



23 December 2016

Dear Mr. van Miltenburg,

I am contacting you on behalf of Europeans for Fair Competition (E4FC), an initiative supported by many European unions (pilots, cabin crew and ground workers) and European network carriers, that share the common goal: ensuring fair competition in aviation. With this in mind, we would like to share with you our deep concerns about several draft compromise amendments to the own initiative report of MEP Telička on the Aviation Strategy with regards to the issue of fair competition.

Please find attached to this letter an explanatory document which summarizes our views on this subject, which we would like to stress reflect those of unions and most of European network carriers.

As explained in this document, the main issues we see with these draft amendments (more specifically, COMP 5 and 6) are the following:

- The term “potential” means the text stops short of recognizing unfair practices as facts, not just allegations.
- The phrase "unacceptable arising protectionism" is unjustifiable.
- The term “subsidies” is not used.
- The text does not give any indication of what the contents of the new Reg. 868/2004 and fair competition clause should be.

This constitutes a major divergence from both the majority view expressed in the initial amendments, and the November 2015 European Parliament resolution on the Aviation Strategy. Concretely we would like you to have a look at our suggested adjustments to the draft compromise amendments (COMP 5 and 6), that can be found on pages 4 and 5 of the explanatory document.

Additionally, we believe that most of the fair competition-related issues addressed by the EMPL opinion have not been adequately reflected in the amendments to the TRAN draft report, and therefore still deserve your attention. We therefore seek your support to amend the language of COMP 28 as suggested on page 6 of the enclosed note.

On behalf of all E4FC supporters in aviation we would like to thank you for your support and attention to this matter.

Kind regards,

On behalf of E4FC,

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## Fair competition in the draft compromise amendments to the European Parliament's own initiative report on the Aviation Strategy

### Key compromise amendments on fair competition

Among the draft compromise amendments to the European Parliament's own initiative report on the Aviation Strategy, which are to be finalized ahead of a vote in the Transport committee on 26 January, the following are the ones most relevant to the issue of fair competition. Passages in red are deemed particularly problematic, explanations can be found below.

#### COMP 5

##### About: European aviation model, 868, ownership and control

International dimension of the Aviation Strategy

3. Welcomes the Commission's proposal to revise Regulation 868/2004 addressing unfair practices, such as unacceptable state aid (AM 100, 111, AM 121, AM 123, AM 127), currently insufficiently adequate and effective, (AM 95) to shed light on the major concerns surrounding **potential** distortions of competition under European rules, stresses however that neither **unacceptable arising protectionism** nor measures to ensure fair competition alone will guarantee the competitiveness of the EU aviation sector;

3 a. Believes that the European aviation sector (AM 98, AM 100) although facing increased pressure from new competitors (AM 95) many of which used air transport as a strategic tool for international development, can fit into a competitive global environment by further building on and developing its assets, such as, for example high safety and security standards, the role of EASA, geographical positioning, innovative industry, social and environmental goals; strongly believes that competition from third countries, if fair, should be seen as an opportunity to develop further an (AM 98) innovative European aviation model that has the potential to provide a unique and competitive response to the specificities of competitors;

3 b. (AM 215, AM 229) Believes that the possibility to attract foreign investment is important for the competitiveness of EU airlines and should not be hampered; (AM 94, AM 125) welcomes therefore the Commission's intention to issue guidelines to bring clarity on the ownership and control rules, as laid down in EU Regulation 1008/2008, (AM 117, 229) and in particular on the "effective control" criteria, to ensure the efficiency of these rules;

#### COMP 6

##### About: aviation agreements and fair competition clause

3 c. Welcomes the initiative to negotiate at EU-level air transport agreements and bilateral aviation safety agreements with third countries representing emerging and strategic markets (China, Japan, ASEAN, Turkey, Qatar, the UAE, Armenia, Mexico, China, Bahrain, Kuwait, Oman and Saudi-Arabia) and encourages prompt and constructive negotiations; (AM 95) recalls that new agreements should be correctly implemented and enforced by all parties and include a (AM 100, AM 101, AM 111, AM 122, AM 125) fair competition clause, (AM 99, AM 106, AM 109, AM 110, AM 129) respecting international standards (ICAO, ILO); calls on the Commission and the Council, (AM 130) in respect of Article 218 of the Treaty on the Functioning of the European Union, (AM 97, AM 126) to fully involve the European Parliament at all stages of negotiations;

## Positive points

These draft compromise amendments do contain some positive points, such as:

- COMP 5: support for the Commission's intention to revise Regulation 868/2004, mention of "unacceptable state aid".
- COMP 6: Support for the insertion of a fair competition clause in the agreements with third countries, reference to ILO standards.

## Main issues

The main issues regarding these draft amendments are the following:

- **In COMP 5, the term "potential" means the text stops short of recognizing unfair practices as facts, not just allegations.**

This ignores the fact that **those unfair practices have been solidly documented**. In particular, the 2015 study commissioned by Delta Air Lines, American Airlines and United Airlines demonstrated that Qatar Airways, Etihad Airways and Emirates have received more than **\$40 billion in subsidies over the past 10 years. This information is based on financial statements filed with third-country jurisdictions, and is thus verifiable. Furthermore, this figure can be considered as conservative** as it does not include a number of items that could not be quantified due to lack of publically available financial information. Finally, **further evidence has become available** since 2015. More information on this subject can be found at <http://e4fc.eu/the-facts/>.

- **In COMP 5, the phrase "unacceptable arising protectionism" is unjustifiable.**

Such wording is evidently excessive considering that European carriers have a record of embracing competition from airlines in all regions of the world and are only asking to curb **unfair practices by subsidized state-owned entities of a scale never seen anywhere before in the history of air transport.**

- **The term "subsidies" is not used.**

Although the phrase "unacceptable state aid" is welcome, using the term "subsidies" **would bring further clarity.**

- **The text does not give any indications on what the contents of the new Reg. 868/2004 and fair competition clause should be.**

In particular, **financial transparency requirements and sanctions in case of non-compliance by third-country carriers** should be mentioned.

The above constitutes a major divergence from both:

- **the majority view expressed in the initial amendments, and**
- **the November 2015 European Parliament resolution on the Aviation Strategy.**

## Divergence from the majority view expressed in the initial amendments

**Annex 1** presents a set of initial amendments relevant to the issue of fair competition. Highlighted in green is language in support of fair competition which was ignored in the drafting of the compromise amendments.

This divergence can be illustrated by focusing on some **key terms found in the initial amendments but no longer found in the draft compromise amendments**:

- **"level playing field"**: amendments 8, 97<sup>1</sup>, 101, 106, 109, 110, 119, 266
- **"subsidies"**: amendments 8, 100, 111, 121, 125, 302.
- **"financial transparency"**: amendments 8, 101, 118<sup>2</sup>, 122, 125.
- **"retaliatory measures and sanctions"**: amendments 121, 125<sup>3</sup>.
- **"strict enforcement of existing ownership and control rules"**<sup>4</sup>: amendments 111, 213, 229.

As can be seen, the draft compromise amendments are contrary to what seems to be the majority opinion of the MEPs who have expressed themselves on this question via the amendments initially tabled.

## Divergence from the November 2015 European Parliament resolution on the Aviation Strategy

**Annex 2** presents articles from the November 2015 European Parliament resolution which are relevant to the issue of fair competition. Highlighted in green is language in support of fair competition which is no longer to be found in the draft compromise amendments.

In the 2015 resolution, unlike the draft compromise amendments:

- **Unfair practices are characterized** through the use of the terms **"subsidies"** and **"state aid"**.
- The term **"level playing field"** is used.
- Unfair practices are **recognized as facts and not simple "allegations"**.

Such a divergence from the November 2015 resolution of the European Parliament seems incomprehensible as even more evidence is available today about unfair practices, and the said practices have in no way ceased or been diminished.

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<sup>1</sup> Amendment 97 uses the equivalent term "fair playing field".

<sup>2</sup> Amendment 118 uses the term "transparency" only ("financial" left implicit).

<sup>3</sup> Amendment 125 does not use the terms "retaliatory measures" or "sanctions" but the "freez[ing of] [...] traffic rights".

<sup>4</sup> Or equivalent wording.

## Suggested adjustments to the draft compromise amendments

The aforementioned concerns may be addressed by adjustments to the draft compromise amendments such as the ones suggested below (E4FC suggested language below in **red**), which are directly based on language repeatedly used in the initial amendments tabled. (See Annexes 1, 2, 3 **highlighted in green** below)

### COMP 5

#### About: European aviation model, 868, ownership and control

International dimension of the Aviation Strategy

3. Welcomes the Commission's proposal to revise Regulation 868/2004 addressing unfair practices, such as unacceptable state aid (AM 100, 111, AM 121, AM 123, AM 127), currently insufficiently adequate and effective, (AM 95) to shed light on the major concerns surrounding distortions of competition under European rules, stresses however that measures to ensure fair competition alone will **not** guarantee the competitiveness of the EU aviation sector

3 a. Believes that the European aviation sector (AM 98, AM 100) although facing increased pressure from new competitors (AM 95) many of which used air transport as a strategic tool for international development, can fit into a competitive global environment by further building on and developing its assets, such as, for example high safety and security standards, the role of EASA, geographical positioning, innovative industry, social and environmental goals; strongly believes that competition from third countries, if fair, should be seen as an opportunity to develop further an (AM 98) innovative European aviation model that has the potential to provide a unique and competitive response to the specificities of competitors; **stresses however that unfair competition must be prevented more effectively in order to create a level playing field, in particular with regard to subsidies awarded to airlines from certain third countries that distort the market; stresses furthermore that the amended Regulation 868/2004 must facilitate the adoption of sanctions in respect of airlines benefiting from such subsidies and state aid;**

3 b. (AM 215, AM 229) Believes that the possibility to attract foreign investment is important for the competitiveness of EU airlines and should not be hampered; (AM 94, AM 125) welcomes therefore the Commission's intention to issue guidelines to bring clarity on the ownership and control rules, as laid down in EU Regulation 1008/2008, (AM 117, 229) and in particular on the "effective control" criteria, to ensure the efficiency of these rules; **stresses however that present ownership and control rules must be strictly enforced and not amended or softened as long as there is no effective reciprocity in place regarding EU investors in third countries;**

**Comment:** The suggested inserts are based primarily on amendments 8, 111, 121, and 213.

### COMP 6

#### About: aviation agreements and fair competition clause

3 c. Welcomes the initiative to negotiate at EU-level air transport agreements and bilateral aviation safety agreements with third countries representing emerging and strategic markets (China, Japan, ASEAN, Turkey, Qatar, the UAE, Armenia, Mexico, China, Bahrain, Kuwait, Oman and Saudi-Arabia) and encourages prompt and constructive negotiations; (AM 95) recalls that new agreements should be correctly implemented and enforced by all parties and include a (AM 100, AM 101, AM 111, AM 122, AM 125) **strong** fair competition clause, (AM 99, AM 106, AM 109, AM 110, AM 129) respecting international standards (ICAO, ILO); calls on the Commission and the Council, (AM 130) in respect of Article 218 of the Treaty on the Functioning of the European Union, (AM 97, AM 126) to fully involve the European Parliament at all stages of negotiations; **stresses that provisions on state aid and financial transparency are essential element to be included in the fair competition clause;**

**Comment:** The suggested inserts are based primarily on amendments 8, 111, and 118.

## COMP 28

### About: Social agenda of the Aviation Strategy

17. EMPL A Whereas 4.7 million jobs in the Union are directly (1.9 million) and indirectly (2.8 million) generated by air transport, airports and the manufacturing industry<sup>1</sup>; whereas a further 917 000 jobs elsewhere in the global economy are supported by the European aviation industry; (EMPL H) whereas the mobile and transnational nature of aviation makes it difficult to detect social abuses and circumvention of labour standards and means that it is impossible to tackle the problems solely at national level; (EMPL B) whereas international labour standards and sound competition principles must be respected to ensure a level playing field; **insists that strong fair competition clauses, including respect for workers' rights, are included in air transport agreements with third countries and insists that any agreement in the field of EU external aviation policy must include effective means of enforcement, including the ultimate sanction of denial or withdrawal of landing rights;**

**Comment:** The suggested inserts are based on amendments articles 19 and 22 of the EMPL opinion on the Aviation Strategy.

## Annex 1

### Initial amendments on fair competition

The set of amendments below is a selection based on relevance to the issue of fair competition.

**In bold:** noteworthy language.

**In green:** language in support of fair competition no longer found in the draft compromise amendments.

#### Amendment 8

**Ramon Tremosa i Balcells, Izaskun Bilbao Barandica, Georges Bach, Dominique Riquet**

having regard to its resolution of 11 November 2015 on aviation<sup>2</sup>, in particular paragraphs 6, 7 and 11 regarding the revision of Regulation (EC) No 868/2004 in order to safeguard fair competition in EU external aviation relations and reinforce the competitive position of the EU aviation industry, **prevent unfair competition more effectively, ensure reciprocity and eliminate unfair practices, including subsidies and state aid awarded to all airlines from certain third countries that distort the market. Financial transparency in the fair competition clause is an essential element to guarantee this level playing field.**

#### Amendment 94

**Pavel Telička, Gesine Meissner, Ramon Tremosa i Balcells, Jozo Radoš, Dominique Riquet**

3. Welcomes the Commission's proposal to revise Regulation 868/2004 addressing unfair practices and to issue guidelines on ownership and control; stresses however that **nor arising protectionism** nor measures to ensure fair competition alone will guarantee the competitiveness of the EU aviation sector; believes that the European aviation sector can fit into a competitive global environment by further building on and developing its assets, such as, for example high safety standards, the role of EASA, geographical positioning, innovative industry, social and environmental goals; strongly believes that competition from third countries, if fair, should be seen as an opportunity to develop further a European aviation model that has the potential to provide a unique and competitive response to the specificities of competitors;

#### Amendment 95

**Franck Proust**

3. Believes that the European aviation sector can fit into a competitive global environment, in which many foreign countries have used air transport as a strategic tool for international development, by further building on and developing its assets; believes that competition from third countries, if fair, should be seen as an opportunity to develop further a European aviation model; recalls that new agreements with third countries should include a fair competition clause, as stipulated in certain negotiating mandates; **calls for the European Union to adopt investigative powers to shed light on the allegations of distortion of competition, under European rules (grants, indirect aid), favouring certain companies;**

#### Amendment 97

**Wim van de Camp**

3. Believes that the European aviation sector can fit into a competitive global environment by further building on and developing its assets; believes that competition from third countries, if fair, should be seen as an opportunity to develop further a European aviation model, underlines in this respect the importance of negotiating comprehensive air transport agreements with third countries to **ensure a competitive fair playing field** and calls on the Commission to substantively involve the European Parliament in these negotiations on a regular base and by way of mid-term reviews;

#### Amendment 100

**Christine Revault D'Allonnes Bonnefoy, Lucy Anderson**

3. Believes that the European aviation sector can fit into a competitive global environment by further building on and developing its assets; stresses that the European aviation industry faces strong competition, particularly as a result of **unfair practices and vast state subsidies to certain international airlines**. Calls on the Commission to include a fair competition clause in comprehensive aviation agreements so as to ensure fair competition.

#### **Amendment 101**

**Ramon Tremosa i Balcells, Izaskun Bilbao Barandica, Georges Bach, Dominique Riquet**

Believes that the European aviation sector can fit into a competitive global environment by further building on and developing its assets; stresses that **competition from third countries should be based on reciprocity and a level playing field; with a fair competition clause and financial transparency in the upcoming aviation agreements**, competition should be seen as an opportunity to develop and strengthen further the European aviation model

#### **Amendment 110**

**Lucy Anderson, Christine Revault D'Allonnes Bonnefoy, Jens Nilsson**

3. Believes that the European aviation sector can fit into a competitive global environment by further building on and developing its assets, while **ensuring a level playing field** and fair competition including respect to universally recognized ILO standards;

#### **Amendment 111**

**Ramon Tremosa i Balcells, Izaskun Bilbao Barandica, Georges Bach, Dominique Riquet**

3a. Deplores the fact that Regulation (EC) No 868/2004 on protection against unfair pricing practices in the air transport sector has proved to be inadequate and ineffective in terms of scope; calls on the Commission to revise Regulation (EC) No 868/2004 in order to safeguard fair competition in EU external aviation relations and reinforce the competitive position of the EU aviation industry, **1a prevent unfair competition more effectively, ensure reciprocity and eliminate unfair practices, including subsidies and state aid awarded to airlines from certain third countries that distort the market**; stresses that the aim should be to improve the political strategy at European level in order to quickly resolve this conflict, based mainly on the application of a transparent 'fair competition' clause; **calls also on the Commission to fully implement Article 4(f) of Regulation (EC) No 1008/2008 on the 'effective control' of airlines**; 1b

#### **Amendment 114**

**Pavel Telička, Izaskun Bilbao Barandica, Ramon Tremosa i Balcells, Matthijs van Miltenburg, Jozo Radoš, Dominique Riquet**

3a. Welcomes the initiative to negotiate at EU-level air transport agreements and bilateral aviation safety agreements with third countries representing emerging and strategic markets (China, Japan, ASEAN, Turkey, Qatar, the UAE, Armenia, Mexico, China, Bahrain, Kuwait, Oman and Saudi-Arabia) and encourages fast negotiations; calls on the Commission and the Council, in respect of Article 218 of the Treaty on the Functioning of the European Union, to **fully involve and inform the European Parliament at all stages of negotiations**;

#### **Amendment 118**

**Inés Ayala Sender**

3a. Calls on the Council to **authorise global air agreements with third countries only when strong clauses on transparency, state aid, environment human and labour protection** are put in place. Calls on the Commission to provide EASA with mechanisms for real monitoring and enforcement of these agreements;

#### **Amendment 121**

**Christine Revault D'Allonnes Bonnefoy, Lucy Anderson**

3a. Calls on the Commission to **amend Regulation 868/2004 to facilitate the adoption of retaliatory measures and sanctions in respect of airlines liable to benefit from subsidies undermining fair competition**.

#### **Amendment 125**

**Ramon Tremosa i Balcells, Dominique Riquet**

3b. Recalls that the EU template fair competition clause states: "When a Contracting Party provides public subsidies or support [...] to an airline, it shall ensure the transparency of such measure through any appropriate means, which may include requiring that the airline identifies the subsidy or support clearly and separately in its accounts. Transparency requirements should cover all airlines benefitting from the agreement irrespective of their ownership when a Contracting Party provides public subsidies or support [...] to an airline, it shall ensure the transparency of such measure through any appropriate means, which may include requiring that the airline identifies the subsidy or support clearly and separately in its accounts". 1a

Believes that there **should be a link between accepting the fair competition clause and financial transparency elements in the future comprehensive aviation agreements, and continuing to operate in EU airspace with a licence granted by EU air carriers that third parties invested in. If an airline refuses to cooperate or to provide any information about public subsidies or financial support, the Commission should be able to freeze their traffic rights.**

Calls the European Commission to address these issues in the new guidelines on the application of EU ownership and control rules that are due to be published by the end of 2016.

#### **Amendment 138**

**Franck Proust**

4. Recalls that air space is also part of the EU single market, and that any fragmentation resulting from diverging national practices has an impact on the rest of the market and hampers EU competitiveness; considers it essential to draft, in each state, a report on the competitiveness of the aviation sector and solutions with which to support airlines and businesses; is convinced that one such solution is to **impose a temporary tax and regulatory moratorium in a Member State or at European level (when possible) for the airlines hardest hit by international competition that is deemed to be unfair;**

#### **Amendment 213**

**Wim van de Camp**

12. Notes that public and private financing in the aviation sector is vital to guarantee territorial cohesion, foster innovation and maintain or regain European leadership of our industry; recalls that all financing must respect EU state aid guidelines and competition law, calls on the Commission to **enforce compliance with the ownership and control provisions as laid down in EU Regulation 1008/2008 by strengthening its supervision and to actively take action in the event non-EU carriers are by-passing or contravening the effective control provisions, stipulates that present ownership and control rules shall be strictly applied and not amended or softened as long as there is no effective reciprocity in place** regarding EU investors in third countries;

## Annex 2

### November 2015 EP resolution on the Aviation Strategy

The following articles from the November 2015 EP resolution are the ones most relevant to the issue of fair competition.

In **bold**: noteworthy language.

In **green**: language in support of fair competition no longer found in the draft compromise amendments.

6. **Highlights the loss of competitiveness of EU airlines and airports vis-à-vis subsidised third-country carriers and airports; requests, in this context, a proactive policy to ensure a level playing field on ownership**, and strongly encourages Member States to improve their national infrastructure to allow their airlines to compete on more favourable terms;

7. **Deplores the fact that Regulation (EC) No 868/2004 on protection against unfair pricing practices in the air transport sector has proved to be inadequate and ineffective in terms of scope**; asks the Commission to issue an analysis of the causes of its non-implementation by November 2015 at the latest; **calls on the Commission to revise Regulation (EC) No 868/2004 in order to safeguard fair competition in EU external aviation relations** and reinforce the competitive position of the EU aviation industry, **prevent unfair competition more effectively, ensure reciprocity and eliminate unfair practices, including subsidies and state aid awarded to airlines from certain third countries that distort the market**; stresses that the aim should be to improve the political strategy at European level in order to quickly resolve this conflict, based mainly on the **application of a transparent 'fair competition' clause**; **calls also on the Commission to address the concept of 'effective control' of airlines**;

## Annex 3

### October 2016 EMPL Committee opinion on the Aviation Strategy

The following articles from the October 2016 EMPL Committee opinion on the Aviation Strategy are the ones most relevant to the issue of fair competition.

In **green** language concerning the social dimension of fair competition no longer found in the draft compromise amendments.

19. Insists that any agreements in the field of EU external aviation policy must include respect for human rights and the relevant ILO conventions, as well as effective **means of enforcement, including the denial or withdrawal of landing rights**, calls on the Commission to ensure that negotiations with third countries do not lead to aviation agreements that undermine the protection of workers or social standards in Europe;

22. Regrets that requirements for third-country airlines operating to and from airports in the Union today are non-enforceable or even non-existent; insists that unfair competition from third-country airlines due to, e.g., **direct and indirect state aid, subsidies or exploitation of workers must be effectively addressed**, and that existing tools to counter unfair competition must be thoroughly evaluated and, where necessary, updated; **firmly believes that as long as fair competition clauses, including respect for workers' rights, are not included in air transport agreements with third countries, their rights to operate in the Union should be limited;**