



Is the competition from the Gulf carriers fair?

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Prof. Dr. Regula Dettling-Ott Vice President EU Affairs

The views presented in this speech reflect my personal opinion



What is fair competition? Different notions about “fair competition” and “unfair competition” – WTO provides guidance

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. (...) More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination (...) are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade. Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example.

- System of rules dedicated to open, fair and undistorted competition
- Rules on dumping (exporting at below cost to gain market share)
- Rules on subsidies

... as well as the EU Commission

EU COMMISSION (Economic and Financial Affairs)

To ensure fair competition, the EC Treaty and the secondary legislation deriving from it define a set of rules that enterprises and governments have to abide by. In particular, the Treaty prohibits restrictive agreements (e.g. cartels), abuses of a dominant position, and those state aids (subsidies) which distort competition to an extent contrary to the common interest.

- Set of rules that enterprises and governments have to abide by
- No restrictive agreements (cartels)
- No abuse of dominant position
- No state aids (subsidies) which distort competition contrary to the common interest

Principles of market access in air services already in the Chicago Convention (1944)

CONVENTION ON INTERNATIONAL CIVIL AVIATION

PREAMBLE

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention to that end.

- International air transport services may be established on the basis of equality of opportunity and operated soundly and economically

For decades, bilateral air service agreements implemented principles of fair competition (example: template ICAO air service agreement)

Article 15 Fair competition	
Traditional	
Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.	
Transitional	
Each Party agrees:	
a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and	
b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.	

- Fair opportunity to operate

- Fair and equal opportunity to compete
- To take action to eliminate all forms of unfair competitive practices adversely affecting the designated airline of the other party

Before liberalisation, “fair competition” was implemented in bilateral air service agreements (example UAE – Germany 1994)

Article 8
Principles Governing
the Operation of Agreed Services

(1) There shall be fair and equal opportunity for the designated airlines of each Contracting Party to operate air services on the routes specified in accordance with Article 2 (2) of this Agreement.

(2) In the operation of international air services on the routes specified in accordance with Article 2 (2) of this Agreement, any designated airline of either Contracting Party shall take account of the interests of any designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the same routes or parts thereof.

(3) The international air services on the routes specified in accordance with Article 2 (2) of this Agreement shall have as their primary objective the provision of capacity commensurate with the foreseeable traffic demand to and from the territory of the Contracting Party designating the airline. The right of such airline to carry traffic between points of a route specified in accordance with Article 2 (2) of this Agreement which are located in the territory of the other Contracting Party and points in third countries shall be exercised, in the interests of an orderly development of international air transport, in such a way that capacity is related to:

- a) the traffic demand to and from the territory of the Contracting Party designating the airline;
- b) the traffic demand existing in the areas through which the air services pass, taking account of local and regional air services;
- c) the requirements of an economical operation of through traffic routes.

(4) To ensure fair and equal treatment to the designated airlines, the frequency of services, the types of aircraft to be used with regard to capacity, as well as the flight schedules shall be subject to approval by the aeronautical authorities of the Contracting Parties. This requirement should also be met in case of any change concerning the agreed services.

(5) The aeronautical authorities of the Contracting Parties should, if necessary, endeavour to reach a satisfactory arrangement regarding transport capacity and frequencies.

- Fair and equal opportunity
- Take into account of the interests of any designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the same routes or parts thereof
- The provision of capacity commensurate with the foreseeable traffic demand
- Reach satisfactory arrangement regarding transport capacity and frequencies

Air service agreements typically define principles of pricing (Air service Agreement Germany – UAE)

Article 10

Tariffs

(1) The tariffs to be charged for passengers and cargo on the routes specified in accordance with Article 2 (2) of this Agreement shall be subject to approval by the aeronautical authorities of the Contracting Party from whose territory they are to be applied. They should take into account the cost of operation, a reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users.

- the cost of operation
- a reasonable profit
- the prevailing conditions of competition and of the market
- the interest of transport users.

Open Sky Agreements of the EU are more specific on fair competition than traditional air service agreements (EU – Israel Aviation Agreement 2013)

Article 7

Competitive Environment

(...)

2. The Contracting Parties acknowledge that it is their joint objective to have a fair and competitive environment for the operation of air services. The Contracting Parties recognise that fair competitive practices by air carriers are most likely to occur where these air carriers operate on a fully commercial basis and are not subsidised (...).

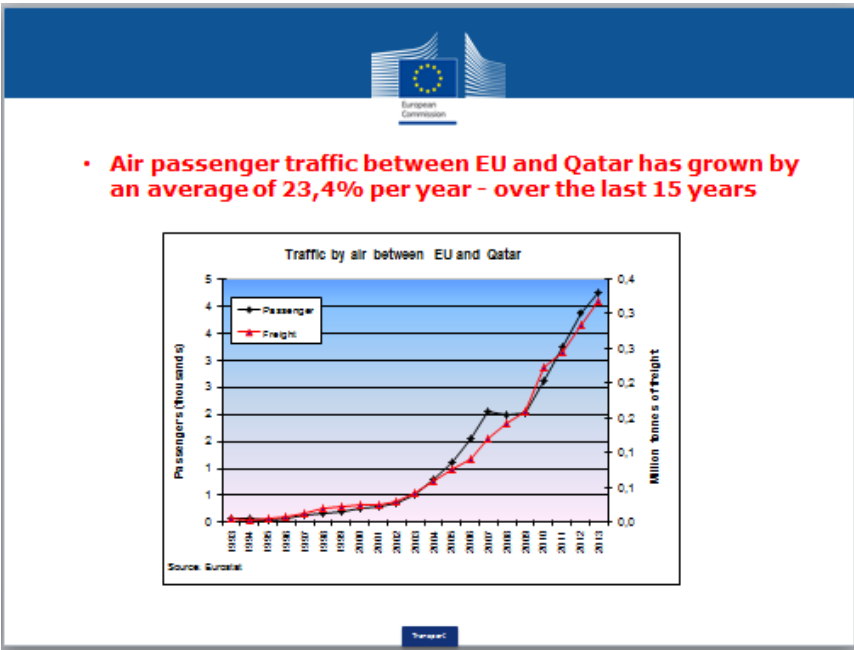
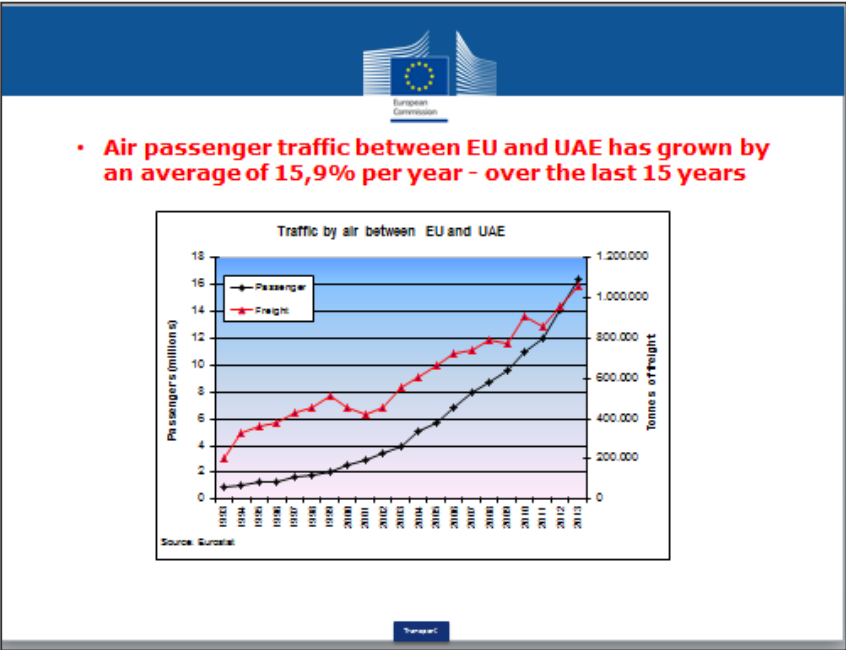
3. If one Contracting Party finds that conditions exist in the territory of the other Contracting Party, in particular due to subsidy, which would adversely affect the fair and equal opportunity of its air carriers to compete, it may submit observations to the other Contracting Party.

- Fair competitive practices most likely where air carriers operate on a fully commercial basis
- Where air carriers are not subsidised

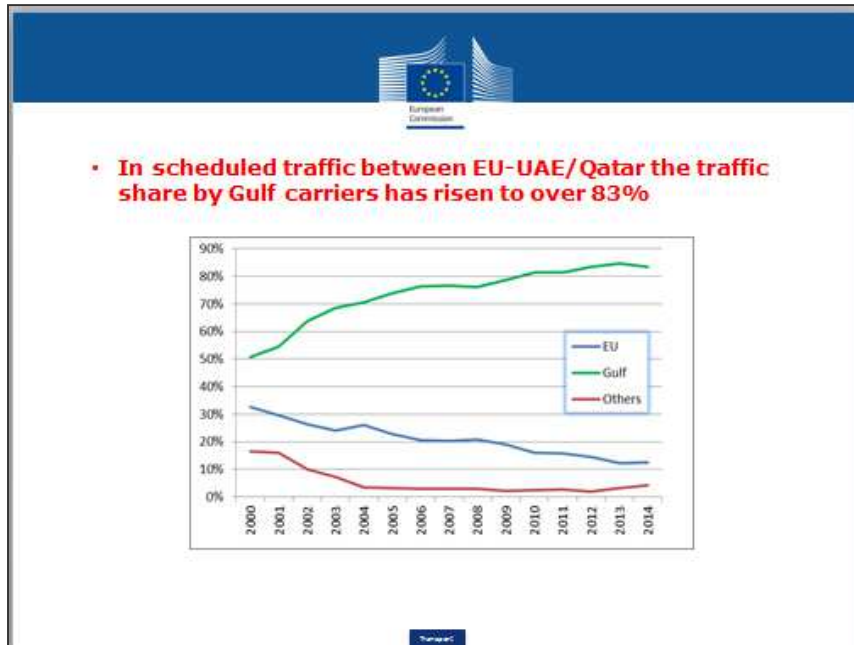
The main issues of fair competition in aviation are subsidies and predatory pricing

- Traditional bilateral air service agreements don't address subsidies and predatory pricing
 - No need to do so: Market access and pricing was controlled by other mechanism (agreement on designation, destinations, capacity, frequencies and tariffs)
- Subsidies
 - WTO/International trade agreements and liberalized aviation agreements: free market access and subsidies are incompatible
- Predatory pricing/dumping
 - Less clear than subsidies; producing below cost vs comparative advantage

Facts and figures indicate unprecedented market developments: Gulf carriers consistently grow far above the market



Number of flights of Gulf carriers between EU and UAE far above the EU carriers



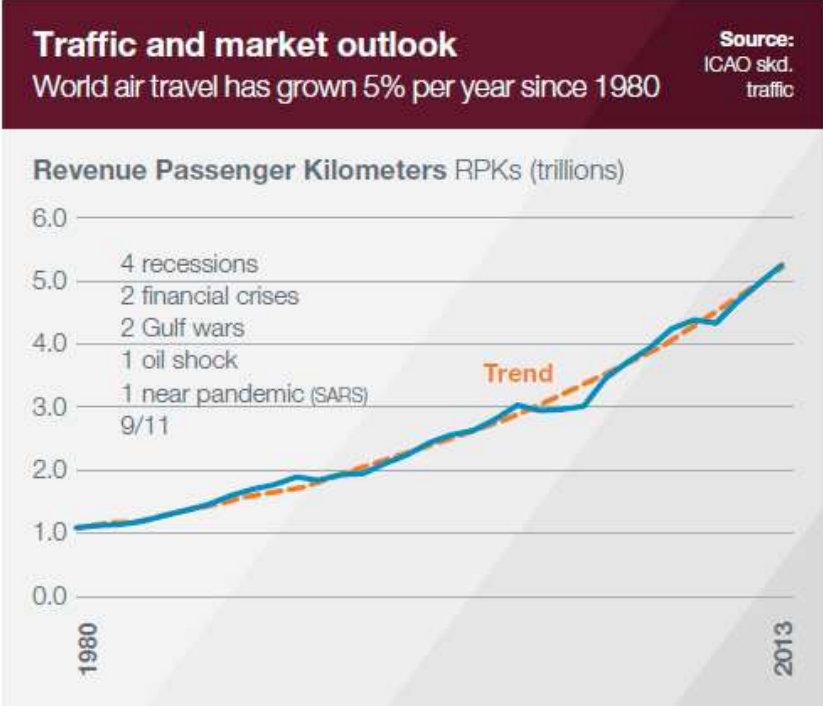
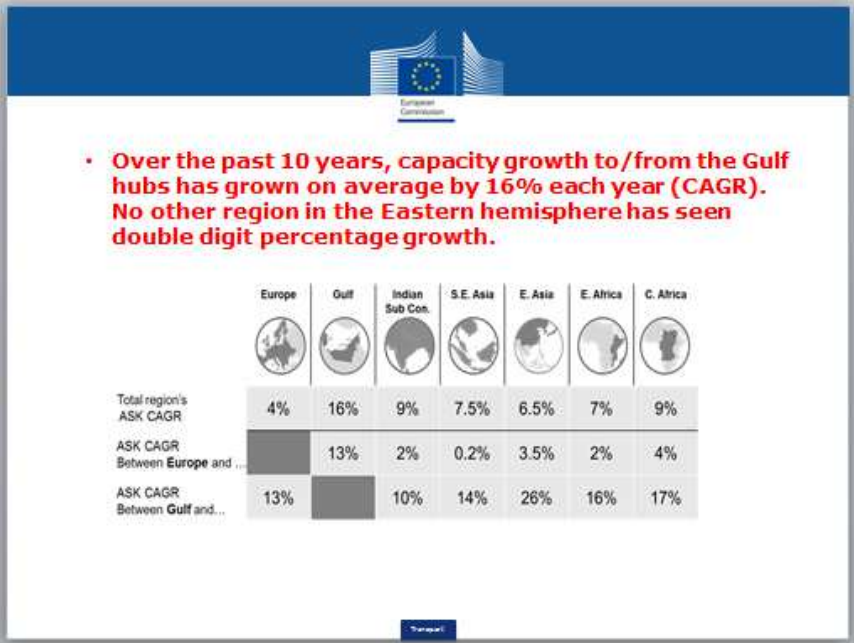
European Commission

- In 2014, MEB3 operated 62 airport/airline pairs between the Gulf and Europe with a minimum of a daily service
- This compares to only 9 airport pairs operated by European carriers.

Number of airport/airline pairs connected by weekly departures	MEB3		European Carriers		Non-European Carriers (excl. MEB3)	
	2004	2014	2004	2014	2004	2014
<7	10	7	12	10	2	3
7	7	34	5	8	2	1
8-13	0	7	0	0	1	0
14	4	14	0	1	2	1
15-20	0	1	1	0	0	0
21	1	4	0	0	0	0
>21	1	2	0	0	0	0

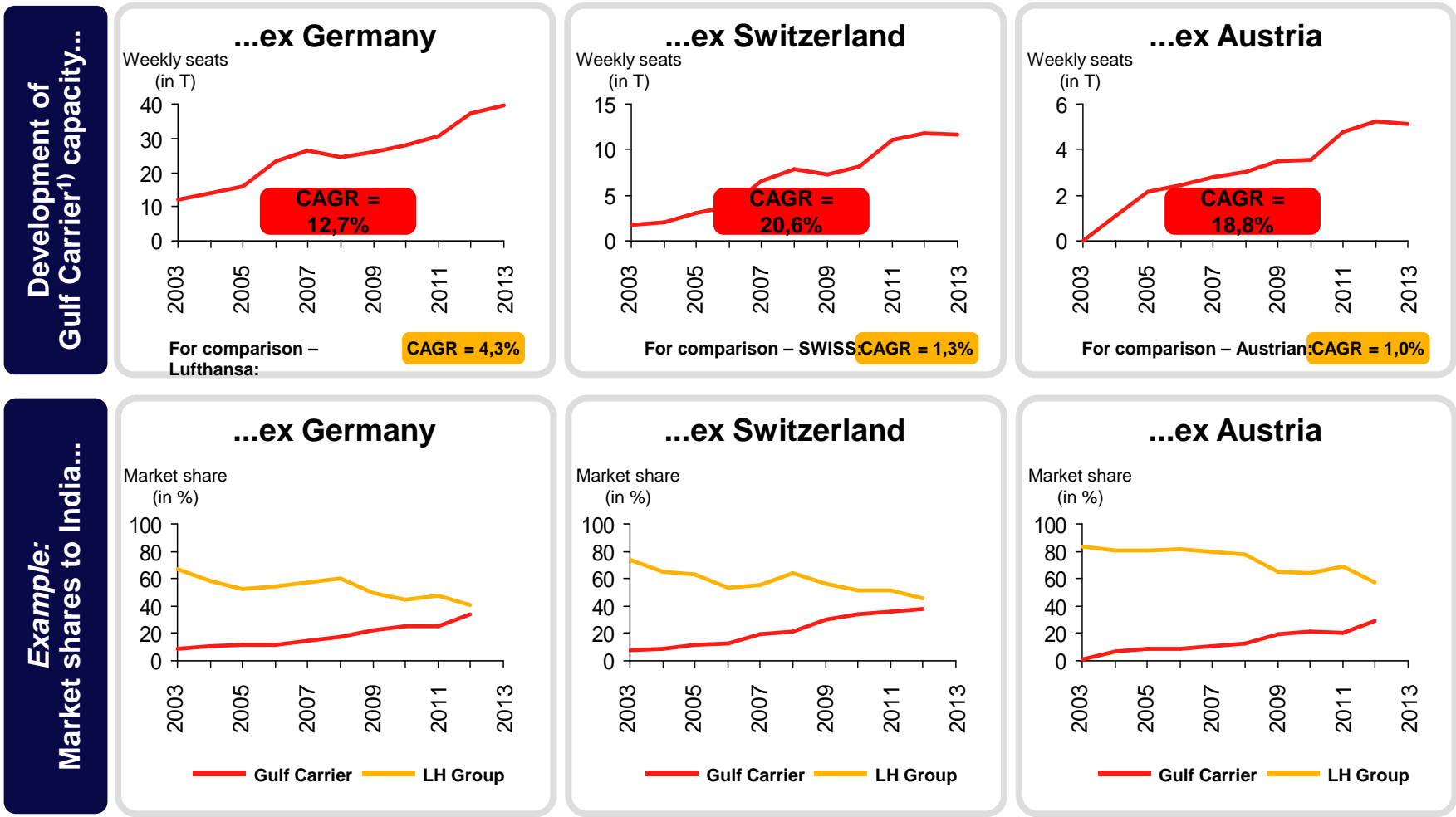
Source: Transport

Growth of capacity in the Gulf significantly different from any other region in the Eastern hemisphere and in comparison to decade long market developments



(Boeing Market Outlook 2014-2033)

Gulf Carrier market development affects LH Group home markets – Example: Effect on market shares to India



1) "Gulf Carrier" comprise: Emirates (EK), Qatar Airways (QR), Etihad (EY) and Gulf (GF). Note: CAGR = Compound annual growth rate (weekly IK seats). Source: Flash, MIDT

Subsidies yes or no?

Gulf carriers:

- We are not subsidized
- EU and US carriers got subsidies too
- We are an infant industry

EU:

- Internal market prohibits subsidies unless specifically approved
- Full transparency
- Legal approval process; possibility of competitors to intervene
- Privat investor principle applies
- Operational aid is also subject to full scrutiny of state aid

A definition of subsidies will allow for a discussion based on facts and figures (excerpt from EU Competition Clause 2012)

2. (...) subsidy or support means the provision of support on a discriminatory basis, directly or indirectly, to an entity by the state or by a public or private body designated or controlled by the state. The Contracting Parties recognise that state aid, subsidy or support may include, but is not limited to, the provision of subsidies; cross subsidiation; the setting-off of operational losses; the provision of capital, grants, guarantees, ownership, loans or insurance on privileged terms; protection from bankruptcy; the granting of financial advantages by foregoing profits or the recovery of sums due; the forgoing of a normal return on public funds used; tax relief or tax exemptions; compensation for financial burdens imposed by public authorities; or discriminatory access to air navigation or airport facilities and services, fuel, ground handling, security, computer reservation systems or other related facilities and services necessary for the operation of air services.

- Provision of subsidies
- Setting-off of operational losses
- Providing capital, grants and loans on privileged terms
- Protecting from bankruptcy
- Foregoing profits
- Tax relief and tax exemptions
- Discriminatory access to infrastructure

EU Commission ready to address the issue of fair competition in aviation



The Commission will now seek a new mandate from EU governments to curb market-distorting state aid to airlines, not only from Persian Gulf states, but also from countries like China, Brazil, and Turkey, Bulc said. "We have a good internal aviation market in the EU, but we are losing the share on intercontinental flights. We need to address how to be competitive in other markets, and social dumping is part of it," stated Anrijs Matiss, the Latvian Minister for Transport, whose country currently holds the EU's rotating Presidency.

EU countries also asked for additional instruments, such as the EU law against subsidies and unfair pricing practices distorting the air transport sector, to be revised in order to avoid unfair competition in the future.

Any future legislative proposal will be presented under the aviation package the Commission intends to put forward in the second half of the year. (Source: EurActiv)

Adhering to principles of fair competition has become part of global trade and a prerequisite to do business in the EU



SPEECH - 20 April 2015

Enforcing competition rules in the global village



Competition culture is spreading. The global market place brings benefits, but also increases the need for a robust legal framework to ensure that markets stay competitive.

(...)

When the founding fathers of the European Union wrote our treaties in 1957, they understood that we could not achieve a successful European single market, if we did not have harmonised competition rules. That is why our treaties allow the Commission to directly enforce competition rules against companies in our Member States.

It was for the Commission to ensure that state aid did not distort the internal market, or that cartels did not prevent its benefits from reaching consumers.

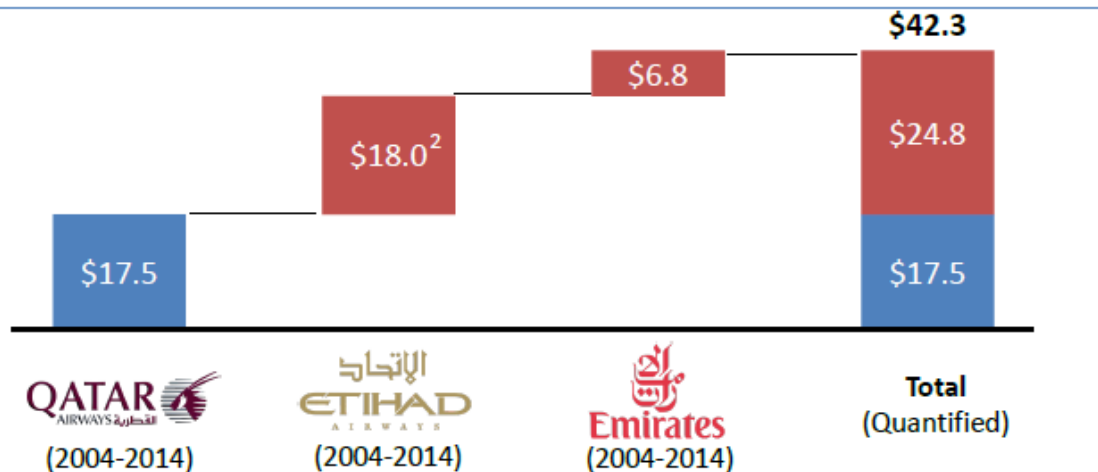
Conclusions: Is the competition from the Gulf carriers fair?

- No, if asking for liberalized market access without accepting principles of fair competition, namely control of state aid and capacity dumping
- No, if access to EU market is not subject to the same rules for all carriers competing in this market
- No, if traffic rights are traded against deals in other industries
- No, if subsidies are invested in ailing (foreign) airlines and are used for expansion/increase of market share

The discussion and investigation on subsidies needs to start – compelling facts have been presented

Since 2004, the Governments of Qatar and the UAE have granted over \$40 billion in subsidies and other unfair benefits to their state-owned carriers

Total quantified subsidies (\$39.2) and other unfair benefits (\$3.1)¹
 USD billions, by airline by date range



Source: <http://www.openandfairskies.com/wp-content/themes/custom/media/Presentation.pdf>

Conclusions: Can the competition from the Gulf carriers be fair?

- Yes, if principles of fair competition are applied to all airlines competing in the same market
- Yes, if foreign carriers doing business in the EU are subject to the same rules as EU carriers
- Yes, if the EU Commission or an independent body like WTO assesses whether Gulf carriers receive subsidies
- Yes, if the EU Commission or an independent body like WTO reviews reasons for abnormal market growth and checks possible capacity dumping
- Yes, if violation of principles of fair competition are sanctioned



Thank you for your attention

