Q&A

Delta Air Lines, United Airlines and American Airlines ("Legacy Carriers") have asked the U.S. Government to freeze Emirates' access to the U.S. and renegotiate the U.S.-UAE Open Skies Agreement on the basis of false allegations. Here are some important things to know in that regard.

Q: Is there any truth to the Legacy Carrier allegations against Emirates?

A: No. It is categorically false that Emirates benefits from government subsidies, competes unfairly and is in violation of the U.S.-UAE Open Skies Agreement. The supposed "evidence" for the allegations is constructed on factual errors, incorrect assumptions and legal distortions that collapse under close scrutiny. We demonstrate this collapse in detail in our fact-based rebuttal document which we submitted to the U.S. Government and is publicly available on our website[1].

Q: How would you describe the "evidence" on which the Legacy Carriers base their allegations against Emirates?

A: Underwhelming and fictitious innuendo. It is so underwhelming that we wonder how it could take them two years to assemble. The allegations are based on factual inaccuracies, outright distortions, and misinterpretations of the applicable rules governing air transport. The objective of the Legacy Carriers in their multimillion dollar political campaign is transparently obvious: their intention is to whip-up a protectionist storm that they hope will lead to less foreign competition in the U.S. aviation market. The aim of the campaign is to deny competitive choice to consumers.

Q: Can you explain briefly what the Legacy Carriers claim about Emirates?

A: Amongst other things, they allege the Dubai Government relieved Emirates of $4 billion worth of fuel hedge losses in 2008/09, despite the fact that payments in respect of maturing contracts were ultimately paid using Emirates' own cash resources and the potential, future paper losses under "mark-to-market" accounting were never realized. The Legacy Carriers also say comparably lower airport charges at Dubai International airport – which apply to all users without discrimination, including Delta and United when they operate their Dubai flights – is a subsidy to Emirates. Furthermore, the Legacy Carriers falsely hypothesize that Emirates gets a variety of discounts in connection with related-party transactions. Our most recent financial statements[2] clearly correct this misconception and our auditor, PricewaterhouseCoopers, has issued an unqualified audit opinion.

Q: Then Emirates does not steal passengers from the Legacy Carriers?

A: Passengers are not proprietary or owned by any carrier: it is the height of arrogance for the Legacy Carriers to allege that "their" passengers are being "stolen" by Emirates when, in fact, it is the passengers themselves who choose the airlines on which they fly. Emirates does not own passengers; we simply provide a good value proposition to destinations not served or served poorly by the Legacy Carriers. The fact is Emirates stimulates significant new passenger traffic in the markets it serves. Emirates offers passengers a world-leading product and, as is fundamental to Open Skies, consumers then have a choice whether to fly with Emirates or competitors. We hope passengers will choose to fly Emirates, but that is their choice – we are not entitled to them flying with us, and that is the way healthy consumer-centric competition is supposed to work.

Q: Who else supports Emirates and the Open Skies policy?

A: Since the Legacy Carriers came forward with their demands to limit competition there has been a groundswell of support for open markets and free air service trade through the U.S.' longstanding Open Skies policy. Passenger airlines, such as JetBlue, Alaska and Hawaiian, and just-in-time all-cargo operators, like FedEx, have expressed concern about the deliberate anti-competitive intent of the Legacy Carriers' campaign to shut competitors out of the U.S. market and deny passengers and shippers competitive choice. So have aerospace manufacturers, the Business Travel Coalition, the U.S. Travel Association, and a host of airports, consumer associations, hoteliers, academic experts and many others[3].

Q: Is the problem really perceived state subsidy?

A: First of all, the alleged subsidies that Emirates has purportedly received are fiction, not fact. The Legacy Carriers' attacks on Emirates amount to nothing more than a house of cards on a foundation of self-serving innuendo and political sound bites. In our rebuttal document we prove that the allegations are categorically false. Secondly, this campaign, combined with other attempts by the Legacy Carriers to stifle competition, indicates the goal is to limit competition and reduce competitive choice. If there were principled concerns about subsidy, the campaign would attack a multitude of carriers on different continents including many of the Legacy Carriers' global alliance partners, some of which even report on subsidies received, rather than focus selectively on Emirates whom they fear as a competitor.

Q: Are the Legacy Carriers being harmed by Open Skies agreements?

A: The short answer is no, and the proof is the record-breaking profits they report each quarter. The Legacy Carriers enjoy some of the best market conditions globally: a huge oligopolized domestic market, virtual oligopolies on the transatlantic routes thanks to antitrust immunity, which allows the Legacy Carriers and their foreign partners to fix prices and limit capacity, and unfettered access to the markets of 115 Open Skies partners. The profitability of the Legacy Carriers suggests that conditions as they are today are ideal, rather than harmful. According to IATA[4], U.S. carrier earnings will likely account for $15.7 billion in 2015, more than twice that of Europe or Asia.

Q: So limiting competition wouldn't necessarily result in more U.S. jobs?

A: The exact opposite is true. Air service competition has proven it stimulates economic activity and supports expanded air service-related jobs. It is ironic that the Legacy Carriers now are concerned about reducing U.S. jobs. During the last eight years, the Legacy Carriers have aggressively cut capacity domestically and that has resulted in fewer opportunities for U.S. airline employees. According to the U.S. Bureau of Transportation Statistics, domestic capacity was cut by more than 50 billion Available Seat Miles between 2007-2013 as part of their drastic de-hubbing activities.[5] Meanwhile, further data from the Bureau of Transportation Statistics shows that average round-trip air fares in current dollars increased by 17% during 2007-2013.[6] In that same period, the Legacy Carriers also increasingly chose to rely much more on their European joint venture partners for international operations. In other words, flights that could be operated by for example Delta and crewed by U.S. employees have been voluntarily relinquished to Air France-KLM to be operated by European crews. This combination has driven up Legacy Carrier profits, made flying less convenient and more expensive for U.S. consumers, and increased employment at joint venture partners in Europe rather than in the U.S. We don't think this is a cause the U.S. Government should support. While it is welcome news that the Legacy Carriers have had an epiphany and now are concerned about U.S. airline jobs, evidence indicates the source of the employment problem they now showcase in their political arguments is decisions the U.S. carriers have themselves made, not unfair competition by Emirates.

Q: Is what they're asking the U.S. Government to do legal?

A: No. The U.S.-UAE Open Skies Agreement expressly prohibits unilateral restrictions on airline capacity. In fact, a senior Obama Administration official recently told the Washington Post that freezing U.S.-UAE Open Skies rights would constitute a "major breach" of that agreement[7].

Q: Are the claims correct that Germany, France and the Netherlands have restricted Emirates as a result of the Legacy Carrier allegations?

A: Just as the allegations are false, it is also false that Emirates has experienced any restrictions in Europe linked to the Legacy Carrier allegations. Germany has not imposed any form of restriction on the existing rights of UAE carriers. UAE carriers may serve any three points plus Hamburg in Germany - with no limitations on frequencies or aircraft type. Emirates currently operates to Frankfurt, Munich, Dusseldorf and Hamburg, and if it chose to do so, could add frequencies to these four German cities and could also upgauge the size of aircraft it operates. In the Netherlands, there are no restrictions on the number of frequencies and the size of aircraft used. Emirates continues to be authorized to grow operations should the market situation warrant it. The UAE-France agreement has always limited frequencies. France for at least three years has indicated its priority is to allow Air France to decrease its debt, cut costs and restructure in an environment where air connectivity by foreign operators remains status quo. Accordingly, France has been unwilling to amend the agreement to authorize additional frequencies. Nevertheless, Emirates remains free to upgauge aircraft size on existing destinations in France, as authorized by the bilateral agreement. Facts are stubborn things – there is no groundswell in Europe as alleged and, to the contrary, European countries continue to honor their existing bilateral air service agreements with the UAE and in many cases actually encourage Emirates to operate more flights.

Q: Are Fifth Freedom services uncommon in the airline industry or unfair in any way?

A: No, and it is hypocritical in the extreme for Delta in particular to brand Fifth Freedom operations as inherently unfair and anachronistic while Delta operates a significant Fifth Freedom hub at Tokyo Narita International Airport.[8] There is nothing unfair, unusual or outdated about Fifth Freedom operations. In fact, Fifth Freedom rights are an essential element of the U.S. model Open Skies agreement and, appropriately, passenger and all-cargo carriers rely on Fifth Freedom operations when it makes commercial sense to do so.

Q: But the Legacy Carriers claim Emirates' Fifth Freedom services between Milan and New York JFK are unfair competition?

A: Turning specifically to Emirates' Fifth Freedom operations between Milan and New York JFK, the fact is the Italian Government approached Emirates and encouraged it to launch the service. The Italian Government saw a need in the marketplace for greater competitive choice and gave the rights to operate Milan to JFK flights because of the limited supply and strong demand, and the fact this was causing excess passenger demand to be met only by forcing passengers to connect through other European hubs. The Italian Government, the Milan region, Milan airport and the surrounding communities saw existing flights did not meet demand and they concluded Emirates' entry into the Milan-New York market would significantly benefit consumers and the region's economy. The Italian Government clearly was right. Within 12 months from the date Emirates commenced flights from Milan to JFK in October 2013, the total market size increased by 79%, which has benefited the airports, tourism and trade, and consumers, who now have better connectivity and more choice.

Q: The Legacy Carriers argue that low airport charges are an illegal subsidy. Is that allegation appropriate and correct?

A: No. Dubai International airport is well-managed and able to charge lower fees than some but by no means all other large airports. It assesses all fees on a non-discriminatory basis, which is good news for all airlines and travelers, and should be praised, not demonized as the Legacy Carriers attempt to do. What is impermissible are discriminatory fees, that is, assessing different fees for the same services. That does not occur at Dubai International. Emirates pays rates at Dubai International airport on the same basis as every carrier serving the airport including Delta and United. These rates are highly competitive, commercially based and in fact higher than a number of other peer group airports. In the absence of discrimination in fees, service provision or facilities between airlines, comparably lower airport charges is not inconsistent with a fair and competitive environment for the operation of air services. Rather, competitively priced airport charges applied in a non-discriminatory manner benefit all airlines that operate to or from a given airport.

Q: What then are the Legacy Carriers really trying to get out of their anti-competition campaign?

A: While the Legacy Carriers disingenuously claim that they only have concerns with two of the countries that are governed by Open Skies agreements, in fact they are seeking action that would undermine the very foundation of the Open Skies policy. Prior to launching this campaign, the Legacy Carriers were on record supporting Open Skies and its core principle that the marketplace, not governments, should determine winners and losers. After favoring airline deregulation domestically and internationally, apparently lacking confidence that they can win in the marketplace, the Legacy Carriers now are asking the U.S. Government to artificially constrain Emirates. They seek protection from competition by urging the U.S. Government to abandon Open Skies, initially with two countries, and turn the clock back to government-enforced limits on routes and capacity. Such old regimes, where governments negotiated detailed schedules of rights, frequencies, fares, and aircraft-type, and vied to protect national champions, will only serve to limit growth and competition in the aviation market to the detriment of consumers.

Q: If that is the case, what's in it for travelers and connectivity?

A: The short answer, nothing. The Legacy Carriers are demanding the Obama Administration embrace an anti-consumer policy. The Legacy Carriers are urging the U.S. Government to intervene to cut off competition, thereby artificially protecting and inflating Legacy Carrier profits. Consumers would be the clear losers: such protection would eliminate competitive choice, reduce service options, sharply reduce business and tourist travel to the U.S., perpetuate the Legacy Carriers' poor service (see below), raise fares, and stifle customer-friendly innovation—reversing the significant achievements of Open Skies. It would also significantly hamper President Obama's goal of 100 million international visitors by 2021. Importantly, consumers also would lose an efficient, single carrier option to fly from the U.S. to many of the fastest growing economies in the world with less elapsed travel time by flying one-stop via Emirates' Dubai hub.

Q: Why is it that the Legacy Carriers mention consumers only once in their white paper?

A: This tells you all you need to know about the Legacy Carriers' campaign against Emirates. It is about their attempt to tighten their stranglehold on markets and to try to restrict consumer choice. In selective attempts to limit competition, consumers will never play a central role and will always be the victims. The Legacy Carrier track record in customer service rankings suggests that passenger satisfaction is not an area of central concern. Delta ranks 45th, United 60th and American 79th according to the Skytrax World Airline Rankings 2015[9], which was based on the votes of millions of travelers from around the world. Emirates ranked 5th. Despite record-setting profits that could be re-invested in product and service enhancements to ensure higher satisfaction ratings, the Legacy Carriers are spending their record profits on share-buybacks and focusing their lobbying on limiting consumer choice through government-imposed restrictions.

Q: Do the Legacy Carriers come to this debate with clean hands?

A: No. In fact they are rather unclean. The Legacy Carriers have received billions of dollars of government support, including U.S. Government assumption of airline pension obligations, airline stabilization grants, loan guarantees, grandfathering of airport slots, bankruptcy relief from debt and other obligations, direct grants and tax exemptions to support airport development, grants of antitrust immunity to form market-dominant alliances, protection of the U.S. market from foreign competition, and the prohibition against majority foreign ownership. As we demonstrate in our response, the Legacy Carriers have received more than $100 billion in government support since 2002 and share with other U.S. carriers in annual benefits potentially exceeding $24 billion.

Q: How many routes do Emirates and the Legacy Carriers directly compete on?

A: Given the decibel level of the Legacy Carrier campaign and the dire "sky is falling" declarations that the future of their international air service is at risk, you would think Emirates competes head-to-head on dozens of routes. In fact, it competes directly with Legacy Carriers on only two routes – Washington Dulles – Dubai (with United) and New York JFK/Newark – Milan (with Delta, American and United). The Legacy Carriers have chosen instead to feed their passengers onto their European joint venture partners for long-haul operations. Emirates has created a hub in Dubai that allows passengers in any of the nine US cities it serves to fly one-stop to 15 different Middle Eastern destinations; 23 African destinations; and 35 Asian destinations – all with connections optimally timed for passenger convenience. In contrast, the Legacy Carriers only serve a combined four points in Africa and four in the Middle East. Only one Legacy Carrier flies to India, serving two cities. In contrast, Emirates serves ten Indian cities, a market it has served since 1985.

Q: Is it true that the Legacy Carriers have had to cancel flights to India because of Emirates?

A: No. A closer look at the facts cast grave doubts on the assertion that any such cancellations were caused by competition from Emirates. Delta cancelled its New York-Mumbai non-stop service in July 2009 which at the time was attributed to "lower projected passenger demand"[10] – there was no mention of intensified competition from Emirates or other airlines. Later Delta changed its story and blamed competition from Air India, which it asserted had an unfair advantage because of ExIm Bank financing.[11] Alleging Gulf Carrier competition now, Delta evidently is happy to reinvent the alleged cause of the flight cancellation to suit whatever argument it may be making at a given time. American Airlines announced the cancellation of its Chicago-Delhi non-stop service in January 2012[12], six weeks after it filed for bankruptcy protection on November 29, 2011. American claimed that the cancellation was due to "historical financial performance of the route and its future outlook given the global economic climate and high oil prices" with no mention of competition. The fact that American abandoned this route more than two years before Emirates started service to Chicago in August 2014 makes these claims even more far-fetched.

Q: What benefits has Emirates brought to the U.S.?

A: Emirates' services have increased consumer choice, filled a gap in the market by taking travelers to destinations not served by the Legacy Carriers, and helped contribute to the U.S. economy, trade and tourism. Importantly, Emirates provides a much-needed competitive alternative to the three airline alliances with antitrust immunity permitting them to limit capacity and keep fares artificially high. The nine current U.S. gateways – Boston, Chicago, Dallas/Fort Worth, Houston, Los Angeles, New York, San Francisco, Seattle, and Washington DC – and their surrounding regions estimate that the annual economic value of Emirates' services amounts to US$2.9 billion[13]. In the aerospace manufacturing sphere Emirates supports more than 400,000 direct and indirect US jobs based on the recent order for 150 Boeing 777X aircraft when using the U.S. Department of Commerce's export goods estimate.[14] In its last financial year alone Emirates also carried 120,320 tonnes of cargo from the US to different parts of the world, helping exports from all the points that it serves.

Q: Why should the U.S. Government reject the Legacy Carrier calls to take action against Emirates?

A: First of all, because the allegations put forward are false. Emirates has never received subsidies, it does not and never has competed unfairly, and therefore there is no basis upon which to take action. Secondly, as clearly shown by stakeholder submissions to the U.S. Government, stakeholders who are a far better barometer than the self-interested Legacy Carriers, there is widespread belief the national interest is best served by maintaining Open Skies policy and not selectively unraveling it. Thirdly, the Legacy Carriers have no credibility to simultaneously profess support for open markets and liberal principles while, on the other hand and concurrently, they selectively urge governments to reassume their anachronistic role as a capacity regulator on a selective basis when they fear competition. Fourthly, it is fundamentally inconsistent to permit the Legacy Carriers to continue to reap the commercial benefits of antitrust immunity and fully integrated global alliances which are predicated on open markets, while limiting the ability of Emirates to compete vigorously and provide consumers with a competitive alternative. Lastly, there is no basis for action under the terms of the Open Skies Agreement between the U.S. and the UAE. Requesting the U.S. Government to take action is to request that the U.S. breaches its own negotiated international obligations.

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1 www.emirates.com/USsubsidyRebuttal
2 Emirates Group Annual Report 2014/15: http://content.emirates.com/downloads/ek/pdfs/report/annual_report_2015.pdf
3 www.emirates.com/USsubsidyRebuttal
4 http://www.bloomberg.com/news/articles/2015-06-08/airline-industry-to-lift-annual-profit-80-on-u-s-surge
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8 See "Look who's flying 5th Freedoms" at http://content.emirates.com/downloads/ek/pdfs/open_sky/OpenSky_19.pdf
9 http://www.worldairlineawards.com/Awards/world_airline_rating.html.
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