

# mcmillan

## **Airports and Competition Law: *is it the end of the world?***

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# Why Competition Law should matter to Airports

*“We live in a society [where] competition is good, and that the consumer has choices,” he said. “Sometimes the more choices for consumers the better because it generates more activity. So, what I’m saying is I’m going to meet with not just [this particular airport] — all the airports in the surrounding area — and say how can we cooperate.”*

# What does Competition Law do (generally)?

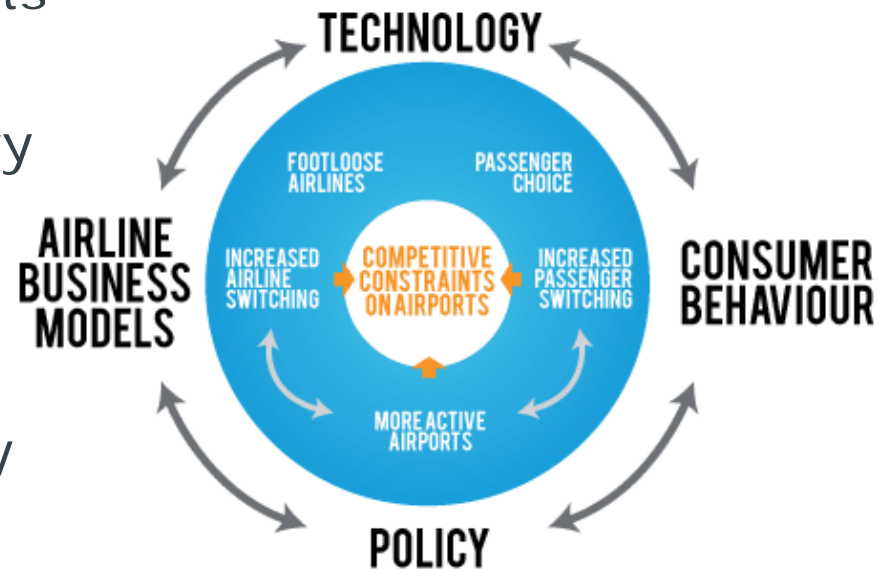
- Merger control
- Abuse of Dominance
- Prohibition on cartels and other anticompetitive agreements

# Main Areas of Airports Competition Risks

- Possible ownership of several airports, Mergers & Joint Ventures
- Management Agreements
- Anti-competitive Agreements
- Business Practices (pricing, exclusionary, etc..)

## Why are we talking about this now and not that much before?

- Privatization of airports in many parts of the world led to increased competitive pressure on airports
- De-regulation of airline industry
- “New” airlines business model
- Growth of the aviation industry
- Development of competition law



Source: airport-business.com

# Key questions for Competition Lawyers (and economists...)

- Competition Law is not uniform worldwide, but some basic questions are recurring:
  - What is the relevant market?
  - Is there market power?
  - Is there a negative impact on competition?
  - Is there an abuse?

# How to identify Markets for Airports?

- Airlines business involve many different products market:
  - Passengers
  - Passenger airlines
  - Cargo services
  - Retail
- Geographic Market Definition is also important:
  - Switching potential for clients of all product lines
  - Could lead to endless substitution possibilities

# How to assess Airports Market Power?

- Assessing Market Power
  - Market shares
  - Concentration
  - Airline buying power
- Other relevant concepts
  - Barriers to entry in Airport business is generally high
  - Regulatory regimes apply
- Airport business is multi-sided
  - Market power analysis is complex



# Real life stories



- In 2009-12, BAA (now Heathrow Airport Holdings ) was ordered to divest Gatwick, Stansted, and one of Glasgow and Edinburgh Airports
  - Single product market for landing charges. Other services were considered to be a separate market (no effect on demand for aeronautical services)
  - There is no advantage in rigid geographic market definitions
- Similar approach when proposed acquisition of BCA by BIA in Belfast was blocked in 1996 by Monopolies Commission

## Alternatives to Competition Law

- Could/Should aviation regulators do anything to try to tame market power?
- An Australia Civil Aviation authority comprehensive study suggests price regulation is “distorting production decisions and chilling airport investments”
- “Light handed” approach better?

# What's ahead?

- Trends towards more privatization and globalization of markets unlikely to reverse
- Current competition paradigm likely to remain and expand

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EUROPE MARKETS | October 21, 2012, 4:18 p.m. ET

## Europe's Airports Get Prepared for Takeoff

# What's ahead (US)?

- Federal Airport Improvement Program
- Airport Privatization Pilot Program



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## City's defense of privatizing Midway suggests deal likely soon

BY FRAN SPIELMAN City Hall Reporter fspielman@suntimes.com August 1, 2013 3:23PM

LATIN AMERICA NEWS | February 26, 2014 6:01 p.m. ET

## Puerto Rico Airport to Go Private

# What's ahead (Canada)?

- Canada
  - High taxes and charges
  - Calls for land transfers



The image shows a screenshot of the website for Aéroport international de Plattsburgh / l'aéroport américain de Montréal. The header features the airport's logo, name in French and English, and social media icons for Facebook, Twitter, and YouTube. Below the header is a navigation menu with links for ACCUEIL, AVIATION GÉNÉRALE, OCCASIONS DE DÉVELOPPEMENT, OPÉRATIONS AÉROPORTUAIRES, MÉDIA, and ENGLISH. The main content area is divided into two sections: SERVICES DES PASSAGERS and STATIONNEMENT ET TRANSPORT. The SERVICES DES PASSAGERS section includes links for Information de Vol, Le statut des vols, Le voyage se reverse, Que puis-je apporter?, and Renseignements sur la région. The STATIONNEMENT ET TRANSPORT section includes links for Stationnement de l'aéroport and Frontière. On the right side of the page, there is a large image of the Montreal skyline at night, reflected in the water. The caption below the image reads "Le panorama urbain de Montréal".

# Airports and Competition Law:

*... It is definitely not the end of the world!*



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