

## **Targeted consultation**

### **Airline Coordination Platform (ACP) – Summary**

**26 November 2020**

Currently, there are two legislations that address unfair competition practices and/or ownership and control in EU carriers: Regulation (EC) 1008/2008 and Regulation (EU) 712/2019.

#### **Most distortive subsidies:**

Examples provided that possibly fall into the scope of the consultation:

- Equity injections and loans of several hundred million EUR from a subsidised third country carrier to a major EU carrier, which kept the EU carrier artificially alive. When one of the loans was cancelled, the EU carrier immediately went into bankruptcy.
- During the COVID pandemic, a state subsidised third country air carrier participated in a capital increase (on top of already acquired shares) into an EU carrier, equalling a capital injection of approx. EUR 600 million at a time when the EU carrier was in the process of acquiring another EU carrier. During the COVID-19 crisis, when air carriers around the world are concerned with having sufficient liquidity to survive, such action is unprecedented.
- A third country has invested in a new airline start-up in a multiple layer entity structure, thereby creating a new EU air carrier, which was not viable, but still competed with EU carriers.
- A state-subsidised third country airline became the major minority shareholder of an EU airline, providing it with most of the aircraft of the latter's fleet, presumably at non-arms-length leases/terms.

Countries most prone to subsidies in the sector: The list of countries can change, however, past and current examples are predominantly countries with state-owned airlines such as China, UAE, Qatar, Russia (cargo).

#### **Consequences of subsidies:**

Distortions 1 (offer better prices) and 2 (expand operation in the EU to the detriment of EU carriers) are the most relevant for services, including aviation. In addition, there is a risk that beneficiaries of subsidies are kept artificially alive or are artificially created, hampering consolidation in the market.

Distortion 3 (access to key technology) is not the prime concern in the aviation sector which is a service sector, although it is not excluded that due to distortion 1 and 2, EU carriers do not get access to the best aircraft anymore or that related industries (air traffic management) can be affected.

Distortion 4 (delocalisation) is not an issue for air carriers, but might be for other actors in the value chain (such as manufacturers).

Distortion 5 (public procurement) can be a concern in specific cases. Tendering public service obligations (PSO) is an example, where a non-subsidised air carrier competes against a subsidised air carrier (which receive e.g. aircraft on favourable loan terms), and can thus offer better prices as seen in case of repatriation flights during the COVID-19 pandemic. Air cargo can also be affected when subsidised third country carriers win tenders of EU countries for humanitarian or medical shipments with lower (subsidised) prizes.

In terms of quantifying impacts, for a), b) and c) above, ACP suggests to compare the market shares prior to and after the end of the period, in which the beneficiaries existed, as well as revenues of such beneficiaries. Looking at a reduction of the network of competing EU carriers might also help.

### **Policy options:**

ACP prefers option 4 (new EU legislation) but also favours option 3 (adapting existing rules). In terms of better international rules, rules of WTO or FTAs would not be applicable. ACP points out that rules on market access and fair competition are mainly laid down in bilateral air service agreements and in some cases in EU-level comprehensive air transport agreements with third countries. The competency to prescribe, apply and enforce rules on foreign subsidies should be delegated to the EU level as a guidance to Member States would not be sufficient. ACP points out that the examples described above do not fall within the scope of existing legislation, including Regulation (EU) 712/2019 and Regulation (EC) 1008/2008 (unless the grantor of a subsidy is deemed to gain control of the beneficiary for the purposes of Art. 4 of Reg. 1008/2008).

In terms of features of such new legislation, ACP supports module 1 and module 2 and sees less need for module 3. They favour the Commission as sole enforcer as it is the case with application and enforcement of EU competition rules and are sceptical about an EU interest test, as this might give rise to political interference in what should essentially be a legal proceeding. Regarding redressive measures, a flexible approach is preferred (not only financial measures, but e.g. market access restrictions).

### **Impacts of the policy options:**

The economic impact should distinguish between short term and long term. On a short term, restrictions might reduce consumer choice, however, foreign subsidies in the long term might lead to reduced competition among EU carriers forcing out of the market compliant airlines. As in the example a) above, the EU airline receiving the money from abroad was used to feed the hub of the third country investor outside the EU, to the detriment of the competing EU carriers with hubs in the EU. The flights namely between the EU and Asia, but also to the Middle East were offered at artificially low prices, especially for premium passengers (business and first class). As a consequence, EU carriers have been unable to compete at such low prices, lost market shares and in some cases given up their flights to certain Asian

destinations. Such a reduction of a network not only impacts the connectivity between the EU and overseas destinations, but also impacts employment in the EU, reducing jobs and lowering social standards, as these are much weaker outside the EU. Last but not least, there is an environmental impact, extending flight routes because of replacing (shorter) non-stop flights with deviating flights through third country hubs and allowing greater access to third country, which may not be subject to the same environmental requirements as EU carriers complying with the high ambitions of the EU to become carbon neutral (ref. European Green Deal), can result in a competitive disadvantage to EU carriers.

**Administrative burden:**

No major change expected for EU carriers, as they are large enterprises listed on the stock exchange and thus subject to stringent transparency rules and are publishing comprehensive yearly accounts. Current EU state aid rules also warrant a high degree of scrutiny. However, there could be a substantially increased administrative burden if in the case of a suspected infringement by a third country company, the complaining EU carrier would have to prove the wrongdoing and the injury. Especially with respect to intercontinental aviation markets, the effect of an unlawful behaviour often takes a considerable time to result in hard facts as EU airlines tend to defend a market as long as possible, because re-entering such a market could also be extremely costly or difficult, e.g. re-gaining traffic rights and/or slots at third country airports, especially the saturated airports in Asia. As in the case of subsidies within the EU, the fact of a third country financial aid in a EU airline should lead to an investigation and approval by the Commission.

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