

# ICAO's Air Transport Symposium 2016

Competition in liberalised markets  
Wednesday 30 March 2016



Universiteit Leiden  
The Netherlands

# Competition in liberalised markets



- References in the Chicago Convention to competition
- See Preamble, and mention of prevention of “unreasonable competition”
- What kind of competition are we looking for?
  - No competition at all (one extreme), as competition is a ‘sin’
  - Reasonable competition
  - Fair competition
  - ‘Effective’ competition
  - Free or unrestricted competition – no rules governing market conduct
- “It is nice to have valid competition; it pushes you to do better.” (Versace)

# Competition in liberalised markets

- 'Fair' - or perhaps 'valid' or 'reasonable' – competition  
What does it mean?

- That competition is governed by rules, policies and enforcement resulting into 'fairness' however that is defined and implemented
- Challenges we are facing:

- Existence of Air Services Agreements (ASAs) supporting anti competitive behaviour
- Absence of a global regime which is needed in this sector to achieve 'fairness'
- Same for other sectors, but see the telecom agreement
- See also WTO rules procedures on anti-dumping and subsidies
- 'Fairness' is also dictated by other factors affecting the equally opaque term 'level playing field' – what is fair for one party may not be fair to the other.



# Competition in liberalised markets



- For instance, does State aid affect the ‘fairness’ of competition should fairness be our chosen benchmark?
- Helping hand from the Chicago Convention, a bit surprisingly: Mandate for the ICAO Council to request, collect, examine and publish information about ‘particulars of subsidies paid to airlines from public funds – which does not yet mean that such payments are forbidden.
- EU is the only jurisdiction submitting State aid to rules, governance, policies and enforcement

# Competition in liberalised markets



Who are the main players:

- The *Competition authorities*, on the one hand, other hand, the following parties:
- *Airlines* – for concerted actions, or ‘conspiracies’, and in occasional instances, abuses of dominant positions;
- *Airports*, if at all, for an abuse of a dominant position;
- *Air traffic control service providers* – mostly immunised;
- Are Airports and ATC providers ‘undertakings’?
- *Ground handling service providers* –subject to other regimes;
- *States* – when and if their aid is regulated;
- *CAA’s* – governing *ASA’s*, sometimes ‘in competition’ with Competition Authorities
- *Merger control* – a special subject.