

Measure 23: Protection against subsidisation and unfair pricing practices in the supply of air services from third countries

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<p><i>Policy package:</i> 3C: Air transport pricing, taxation and financing</p>
<p><i>Measure 23:</i> Protection against subsidisation and unfair pricing practices in the supply of air services from countries not members of the European Community</p>
<p><i>What is the problem being addressed ?</i> Following the events of 11 September 2001, the US administration and other governments granted their airlines huge subsidies, distorting above all the transatlantic market and thus hitting the interests of European airlines. Additionally, subsidisation is not the only type of state-involvement which can result in distortion of international supply of airline services. Pricing practices by foreign air carriers may be at unfair levels by virtue of them being state-controlled rather than being subsidised. In fact, any subsidies granted by foreign governments to carriers they themselves control would be extremely difficult to detect. The measure is designed to address this problem. It will allow Community action against unfair competition from non-Community carriers on routes to and from the Community due to trade-distorting third country subsidies. Additionally, it will provide for a remedy against unfair pricing practices by state-controlled air carriers. Cases will be examined on the basis of industry complaints which show that such subsidies or unfair pricing practices are causing injury on certain routes.</p>
<p><i>Measure's costs and/or benefits:</i> Additional information on the costs of the proposed Regulation is needed.</p>
<p><i>Legislative implementation at the EU level:</i> The Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community has been published on the Official Journal of the European Union of 30 April 2004. It is entered into force on 20 May 2004.</p>
<p><i>What are the objectives ?</i> The Regulation lays down the procedure to be followed to provide protection against subsidisation and unfair pricing practices in the supply of air services from third countries in so far as injury is thereby caused to the Community industry. A redressive measure is imposed for the purpose of offsetting:</p> <ul style="list-style-type: none">• a subsidy granted, directly or indirectly, to a non-Community air carrier; or• unfair pricing practices by non-Community air carriers, <p>concerning the supply of air services on one or more routes to and from the Community which cause injury to the Community carriers.</p> <p>The determination of injury shall be based on positive evidence and shall involve an objective examination of both the level of fares of the air services under consideration and the impact of those air services on the Community industry, as indicated by trends in a number of market indicators.</p> <p>Redressive measures, whether provisional (six months) or definitive, will be imposed on a per carrier basis and shall preferably take the form of duties. In practice, the Member States authorities collecting an "airport tax" could also collect the duty. Duties collected will be remitted to the Community budget in line with existing provisions applied within the European Union on redressive and countervailing duties.</p>
<p><i>Interactions with other WP measures:</i> There is an "inverse" relationship with the Air Services Agreements with third countries (Measure 24). Indeed, the Regulation is not intended to replace these agreements that, when they are brought in line with Community law, can be used to deal effectively also with practices covered by this Regulation. Where an ASA exists at Member State level which would enable a satisfactory response to be made within a</p>

reasonable period of time, that instrument would take precedence over this Regulation. This means in practices that the need for active Community protection against subsidisation and unfair pricing practices will be reduced as long as air services agreements compatible with the Community law will be established by the Member States with the third countries concerned.

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Output indicators:

Output indicators may include the following:

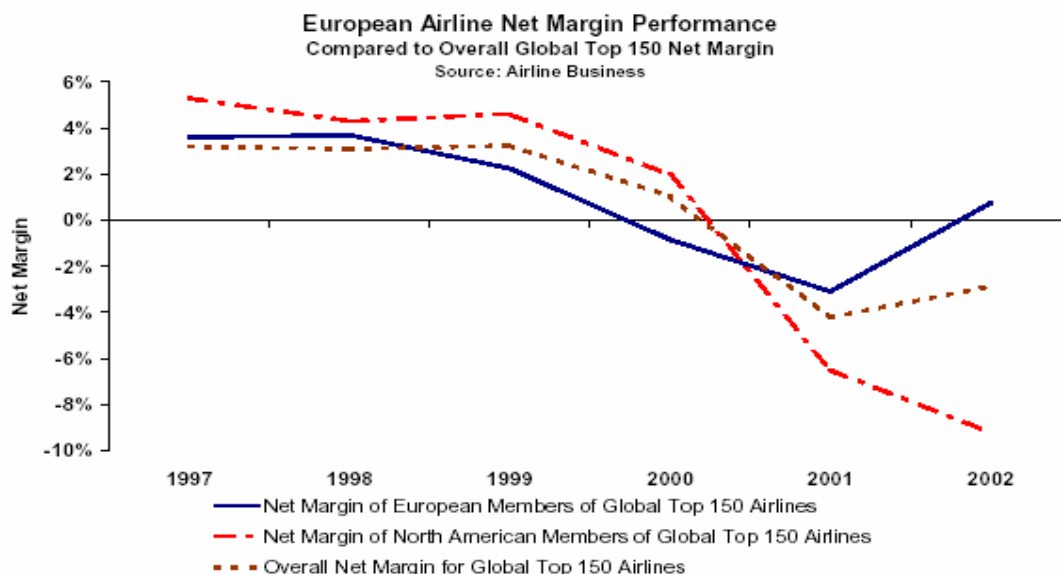
- Total number of investigations initiated, on an annual basis
- Total amount of duties imposed as a result of investigations in the Member States, on an annual basis

Outcome indicators: intermediate impacts on transport markets

With the purpose of determining the injury to the Community industry, detailed market data shall be collected for the concerned routes. They include comparative Community carriers and third country carriers levels of fares, as well as trends in a number of economic indicators such as the number of flights, utilisation of capacity, passenger bookings, market share, profits, return on capital, investment, employment for the Community and non-Community airlines operating on the concerned routes.

The investigations will be based then on specific market impact analyses, whose results can be used to assess the impact of the measure on the total European civil aviation market.

However, at a more general level, it is important to note that the global airline industry continued to record poor financial results in 2002 (DGTREN, 2003). Operating losses from major airlines totalled US\$ 7,3 billions, with a total net loss of US\$ 11,7 billion. European airlines improved their profitability after the dire financial results posted in 2001. The European airline sector as a whole managed to achieve a positive net margin, albeit only just. The margin recorded in 2002 was at a similar level to the year 2000 margin. European profitability outperformed the global airline sector. Losses at North American airlines continued to grow. This was despite government financial support.



Outcome indicators: final impacts on transport users and non users

The measure has a direct impact on the public budget available to the Community, in forms of duties that may be used to compensate the injury caused to the Community industry by unfair practices of third countries.