

## Recommended

### Fair Competition Clause

1. The Contracting Parties acknowledge that it is their joint objective to have a fair and competitive environment and fair and equal opportunity for the airlines of both Contracting Parties to compete in operating the agreed services on the specified routes. Therefore, the Contracting Parties shall take all appropriate measures to ensure the full enforcement of this objective.
2. The Contracting Parties assert that free, fair and undistorted competition is important to promote the objectives of this Agreement and note that the existence of comprehensive competition laws and of an independent competition authority as well as the sound and effective enforcement of their respective competition laws are important for the efficient provision of air transport services. The competition laws of each Contracting Party addressing the issues covered by this Article, as amended from time to time, shall apply to the operation of the air carriers within the jurisdiction of the respective Contracting Party. The Contracting Parties share the objectives of compatibility and convergence of Competition law and of its effective application. They will cooperate as appropriate and where relevant on the effective application of competition law, including by allowing the disclosure, in accordance with their respective rules and jurisprudence, by their respective airline(s) or other nationals of information pertinent to a competition law action by the competition authorities of each other<sup>1</sup>.
3. Nothing in this Agreement shall affect, limit or jeopardise in any way the authority and powers of the relevant competition authorities and courts of either Contracting Party (and of the European Commission), and all matters relating to the enforcement of competition law shall continue to fall under the exclusive competence of those authorities and courts. Therefore, any action taken pursuant to this Article by a Contracting Party shall be without prejudice to any possible actions taken by those authorities and courts.
4. Any action taken pursuant to this Article shall fall under the exclusive responsibility of the Contracting Parties and shall be exclusively directed towards the other Contracting Party and/or to airline(s) providing air transport services to/from the Contracting Parties. Such action shall not be subject to the dispute settlement procedure foreseen in *[refer to the relevant Article of the ASA]*

### Unfair competition

5. Each Contracting Party shall eliminate all forms of discrimination or unfair practices which would adversely affect the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing air transport services.

### Public subsidies and support

6. Neither Contracting Party shall provide or permit public subsidies or support to their respective airlines if these subsidies or support would significantly and adversely affect, in an unjustified way, the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing air transport services. Such public subsidies

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<sup>1</sup> This paragraph may be inserted in the Preamble to the ASA or in the MoU/Agreed Minutes.

or support may include, but are not limited to: cross-subsidisation; the setting-off of operational losses; the provision of capital; grants; guarantees; loans or insurance on privileged terms; protection from bankruptcy; foregoing the recovery of amounts due; foregoing a normal return on public funds invested; tax relief or tax exemptions; compensation for financial burdens imposed by public authorities; and access on a discriminatory or non-commercial basis to air navigation or airport facilities and services, fuel, ground handling, security, computer reservation systems, slot allocation or other related facilities and services necessary for the operation of air services<sup>2</sup>.

7. When a Contracting Party provides public subsidies or support in the sense of paragraph 6 above 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.
8. Each Contracting Party shall, at the request of the other Contracting Party, provide to the other Contracting Party within a reasonable time financial reports relating to the entities under the jurisdiction of the first Contracting Party, and any other such information that may be reasonably requested by the other Contracting Party to ensure that the provisions of this Article are being complied with. This may include detailed information relating to subsidies or support in the sense of paragraph 6 above. The submission of such information may be subject to its confidential treatment by the Contracting Party requesting access to the information<sup>3</sup>.
9. Without prejudice to any action undertaken by the relevant competition authority and/or court for the enforcement of the rules referred to in paragraphs 5 and 6,
  - a) if one Contracting Party finds that an airline is being subject to discrimination or unfair practices in the sense of paragraphs 5 or 6 above and that this can be substantiated, it may submit observations in writing to the other Contracting Party. After informing the other Contracting Party, a Contracting Party may also approach responsible government entities in the territory of the other Contracting Party, including entities at the central, regional, provincial or local level to discuss matters relating to this Article. Moreover, a Contracting Party may request consultations on this matter with the other Contracting Party with a view to solving the problem. Such consultations shall start within a period of thirty (30) days of the receipt of the request. In the meantime, the Contracting Parties shall exchange sufficient information to enable a full examination of the concern expressed by one of the Contracting Parties.
  - b) if the Contracting Parties fail to reach a resolution of the matter through consultations within thirty (30) days from the start of consultations or consultations do not start within a period of thirty (30) days of the receipt of the request concerning an alleged violation of paragraphs 5 or 6 above, the Contracting Party which requested the consultation shall have the right to suspend the exercise of the rights specified in this Agreement by the airline(s) of the other Contracting Party by refusing, withholding, revoking or suspending the operating authorisation/permit, or to impose such conditions as it may deem necessary on the exercise of such rights<sup>4</sup>, or impose

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<sup>2</sup> The definition of state subsidy may be included in the Article on definitions (in the ASA).

<sup>3</sup> If the partner country is more willing to accept it, this paragraph could also be included in a MoU/Agreed Minutes.

<sup>4</sup> The Article in the ASA on Revocation, Suspension or Limitation of Authorisation should refer to this paragraph as basis for action.

duties or take other actions. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary.

### **Antitrust**

10. Each Contracting Party shall effectively apply antitrust laws in accordance with paragraph 2, and shall prohibit airline(s):

a) in conjunction with any other airline(s) to enter into agreements, take decisions or engage in concerted practices which may affect air transport services to/from that Contracting Party and which have as their object or effect the prevention, restriction or distortion of competition. This prohibition may be declared inapplicable where such agreements, decisions or practices contribute to improving the production or distribution of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and do not: (a) impose on the airlines concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such airlines the possibility of eliminating competition in respect of a substantial part of the services in question, and

b) to abuse a dominant position in a way which may affect air transport services to/from that Contracting Party.

11. Each Contracting Party shall entrust the enforcement of the antitrust rules referred to in paragraph 10 above exclusively to its relevant and independent competition authority and/or court.

12. Without prejudice to any action undertaken by the relevant competition authority and/or court for the enforcement of the rules referred to in paragraph 10, if one Contracting Party finds that an airline suffers from an alleged violation of paragraph 10 above and that this can be substantiated, it may submit observations in writing to the other Contracting Party. After informing the other Contracting Party, a Contracting Party may also approach responsible government entities in the territory of the other Contracting Party, including entities at the central, regional, provincial or local level to discuss matters relating to this Article. Moreover, a Contracting Party may request consultations on this matter with the other Contracting Party with a view to solving the problem. Such consultations shall start within a period of thirty (30) days of the receipt of the request. In the meantime, the Contracting Parties shall exchange sufficient information to enable a full examination of the concern expressed by one of the Contracting Parties.

13. If the Contracting Parties fail to reach a resolution of the matter through consultations within thirty (30) days from the start of consultations or consultations do not start within a period of thirty (30) days of the receipt of the request concerning an alleged violation of paragraph 10, and provided the relevant competent competition authority or court has found an antitrust violation, the Contracting Party which requested the

consultation shall have the right to suspend the exercise of the rights specified in this Agreement by the airline(s) of the other Contracting Party by refusing, withholding, revoking or suspending the operating authorisation/permit, or to impose such conditions as it may deem necessary on the exercise of such rights<sup>5</sup>, or impose duties or take other actions. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary.

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<sup>5</sup> The Article in the ASA on Revocation, Suspension or Limitation of Authorisation should refer to this paragraph as basis for action.

## **EU-Canada Air Transport Agreement**

### *Article 14*

#### **Competitive environment**

1. The Parties acknowledge that it is their joint objective to have a fair and competitive environment for the operation of the air services. The Parties recognise that fair competitive practices by airlines are most likely to occur where these airlines operate on a fully commercial basis and are not state subsidised. They recognise that matters, such as, but not limited to the conditions under which airlines are privatised, the removal of competition distorting subsidies, equitable and non-discriminatory access to airport facilities and services and to computer reservation systems are key factors to achieve a fair and competitive environment.

2. If a Party finds that conditions exist in the territory of the other Party that would adversely affect a fair and competitive environment and its airlines' operation of the air services under this Agreement, it may submit observations to the other Party. Furthermore, it may request a meeting of the Joint Committee. The Parties accept that the degree to which the objectives in the Agreement related to a competitive environment may be undermined by a subsidy or other intervention is a legitimate subject for discussion in the Joint Committee.

3. Issues that may be raised under this Article 14 include, but are not limited to, capital injections, cross subsidisation, grants, guarantees, ownership, tax relief or tax exemption, protection against bankruptcy or insurance by any government entities. Subject to paragraph 4 of Article 14, a Party, upon notification to the other Party, may approach responsible government entities in the territory of the other Party including entities at the state, provincial or local level to discuss matters relating to this Article.

4. The Parties recognise the cooperation between their respective competition authorities as evidenced by the Agreement between the Government of Canada and the European Communities regarding the Application of their competition laws, done at Bonn on 17 June 1999.

5. If, following consultations in the Joint Committee, a Party believes that the conditions referred to in paragraph 2 of Article 14 persist and are likely to result in significant disadvantage or harm being caused to its airline or airlines, it may take action. A Party may take action under this paragraph from the earlier of the establishment, by a decision of the Joint Committee, of procedures and criteria by the Joint Committee for the exercise of such action or one year from the date that this Agreement is applied provisionally by the Parties or enters into force. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary. It shall be exclusively directed towards the entity benefiting from the conditions referred to in paragraph 2, and shall be without prejudice to the right of any Party to take action under Article 21 (Settlement of disputes).

### *Article 21*

#### **Settlement of disputes**

1. If any dispute arises between the Parties relating to the interpretation or application of this Agreement they shall in the first place endeavour to settle it through formal consultations within the Joint Committee. Such formal consultations shall begin as soon as possible and notwithstanding paragraph 4 of Article 17 within a period of no more than 30 days from the date of receipt by one Party of the written request made by the other Party, referring to this Article, unless otherwise decided by the Parties.

2. If the dispute is not resolved within 60 days of the receipt of the request for formal consultations, it may be referred to a person or body for decision by consent of the Parties. If the Parties do not so consent, the dispute shall, at the request of either Party be submitted to arbitration by a tribunal of three arbitrators in accordance with the procedures set forth below.
3. Within 30 days from the receipt of a request for arbitration each Party to the dispute shall nominate an independent arbitrator. The third arbitrator shall be appointed within a further period of 45 days by agreement between the two arbitrators named by the Parties. If either of the Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation may be requested by either Party to appoint an arbitrator or arbitrators as the case requires. If the President is of the same nationality as one of the Parties, the most senior Vice-president who is not disqualified on that ground shall make the appointment. In all cases the third arbitrator shall be a national of a third State, shall act as President of the Tribunal and shall determine the place where arbitration will be held.
4. The Tribunal shall establish its own rules of procedure and the timetable for the proceedings.
5. At the request of a Party the Tribunal may order the other Party to the dispute to implement interim relief measures pending the Tribunal's final determination.
6. The Tribunal shall attempt to render a written decision within 180 days from the receipt of the request for arbitration. The decision of the majority of the Tribunal shall prevail.
7. If the Tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach a resolution with the other Party to the dispute on a mutually satisfactory solution within 30 days after notification of the Tribunal's decision, the other Party may suspend the application of equivalent benefits arising under this Agreement until such time as the dispute has been resolved.
8. The expenses of the Tribunal shall be shared equally between the Parties to the dispute.
9. For the purposes of this Article, the European Community and the Member States shall act together.

## **EU-US Air Transport Agreement**

### *Article 14*

#### **Government subsidies and support**

1. The Parties recognise that government subsidies and support may adversely affect the fair and equal opportunity of airlines to compete in providing the international air transportation governed by this Agreement.
2. If one Party believes that a government subsidy or support being considered or provided by the other Party for or to the airlines of that other Party would adversely affect or is adversely affecting that fair and equal opportunity of the airlines of the first Party to compete, it may submit observations to that Party. Furthermore, it may request a meeting of the Joint Committee as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.
3. Each Party may approach responsible governmental entities in the territory of the other Party, including entities at the State, provincial or local level, if it believes that a subsidy or support being considered or provided by such entities will have the adverse competitive effects referred to in paragraph 2. If a Party decides to make such direct contact it shall inform promptly the other Party through diplomatic channels. It may also request a meeting of the Joint Committee.
4. Issues raised under this Article could include, for example, capital injections, cross-subsidisation, grants, guarantees, ownership, relief or tax exemption, by any governmental entities.

### *Article 20*

#### **Competition**

1. The Parties recognise that competition among airlines in the transatlantic market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not individual competitors.
2. The Parties recognise that differences may arise concerning the application of their respective competition regimes to international aviation affecting the transatlantic market, and that competition among airlines in that market might be fostered by minimising those differences.
3. The Parties recognise that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results and to minimise differences in approach with respect to their respective competition reviews of inter-carrier agreements. Consequently, the Parties shall further this cooperation to the extent feasible, taking into account the different responsibilities, competencies and procedures of the authorities, in accordance with Annex 2.
4. The Joint Committee shall be briefed annually on the results of the cooperation under Annex 2.

**EU-Israel Air Transport Agreement***Article 7***Competitive Environment**

1. The Contracting Parties reaffirm the application of the provisions of Chapter 3 ("Competition") of Title IV of the Association Agreement to this Agreement.
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, and where neutral and non-discriminatory access to airport facilities, services, and slot allocation is ensured.
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. Furthermore, it may request a meeting of the Joint Committee, as provided for in Article 22 of this Agreement. Consultations shall start within 30 days of receipt of such a request. Failure to reach a satisfactory agreement within 30 days from the start of consultations shall constitute grounds for the Contracting Party that requested the consultations to take action to refuse, withhold, revoke, suspend or impose appropriate conditions on the authorisations of the air carrier(s) concerned, consistent with Article 4.
4. The actions referred to in paragraph 3 shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary. They shall be exclusively directed towards the air carrier(s) benefiting from the conditions referred to in paragraph 3, and shall be without prejudice to the right of either Contracting Party to take action under Article 23.
5. The Contracting Parties agree that the participation of the Israeli Government to help cover additional security expenses incurred by the Israeli air carriers as a result of Israeli Government instructions, is not an unfair competitive practice and is not considered as a subsidy for the purpose of this article provided that:
  - (a) such support covers exclusively costs necessarily incurred by the air carriers of Israel when implementing extra security measures required by the Israeli authorities which are not imposed on, or incurred by, air carriers of the European Union; and
  - (b) such security costs are clearly identified and quantified by Israel; and
  - (c) the Joint Committee receives, once a year, a report describing the total sum of the security expenses and the rate of participation of the Israeli government in the previous year.
6. Each Contracting Party, upon notification to the other Contracting Party, may approach responsible government entities in the territory of the other Contracting Party including entities at the state, provincial or local level to discuss matters relating to this Article.
7. The provisions of this Article shall apply without prejudice to the Contracting Parties' laws and regulations regarding public service obligations in the territories of the Contracting Parties.



**EU-Moldova Air Transport Agreement**

*Article 8*

**Competitive environment**

1. The Parties acknowledge that it is their joint objective to have a fair and competitive environment for the operation of air services. The 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.
2. Within the scope of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.
3. State aid which distorts or threatens to distort competition by favouring certain undertakings or certain aviation products or services is incompatible with the proper functioning of this Agreement, insofar as it may affect trade between the Parties in the aviation sector.
4. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the European Union, in particular from Article 107 of the Treaty on the Functioning of the European Union and interpretative instruments adopted by the European Union institutions.
5. If one Party finds that conditions exist in the territory of the other Party, in particular due to a subsidy, which would adversely affect the fair and equal opportunity of its air carriers to compete, it may submit observations to the other Party. Furthermore, it may request a meeting of the Joint Committee, as provided for in Article 22 (Joint Committee) of this Agreement. From the receipt of such a request consultations shall start within 30 days. Failure to reach a satisfactory agreement within 30 days from the start of consultations shall constitute grounds for the Party that requested the consultations to take action to refuse, withhold, revoke, suspend or impose appropriate conditions on the authorisations of the air carrier(s) concerned, consistent with Article 5 (Refusal, Revocation, Suspension or Limitation of Authorisation) of this Agreement.
6. The actions, referred to in paragraph 5 of this Article, shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary. They shall be exclusively directed towards the air carrier or air carriers benefiting from a subsidy or the conditions referred to in this Article, and shall be without prejudice to the right of either Party to take action under Article 24 (Safeguard measures) of this Agreement.
7. Each Party, upon notification to the other Party, may approach responsible government entities in the territory of the other Party including entities at the state, provincial or local level to discuss matters relating to this Article.
8. The provisions of this Article shall apply without prejudice to the Parties' laws and regulations regarding public service obligations in the territories of the Parties.