment 37
Article 3, paragraph 3

3. A non-Community air carrier shall be deemed to be "state-controlled" if the Government or any other public body within the territory of a third country owns more than 50 per cent of the equity interest in it, or have the power to name a majority of its directors or otherwise legally direct its actions.

3. A non-Community air carrier shall be deemed to be "state-controlled" if the Government or any other public body within the territory of a third country owns, ***directly or indirectly***, more than 50 per cent of the equity interest in it, ***or of the specific rights over a majority of its liabilities, or are able to determine its fares and revenue***, or have the power to name a majority of its directors or otherwise legally ***control or*** direct its actions.

Justification

There are many ways, both direct and indirect, in which a non-Community carrier can be deemed to be state-controlled, and this should be made clear in the text.

Amendment 38
Article 4, paragraph 1, point (a)

(a) the term "injury" shall be taken to mean material injury to the Community industry, or threat of material injury to the Community industry;

(a) the term "injury" shall be taken to mean ***significant*** material injury to the Community industry, or threat of ***significant*** material injury to the Community industry;

Justification

Introduces 'significant material injury' as the basic definition of injury within the meaning of

this regulation.

Amendment 39
Article 4, paragraph 1, point (b)

(b) the term “Community industry” shall be interpreted as referring to the Community air carriers supplying like air services as a whole or those of them whose collective share constitutes a major proportion of the total Community supply of those services;

(b) the term “Community industry” shall be interpreted as referring to the Community air carriers supplying like air services as a whole or those of them whose collective share constitutes a major proportion of the total Community supply of those services, ***excluding Community carriers which are related, for example by means of an alliance agreement, to an allegedly subsidised non-Community carrier;***

Amendment 40
Article 4.2

2. A determination of injury shall be based on positive evidence ***and shall involve*** an objective examination of both:

2. A determination of injury shall be based on positive evidence, ***following a prior*** objective examination of both:

(a) the level of fares of the air services under consideration, and the effect of such air services on fares offered by Community air carriers;

(a) the level of fares of the air services under consideration ***or of the aid received,*** and the effect of such air services on fares offered by Community air carriers, ***including the comparative negative effect***

(b) the consequent impact of those air services on the Community industry as indicated by trends in a number of economic indicators such as number of flights, utilisation of capacity, passenger bookings, market share, profits, return on capital, investment, employment.

(b) the consequent impact of those ***subsidised*** air services on the Community industry as indicated by, ***amongst others,*** trends in a number of ***objectively quantifiable*** economic indicators such as number of flights, utilisation of capacity ***and occupation levels,*** passenger bookings, market share ***obtained, the geographical sphere of activity,*** profits ***obtained on these routes and overall,*** return on capital, investment, ***the level of*** employment. ***As a reference period for such a trend at least one traffic season shall be considered.***

Justification

In seeking to determine injury allegedly suffered by enterprises, a wide range of quantifiable criteria is required so as to establish objectively and with firm evidence that economic injury has been caused as a consequence of a subsidy and that the imposition of redressive measures is therefore justified.

Amendment 41

Article 4, paragraph 2, subparagraph 2

No one or more of these factors can necessarily give decisive guidance.

These indicators should be considered together and no single indicator should provide decisive guidance.

Justification

Makes it clearer that a balanced approach is needed when determining injury.

Amendment 42

Article 4, paragraph 4

4. ***Known*** factors other than the air services under consideration which are injuring the Community industry at the same time shall also be examined to ensure the injury caused by these other factors is not attributed to the air services under consideration.

4. Factors other than the air services under consideration which are injuring the Community industry at the same time shall also be examined to ensure the injury caused by these other factors is not attributed to the air services under consideration.

Justification

“Known factors” is not a legal description.

Amendment 43

Article 4, paragraph 5

5. *A determination of* threat of material injury shall be ***based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstance which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent.***

5. Threat of ***significant*** material injury shall ***only be positively determined and redressive measures imposed if the totality of the factors considered leads to the conclusion that, unless redressive measures are taken, significant material injury will occur imminently.***

Amendment 44
Article 5, paragraph 1

1. An investigation under this Regulation shall be initiated upon a written complaint by any person or association acting on behalf of the Community industry, or on the Commission's own initiative, if there is sufficient evidence of the existence of countervailable subsidies (including, if possible, of their amount) or unfair pricing practices within the meaning of this Regulation, injury and a causal link between the allegedly subsidised air services and the alleged injury.

1. An investigation under this Regulation shall be initiated upon a written complaint by any ***natural or legal*** person or ***any*** association acting on behalf of the Community industry, or on the Commission's own initiative, if there is sufficient evidence of the existence of countervailable subsidies (including, if possible, of their amount) or unfair pricing practices within the meaning of this Regulation, injury and a causal link between the allegedly subsidised air services and the alleged injury.

Justification

It is necessary to spell out clearly who is entitled to lodge the complaint.

Amendment 45
Article 5, paragraph 1a (new)

1a. The complaint may be submitted to the Commission. It shall contain sufficient evidence of the existence of the unfair pricing practice and the injury resulting therefrom. Even if no complaint has been lodged, any Member State which has sufficient evidence regarding the granting

of subsidies and the injury resulting therefrom to the Community sector shall immediately forward such evidence to the Commission.

Justification

It is necessary to spell out to whom the complaint should be addressed, under what circumstances it will be admissible, and the information on countervailable subsidies, injury and cause and effect which should be included.

Amendment 46
Article 5, paragraph 2

2. When it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), initiate the proceeding within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Communities*. Where insufficient evidence has been presented, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), inform the complainant within 45 days of the date on which the complaint has been lodged with the Commission.

2. When it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), initiate the proceeding within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Communities*. Where insufficient evidence has been presented, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), inform the complainant within 45 days of the date on which the complaint has been lodged with the Commission. ***A complaint shall be rejected if injury or threat of injury has not been sufficiently demonstrated to justify proceeding with the case.***

Justification

It should be made clear that when the evidence is insufficient, the proceedings must be terminated immediately.

Amendment 47
Article 5, paragraph 3

3. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the scope of the investigation, the airline services on the routes concerned, the countries whose governments allegedly granted the subsidies or control the air carriers allegedly engaged in unfair pricing practices and the period within which interested parties may make themselves known, present their views in writing and submit information, if such views are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission.

3. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the scope of the investigation, the airline services on the routes concerned, the countries whose governments allegedly granted the subsidies or control the air carriers allegedly engaged in unfair pricing practices and the period within which interested parties may make themselves known, present their views in writing and submit information, if such views are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission, ***in accordance with Article 6(2)***.

Justification

This amendment makes it clear that, in order to be heard by the Commission, interested parties must prove "that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard" (Article 6(2)).

Amendment 48
Article 5, paragraph 5

5. The Commission may, at any time before initiation of the proceedings and thereafter, invite the ***foreign*** government concerned for consultations with the aim of clarifying the ***situation as to the*** matters referred to in paragraph 2 ***and arriving at a mutually agreed solution.***

5. The Commission may, at any time before initiation of the proceedings and thereafter, invite the ***non-Community*** government concerned for consultations with the aim of clarifying the matters referred to in paragraph 2 ***in order to attempt to arrive at a mutually acceptable solution.***

Justification

Consultations may be necessary and indeed are the preferred solution. In view of the developing Community external framework, there is a clear need not only to adhere to the

developing structure of competence, but also to the principle of subsidiarity.

Amendment 49
Article 6, paragraph 1

1. Following the initiation of the proceeding, the Commission shall commence an investigation which shall cover both subsidisation or unfair pricing practices of airline services supplied by non-Community carriers on certain routes, and injury.

1. Following the initiation of the proceeding, the Commission shall commence an investigation which shall cover both subsidisation or unfair pricing practices of airline services supplied by non-Community carriers on certain routes, and injury. ***This investigation must be carried out expeditiously and shall normally be concluded within a period of three months, except in the following circumstances, where it may be prolonged:***

(a) negotiations with the foreign governments concerned have progressed to a point that a satisfactory resolution of the complaint appears imminent; or

(b) additional time is needed in order to achieve a resolution which is in the Community interest.

Amendment 50
Article 7, paragraph 1

1. Provisional measures may be imposed if a provisional affirmative determination has been made that the air carriers under consideration benefit from subsidies or are engaged in unfair pricing practices and consequent injury to the Community industry and that the Community interest calls for intervention to prevent such injury.

1. ***Normally no later than six months after the initiation of the proceeding,*** provisional measures may be imposed if a provisional affirmative determination has been made that the air carriers under consideration benefit from subsidies or are engaged in unfair pricing practices and consequent injury to the Community industry and that the Community interest calls for intervention to prevent such injury.

Amendment 51
Article 9, paragraph 2

2. The level of measures imposed to offset subsidies shall not exceed the amount of subsidies, calculated in terms of benefit conferred on the recipient, from which the non-Community carriers have been found to benefit, and **should** be less than the total amount of subsidies, if such lesser level were to be adequate to remove the injury to the Community industry.

2. The level of measures imposed to offset subsidies shall not exceed the amount of subsidies, calculated in terms of benefit conferred on the recipient, from which the non-Community carriers have been found to benefit, and **shall** be less than the total amount of subsidies, if such lesser level were to be adequate to remove the injury to the Community industry.

Justification

A level of redressive measures which exceeds the level of actual injury inflicted on Community carriers must be avoided.

Amendment 52
Article 9, paragraph 3

3. The level of measures imposed to offset unfair pricing practices benefitting from a non-commercial advantage, shall not exceed the difference between the fares charged by the non-Community air carrier concerned and the normal fare rate established in accordance with Article 3 **but should** be less if a such lesser level would be adequate to remove injury to Community industry. In any event, the level of measures should not exceed the value of the non-commercial advantage granted to the non-Community air carrier.

3. The level of measures imposed to offset unfair pricing practices benefitting from a non-commercial advantage, shall not exceed the difference between the fares charged by the non-Community air carrier concerned and the normal fare rate established in accordance with Article 3 **and shall** be less **than that difference** if a such lesser level would be adequate to remove injury to Community industry. In any event, the level of measures should not exceed the value of the non-commercial advantage granted to the non-Community air carrier.

Justification

A level of redressive measures which exceeds the level of actual injury inflicted on Community carriers must be avoided.

Amendment 53
Article 9, paragraph 4

4. A redressive measure shall be imposed in the **appropriate** amounts in each case, on a non-discriminatory basis on air services supplied by all non-Community air carriers found to benefit from subsidies or engaged in unfair pricing practices on the respective routes, except as to air services supplied by those non-Community air carriers for which undertakings under the terms of this Regulation have been accepted.

4. A redressive measure shall be imposed in the **reasonable and proportional** amounts **as determined** in each case, on a non-discriminatory basis on air services supplied by all non-Community air carriers found to benefit from the unfair subsidies or engaged in unfair pricing practices on the respective routes, except as to air services supplied by those non-Community air carriers for which undertakings under the terms of this Regulation have been accepted..

Justification

A simplified text is put forward to follow the rationale of amendments to previous amended paragraphs in Article 9.

Amendment 54
Article 9a (new)

..

Article 9a

Sanctions

In the event of failure to meet the redressive measures imposed by this regulation, restrictions on take-off and landing rights may be deployed against the non-Community air carriers concerned.

Justification

Non-Community carriers must realise that a failure to comply with the redressive measures imposed on them by virtue of this regulation will lead to further action.

Amendment 55
Article 9b (new)

Article 9b

Reimbursement

If the non-Community air carrier in question can show that the redressive measures applied exceed the level of injury inflicted on Community carriers, the excess amount shall be reimbursed.

In order to secure such reimbursement, the non-Community air carrier shall submit a request to the Commission within three months of the date on which the amount of the redressive measures to be imposed was duly established by the competent authorities. This request should be accompanied by supporting evidence.

A final decision on the validity of a request for reimbursement, as referred to in the first paragraph, shall be taken in accordance with the procedure laid down in Article 12(2).

Justification

This is an additional safeguard to ensure, as far as possible, that the level of redressive measures imposed doesn't exceed the actual level of injury inflicted on Community carriers.

Amendment 56 Article 10, paragraph 1

1. Investigations may be terminated without the imposition of provisional or definitive measures ***upon receipt of*** satisfactory voluntary undertakings under which:

1. Investigations may be terminated without the imposition of provisional or definitive measures ***if agreements are received or reached with the subsidised enterprises and/or non-Community states, entailing*** satisfactory voluntary undertakings under which:

Justification

It should be specified which parties may agree on an undertaking and the proceeding may only be terminated without the imposition of measures when such undertakings have been agreed.

Amendment 57
Article 10, paragraph 1(a)

(a) the government granting the subsidy or non-commercial advantage agrees to eliminate or limit the subsidy or non-commercial advantage or take other measures concerning its effects; or

(a) the government granting the subsidy or non-commercial advantage agrees to eliminate or limit the subsidy or non-commercial advantage or take other measures concerning its *injurious* effects; or

Justification

Injury should be the focus, and not subsidies per se.

Amendment 58
Article 10, paragraph 2

Undertakings **shall be** accepted in accordance with the procedure laid down in Article 12(2).

If undertakings ***are*** accepted in accordance with the procedure laid down in Article 12(2), ***the investigation shall be terminated. The Commission shall immediately submit to the Council a report on the results of the consultations together with a proposal for closure of the investigation.***

Justification

When the investigation is terminated, the Commission must report to the Council on the outcome, since the Council should be kept informed at all times.

Amendment 59
Article 11, paragraph 1

1. The need for the continued imposition of measures in their initial form **may** be reviewed, **where warranted**, on the initiative of the Commission or upon the request of a Member State or, provided that a reasonable time of at least one year has elapsed since the imposition of the definitive measure,

1. The need for the continued imposition of measures in their initial form **shall** be reviewed on the initiative of the Commission or upon the request of a Member State or, provided that a reasonable time of at least one year has elapsed since the imposition of the definitive measure, upon a **duly**

upon a request by non-Community air carriers subject to measures or by Community air carriers.

substantiated request by non-Community air carriers subject to measures or by Community air carriers.

Amendment 60
Article 12, paragraph 2

2. Where reference is made to this paragraph, the **advisory** procedure laid down in **Article 3** of Decision 1999/468/EC/ shall apply, in compliance with Article 7 and Article 8 thereof.

2. Where reference is made to this paragraph, the **safeguard** procedure laid down in **Article 6** of Decision 1999/468/EC/ shall apply, in compliance with Article 7 and Article 8 thereof.

Justification

In order to ensure that Member States are properly consulted, the advisory procedure should be replaced by the safeguard procedure. This is particularly important given that, for the time being, Member States will be responsible for introducing redressive measures by virtue of their respective bilateral agreements with third countries.

Amendment 61
Article 12, paragraph 2 a (new)

2a. The period laid down in Article 6(b) of Decision 1999/468/EC shall be one month.

Amendment 62
Article 12, paragraph 2 b (new)

2b. In accordance with the provisions of Article 6(c) of Council Decision 1999/468/EC, the Council, acting by a qualified majority, may confirm, amend or revoke the decision adopted by the Commission. If the Council has not taken

a decision within two months, the decision of the Commission is deemed to be revoked.

Amendment 63
Article 13

A determination as to whether the Community interest calls for intervention should be based on an appraisal of all the various interests taken as a whole. In such an examination the need to eliminate the trade-distorting effects of injurious subsidisation or unfair pricing practices and to restore effective competition shall be given special consideration. Measures **may not** be applied where the authorities can clearly conclude that it is **not** in the Community interest to apply such measures.

A determination as to whether the Community interest calls for intervention should be based on an appraisal of all the various interests taken as a whole, **including the interests of the domestic industry and users and consumers.** In such an examination the need to eliminate the trade-distorting effects of injurious subsidisation or unfair pricing practices and to restore effective competition shall be given special consideration. Measures **shall only** be applied where the authorities, **on the basis of all the information submitted,** can clearly conclude that it is in the Community interest to apply such measures.

Justification

Specific reference is needed to the main interests to be considered when deciding whether or not to take action under this proposal.

Amendment 64
Article 14 a (new)

Article 14a

Evaluation

Within two years of the entry into force of this Regulation, the Commission shall submit to the European Parliament and the Council an evaluation of its implementation and the associated impact on the Community's air transport sector, including service providers, users and

consumers. If deemed appropriate by the Commission, in view of any changes to the scope of the Community's legal competence in this sector, with particular regard to the case law of the European Court of Justice in its judgments of 5 November 2002 (C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98 and C-476/98), this evaluation shall be accompanied by a proposal to amend this Regulation.

Amendment 65
Article 15

This Regulation shall enter into force on *the day following that of its publication in the Official Journal of the European Communities.*

This Regulation shall enter into force on *1 April 2003.*

Justification

In the light of recent events in the United States in particular, there is an additional urgency to bring this legislation into force. For this reason it would be desirable to define a concrete date.

EXPLANATORY STATEMENT

This Commission proposal is aimed at creating a level playing field in the international aviation sector. The distortions to fair competition have increased substantially since the events of September 11th last year because of the substantial emergency support granted by Governments to third country airlines. In recent months, for instance, the US Government has granted \$15 billion for losses and \$10 billion in loan guarantees to the US airline industry. The Swiss Government paid the lion's share of a \$2.6 billion rescue package aimed at keeping a scaled down Swissair service flying. Meanwhile, Community airlines continue to be subject to strict rules on government aid.

Thus, there is clearly a need for the EU to equip itself with the means to respond to such significant distortions of competition, and to ensure that the interests of Community airlines are not unfairly prejudiced. This is particularly pressing in view of the fact that some non EU governments already possess sweeping powers to protect their own airlines from actions taken by other governments. The US administration, for instance, possesses the power to impose a wide range of retaliatory measures against third country airlines if it deems that the interests of US carriers are threatened. In this context, your Rapporteur endorses the Commission's objective to restore "equality of arms" to the balance of retaliatory instruments available to the EU and our principal competitors.

However, after extensive consultation with both industry and experts, your Rapporteur retains serious reservations about the practical application of this proposal. Given that the EU does not (yet) possess legal competence in this sector, and given the enormous difficulties in proving that third country airlines are acting unfairly when setting ticket prices at low levels, there is a significant risk that this instrument will only provide a symbolic retaliatory weapon for the EU. Whilst your Rapporteur agrees with the need to arm the EU with the ability to threaten third country governments and airlines, there is a real risk that this threat will lack credibility because of the legal and practical impediments in applying this Regulation. For this reason, the Community airline industry has been less than fulsome in its support for this proposal.

Thus one of the principal aims of the amendments proposed by your Rapporteur is to strengthen the credibility of the proposal. For instance, amendments are proposed which would specify the kinds of retaliatory action available to the Community (duties, restricted take off/landing slots etc), would clarify when subsidies or unfair pricing practices are injurious to Community airlines, and would impose clear deadlines on the Commission's investigations into subsidies and unfair pricing practices. Given that there is an urgent need to equip the Community with this new power, your Rapporteur also suggests that an early date of entry into force of the instrument should be included.

A parallel objective of the proposed amendments is to ensure that this new instrument cannot be used in an arbitrary or protectionist manner. Thus your Rapporteur has included amendments which specify that no action can be taken unless there is clear and unambiguous evidence of injury to Community interests, that interested parties should have full access to all the information pertaining to the investigations, that non Community airlines should have recourse to compensation if they are wrongly penalised, and that no measures shall be taken against small non Community airlines which represent only a fraction of the aviation market.

Finally, your Rapporteur wishes to draw attention to the fact that the full force of this measure will only become possible when/if the Community gains competence in the external aviation sector. This, at present, is still a matter subject to a court ruling from the European Court of Justice. If the court finds in favour of the Community, and if the Community establishes operational competence in the field of external relations in the aviation sector, this proposal will need to be revised further to bring it into line with the evolving powers of the Community. Thus a new Article on evaluation of the regulation is proposed which reflects the fact that this proposal, premature as it is given that Community competence has not yet been established, is likely to require further changes in the near future.

With these important observations in mind, your Rapporteur recommends that the Committee adopts the Commission proposal with the following amendments.

6 November 2002

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a regulation of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices in the supply of airline services for countries not members of the European Community
(COM(2002) 110 – C5-0133/2002 – 2002/0067(COD))

Draftsman: Mónica Ridruejo

PROCEDURE

The Committee on Economic and Monetary Affairs appointed Mónica Ridruejo draftsman at its meeting of 21 May 2002.

It considered the draft opinion at its meetings of 2 October 2002 and 5 November .

At the latter meeting it adopted the following amendments by 31 votes to 4.

The following were present for the vote: Christa Randzio-Plath, chairman; Philippe A.R. Herzog and John Purvis, vice-chairman; Mónica Ridruejo, draftsman; Generoso Andria, Luis Berenguer Fuster (for David W. Martin), Pervenche Berès, Roberto Felice Bigliardo, Hans Blokland, Hans Udo Bullmann, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Mary Honeyball, Christopher Huhne, Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Christoph Werner Konrad, Wilfried Kuckelkorn (for Bernhard Rapkay), Werner Langen (for Ingo Friedrich), Astrid Lulling, Hans-Peter Mayer, Peter Michael Mombaur (for Renato Brunetta), Karla M.H. Peijs (for Ioannis Marinou), Fernando Pérez Royo, José Javier Pomés Ruiz (for José Manuel García-Margallo y Marfil), Alexander Radwan, Olle Schmidt, Peter William Skinner, Charles Tannock (for Jonathan Evans), Helena Torres Marques, Bruno Trentin, Ieke van den Burg (for a full member to be nominated), Theresa Villiers.

SHORT JUSTIFICATION

There are some indications that airlines are beginning to recover from the events of 2001. Passenger numbers are rising and many airlines may soon become profitable again. As a result, some of the reasons which originally prompted the proposal, particularly the package of aid granted to United States airlines, may no longer be relevant.

Nevertheless, the Commission proposal is useful for two main reasons. First, many airlines are still experiencing difficulties and there is still a danger that non-member countries will provide substantial aid packages for airlines. Such aid could enable these companies to embark on aggressive price policies allowing them to capture customers and market share. This situation is potentially damaging for Community airlines, many of which remain vulnerable. Because they are unable to secure similar aid as a result of the strict regulation of state aids in the European Union, measures are needed to protect them from possible unfair competition.

Second, there is what the Commission calls 'equality of arms'. As the Commission points out in its proposal, almost all third countries already possess a defence mechanism and it would appear logical for the EC to have an instrument of this kind available. This is particularly true at a time when we appear, unfortunately, to be experiencing a period of tension in global trade relations.

The aim of this opinion is to introduce a number of amendments designed to clarify certain parts of the Commission proposal.

For this purpose, definitions are required for some expressions such as 'unfair pricing practices' and clear and simple criteria are needed as a basis for objective analysis of individual situations and, where appropriate, determining the existence of pricing practices or subsidies in breach of the principles of fair competition. The criteria must be objective and quantifiable, so as to calculate the damage caused by the aid and justify the imposition of corrective measures. It is also important to determine the method of analysis and complaint, including who, and under what conditions, may lodge a complaint and clearly establishing the occasions on which the countries concerned need to be consulted.

One of the proposals is that Member States be allowed to suspend take-off and landing rights (slots) at their airports if the airlines (on which redressive measures have been imposed) fail to provide a financial guarantee. A new reimbursement procedure is introduced so that third country airlines can secure reimbursement of fines paid, if they can show that these were excessive. This procedure is necessary to ensure that third country airlines are treated fairly.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 3a (new)

3a. It would be preferable for airline services to be included within the scope of the GATS process of the WTO, so that competition and subsidisation in the sector could be regulated fairly on a global basis.

Justification

Airline services are currently exempted from GATS. Their inclusion would provide a much better way of ensuring an internationally enforceable level playing field.

Amendment 2
Recital 4

4. The Community should be able to take action to redress such unfair practices resulting from subsidies granted by the government of a country which is not a member of the Community;

4. The Community should, ***in the meantime***, be able to take action to redress such unfair practices resulting from subsidies granted by the government of a country which is not a member of the Community;

Justification

As a consequence of amendment 3a(new).

¹ OJ C 151, 25.6.2002, p. 285.

Amendment 3
Recital 6

It should be explained when a subsidy shall be deemed to exist and according to which principles it shall be countervailable (in particular whether the subsidy has been targeted at certain enterprises or sectors or is contingent upon service supply to third countries);

The definitions and assessment criteria for cases of alleged unfair competition must be specified in advance and evidence must be provided on the existence, amount, nature and countervailability of the aid and subsidies. In particular, *it should be shown that* the subsidy has been targeted at *compensating* certain enterprises or sectors *which are in competition with these enterprises on these routes*, or *that the aid* is contingent upon service supply to third countries), *in accordance with Articles 1, 2 and 3 Regulation 2026/97.*

Justification

In order to determine in an objective and systematic manner the existence of unfair aid in the form of a subsidy and to determine countervailing duties, it is vital to establish clear criteria for analysing the situation and proving that it exists. It must be shown that the subsidy in question was intended to compensate an enterprise or sector in competition on the same route.

Amendment 4
Recital 7

In determining the existence of a subsidy, it is necessary to demonstrate that there has been a financial contribution by a government or that government revenue that *is* otherwise due is foregone or not collected, and that a benefit has thereby been conferred on the recipient enterprise;

In determining the existence of a subsidy, it is necessary to demonstrate that there has been a financial contribution by a government *via a transfer of funds* or that *debts of any kind representing* government revenue that *are* otherwise due *are* foregone or not collected, and that a benefit has thereby been conferred on the recipient enterprise;

Justification

In order to determine the existence of aid in the form of a subsidy, it is necessary to clarify that the aid must be specific and quantifiable in the form of transferred funds or debts owed to the government which the latter has not collected or called in, where the debt would otherwise have represented public revenue.

Amendment 5 Recital 9

It is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the subsidised or unfairly priced air services provided by non-Community air carriers have caused material injury or are threatening to cause injury; ***in demonstrating*** that the ***price levels*** of the supply of such air services ***are responsible for injury sustained by*** the Community industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Community;

It is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the subsidised or unfairly priced air services provided by non-Community air carriers have caused material injury or are threatening to cause injury; ***in order to demonstrate*** that the ***subsidies and pricing practices*** of the supply of such air services ***cause injury to*** the Community industry, attention should be given to the effect of other factors, ***since consideration will be given to all relevant factors and economic indicators which influence the criteria for assessing the state of the industry***, and in particular prevailing market conditions in the Community;

Justification

To determine whether subsidies have caused injury, a number of objective, clear and uniform criteria have to be applied, including the impact of economic indicators in the sector concerned.

Amendment 6

Recital 10

It is *advisable* to define the terms 'Community air carrier', 'Community industry', 'like air service' and 'state-controlled';

It is *essential* to define the terms 'Community air carrier', 'Community industry', 'like air service' and 'state-controlled';

Justification

It is impossible to evaluate a sector or an allegedly unfair aid unless the basic concepts needed for analysis have been defined in advance.

Amendment 7 Recital 14

An investigation or proceeding should be terminated whenever there is no need to take measures, for example if the amount of subsidisation, the degree of unfair pricing or the injury is negligible; a proceeding shall not be terminated unless *such a* decision is duly motivated; that measures should be less than the amount of countervailable subsidies or the degree of unfair pricing if such lesser amount would remove the injury;

A proceeding should be terminated *even if* there is no need to take *redressive or countervailing* measures, for example if the amount of subsidisation, the degree of unfair pricing or the injury is negligible *in accordance with criteria to be fixed in advance and applied universally to any cases which may arise in future.* A proceeding shall not be terminated unless *the* decision is duly motivated, *whether it be to take countervailing measures or reject the procedure*; that measures *involving fines or compensation* should be less than the *verified* amount of subsidies *considered to be countervailable* or the degree of unfair pricing if such lesser amount would remove the injury;

Justification

It is important to establish in advance a clear, transparent and predictable regulatory framework in order to create trust and make it possible to act fairly in cases of unfair competition, ensuring that measures involving fines or compensation are not higher than the amount of the irregular subsidies.

Amendment 8
Recital 16

It is necessary to provide that measures are to remain in force only for as long as it is necessary to counteract the subsidies or unfair pricing practices causing injury;

It is necessary to provide that measures are to remain in force only for as long as it is necessary to counteract the subsidies or unfair pricing practices causing injury, ***for a maximum period of six months. If the subsidies which have given rise to the measures continue beyond this deadline, it may be extended for a further maximum period of six months, once the circumstances relating to the continuation of the subsidies have been examined and noted.***

Justification

The competent authority must keep intervention in the sector to a minimum so as not to upset the balance of the market or hold back the development of competition in the industry or disrupt its structure in the medium term. Compensatory payments must not become permanent subsidies reducing the efficiency of companies in the sector. A period of six months, which may be extended where the relevant situation persists, should therefore be sufficient to correct irregularities.

Amendment 9
Article 2.1

1. A subsidy shall be deemed to exist if:
- (a) there is a financial contribution by a government of a country not member of the European Community, that is to say,

 - (i) where a government practice involves a direct transfer of funds, potential direct transfer of funds or liabilities;

1. A subsidy shall be deemed to exist if:
- (a) there is a financial contribution by a government of a country not member of the European Community, that is to say,

 - (i) where a government practice involves a direct transfer of funds, potential direct transfer of funds ***to the company (for example, grants, loans, equity infusion) or the assumption of liabilities of the company (for example, loan guarantees);***

- | | |
|--|---|
| <p>(ii) government revenue that is otherwise due is foregone or not collected;</p> | <p>(ii) debts representing government revenue that are otherwise due are foregone or not collected (for example, fiscal incentives such as tax credits);</p> |
| <p>(iii) a government provides goods or services other than general infrastructure, or purchases goods or services;</p> | <p>(iii) a government provides goods or services other than general infrastructure, or purchases goods or services from the company;</p> |
| <p>(iv) a government makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and, in practice, in no real sense, differs from practices normally followed by governments; and</p> | <p>(iv) a government makes payments via a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and, in practice, in no real sense, differs from practices which may be followed by governments; and</p> |

Justification

The examples have been taken from the Council Regulation 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community.

Amendment 10
Article 3, paragraph 2(a)

the comparable rate actually charged during a period of at least 6 months in the ordinary course of air transport for the like air service on the same or comparable route by an established and representative air carrier which is not a government controlled air carrier; or where such rate cannot be determined,

the comparable rate actually charged during a period of at least 6 months in the ordinary course of air transport for the like air service on the same or comparable route **operated** by an established and representative air carrier which is not a government controlled air carrier; or where such rate cannot be determined,

Justification

Self-explanatory.

Amendment 11
Article 3.2.b

the constructed rate which is determined by the costs of a comparable air carrier plus a reasonable margin of profit. ***This cost*** shall be computed on the basis of all costs incurred in the ordinary course of trade, both fixed and variable, plus a reasonable amount for overhead expenses.

the constructed rate which is determined by the costs of a comparable air carrier plus a reasonable margin of profit. ***These costs*** shall be computed on the basis of all costs incurred in the ordinary course of trade, both fixed and variable, plus a reasonable amount for overhead expenses.

Justification

Self-explanatory.

Amendment 12
Article 3, paragraph 3

A non-Community air carrier shall be deemed to be "state-controlled" if the Government or any other public body within the territory of a third country owns more than 50 per cent of the equity interest in it, or have the power to name a majority of its directors or otherwise legally direct its actions

A non-Community air carrier shall be deemed to be "state-controlled" if the Government or any other public body within the territory of a third country owns, ***directly or indirectly***, more than 50 per cent of the equity interest in it, ***or of the specific rights over a majority of its liabilities, or are able to determine its fares and revenue***, or have the power to name a majority of its directors or otherwise legally ***control or*** direct its actions

Justification

The criteria for determining whether a carrier is 'state controlled' should be listed in detail. There are many mechanisms, financial and otherwise, which make it possible to control the activities of a general interest enterprise.

Amendment 13
Article 4.1.b

the term "Community industry" shall be interpreted as referring to the Community air carriers supplying like air services as a whole or those of them whose collective share constitutes a major proportion of the total Community supply of those services;

the term "Community industry" shall be interpreted as referring to the Community air carriers supplying like air services as a whole ***on routes to and from the Community or within it***, or those of them whose collective provision of air services represents a substantial part of the total Community supply of those services; ***When some Community carriers are related, for example by means of an alliance agreement, to the allegedly subsidized non-Community air carrier, the term 'Community industry' may be interpreted as referring to the rest of the Community air carriers.***

Justification

The definition is inspired from the definition of Community industry pursuant to Article 9 of Regulation 2026/97 on protection against subsidised imports from third countries in the area of goods.

Amendment 14
Article 4.2

A determination of injury shall be based on positive evidence ***and shall involve*** an objective examination of both:

(a) the level of fares of the air services under consideration, and the effect of such air services on fares offered by Community air carriers;

(b) the consequent impact of those air services on the Community industry as indicated by trends in a number of economic indicators such as number of flights, utilisation of capacity, passenger

A determination of injury shall be based on positive evidence, ***following a prior*** objective examination of both:

(a) the level of fares of the air services under consideration ***or of the aid received***, and the effect of such air services on fares offered by Community air carriers, ***including the comparative negative effect***

(b) the consequent impact of those ***subsidised*** air services on the Community industry as indicated by trends in a number of ***objectively quantifiable*** economic indicators such as number of flights, utilisation of capacity ***and occupation***

bookings, market share, profits, return on capital, investment, employment.

levels, passenger bookings, market share obtained, the geographical sphere of activity, profits obtained on these routes and overall, return on capital, investment, the level of employment. A study may also be included of pricing practices on routes outside the Community and their impact on the funding and profits of non-Community enterprises, in order to determine whether practices exist which entail lack of transparency in the funding of the enterprise which may involve a combination of aids or advantages not subject to the mechanisms of free competition.

Justification

In seeking to determine injury allegedly suffered by enterprises, a wide range of quantifiable criteria is required so as to establish objectively and with firm evidence that economic injury has been caused as a consequence of a subsidy and that the imposition of redressive measures is therefore justified.

Amendment 15 Article 5, paragraph 1

An investigation under this Regulation shall be initiated upon a written complaint by any person or association acting on behalf of the Community industry, or on the Commission's own initiative, if there is sufficient evidence of the existence of countervailable subsidies (including, if possible, of their amount) or unfair pricing practices within the meaning of this Regulation, injury and a causal link between the allegedly subsidised air services and the alleged injury.

An investigation under this Regulation shall be initiated upon a written complaint by any **natural or legal** person or **any** association acting on behalf of the Community industry, or on the Commission's own initiative, if there is sufficient evidence of the existence of countervailable subsidies (including, if possible, of their amount) or unfair pricing practices within the meaning of this Regulation, injury and a causal link between the allegedly subsidised air services and the alleged injury.

Justification

It is necessary to spell out clearly who is entitled to lodge the complaint.

Amendment 16
Article 5, paragraph 1a (new)

1a. The complaint may be submitted to the Commission. It shall contain sufficient evidence of the existence of the unfair pricing practice and the injury resulting therefrom. Even if no complaint has been lodged, any Member State which has sufficient evidence regarding the granting of subsidies and the injury resulting therefrom to the Community sector shall immediately forward such evidence to the Commission.

Justification

It is necessary to spell out to whom the complaint should be addressed, under what circumstances it will be admissible, and the information on countervailable subsidies, injury and cause and effect which should be included.

Amendment 17
Article 5, paragraph 1b (new)

1b. The complaint shall be rejected if there is insufficient evidence of the countervailable subsidy and the injury caused to justify continuing the relevant proceeding. The proceeding shall not be initiated against countries where the provision of services represents a market share lower than 1% of the Community market, unless the countries concerned together represent a share of 3% or more of Community consumption.

Justification

Details should be provided of cases where complaints are inadmissible or proceedings should not be initiated. Complaints will not be accepted where the amount of subsidy is very small and the injury caused insignificant.

Amendment 18 Article 5, paragraph 2

2. When it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), initiate the proceeding within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Communities*. Where insufficient evidence has been presented, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), inform the complainant within 45 days of the date on which the complaint has been lodged with the Commission.

2. When it is apparent that there is sufficient evidence to justify initiating a proceeding **and when consultations with the country concerned have been completed**, the Commission shall, acting in accordance with the procedure laid down in Article 12(2), initiate the proceeding within 45 days of the lodging of the complaint and shall publish a notice in the *Official Journal of the European Communities*. Where insufficient evidence has been presented, the Commission shall, **after holding consultations and** acting in accordance with the procedure laid down in Article 12(2), inform the complainant within 45 days **at the latest** of the date on which the complaint has been lodged with the Commission.

Justification

Consultations with the countries concerned are essential. The parties concerned must be informed before the proceeding is opened to enable them to provide evidence. The deadline for notification by the Commission may not be extended beyond 45 days, as it is important to maintain a dynamic response to this problem.

Amendment 19 Article 5, paragraph 3

3. The notice of initiation of the proceedings shall announce the initiation of

3. The notice of initiation of the proceedings shall announce the initiation of

an investigation, indicate the scope of the investigation, the airline services on the routes concerned, the countries whose governments allegedly granted the subsidies or control the air carriers allegedly engaged in unfair pricing practices and the period within interested parties may make themselves known, present their views in writing and submit information, if such views are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission.

an investigation, indicate the scope of the investigation, the airline services on the routes concerned, the countries whose governments allegedly granted the subsidies or control the air carriers allegedly engaged in unfair pricing practices and the period within interested parties may make themselves known, present their views in writing and submit information, if such views are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission, ***once they have submitted a written request showing that they are genuinely interested parties which could be affected by the outcome of the proceeding and that there are specific reasons for them to be heard.***

Justification

It is vital to lay down the conditions for interested parties to be heard by the Commission so as to ensure that no one can take part unless they can show that they are genuinely affected by the Commission's decision. It is necessary to spell out the way in which the interested parties should be notified of the information required by the authorities and offered the opportunity of submitting in writing any evidence they consider relevant in defending their interests.

Amendment 20 Article 5, paragraph 4

4. The Commission shall inform the air carriers supplying the air services under consideration, the government concerned and the complainants of the initiation of the proceedings.

4. The Commission shall ***officially*** inform the air carriers supplying the air services under consideration, the government concerned and the complainants of the initiation of the proceedings ***and, bearing in mind the confidential nature of the information, shall also provide the full text of the written complaint to the other interested parties at their request.***

Justification

The Commission should inform interested parties officially so as to have proof that they have been informed of the opening of the proceeding and ensure that there are no grounds for complaint. It will also have to inform other parties concerned by the opening of the proceeding if they have so requested and have shown that they are genuinely affected. Information must be treated as confidential to prevent commercial or state secrets from being divulged.

Amendment 21
Article 10, paragraph 1

1. Investigations may be terminated without the imposition of provisional or definitive measures ***upon receipt of*** satisfactory voluntary undertakings under which:

1. Investigations may be terminated without the imposition of provisional or definitive measures ***if agreements are received or reached with the subsidised enterprises and/or non-Community states, entailing*** satisfactory voluntary undertakings under which:

Justification

It should be specified which parties may agree on an undertaking and the proceeding may only be terminated without the imposition of measures when such undertakings have been agreed.

Amendment 22
Article 10, paragraph 2

Undertakings ***shall be*** accepted in accordance with the procedure laid down in Article 12(2).

If undertakings ***are*** accepted in accordance with the procedure laid down in Article 12(2), ***the investigation shall be terminated. The Commission shall immediately submit to the Council a report on the results of the consultations together with a proposal for closure of the investigation.***

Justification

When the investigation is terminated, the Commission must report to the Council on the outcome, since the Council should be kept informed at all times.

Amendment 23
Article 11a (new)

Reimbursement

If the non-Community air carrier in question can show that the duty collected exceeds the difference between the fare charged and the normal fare rate referred to in Article 3, the excess amount shall be reimbursed.

In order to secure the reimbursement referred to in the first paragraph, the non-Community air carrier shall submit a request to the Commission within three months of the date on which the amount of the redressive measures which had to be imposed was duly established by the competent authorities.

The Commission shall immediately inform the other Member States and deliver an opinion on the subject. If the Member States approve the Commission's opinion or do not lodge objections within one month, the Commission may take a decision in accordance with the abovementioned opinion. In other cases, the Commission shall decide, after consultation, whether and to what extent the request should be followed up.

Justification

A reimbursement procedure is needed to ensure that non-Community air carriers are treated fairly at all times. If the Commission imposes an excessively high redressive measure, this will

not create equal conditions but will discriminate against non-Community airlines.

Amendment 24

Article 13

Not applicable to English version.

Amendment 25

Article 14, paragraph 1a (new)

Take-off and landing rights at one or more Community airports shall be made conditional as a security measure, bearing in mind the obligations and/or other redressive measures imposed in accordance with this regulation.

Justification

This clarification is necessary to ensure that third country airlines genuinely comply with the measures imposed.

27 November 2002

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a Council Proposal for a Regulation of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices in the supply of airline services from countries not members of the European Community (COM(2002) 110 – C5-0133/2002 – 2002/0067(COD))

(*) Draftsman: Sir Robert Atkins

(*) Hughes procedure

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Sir Robert Atkins draftsman at its meeting of 19 June 2002.

It considered the draft opinion at its meetings of 1st October 2002, 11 November and 26 November 2002.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Yves Piétrasanta, vice-chairman; Jaime Valdivielso de Cué, vice-chairman; Sir Robert Atkins, draftsman; Gordon J. Adam (for Massimo Carraro), Konstantinos Alyssandrakis, Luis Berenguer Fuster, Guido Bodrato, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Concepció Ferrer, Colette Flesch, Christos Folias (for Marjo Matikainen-Kallström), Norbert Glante, Michel Hansenne, Roger Helmer (for Peter Michael Mombaur), Hans Karlsson, Bashir Khanbhai, Helmut Kuhne (for Harlem Désir), Werner Langen, Rolf Linkohr, Eryl Margaret McNally, Erika Mann, Hans-Peter Martin (for Myrsini Zorba), Bill Newton Dunn (for Willy C.E.H. De Clercq), Angelika Niebler, Giuseppe Nisticò (for John Purvis), Seán Ó Neachtain, Reino Paasilinna, Paolo Pastorelli, Elly Plooij-van Gorsel, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Mechtild Rothe, Christian Foldberg Rovsing, Paul Rübig, Esko Olavi Seppänen, W.G. van Velzen, Alejo Vidal-Quadras Roca and Olga Zrihen Zaari.

SHORT JUSTIFICATION

Background

Following the US Administration's implementation of an assistance package (post-11 September) to its airline industry, the Commission noted that it had little power to address subsidisation to airline carriers by a non-EU State. In the eyes of the Commission, the developments with Switzerland after the demise of Swissair further accentuated the problem.

Present legislation

The current aviation framework is primarily based on bilateral agreements applying between individual member states and third countries. There is as yet no Community framework for external aviation relations or for external relations as a whole. Such a framework is being discussed in the Council and is related to a pending European Court of Justice procedure between the Commission and a number of Member States, but does not yet exist.

New directive proposal

In order to prevent distortions of competition in the field of air services, the Commission proposes the introduction of an instrument which allows the Commission to investigate pricing practices in air services offered by third country airline carriers on the basis of:

- subsidies given by a certain government to eligible foreign carriers or unfair practices by certain state-controlled foreign carriers, and
- air routes where the Community air industry faces problems.

Investigations are to be initiated if a duly substantiated complaint is made on behalf of the Community air industry, or if the Commission finds that there is sufficient evidence to open an investigation *ex officio*.

The proposed instrument will also grant the Commission the right to impose both provisional and definitive measures (e.g. duties, restriction of landing rights) on foreign carriers.

Draftsman's position

The current Proposal of the Commission is valuable, because it indicates clearly that, with the progress of the Community aviation market, this market can be influenced negatively by unfair practices of third countries. Indeed, the proposed instrument is needed in ensuring that European air carriers are able to compete on a level playing field within the Community.

Experience from similar legislation concerning the maritime industry (Council Regulation No. 4057/86) has shown a positive effect on pricing practices by companies in third countries in order to avoid the imposition of punitive measures by the EC. However, in drawing such comparisons, it has to be recognised that this is part of an overall maritime policy, something that does not exist for the aviation industry.

If this Regulation has to be tabled now as a "stand-alone" document, there must be a concerted effort for this to be part of an overall aviation mandate or of a generic proposal for external relations at a later date. In such a case, the retaliatory instrument, worded like the US equivalent, could be invoked in those cases where a country does not live up to its commitments under the agreement or where actions are taken by that country, or service providers of that country, that damage Community interests or aviation industry interests, in such a way that the value of that particular agreement is thereby diminished.

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Recital 1

(1) *There is reason to believe that* the competitive *participation* of Community air carriers *in* providing air services to or from the Community *is* adversely affected by *certain* unfair practices of non-Community air carriers providing like *air* services;

(1) The competitive *position* of Community air carriers *when* providing air services to, *via* or from the Community *could be* adversely affected by unfair *and discriminatory* practices of non-Community air carriers providing like services;

Justification

Normally, a Proposal would contain a factual and economic analysis of the issue. No such analysis has been made available. (1) "reason to believe" would not seem sufficient.

Amendment 2

Recital 2

(2) Such unfair practices may result from a subsidy granted by a government of a country *which is not* a member of the Community or from certain pricing practices by a non-Community air carrier which *is* state-controlled;

(2) Such unfair practices may result from a subsidy *or subsidies or other forms of aid* granted by a government, *or regional body or other public organisation* of a country *not being* a member of the Community or from certain pricing practices by a non-Community air carrier *or carriers* which *are* state-controlled;

¹ OJ C 151 E, 26.6.02, p.267.

Justification

Particularly, while the issue of subsidies may be an issue where clarity could exist or be created, the issue under (2) of certain pricing practices by State controlled carriers is much more complicated, not least because most carriers in the world are state controlled, not least of which the European carriers.

Amendment 3
Recital 2 a (new)

(2a) The Community as a whole, or individual Member States should be able to take effective and proportional action to redress such unfair and discriminatory practices. Action should be taken with regard to the air carriers concerned, to the non-Community Government where the carrier is licensed and has its principle place of business, and to the Government or Governments enabling the unfair or discriminatory practice to take place;

Justification

Overall, the scope of the Regulation must be enhanced to provide (a) more overall coverage of unfair practices and (b) align more with the Community acquis Communautaire on international air transport relations as this gradually develops.

Amendment 4
Recital 9

(9) It is desirable to lay down clear and ***detailed*** guidance as to the factors ***which*** may be relevant for the determination of whether ***the subsidised or unfairly priced air services provided by non-Community air carriers*** have caused material ***injury*** or are threatening to cause ***injury***; in demonstrating ***that the price levels of the***

(9) It is desirable to lay down clear and ***reasonable*** guidance as to the factors ***that*** may be relevant for the determination of whether the ***unfair or discriminatory practices*** have caused material ***financial damage*** or are threatening to cause ***such damage***; ***since it is often difficult to be exact in substantiating such financial***

supply of such air services are responsible for injury sustained by the Community industry, attention should be given to the *effect* of other factors and in particular prevailing market conditions in the Community;

damage, a reasonable prima facie case must be presented; in demonstrating such financial damage, attention should be given to the *effects* of *possible* other factors *that could have an influence on this damage* and in particular *the* prevailing market conditions in the Community;

Justification

Overall, the scope of the Regulation must be enhanced to provide (a) more overall coverage of unfair practices and (b) align more with the Community acquis Communautaire on international air transport relations as this gradually develops.

Amendment 5 Recital 11

(11) It is necessary to *lay down* who may lodge a complaint, and the information *on countervailable subsidies or unfair pricing practice, injury and causation which* such complaint should contain;

(11) It is necessary to *specify* who may lodge a complaint, and the information *that* such *a* complaint should contain;

Justification

Overall, the scope of the Regulation must be enhanced to provide (a) more overall coverage of unfair practices and (b) align more with the Community acquis Communautaire on international air transport relations as this gradually develops.

Amendment 6 Article 1

A redressive measure may be imposed for the purpose of :
(1) Offsetting any subsidy granted, directly or indirectly to a non-Community air carrier, *or*

A redressive measure may be imposed for the purpose of :
(1) Offsetting any *aid, support, benefit or* subsidy granted, directly or indirectly to a non-Community air carrier *by a non-Community Government or public body*;

(2) Offsetting the unfair **pricing** practices by **state controlled** non-Community **air** carriers

concerning the supply of air services on **certain** routes **to and from** the Community **which cause injury** to the Community industry.

(2) Offsetting unfair **or discriminatory** practices by **non-Community** carriers;

(2a) Offsetting discriminatory practices by a non-Community Government or public body benefitting, directly or indirectly, non-Community carriers

concerning the supply **and commercial exploitation** of air services on routes **to, from and via the territory of** the Community and **where the measures and practices mentioned under (1), (2) and (2a) cause financial or competitive damage** to the Community industry.

Justification

The current wording follows the WTO instruments. Since the WTO framework is not applicable it makes no sense to use this approach. European industry is confronted by many other potential unfair practices. The US International Air Transportation Fair Competitive Practices Act of 1974 which, as amended, is embodied in U.S.C. 49 se. 41302, contains much broader powers, in keeping with the applicable overall air transport framework legislation this instrument needs to be part of.

Thus, it is seen necessary to substantially alter the limited and narrow scope of the Proposal and put it in the right framework, the developing external aviation relations of the Community as this is being developed by the Council and the Parliament on the basis of Proposals by the Commission.

Amendment 7 Article 2, point (i)

(i) where a government practice involves a direct transfer of funds, potential direct transfer of funds or liabilities;

(i) where a government **or public body** practice involves a direct transfer of funds, potential direct transfer of funds or liabilities;

Justification

It is not only Governments that are involved here - there will also be regional bodies, municipalities, or other state controlled bodies.

Amendment 8
Article 2, point (ii)

(ii) government revenue that is otherwise due is foregone or not collected;

(ii) government **or public body** revenue that is otherwise due is foregone or not collected;

Justification

It is not only Governments that are involved here - there will also be regional bodies, municipalities, or other state controlled bodies.

Amendment 9
Article 2, point (iii)

(iii) a government provides goods or services other than general infrastructure, or purchases goods or services;

(iii) a government **or public body** provides goods or services other than general infrastructure, or purchases goods or services;

Justification

It is not only Governments that are involved here - there will also be regional bodies, municipalities, or other state controlled bodies.

Amendment 10
Article 2, paragraph 1, point (a)(iv)

(iv) a government makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and, in practice, in no real sense, differs from practices normally followed by governments; and

(iv) a government **or public body** makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government **or public body** and, in practice, in no real sense, differs from practices normally followed by governments **or public bodies**; and

Justification

It is not only Governments that are involved here - there will also be regional bodies, municipalities, or other state controlled bodies.

Amendment 11
Article 3, paragraph 1

1. Unfair **pricing** practices shall be deemed to exist where **state controlled non-Community air carriers benefitting from a non-commercial advantage continuously charge on a particular air service to or from a Community air fares which are lower than the normal fare rate.**

1. Unfair practices shall be deemed to exist where **an activity of a government of a non-Community country or another non-Community entity, including a non-Community air carrier,**

(a) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against a Community air carrier; or

(b) imposes an unjustifiable or unreasonable restriction on access of a Community air carrier to a non-Community market; or

(c) results in a price charged or received by a non-Community air carrier for supply or operation of services on routes to, from, or via the Community, or a classification, rule, or practice affecting that price or the value of the transportation provided under that price, being unreasonably discriminatory, predatory or anticompetitive.

Justification

Overall, the scope of the Regulation must be enhanced to provide (a) more overall coverage of unfair practices and (b) align more with the Community acquis Communautaire on international air transport relations as this gradually develops.

The term “non-commercial advantage” is ambiguous nor is it clear with what is meant by

“continuously” - this provides better clarification.

Amendment 12
Article 3, paragraphs 2 and 3

2. The term ‘normal fare rate’ means

a) the comparable rate actually charged during a period of at least 6 months in the ordinary course of air transport for the like air service on the same or comparable route by an established and representative air carrier which is not a government controlled air carrier; or where such rate cannot be determined

b) the constructed rate which is determined by the costs of a comparable air carrier plus a reasonable margin of profit. This cost shall be computed on the basis of all costs incurred in the ordinary course of trade, both fixed and variable, plus a reasonable amount for overhead expenses.

2. In deciding whether to qualify a price as unfair practice, the following shall be considered:

(a) the effect of the price on the movement of traffic;

(b) the need in the public interest of adequate and efficient transportation by Community and non-Community air carriers at the lowest cost consistent with providing the transportation;

(c) the standards prescribed under Community law related to the character and quality of transportation to be provided by Community and non-Community air carriers;

(d) the need of the non-Community air carrier for revenue sufficient to enable the non-Community air carrier, under honest, economical, and efficient management, to provide adequate and efficient transportation;

(e) whether the price will be predatory or tend to monopolize competition among Community air carriers and non-Community air carriers in air transportation to, from or via the Community;

(f) reasonably estimated or foreseeable future costs and revenues for the non-Community air carrier for a reasonably limited future period during which the price would be in effect; and

(g) other factors.

3. A non-Community air carrier shall be deemed to be "state-controlled" if the Government or any other public body within the territory of a third country owns more than 50 per cent of the equity interest in it, or have the power to name a majority of its directors or otherwise legally direct its actions

Justification

The definition under 2 (a) is very difficult to apply - it is very hard to determine a "comparable" rate with the huge variations in conditions, rate levels and the differing routes and structures that apply in the air transport industry.

The definition under (b) is even more complicated. In the US before deregulation, the then US Civil Aeronautics Board tried to determine what reasonable cost levels were and what a reasonable margin of profit would be. After ten years of study and constant failures they gave up. This is simply impossible and would require so much analysis and be open to dispute that it would be completely impractical.

It is very difficult to come up with acceptable and alternative criteria for comparison. The best is to compare the comparable average fare charged for the particular route under similar or comparable conditions over the last 6 months. The stated "a comparable" route will not be easy to find. This will require much more analysis and discussion with experts to find a satisfactory solution.

Amendment 13

Article 4, paragraph 2, point (b)

(b) the consequent impact of those air services on the Community industry as indicated by trends in a number of economic indicators such as number of flights, utilisation of capacity, passenger bookings, market share, profits, return on capital, investment, employment.

(b) the consequent impact of those air services on the Community industry as indicated by, **amongst others**, trends in a number of economic indicators such as number of flights, utilisation of capacity, passenger bookings, market share, profits, return on capital, investment, employment. ***As a reference period for such a trend at least one traffic season shall be considered.***

Justification

The sentence “no one of these factors can necessarily give decisive guidance” (which follows above text) is a necessary and positive indication of the difficulties involved. This means that “amongst others” would need to be added as indication of an examination of “at least” these elements, thus enabling further evidence to be weighed.

Amendment 14
Article 4, paragraph 4

4. **Known** factors other than the air services under consideration which are injuring the Community industry at the same time shall also be examined to ensure the injury caused by these other factors is not attributed to the air services under consideration.

4. Factors other than the air services under consideration which are injuring the Community industry at the same time shall also be examined to ensure the injury caused by these other factors is not attributed to the air services under consideration.

Justification

“Known factors” is not a legal description.

Amendment 15
Article 5, paragraph 1

1. An investigation under this Regulation shall be initiated upon a written complaint by any person or **association** acting on behalf of the Community industry, or on the Commissions own initiative, if there is sufficient evidence of the existence of **countervailable subsidies (including, if possible, of their amount) or unfair pricing practices** within the meaning of this Regulation, **injury** and **a** causal link between the **allegedly subsidised air services** and the **alleged injury**.

1. An investigation under this Regulation shall be initiated upon a written complaint by any person or **legal entity** acting on behalf of the Community industry, **or on complaint by interested Community carrier(s) or interested airports situated in the Community**, or on the Commissions own initiative, if there is sufficient evidence of the existence of **unfair practices** within the meaning of the Regulation, **financial damage** and causal link between the **unfair practices** and the **financial damage**.

Justification

By just referring to the 'Community industry' this indicates that a single carrier or airport being hurt cannot file a complaint. A subsidy may result in only a single carrier or a couple of carriers being hurt, without it effecting the "whole" industry.

Amendment 16
Article 5, paragraph 5

5. The Commission may, at any time before initiation of the proceedings and thereafter, invite the **foreign** government concerned for consultations with the aim of clarifying the **situation as to the** matters referred to in paragraph 2 **and arriving at a mutually agreed solution.**

5. The Commission may, at any time before initiation of the proceedings and thereafter, invite the **non-Community** government concerned for consultations with the aim of clarifying the matters referred to in paragraph 2 **in order to attempt to arrive at a mutually acceptable solution.**

Justification

Consultations may be necessary and indeed are the preferred solution. In view of the developing Community external framework, there is a clear need not only to adhere to the developing structure of competence, but also to the principle of subsidiarity.

Amendment 17
Article 9, paragraph 2

2. The level of measures imposed **to offset subsidies** shall **not exceed the amount of subsidies, calculated in terms of benefit conferred on the recipient, from which the non-Community carriers have been found to benefit, and should be less than the total amount of subsidies, if such lesser level were to be adequate** to remove the **injury** to the Community industry

2. The level of measures imposed shall **be reasonable and proportional to the financial damage caused, also taking into account the competitive situation in the market, and the level necessary** to remove the **damage** to the Community industry.

Justification

All the elements mentioned under 2. require specific value assessment. An assessment will have to measure the effect on the industry. Simply referring to the fact that the measures need to be “proportional” and “reasonable” would be more effective than to try and define this in detail. It is as if this is all something than can be imposed in the confines of the internal market without serious political implications. That is why a simplified text is put forward.

Amendment 18 Article 9, paragraph 3

3. The level of measures imposed to offset unfair pricing practices benefitting from a non-commercial advantage, shall not exceed the difference between the fares charged by the non-Community air carrier concerned and the normal fare rate established in accordance with Article 3 but should be less if a such lesser level would be adequate to remove injury to Community industry. In any event, the level of measures should not exceed the value of the non-commercial advantage granted to the non-Community air carrier. Deleted

Justification

All the elements mentioned under 3. require specific value assessment. An assessment will have to measure the effect on the industry. Simply referring to the fact that the measures need to be “proportional” and “reasonable” would be more effective than to try and define this in detail. It is as if this is all something than can be imposed in the confines of the internal market without serious political implications.

The application of paragraph 3. is impossible task for the Commission to calculate. It would be better to leave it to an arbitration board (like it is done in WTO). That is why a simplified text is put forward.

Amendment 19
Article 9, paragraph 4

4. A redressive measure shall be imposed in the **appropriate** amounts in each case, on a non-discriminatory basis on air services supplied by all non-Community air carriers found to benefit from subsidies or engaged in unfair pricing practices on the respective routes, except as to air services supplied by those non-Community air carriers for which undertakings under the terms of this Regulation have been accepted.

4. A redressive measure shall be imposed in the **reasonable and proportional** amounts **as determined** in each case, on a non-discriminatory basis on air services supplied by all non-Community air carriers found to benefit from the unfair subsidies or engaged in unfair pricing practices on the respective routes, except as to air services supplied by those non-Community air carriers for which undertakings under the terms of this Regulation have been accepted..

Justification

A simplified text is put forward to follow the rationale of amendments to previous amended paragraphs in Article 9.