

Safeguarding competition in air transport

2017/0116(COD) - 10/05/2019 - Final act

PURPOSE: to safeguard competition in air transport.

LEGISLATIVE ACT: Regulation (EU) 2019/712 of the European Parliament and of the Council on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004.

CONTENT: in a context of increased competition between air transport actors at a global level, fair competition is an indispensable general principle in the operation of international air transport services.

At the international level, there is currently no World Trade Organization (WTO) or International Civil Aviation Organization (ICAO) framework regulating competition between air carriers. The purpose of this Regulation is to provide the EU with an effective mechanism to combat unfair commercial practices that have so far been lacking.

Subject matter

This Regulation repealing Regulation (EC) No 868/2004 lays down rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to practices distorting competition between Union air carriers and third-country air carriers and causing, or threatening to cause, injury to Union air carriers.

Procedure

A single procedure for launching investigations and deciding on possible redressive measures shall apply to both global agreements at EU level and bilateral air transport agreements between EU and third countries.

When determining the Union interest, priority shall be given to the need to protect consumer interests and to maintain a high level of connectivity for passengers and for the Union. In the context of the whole aviation chain, the Commission may also take into account relevant social factors. The Commission shall also take into consideration the need to eliminate the practice distorting competition, to restore effective and fair competition, and to avoid any distortion to the internal market.

An investigation shall be initiated following a written complaint submitted by a Member State, one or more Union air carriers or an association of Union air carriers, or on the Commission's own initiative, if there is prima facie evidence of the existence of all the following circumstances: (i) a practice distorting competition, adopted by a third country or a third-country entity; (ii) injury or threat of injury to one or more Union air carriers; and (iii) a causal link between the alleged practice and the alleged injury or threat of injury.

When deciding not to initiate an investigation, the Commission shall inform the complainant and all Member States. The information shall contain the reasons for the decision and be forwarded to the European Parliament.

The Commission shall decide to open an investigation within a maximum period of 5 months from the lodging of the complaint and inform the Member States and the European Parliament.

The investigation shall be concluded within 12 months while the proceedings shall be concluded within 20 months. That period may be prolonged in duly justified cases. In the case of urgency, that is in situations where, following clear evidence submitted by the complainant or the interested parties, the injury to Union air carriers might be irreversible, the proceedings may be shortened to 9 months.

Distortive practices and redressive measures

A finding of injury shall be based on evidence and shall take account of the relevant factors, in particular:

- the situation of the Union air carriers concerned, notably in terms of aspects such as frequency of services, utilisation of capacity, network effect, sales, market share, profits, return on capital, investment and employment;
- the general situation on the affected air transport services markets, notably in terms of level of fares or rates, capacity and frequency of air transport services or use of the network.

A determination of a threat of injury shall be based on clear evidence and not merely on allegation, conjecture or remote possibility.

Redressive measures - financial or operational – shall be adopted by means of a Commission implementing act, but operational measures shall be subject to a stricter procedure. The Commission shall regularly provide a written report to the European Parliament and to the Council on the effectiveness and impact of redressive measures.

ENTRY INTO FORCE: 30.5.2019.