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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

LATIN AMERICAN COMPETITION FORUM

Session IV: Competition Issues in the Air Transport Sector

Call for Country Contributions

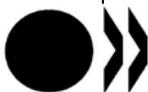
13-14 Septembre 2011, Bogotá (Colombia)

The attached document is circulated in preparation for the discussion under session IV of Latin American Competition Forum at its forthcoming meeting to be held on 13-14 September 2011 (Colombia). Written contributions for that session should reach the Secretariat by 17 August at the latest. Advance notice of contributions by 29 July would be useful.

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LATIN AMERICAN COMPETITION FORUM

-- 13-14 September 2011, Bogota (Colombia) --

Session IV: Competition Issues in the Air Transport Sector

CALL FOR COUNTRY CONTRIBUTIONS

1. Introduction

1. This request for contributions is circulated in preparation for the discussion to be held in Session IV of the Latin American Competition Forum (LACF, 13-14 September 2011 in Colombia). Session IV will discuss *Competition Issues in the Air Transport Sector*. You are invited to make a written contribution to this discussion.

2. This call for contributions will identify possible issues which countries may wish to address in their written contributions and further discuss during the session on 14 September 2011. This should not be considered a prescriptive or exhaustive list of issues, and countries should feel free to describe other relevant issues that reflect their experiences. Speakers will be selected on the basis of the written contributions submitted to the OECD Secretariat in response to this call. All participating countries are invited to prepare submissions. To assist the OECD Secretariat with the detailed planning of the session, **advance notice by 29 July 2011** of your intention to provide a contribution would be helpful. The contributions should be sent by email to Erica Agostinho [Erica.Agostinho@oecd.org] (copied to: Helene Chadzyska [Helene.Chadzyska@oecd.org]) **by 17 August 2011 at the latest** (in electronic Word document, 5 pages maximum in Spanish or English). Country contributions will be circulated to participants through the OECD (<http://www.oecd.org/competition/latinamerica>) and Colombian websites (URL to be circulated shortly).

3. The Secretariat will circulate a Background Paper on the topic in advance of the LACF meeting.

4. Aviation is an important sector of the economy nationally, internationally and regionally. It is a large sector both in terms of monetary value and in terms of its effect on international trade. Its significance has not diminished despite the major recent challenges facing the airline industry, including terrorist attacks, international conflicts and the rapid rise in oil prices. In fact, the underlying long-term trend in air passenger numbers is strongly upward.

5. Air transport liberalisation over the last two decades has facilitated the entry of new firms and produced positive effects on consumer welfare, both in terms of price and the range of services on offer. The entry and rapid growth of low-cost carriers has increased competition between airlines in recent years. This competition and the development of new business models has reduced the average fares paid by consumers, particularly on domestic and short haul flights.

6. Progressive liberalisation of international aviation treaties, the globalisation of the economy and advances in technology have also contributed to the growing strength of airline alliances. For historic reasons, substantial foreign ownership of airlines is often restricted. Alliances enable airlines to obtain the efficiencies and benefits normally linked with mergers and acquisitions, such as fleet rationalisation, expansion and rationalisation of network structure, greater exploitation of cost-side economies of scale and reduction of costs through joint purchasing and joint marketing. These alliances have offered benefits to travellers, notably through offering seamless travel and services between a more extensive range of city pairs, reduction in travelling time, joint lounges and co-ordination of frequent flyer programmes. There is, however, debate about the impact of such alliances on market concentration and higher fares on routes where competition has shrunk. In their assessment of airline alliances, competition authorities have looked to ensure that competition on all markets is maintained and that the alliances do not rule out opportunities for real competition from new operators on the main routes.

7. Airports and airport services are essential for the effective functioning of the aviation industry. Airports have also benefited from the rapid and ongoing expansion of airlines, leading to greater economies of scale in certain operations, while posing challenges to expand capacity to meet demand. Actions by dominant airport operators have been reviewed by sector regulators and competition authorities. Issues such as slot allocation and conditions for access to airport infrastructures, such as reservation systems, ground-handling services, catering facilities and jet fuel distribution systems, have prompted anti-trust scrutiny and reviews of the regulatory frameworks.

8. The aviation industry is subject to significant regulation – not only economic but also in relation to zoning regulations, air safety, security and the environment. While route schedules and pricing for the airline industry have been the subject of deregulation, many other aspects of the industry are still highly regulated. For example, international routes have been deregulated only gradually, through negotiated bilateral Open Skies agreements, which generally allow airline companies from the two countries in question to fly between these countries without restrictions. However, these Open Skies agreements do not create fully competitive markets as they do not generally allow carriers to transport passengers within the country. Thus, despite this liberalisation process, many activities are still subject to government regulations at different levels.

9. The development and maintenance of effective competition in the airline industry requires both effective liberalisation of markets and effective competition enforcement. Liberalisation and competition enforcement are mutually reinforcing policies. In particular, the reduction or elimination of regulatory constraints increases competition between market players, but at the same time it increases the risk of anti-competitive behaviour by airlines or airport operators which attempt to protect or maintain existing privileges and market positions. Competition policy should seek to prevent regulatory barriers being replaced by anti-competitive agreements (such as market sharing, price fixing, etc.) between airlines or abusive behaviour by dominant carriers or airport operators, such as refusals to deal, refusal to grant access to airport facilities and other exclusionary strategies, which could significantly reduce or eliminate the benefits of liberalisation.

10. Deregulation, in combination with competition, has spurred the development of the airline sector making air travel more affordable and improving the range of services on offer. The positive impact of these deregulation measures suggests that policies to allocate some key inputs (such as slots) on a market

basis may yield more efficient outcomes. Further liberalisation of other regulatory restrictions, such as foreign ownership and control rules and domestic flights by foreign-owned airlines, could increase the level of competition for both international and domestic flights. Here, competition authorities can play an important role in advocating for the necessary degree of liberalisation to ensure competitive markets.

QUESTIONS FOR CONSIDERATION IN COUNTRY CONTRIBUTIONS

Countries are invited to address these general issues by reference to the illustrative questions below. Wherever possible, these responses should be illustrated by reference to specific cases.

1. Industry characteristics

1. What is the structure of the aviation industry in your country? Has the structure of the industry evolved over time? If yes, describe which factors have contributed to the industry's development.
2. Have aviation services been liberalised in your country? If yes, are there areas which are still subject to government regulation or control? Have they been subject to advocacy initiatives to promote further liberalisation or deregulation? What role did the competition authority have, if any?
3. Does competition law apply to the air transport sector? What exemptions are there? What is the relationship between regulation and competition in the aviation sector of your country?

2. Market definition

4. How do you define aviation markets in your enforcement practice? Does the market definition vary depending on the types of cases that you investigate (cartels, mergers, or abuses of a dominant position)? Is market definition for antitrust purposes different from market definition used for regulatory purposes? Have you considered substitutability of airlines services with other transport services, such as high speed train connections between two cities?
5. Which criteria do you use to define markets in the aviation industry? For example, do you distinguish markets based on customer groups (business travellers vs. leisure travellers) or types of airlines ("full services" vs. charter airlines vs. low cost) or based on the distance between the origin and destination points (long haul vs. short haul)?
6. What is the geographic scope of markets for air service? Are these markets national, local or international? What factors do you look at when taking such decisions?

3. Alliances and mergers

7. Have you reviewed any alliance or cooperation agreement between competing airlines? If yes, what type of cooperation agreement have you analysed? Did you find them to be pro- or anti-competitive? Have you imposed remedies or sanctions?

8. Do you have any experience in reviewing airline mergers, either national or cross-border? What issues have you considered in these type of mergers? If you identified any anti-competitive effects of these mergers did you impose any structural or behavioural remedies?

4. Airport services

9. Are individual airports services (e.g. airport infrastructure services to airlines, services delivered directly to air passengers, and services to other commercial operators at airports) a separate product or are they a single product of bundled services? What type of airport services have you reviewed in your enforcement practice and advocacy efforts?

10. Do you consider airport operators as market entities which are subject to competition law enforcement? Have you ever assessed if airport operators have a dominant position in the supply of airport services? Have you investigated anti-competitive practices of airport operators?