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The airline industry: re-establishing free, fair competition

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Abstract :

European airlines are facing an offensive strategy on the part of their State competitors in the countries of the Gulf, which is leading to their demise. The European Union has in its possession regulatory tools that it must use to the full but which in all likelihood require completion so that they can rise to the new situation.

It must also draw up a global strategy which brings fair competition to the heart of the airline industry of all players who want to enjoy the benefits of the Single European Sky.

The European Parliament has turned its attention to the issue by adopting two resolutions on transport [1] and the Aviation Package [2], which both move in this direction.

The European Commission use this work to finalise the "Aviation Package" that it is due to present at the end of 2015.

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air transportation one of the major activities in terms of diversifying their economies. To succeed in this these States do everything they can to attract increasingly large flows of international traffic towards their airports together with any possible associated business.

This is how the State companies of the Gulf increased the control of the air transportation market between Europe and Asia/Middle-East from 22 to 34% between 2008 and 2014, to the detriment of the main European and Asian airlines, which recorded respective declines of 23 down to 16% and from 15 to 11% of their share of the same market. [8] This disproportionate growth in the Gulf airlines' transport capacities is forecast to be three times that of the world GDP growth rate between 2012 and 2020 [9]. In the Emirates transit capacities of over 300 million passengers are planned for 2020 with the development of existing hubs (quadrupling in Abu Dhabi, and multiplying five-fold in Doha (+15% in Dubai) and the construction of Jebel Ali [10].

This overcapacity reflects the target of capturing 78 million additional passengers per year [11], which is almost double the present figure; this means they have to implement, by all the means available to them,

The issues at stake for Europe are particularly important. Airline competitiveness is closely linked to the future of the aviation industry, which is a major contributor to growth and employment in the European Union. In 2014 the European airline industry generated a turnover of 365 billion €, i.e. 2.4% of the EU's GDP [3] as well as 2 million direct jobs [4] and 5.1 million jobs in all [5]. The same data on the aviation industry totals (2013) 140 billion € in turnover, i.e. 1.04% of the European GDP and around 500,000 direct, highly qualified jobs [6]. We might add that according to recent estimates made by the European Economic and Social Council [7], Europe's tourist spending on air travel is said to be the source of 4.7 million additional jobs and of 279 billion \$ turnover.

AN AGGRESSIVE STRATEGY TO CAPTURE WORLD AIR TRAFFIC

The companies of the Gulf are State owned organisations which were created and established under the impetus and with the support of the States of this region, which enjoys major government funding. For them this entails government policies that are designed to make

1. Resolution No. 2015/2005(INT) of 9th September 2015 on the implementation of the 2011 White paper on transport: results and path to follow for sustainable mobility.

2. Common Resolution No. 1146/2015 adopted on 11th November 2015

3. http://ec.europa.eu/transport/modes/air/index_en.htm

4. "Aviation: Benefits Beyond Borders" ATAG (Air Transport Action Group) April 2014 http://aviationbenefits.org/media/26786/ATAG_Aviation_Benefits2014_FULL_LowRes.pdf

5. http://ec.europa.eu/transport/modes/air/index_en.htm

6. http://ec.europa.eu/growth/sectors/aeronautics/index_en.htm

7. www.eesc.europa.eu/?i=portal.fr:ten-opinions&itemCode=35317
Opinion of the European Economic and Social Council (EESC) of 17th September 2015 "An integrated aviation policy"

8. <http://centreforaviation.com/analysis/af-klm-lufthansa-iag-weight-in-on-us-gulf-dispute-pt-2-marketshare-loss-who-owns-the-passenger-245293>
- CAPA (Center for Asia Pacific Aviation) "US-Gulf Airline dispute - Europe part 2: Market share in dispute. Does anyone "own" the passenger?" (24 sept 2015)

9. GDP forecast growth for 2014-2019: Conference Board Global Economic Outlook 2014, 05/2014: www.conference-board.org/pdf_free/workingpapers/EPWP1403.pdf

10. "Restoring open skies: the need to address subsidized competition from state-owned airlines in Qatar and the UAE"

11. Partnership for Open and Fair Skies "Restoring Open Skies: The Need to Address Subsidized Competition from State-Owned Airlines in Qatar and the UAE" <http://travelskills.com/wp-content/uploads/2015/03/Presentation.pdf>

an aggressive strategy regarding other companies on the world market. If this overcapacity were to be used to the full the companies of the Gulf might find themselves in a situation of almost total monopoly regarding certain destinations and in a position to set their conditions on the world market, both in Europe and in the rest of the world.

The State companies of the Gulf have already captured a massive share of the traffic between Europe and Asia, as they doubled their market share to India, South-East Asia and Australia between 2008 and 2014 and now turning their attention to the Far East. Regarding Bangkok they have supplanted all other companies. The Emirates offer 42 weekly flights there.

The Gulf countries' strategy has also been effective on the European market and their growth in transport capacity is more than significant: between 2004 and 2015 traffic between Europe and the Gulf increased by 430% with 140 daily flights (80% of which was undertaken by their companies). There are more seats offered between Europe and the Gulf than between Europe and China, Japan and South Korea together, whilst the GDP of the latter is 250 times that of the UAE and Qatar together. Hence this is not just a simple commercial strategy resulting from developments in demand, but of a State, monopoly-oriented policy which started outside of the market rationale.

A LOSS OF DIRECT CONNECTIVITY FOR THE EUROPEANS

European consumers are increasingly dependent on the countries of the Gulf to travel to distant destinations that were previously flown to directly and frequently, and gradually they are losing their freedom of choice in terms of the journeys they take and the companies with whom they fly. European capitals are less and less connected via direct flights to final destinations vital to European growth. Increasingly regions of European countries are directly connected to the Gulf States and have less and less access to European hubs or their final destinations, particularly those in America.

TRUE DISTORTION OF COMPETITION

According to an American source [12], the State companies, Emirates, Etihad and Qatar Airways received a minimum of 42 billion in substantiated subsidies, as well as other undue advantages, including interest free loans or non-reimbursable "loans". Without these subsidies Etihad and Qatar Airways would never have been commercially viable according to audits of which they have been the focus. Most of their suppliers, including the airports which they use as hubs, are intrinsically linked to them and it is impossible to establish at present that their transactions are paid at the market price. Bound to the public authorities, the Gulf airlines do not have to present transparent financial accounts, neither do they need to remunerate their shareholders [13].

Conversely European companies are involved in free competition, the regularity of which is strictly organised by rules which guarantee this. State aid is prohibited and the companies are the focus of continuous monitoring and regular inquiries. Typically, they pay infrastructure costs, airport and navigation taxes. Most of these companies adhere to strict rules of transparency, financial reporting and return on capital.

The State companies of the Gulf have concluded bilateral agreements with 26 EU Member States, granting them unlimited traffic rights in 23 of these and the right to the Fifth Freedom in five others. Hence they have the free use of the entire field of competition, whilst enjoying exclusive privileges granted to them by their national authorities. Their strategy to capture the markets of Europe is also designed to develop connected industries in their sub-regions which includes tourism and the organisation of professional congresses to the detriment of the European players. In Europe the tourist industry represents 3.2 million jobs and 213 billion € in turnover, i.e. 1.28% of the European GDP [14]. Business tourism (MICE) [15] represented a revenue of 339 billion € in 2014 [16].

12. <http://travelskills.com/wp-content/uploads/2015/03/Presentation.pdf>

Study undertaken by American airlines Delta Airlines, United Airlines and American Airlines in January 2015.

13. Emirates, the most powerful airline in the Gulf is the only one to publish its account (and recently) unlike Etihad and Qatar Airways.

14. http://aviationbenefits.org/media/26786/ATAG_AviationBenefits2014_FULL_LowRes.pdf « Aviation : Benefits Beyond Borders », ATAG 2014

15. MICE = Meetings, Incentives, Conferencing, Exhibitions

16. World Trade and Tourism Agency, 2015

CONTESTED PRACTICES IN TERMS OF SOCIAL AND GENDER DISCRIMINATION

In addition to this the European Union cannot afford to ignore practices that are affecting its fundamental values, which incidentally are guaranteed by texts that have the force of law (the Charter of Fundamental Rights for example), and with which it is not used to compromising. As it happens several practices deserve careful study. An illustration of these is offered by the ILO's decision of 16th June 2015 to condemn the policy of automatic cabin staff dismissal if employees are pregnant or if they marry (within the first five years of their contract) at Qatar Airways. The company also had to review its internal rules and it was normal for the Union to be concerned about this.

Other practices of the Gulf companies are criticised by the unions in the ILO Report dated 15th June 2015. They involve, for example, the obligation for a female employee to be accompanied to the entrance and at the exit of the airplane or the company's building, as well as the monitoring of employees' activities on the social networks. The European has to respond to this.

THE EUROPEAN PARLIAMENT'S PROPOSALS

On 9th September 2015 the European Parliament's resolution notes this situation and hopes for the introduction of the measures in response in the Aviation Package planned for the end of the year. It draws an objective picture of the decline of direct links between Europe and the rest of the world, of the restricted capacity in the increase in air traffic and of the growth of services offered by non-European airlines.

It asks for the suppression of unfair practices, notably subsidies which distort the market, as well as the means to guarantee reciprocity. It targets the Gulf States and also Turkey directly, with which dialogue has to be launched in order to improve financial transparency and to "protect" fair competition via the inclusion of "fair competition clauses" in the air transportation agreements.

It requests the review of the Union's and Member States' budgetary and regulatory policies so that

competitiveness in the European aviation sector can be strengthened and for fair competition with transporters in third countries to be guaranteed.

It has asked the Commission and the Member States to adjust and repeal measures that distort competition and asks third countries to change their practices.

This resolution targets the coherent, effective development of an airport network in the Union which should firstly include the main airports, the "hubs" and secondly a well-covered, sustainable, strong network of local and regional airports.

It calls for measures capable of countering practices that distort competition from a social point of view, such as flags of convenience and varying forms of atypical employment and outsourcing [17]. This particularly involves a review of the regulation on the implementation of social legislation and collective conventions of airlines whose operational bases are on Union soil [18] i.e. the notion of "main place of activity".

The joint resolution of the three main groups in Parliament (EPP, S&D, ALDE) adopted on 11th November 2015 [19] aims to be even more precise regarding unfair competition on the part of third country airlines, notably regarding the State aid from which they benefit, reminding the Commission of the non-implementation of regulation 886/2004, its non-intervention in re-establishing fair competition and expressly denouncing social practices which are contrary to Community law and to the Member States' internal law. It calls for firm response on the part of the European executive, notably in the drafting of its "Aviation Package". The three main groups in the Parliament seem to criticise the future content of this; they are, quite rightly, calling for it to take up the wishes repeated by Parliament in support of a firm response to reciprocity and negotiation with the States of the Gulf, points which have now been clearly defined.

THE STATES' POLITICAL RESPONSE

The French and German governments, via the Secretary of State and the Federal Minister for Transport, spoke

17. Which can be found elsewhere under the name "Temporary work agency"

18. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:f:c:PDF> regulation 1008/2008 of the European Parliament and of the Council of 24th September 2008.

19. <http://www.europarl.europa.eu/sidesgetDocdo?type=MOTION&reference=P8-RC-2015-1146&language=FR>

on 13th March 2015 at the EU's "Transport" Council suggesting the adoption of a common strategy designed to restore fair competition on the part of the Gulf airlines. Both States notably asked that the extension of traffic rights granted to foreign airlines go together with true monitoring of how these airlines function and that a mandate be given to this end to the Commission. These declarations open the way to a review of regulations in order to achieve a strong, effective legal tool [20].

PROPOSALS MIGHT BE MADE IN THIS REGARD IN THE "AVIATION PACKAGE" THAT THE COMMISSION HAS ANNOUNCED FOR THE END OF THE YEAR.

The regulation on fair competition and the suppression of subsidies and unfair pricing practices [21], which dates back to 2004 should be implemented and reformed (tightened) if necessary.

It is in fact stated therein [22] that "subsidies" are undertaken by public authorities or a regional body and comprise the direct transfer of funds, whether these are donations, loans or participation in the social capital, potential direct transfers of funds in support of the business and even the take-over of its debts, for example in the shape of loan guarantees. They might also take the shape of abandoned forgone or uncollected revenues. Finally it might comprise the provision or purchase of goods and services by government authorities to the benefit of these businesses. As for unfair pricing practices, these comprise the benefit of a non-commercial advantage or the use of air fares that are sufficiently lower than European carriers to cause damage. These practices are clearly discrete from normal competitive pricing practices.

The operating mode is also clearly explained. The complainant with the Commission is notified within a regulatory period of 45 days whether the evidence provided is sufficient or not. In the first instance the launch of the procedure comprises the announcement of the launch of an inquiry. If the interested party refuses access to necessary information, or impedes this, preliminary or final conclusions can be established. Restorative measures usually take the shape of taxes set on the non-community airline in question.

But in order to decide if a subsidy has been granted, evidence has to be provided. However European airlines often find it impossible to establish any proof of unfair practice due to a lack of transparency on the part of their competitors. This is the case with the Gulf's State airlines. From a political point of view it is also difficult to challenge the States, which are regular partners of national government authorities or aviation industry clients. They are dissuaded *de facto* from making complaints. And to date the Commission has refused to act under its own free will, which is to be deplored.

Proposals have to be presented by the Commission in order to address the issue of transparency effectively, one the main missions of which is to guarantee fair competition. The tools available to the Commission must be completed if necessary, but to date it has been unable to demonstrate any true spirit of initiative. If the Gulf airlines want to work on the European market the Commission should be asked for the publication of the same accounting and legal data which are also requested of their European counterparts. It should also review the sanctions that are provided for, and lend them a dissuasive character.

NECESSARY EUROPEAN RESPONSE

It must target stricter implementation of existing measures and foil their voluntary circumvention. It must look into all elements comprising free, non-distorted competition as understood from its widest possible angle. It must demand actors' transparency. It should be more creative in strengthening those involved in European aviation industry.

STRENGTHENING "EFFECTIVE CONTROL"

The issue of "effective control" also has to be addressed, since one of the strategies of the Gulf's State airlines is to take shares in European airlines. According to the regulation that establishes the common rules for the use of air services in the Union [23], effective control must be undertaken by an EU company and the participation by a foreign company in the capital cannot exceed 49%. However it is clear that the purchase of a European airline, even if it is limited by the 49% rule

20. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0868:20090807:FR:PDF> regulation (CE) n° 868/2004 of 21st April 2004 regarding protection against subsidies and unfair pricing practices which damage community airlines.

21. Regulation (CE) 868/2004

22. Articles 4 and 5 of the regulation (CE) n°868/2004

23. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:fr:P> DE regulation (CE) n°1008/2008 of the European Parliament and the Council of 24th September 2008.

often goes hand in hand with measures and practices which provide *de facto* control to the foreign company.

When questioned about this issue the Commission replied on 23rd July 2014 to a joint letter from European CEOs and general managers and guaranteed that it had assessed several investments by third countries in European airlines. It quotes the investment by Etihad in Air Berlin in Germany as well as in Air Serbia in Serbia, of Delta in Virgin Atlantic in the UK, of the Chinese HNCA in Cargolux and of Korean Air in Czech Airlines in the Czech Republic and a third Etihad investment, stating that it had *written to the Italian authorities recalling the European property and control rules in view of Etihad's investment in Alitalia.* The Commission should be able to investigate beyond the simple formal respect of this obligation and proceed, as it does in terms of competition, to the addition of converging elements regard-ing the reality of effective management so that it can freely form an independent opinion.

It is expected of the Commission that it will implement the investigative powers in its possession to bring about the respect of the rules in force regarding "effective control" of European airlines by non-European interests and thereby counter the present circumventions of European regulations.

PUTTING A STOP TO PUBLIC INVESTMENT DISCRIMINATION

Given the close links between airport infrastructures and the airline business, it is time to do away with existing discrimination between European government investments that are subject to the "Market Economy Investor Principle" (MEIP) and investments by the Gulf countries which come from government sources that are not subject to the same control.

DEMANDING FINANCIAL TRANSPARENCY IN BUSINESS GOVERNANCE

The equality of treatment in terms of financial transparency demands the achievement of guarantees regarding the governance of airlines and notably the

separation of airport management, regulation, duty free, when this does not involve the management of an investment bank.

CREATING AN "AVIATION TOOLBOX" BASED ON THE MARITIME MODEL

An "aviation toolbox" should be included in the "Aviation Package" in the ilk of action in the maritime domain. The air transportation system should benefit from certain national measures to strengthen European airline competitiveness, like those adopted in the maritime sector in the 1990's. These measures are permitted since they do not lead to the distortion of competition between States.

This toolbox might include:

- the adjustment of employers' and social charges regarding staff on long-haul flights to take on board disparities in wages costs on international lines between European airlines and their state-owned Gulf competitors;
- the introduction of a more flexible framework with improvements in the air control system as well as a review of taxation and airport royalties;
- support to investments (early payment, exoneration of investments, etc.),
- the training of staff. For sailors, according to the community guidelines 2004-2014, aid for training is exempt per category. We might therefore – regarding staff training – find inspiration in the maritime regime whereby this is paid for by the communities.

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Free, undistorted competition must be guaranteed on the European air transport market. To do this transparency and equal treatment between the Gulf airlines and the European companies has to be restored.

First, the Commission is expected to use its powers to the full in view of European regulation (CE) n°868/2004, which is not the case at present.

Additional measures should enable it to continue this mission more effectively:

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- Effective control in the management of airlines operating in Europe which is more precise and more restrictive than regulation (CE) n°1008/2008 to prevent the present circumventions. Given the many cases already under assessment the Commission should establish nationality criteria and effective control acknowledged by all and which allow European airlines to enjoy reciprocity in third countries which invest in the European Union.

- The presentation of an "aviation toolbox" based on the maritime model which rewards the effort demanded of the European airlines in the face of competition regarding various charges and royalties, as well as support to investment and the training of staff.

- Guarantees must be achieved by the Commission in its talks with the countries of the Gulf regarding the two key elements quoted above.

- Condition access to the European market by the respect of regulations, in their spirit as well as in their letter, and reciprocity on third State markets.

The issues at stake are significant and strategic for the European Union and these concern:

- the European continent's connectivity and future protection of rights and air passenger choice,
- the future of European airlines which are struggling in terms of productiveness and suffering unfair competition that is benefiting from State aid which they do themselves receive,
- the future of large airports and associated business centres,
- the European tourist industry
- the independence of the aviation industry, which in

the end, will see a decrease in European airline orders, - the upkeep of direct jobs in air transport, - passengers' interest who, if they cannot continue to enjoy competition, will have to rely on a reduced offer for their intercontinental flights that will rapidly foster a rise on prices.

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The institutions of the European Union must show that they are defending their values, their rules and their businesses by assuming their full role as regulator granted to them by European law. Given the way the latter is circumvented it may also be provided with additional tools.

Unlike the European Parliament, which has decided to tackle the unfair trade attacks that are affecting European the air transport industry (Wim van de Camp (EPP, NL) resolution sup-ported by the EPP, S&D and ALDE groups, Franck Proust (EPP, FR) initiatives notably), it is up to the European Commission to put forward a common, collective response that is equal to the issues in question, which involve both the future of our big airlines, the independence of European transport and the long term interests of the European consumer.

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