UNIVERSITAT JAUME I

# The “Extraterritorial” Application of European Law in the Field of Air Transport

## or

torial” Application
opean Law
of Air Transport

## The Art of War against misdeeds committed abroad

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Ach z

Tenured Professor of Commercial Law
Institute for Transport Law
Jaume I-University, Castellon

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# I. 計篇 – Laying Plans

孫子曰兵者國之大事

*Sun Tzŭ said: The art of war is of vital importance to the State*

**Why**

**do we discuss “extraterritorial” application of European law?**

曰主孰有道將孰有能天地孰得法令孰行兵衆孰强士卒孰練賞罰孰明

*[…] In which army is there the greater constancy […] in […] punishment?*

[i.e. on which side is there the most absolute certainty that […] misdeeds [will be] summarily punished?]

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# I. 計篇 – Laying Plans

1999

Example

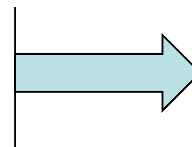
***The "Airfreight" cartel***

7 December 2005
Application for immunity under the 2002 Leniency Notice

必取於人知敵之情者也

*Knowledge of the enemy's dispositions can only be obtained from other men.*

9 November 2010
Commission Decision I
Case COMP/39258 – *Airfreight*



- single and continuous infringement
- 15 addressees
- fine: EUR 790 million

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# I. 計篇 – Laying Plans

AIR CANADA

SAS Cargo

SINGAPORE AIRLINES

AIRFRANCE KLM GROUP

Martinair CARGO

AIRFRANCE

Lufthansa Cargo

KLM

swiss

Swiss International Air Lines

BRITISH AIRWAYS

QANTAS

cargolux

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CATHAY PACIFIC

LAN CARGO

JAPAN AIRLINES

fuel surcharges

security surcharges

denying of remuneration to freight forwarders

# I. 計篇 – Laying Plans

1999

Example

*The "Airfreight" cartel*

7 December 2005
Application for immunity under the 2002 Leniency Notice

9 November 2010
Commission Decision I
Case COMP/39258 – *Airfreight*

- single and continuous infringement
- 15 addressees
- fine: EUR 790 million

16 December 2015
General Court
cases T-9/11, T-28/11, T-36/11, T-38/11, T-39/11, T-40/11, T-43/11, T-46/11, T-48/11, T-56/11, T-62/11, T-63/11, T-67/11

17 March 2017
Commission Decision II

- single and continuous infringement
- 14 addressees
- fine: EUR 776 million

# II. 作戰 – Waging War

其用戰也勝久則鈍兵挫銳攻城則力屈

*When you engage in actual fighting, if victory is long in coming, then men's weapons will grow dull and their ardor will be damped […]*

**controversial issues in the "Airfreight"-case**

1. the material and territorial scope of the Commission's jurisdiction over time (*internal* provisions)

2. the "extra"-territorial application of European law

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# II. 作戰 – Waging War

## controversial issues in the “Airfreight”-case (I)

1. the material and territorial scope of the Commission’s jurisdiction over time

controversial issues
in the “Airfreight”-case

**Regulation No 141/1962**
*declares the non-application of Regulation No 17/1962 to the transport sector*

“peculiarities” of the sector

1. t… mat… sc…e of …isdi

*Article 100*

***(ex Article 80 TEC)***

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

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# II. 作戰 – Waging War

**before 1 January 1988**
**no jurisdiction of the Commission (transitional provisions)**

**1 January 1988**
**Regulation No 3975/87 confers powers to investigate international transport between Community airports**

1 January 1994
EEA Agreement allows for the investigation of international air transport between EEA airports

1 January 2002
EC-Swiss Air Transport Agreement: international air transport between the Community and Switzerland

**1 May 2004**
**Regulation No 1/2003 (as amended) confers jurisdiction on routes between EU and third country airports**

19 May 2005
EEA Agreement amended to implement R 1/2003 (as amended): international transport between the EEA and third countries

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# III. 謀攻篇 – Attack by Stratagem

故曰知彼知己百戰不殆不知彼而知己一勝一負不知彼不知己每戰必殆

*If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.*

**controversial issues in the "Airfreight"-case (II)**

1. the material and territorial scope of the Commission's jurisdiction over time (internal provisions)

does the Commission have jurisdiction under *international (public) law?*

2. the "extra"-territorial application of European law

2. the "extra"-territorial application of European law

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# III. 謀攻篇 – Attack by Stratagem

does the Commission have jurisdiction under *international (public) law*?

(traditional) criteria that *do* provide jurisdiction

does the Commission have jurisdiction under *international (public) law*?

**territoriality**

**personality**

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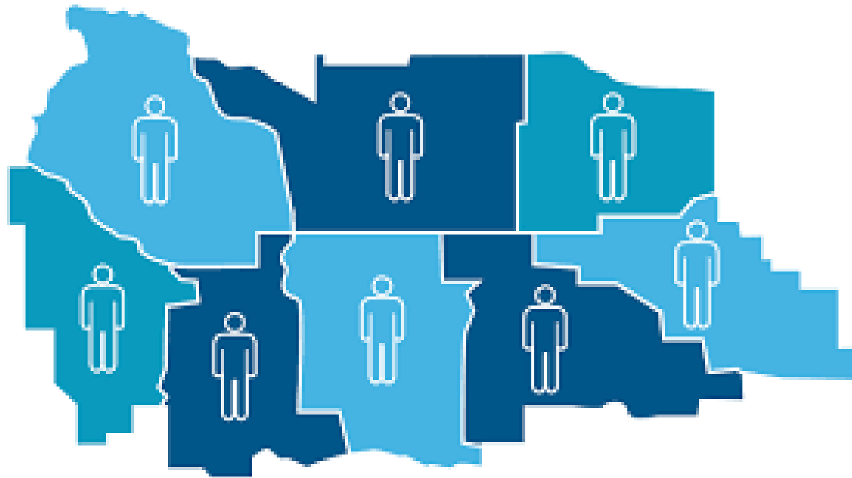
# III. 謀攻篇 – Attack by Stratagem

**personality**

a State has jurisdiction over its nationals, although they find themselves abroad



**territoriality**

a State has unlimited jurisdiction over the State's territory, including foreign nationals who merely reside or temporarily find themselves therein

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# III. 謀攻篇 – Attack by Stratagem

**extra-territoriality**

jurisdiction over acts committed
1) by non-nationals 2) abroad

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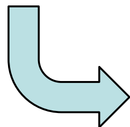
# III. 謀攻篇 – Attack by Stratagem

**principles derived from the principle of territoriality**

- *subjective* territoriality
  - a State is allowed to deal with acts which originated within its territory, even though they have been completed abroad
- *objective* territoriality
  - a State is allowed to deal with acts which originated abroad but which have been **completed**, at least in part, within its own territory



does a State have jurisdiction where acts of foreign nationals committed abroad have "effects" in the investing State's marketplace?

**"effects"-doctrine** U.S.

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# III. 謀攻篇 – Attack by Stratagem

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Martinair CARGO

AIRFRANCE

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KLM

swiss

Swiss International Air Lines

BRITISH AIRWAYS

QANTAS

cargolux

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CATHAY PACIFIC

LAN CARGO

JAL JAPAN AIRLINES

*quid iuris* **in the Airfreight case?**

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# III. 謀攻篇 – Attack by Stratagem

cartelized transactions

(i.e. contracts for the carriage of goods by air)

3rd parties who are not nationals of the EU
(or an EEA State or Switzerland)

**outside the EU**
**(or the EEA / Switzerland)**

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# IV. 形篇 – Tactical Dispositions

故曰勝可知而不可爲

*Hence the saying:*
*One may know how to conquer without being able to do it.*

**SO…**

**…does the Commission *have* jurisdiction to investigate the case?**

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# IV. 形篇 – Tactical Dispositions

prescriptive jurisdiction
(jurisdiction to legislate)

curial jurisdiction
(jurisdiction to adjudicate)

The **LOTUS**-case

On 2 August 1926, a collision occurred between the French ship 'Lotus' and the Turkish ship 'Boz-Kourt', the latter of which broke in two and sank, causing the death of eight Turkish nationals. Upon arrival of the 'Lotus' in Istanbul, the first officer, who was in charge of the watch on the ship at the time of the accident, and the captain of the 'Boz-Kourt' were arrested by the Turkish authorities accused of involuntary manslaughter. Since the collision had occurred on the high seas, no jurisdiction other from those of France or Turkey entered into account.

enforcement jurisdiction
(jurisdiction to enforce)



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# IV. 形篇 – Tactical Dispositions

Had Turkey to be able to point to some title to jurisdiction recognized by international law?
(position of the French government)

**OR**

Was Turkey allowed to exercise jurisdiction unless such jurisdiction came into conflict with a principle of international law?
(position of the Turkish government)

Permanent Court of International Justice
judgment of 7 September 1927, *S.S. Lotus*
(France v Turkey)

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# IV. 形篇 –
# Tactical Dispositions

"It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law". "Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, [international law] leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules". In the absence of such prohibitive rules, "every State remains free to adopt the principles which it regards as best and most suitable"

prescriptive jurisdiction

curial jurisdiction

enforcement jurisdiction
(jurisdiction to enforce)

"the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State"

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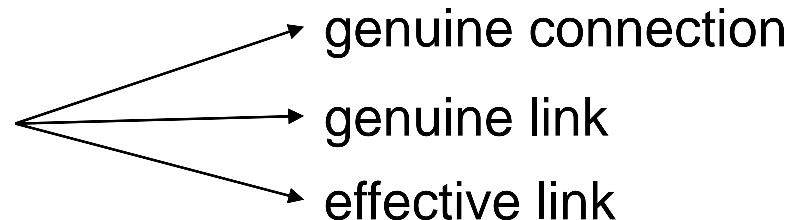
# IV. 形篇 – Tactical Dispositions

## SO…

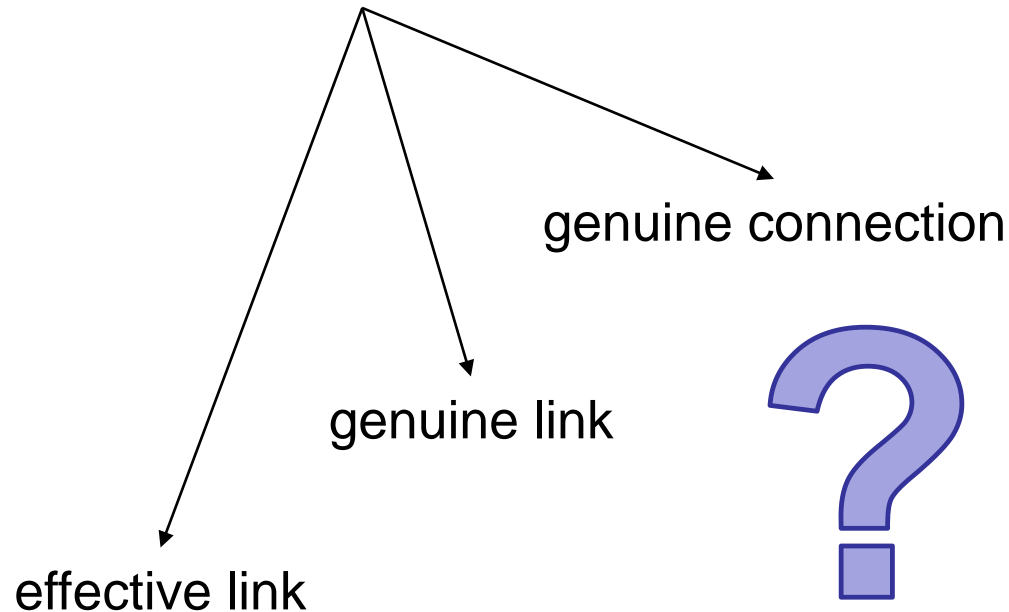
**…impossibility to exercise enforcement jurisdiction and unlimited prescriptive and curial jurisdiction?**




International Court of Justice judgments of 6 April 1955, *Nottebohm*, and 5 February 1970, *Barcelona Traction*

# IV. 形篇 – Tactical Dispositions

# BUT…

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# IV. 形篇 – Tactical Dispositions

1. **The "single economic entity"-doctrine: the *Dyestuffs*-case (1972)**

- AG Mayras considered the convenience to apply the "effects"-doctrine, albeit limited to those cases in which the effects are
  - a direct result of the conduct occurring abroad
  - reasonably foreseeable
  - substantial on the territory of the EC

  he also considered that *imposing* a fine is *not* an act of enforcement justice (the recovery by way of forcible execution is)

- **BUT** the CJEU (14 July 1972, case 48/69, *Imperial Chemical Industries Ltd. v Commission of the European Communities*) did not apply the "effects"-doctrine, but rather the so-called "single economic entity"-test

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# IV. 形篇 – Tactical Dispositions

## 2. The "implementation"-doctrine: the *Woodpulp I*-case (1988)

- AG Darmon once again considered it convenient to apply the "effects"-doctrine
- **BUT** the CJEU (27 September 1988, joined cases 89, 104, 114, 116, 117 and 125 to 129/85, *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*) did *not*
- rather, according to the Court, a distinction has to be made between the formation and the implementation of the agreement, decision or concerted practice
- the *place of formation* of the agreement is irrelevant (otherwise, it would be easy to avoid the application of antitrust laws); the decisive factor is where the agreement *is implemented* (direct sales to customers within the Single Market)

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# IV. 形篇 – Tactical Dispositions

## 3. The “qualified effects”-doctrine: the *Intel*-case (2017)

- Intel had been sanctioned by the Commission, who did not analyse its own jurisdiction
- Intel challenged the Decision, among other reasons, for a lack of jurisdiction of the Commission with regard to the so-called “Lenovo agreements”, which had been concluded by a US and a Chinese company and they referred to CPUs that had been manufactured and sold outside the territory of the EU and were to be incorporated into computers manufactured in China

# IV. 形篇 – Tactical Dispositions

## 3. The "qualified effects"-doctrine: the *Intel*-case (II)

- in first instance, the GC applied the "qualified effects"-test
  - foreseeable effects
    although the effects have to be *foreseeable*, they need not be *actual* (potential is enough)
  - direct effects
    despite the fact that the computers were not sold directly in the EEA, there was a direct effect (postponement of the launch of computers with CPU's manufactured by Intel's main competitor in the Common Market)
  - substantial effects
    the agreements formed part or a "single and continuous infringement", so the effects are substantial even if, viewed in isolation, each conduct might not be liable to produce such substantial effect
- it also applied (but only for the sake of completeness) the "implementation"-test (implementation by Intel's customers)

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# IV. 形篇 – Tactical Dispositions

## 3. The "qualified effects"-doctrine: the *Intel*-case (and III)

- on appeal, the CJEU upheld all and every single one of the arguments
  - the readiness with which it accepted the "effects"-doctrine is surprising (Brexit?)
  - "The qualified effects test pursues the same objective [as the implementation test], namely preventing conduct which, while not adopted within the EU, has anticompetitive effects liable to have an impact on the EU market"
  - the "qualified effects"-test is an *alternative* to the "implementation"-test
    - → even if the GC had erred when applying the implementation test, the complaint could not lead to the judgment's being set aside (for the sake of completeness only)

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# V. 軍爭篇 – Manœuvering

莫難於軍爭軍爭之難者以迂爲直以患爲利

*[…] The difficulty of tactical maneuvering consists in turning the devious into the direct, and misfortune into gain.*

**BUT…**

**…are the conditions for "extra"-territorial application met with regard to inbound flights in the *Airfreight* case?**

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# V. 軍爭篇 – Manœuvering

## 1. The "implementation"-test

- *Woodpulp I:* an agreement is "implemented" in the EU when the cartel sales are made directly with buyers established in the Common Market, but for inbound flights
  - customers that purchase air freight transport services from air cargo carriers are, in general, established within the country of departure

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GREENLAND
CANADA
U.S.A
CEN TRAL AMERICA
CARIBBEAN SEA
VENEZUELA
BRAZIL
PERU
ARGENTINA
ATLANTIC OCEAN
PACIFIC OCEAN
ARCTIC OCEAN
SCANDINAVIA
BALTIC SEA
WESTERN EUROPE
EASTERN EUROPE
RUSSIA
SIBERIA
MONGOLIA
KAZAKHSTAN
CASPIAN
CHINA
MEDITERRANEAN SEA
NORTHAFRICA
SAHARA
RED SEA
ARABIAN SEA
HIMALAYA
INDIA
SOUTHEAST ASIA
JAPAN
CHINA
SEA
PACIFIC OCEAN
EQUATORIAL AFRICA
SOUTHERN AFRICA
MADA GASCAR
INDIAN OCEAN
NEW GUINEA
AUSTRALIA
SOUTHERN OCEAN
ANTARCTICA

# V. 軍爭篇 – Manœuvering

## 1. The "implementation"-test

- *Woodpulp I:* an agreement is "implemented" in the EU when the cartel sales are made directly with buyers established in the Common Market, but for inbound flights
  - customers that purchase air freight transport services from air cargo carriers are, in general, established within the country of departure
  - sales of these air freight transport services are usually made by local personnel or a local general sales agent within the country of departure

ARCTIC OCEAN
GREENLAND
CANADA
U.S.A
CENTRAL AMERICA
CARIBBEAN SEA
ATLANTIC OCEAN
PACIFIC OCEAN
VENEZUELA
PERU
BRAZIL
ARGENTINA
SCANDINAVIA
BALTIC SEA
WESTERN EUROPE
EASTERN EUROPE
RUSSIA
SIBERIA
MONGOLIA
KAZAKHSTAN
CASPIAN
CHINA
SEA
JAPAN
PACIFIC OCEAN
MEDITERRANEAN SEA
NORTHAFRICA
SAHARA
RED SEA
HIMALAYA
INDIA
SOUTHEAST ASIA
ARABIAN SEA
EQUATORIAL AFRICA
SOUTHERN AFRICA
MADAGASCAR
NEW GUINEA
AUSTRALIA
SOUTHERN OCEAN
ANTARCTICA
contract of carriage

# V. 軍爭篇 – Manœuvering

## 1. The "implementation"-test

- *Woodpulp I:* an agreement is "implemented" in the EU when the cartel sales are made directly with buyers established in the Common Market, but for inbound flights
  - customers that purchase air freight transport services from air cargo carriers are, in general, established within the country of departure
  - all sales of these air freight transport services are made by local personnel or a local general sales agent within the country of departure
  - prices for air freight transport services are, in general, expressed in the currency of the country of departure

contract of carriage

# V. 軍爭篇 – Manœuvering

## 1. The "implementation"-test

- *Woodpulp I:* an agreement is "implemented" in the EU when the cartel sales are made directly with buyers established in the Common Market, but for <u>inbound flights</u>
  - customers that purchase air freight transport services from air cargo carriers are, in general, established within the country of departure
  - all sales of these air freight transport services are made by local personnel or a local general sales agent within the country of departure
  - prices for air freight transport services are, in general, expressed in the currency of the country of departure
  - sales of air freight transport services, including surcharges are, in general, regulated by the authorities in the country of departure in accordance with the applicable Air Service Agreements (ASAs)

contract of
carriage

# V. 軍爭篇 – Manœuvering

## 1. The “implementation”-test (II)

- Regulation No 1/2003 does not make distinctions between outbound and inbound flights
  - ⇢ true, but not decisive for the Commission’s *external* jurisdiction
- many of the contacts between the addressees had taken place in the EEA or involved participants established therein
  - ⇢ also true, but unless the agreement *affects trade* between Member States, the place where the agreement is concluded seems to be irrelevant *(Woodpulp I)*
- the services affected by the agreement are partly provided within the territory of the EEA
  - ⇢ necessarily true, but the mere fact that the services are provided partly within the Common Market does not imply that competition there is affected
- implementation by a customer (GC in Intel)?
  - ⇢ very farfetched (“implementation” = passing-on of surcharges?)

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# V. 軍爭篇 – Manœuvering

## 2. The “qualified effects”-test

- effects on European territory cannot be denied (at least, increase in the end-consumer prices), **but** are they direct, substantial and foreseeable?
- **direct effects**
  - an increase of the end-consumer prices seems to be a knock-on effect rather than a direct effect

sales contract
(price + transport
**+ surcharge)**

contract of
carriage

# V. 軍爭篇 – Manœuvering

## 2. The "qualified effects"-test

- effects on European territory cannot be denied (at least, increase in the end-consumer prices), **but** are they <u>direct</u>, <u>substantial</u> and <u>foreseeable</u>?
- **direct effects**
  - an increase of the end-consumer prices seems to be a knock-on effect rather than a direct effect
  - there are, however, *direct* effects where the freight-forwarder is established in the Common Market (refusal to satisfy the commission due; or when acting on behalf of a buyer in the EEA)
- **substantial effects**
  - the effects must be direct *and* substantial
  - it is sufficient if there is a single and continuous infringement, the effects of which are, considered as a whole, substantial (Intel)
- **foreseeable effects**
  - the requirements applied by the CJEU are not at all demanding, so the challenge on this ground will probably not be successful

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# CONCLUSION

**In view of the case-law of the European courts, it does not seem probable that the jurisdiction of the Commission will be questioned**

# VI. 虛實篇 – Weak Points and Strong

故善戰者致人而不致於人

*Therefore the clever combatant imposes his will on the enemy, but does not allow the enemy's will to be imposed on him.*

## Other issues related to the (extra)territorial application of competition law in the air sector

# VI. 虛實篇 – Weak Points and Strong

1. **Inter-State agreements on co-operation in the field of competition law**
   - since 1967, the OECD has issued **Recommendations concerning international co-operation on competition investigations and proceedings** (last version: 2014)
     - only procedural issues, not jurisdiction ("co-operation should not be construed to affect the legal positions of Adherents with regard to questions of sovereignty or extra-territorial application of competition laws")
     - objective: observance of international "comity" (consultation with other States)
   - on the basis of these Recommendations, bilateral agreements have been concluded between the European Union and other countries
     - ⇢ EU/US Agreement (1991) and Exchange of interpretative letters
     - ⇢ Positive Comity Agreement (1998): possibility that one of the parties requests the other to remedy anti-competitive behaviour which originates in the latter's jurisdiction, but which affects the requesting party as well

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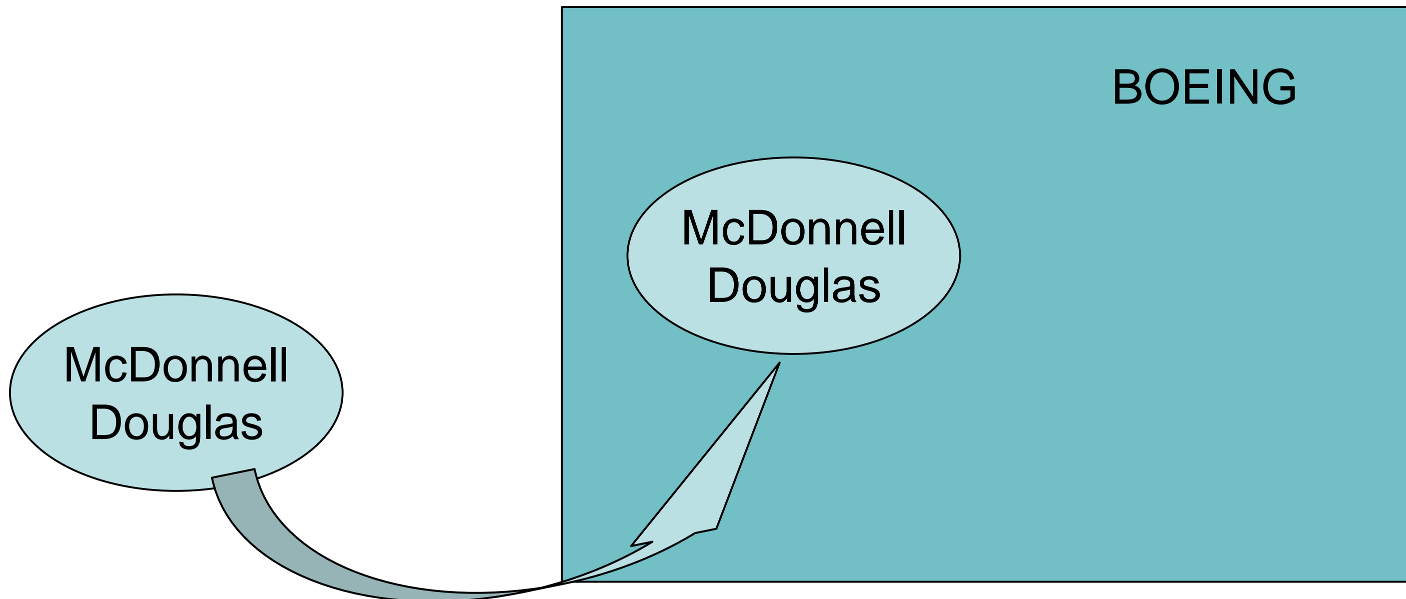
# VI. 虛實篇 – Weak Points and Strong

## 2. Merger control

- EU/US Agreement has *inter alia* be applied in a merger in case in which none of the merging enterprises had their registered office within the Common Market

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

- importance of State-aid law within the European Union (private investor test, non-discrimination)

**BUT**

- NOT applicable to subsidies by non-EU Member States

**Which are the possible solutions?**

a) apply unilateral sanctions to third-country airlines

b) (re)negotiate Air Service Agreements (ASAs)

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

a) apply unilateral sanctions to third-country airlines

- difficulty to address the question:
  - ⇢ subsidies by third countries directly affect, not important interests of the State, but the State itself
  - ⇢ competition is also distorted by other issues (e.g. lower costs, less demanding obligations)
- Regulation No 868/2004, concerning protection against subsidisations and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community

**subsidisation** | **unfair pricing practices**

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

a) apply unilateral sanctions to third-country airlines

**subsidisation**

financial contribution by a government, regional body or other public organisation that confers a benefit on the carrier

**unfair pricing practices**

non-EU carrier benefits from the existence of *non-commercial* advantages and charges fares which are sufficiently below those that are offered by competing EU-carriers to cause injury

no definition in the Regulation / hardly any examples in case-law:

- a cargo reservation scheme (an exclusive right to carry certain goods from the country in question)
- an industry rationalization plan (including tax benefits and debt moratoria)
- "Fly America Act" (49 U.S.C. 40118)?
- labour standards?
- fiscal regimes?
- **geographical situation of some carriers (especially those of the Gulf region)?**

Regulation No 15/89, Hyundai Merchant Marine (container shipping)

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

a) apply unilateral sanctions to third-country airlines

- practical problems for the implementation of Regulation No 868/2004:
  - ”unfair pricing” badly defined, other issues not contemplated and redressive measures (mainly, duties imposed upon the non-Community carrier concerned) taken from *trade* agreements (mainly, GATT and WTO)
  - difficulty to start investigations (written complaint on behalf of the Community industry, if there is sufficient evidence of the existence of countervailable subsidies (including, if possible, of their amount) or unfair pricing practices within the meaning of this Regulation, injury and a causal link between the allegedly subsidised or unfairly priced air services and the alleged injury)
  - the measures arguably enter into conflict with existing Air Service Agreements

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**“toothless tiger”**

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

a) apply unilateral sanctions to third-country airlines

- Regulation No 868/2004 has recently been superseded by **Regulation No 2019/712, of 17 April, on safeguarding competition in air transport**:
  - ⇢ practices redefined: subsidisation and *discrimination*
  - ⇢ the Commission is obliged to consider the "Union interest"

    A determination of the Union interest for the purpose of point (b) of Article 13(2) shall be made by the Commission based on an **appreciation of all the various interests**, which are relevant in the particular situation**, taken as a whole**. When determining the Union interest, priority shall be given to the need to **protect consumer interests** and to maintain a **high level of connectivity** for passengers and for the Union. In the context of the whole aviation chain, the Commission may also take into account relevant **social factors**. […]

  - ⇢ lower burdens to start an investigation (*prima facie* evidence, any Union carrier)
  - ⇢ better co-ordination with Member State's ASAs
  - ⇢ new redressive measures: financial duties and operational measures (e.g. suspension of concessions)

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

b) (re)negotiate Air Service Agreements (ASAs)

- difficulty:
  - many of the existing ASAs have been negotiated by the Member States and not by the Commission
  - such ASAs do not necessarily envisage a "fair competition"-clause
- in the U.S., agreements have been negotiated with Qatar and the United Arab Emirates —Etihad and Emirates airlines— (they mainly oblige Gulf companies to adopt internationally accepted rules on financial accounting and to abandon fifth-freedom flights)

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# VI. 虛實篇 – Weak Points and Strong

## 3. Subsidies and other advantages of non-EU carriers

b) (re)negotiate Air Service Agreements (ASAs)

- difficulty:
  - many of the existing ASAs have been negotiated by the Member States and not by the Commission
  - such ASAs do not usually envisage a “fair competition”-clause
- in the U.S., ASAs have been negotiated with Qatar and the United Arab Emirates —Etihad and Emirates airlines— (they mainly oblige Gulf companies to adopt internationally accepted rules on financial accounting and to abandon fifth-freedom flights)
- the EU has just finished to negotiate an “open skies” agreement with Qatar, that allows for unrestricted access to the markets in 2024, but arguably includes a “fair competition” clause (no publication of the agreement available; the negotiations with the UAE have terminated abruptly)

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# VII. 九變篇 – Variation of Tactics

故將通於九變之利者知用兵矣

*The general who thoroughly understands the advantages that accompany variation of tactics knows how to handle his troops.*

**However,**

**competitive differences between airlines can also be levelled by other strategies**



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# VII. 九變篇 – Variation of Tactics

Example

## *Emission allowances*

13 October 2003: Directive 2003/87/EC
Directive establishing a scheme for emission allowance trading

19 November 2008: Directive 2008/101/EC
Amends Directive 2003/87/EC so as to include aviation activities in the scheme for emission allowance trading

21 December 2011
CJEU
case C-366/10, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*

**Are flights over the high seas subject to the emission allowance trading scheme?**

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# VII. 虛實篇 – Variation of Tactics

- principal findings of the court:
  - there are only three principles of international law that can be relied upon:
    - each State has complete and exclusive sovereignty over its airspace
    - no State may validly purport to subject any part of the high seas to its sovereignty
    - freedom to fly over the high seas
  - the principle of territoriality is respected by the scheme
    - it only applies to aircraft which depart from or arrive at European airports (which is a commercial decision by the airline)
    - aircraft which are flying over the high seas are not affected, inasmuch as they do so (and do not take off or land at a European airport)
    - the fact of crossing the airspace of the Union (without taking off or landing at a European airport) does not necessarily entail the application of the scheme
  - the EU is free to apply the scheme even to parts of the journey which are performed over the high seas and calculate the allowances to be surrendered according to the whole flight

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# MANY THANKS FOR YOUR ATTENTION

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