Government Bailouts of Airlines in the COVID-19 Crisis: Improving Transparency in International Air Transport

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ABSTRACT

Coronavirus disease 2019 (COVID-19) presents the airline industry with unprecedented challenges that constitute no less than an existential threat. Given airlines’ importance in the economy, which includes providing connectivity, preserving jobs, and supporting related sectors, many governments have given local airlines enormous financial support since early 2020. Although it is well understood why many governments cannot allow their major airlines to shut down, the ongoing massive government bailouts can distort competition in the airline industry. This article analyzes various government bailouts of airlines in the COVID-19 crisis and discusses how these bailouts are creating a growing problem with fair competition in the international air transport market. While examining the unique regulatory framework of international air transport, the article recommends multilateral, bilateral, and unilateral rule-based approaches that can better serve economic governance of international air transport in the post-COVID-19 era. Although this article does not suggest major legal reforms, which would be too ambitious and unrealistic at this stage, transparency can be significantly improved through the recommendations provided here.

I. OVERVIEW

The coronavirus disease 2019 (COVID-19) pandemic hit the aviation industry hard, if not the hardest of all industries. In 2019, aviation's global economic impact was USD 3.5 trillion with 4.5 billion passengers carried, USD 6.5 trillion worth of cargo handled, and 46.8 million commercial flights scheduled. But in 2020, aviation's global economic impact more than halved as we witnessed a USD 1.8 trillion decline in economic activity supported by aviation. The cargo business has survived the crisis much better than the passenger business. While the global air freight markets showed that demand for air cargo...

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1 Air Transport Action Group, ‘Global Fact Sheet September 2020’, https://aviationbenefits.org/media/167144/abbb20_factsheet_global.pdf (visited 25 September 2021).

2 Ibid.
decreased by 10.6% in 2020,\textsuperscript{3} global passenger traffic decreased by 60% in 2020, compared to 2019 levels.\textsuperscript{4}

For an international traveler, the fear of getting infected with COVID-19 during air travel or in a foreign country is one deterrent, but mandatory quarantine is a more significant barrier. In a survey by the International Air Transport Association (IATA), 83% of respondents said they would not travel if it required quarantine.\textsuperscript{5} With the vaccine rollout and increased testing capacity, airlines are calling to replace quarantine requirements with digital health passports that would store passengers’ vaccine and testing histories.\textsuperscript{6} However, it is expected that governments will not move fast until they regain enough confidence to roll back quarantine and other border controls.\textsuperscript{7} Thus, the harsh reality has pushed back expectations of a meaningful recovery in global travel anytime soon.\textsuperscript{8}

With the direct impact of COVID-19 and the slow recovery, airlines face an existential threat. This capital-intensive and labor-intensive industry continues to incur high fixed and variable costs including aircraft leases, airport parking, and employee wages despite the devastating market conditions. Since almost no airlines could survive without financial support amid the COVID-19 slump, airlines have been calling on governments for enormous bailouts, and states have been taking drastic measures. There is ongoing debate as to whether, to what extent, and how long governments should bail out the airline industry.\textsuperscript{9} Regardless of the debate, the diverse forms of bailouts at a wide range of scale have a profound effect on the ecosystem of the airline industry.

This article aims to analyze government bailouts of airlines in the COVID-19 crisis, to identify problems resulting from those bailouts, and to recommend better economic governance of the airline industry. The following analysis starts by briefly introducing the governance structure of international air transport in Section II and the current international conventions relating to airline subsidies in Section III. Section IV provides useful insights on government bailouts of major international airlines, and Section V discusses how the bailout has changed the landscape of the international aviation market and how favoritism has grown during the COVID-19 slump. Section VI provides recommendations for better economic governance of the aviation market, and Section VII concludes.

\textbf{II. THE GOVERNANCE STRUCTURE OF INTERNATIONAL AIR TRANSPORT}

International aviation is recognized as a field in which multilateralism works relatively well.\textsuperscript{10} Since multilateral coordination makes the operation of air travel more efficient, all states have an incentive to cooperate.\textsuperscript{11} This explains why the International Civil Aviation Organization

\begin{itemize}
\item \textsuperscript{3} IATA, ‘2020 Worst Year for Air Cargo Demand Since Performance Monitoring Began’, https://www.iata.org/en/pressroom/pr/2021-02-03-01/ (visited 25 September 2021).
\item \textsuperscript{4} ICAO, ‘Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis’, https://www.icao.int/sustainability/Documents/COVID-19/ICAO_Coronavirus_Econ_Impact.pdf (visited 25 September 2021).
\item \textsuperscript{5} IATA, ‘Steps Forward for Testing to Reopen Borders Without Quarantine’, https://www.iata.org/en/pressroom/pr/2020-11-23-02/ (visited 25 September 2021).
\item \textsuperscript{6} IATA, ‘IATA Travel Pass Initiative’, https://www.iata.org/en/programs/passenger/travel-pass/ (visited 25 September 2021).
\item \textsuperscript{7} Bloomberg, ‘Brace Yourself: Long-Haul Travel May Not Get Going Until 2023’, https://www.bloomberg.com/news/articles/2021-02-04-put-away-the-suitcase-vaccines-won-t-bring-back-overseas-travel (visited 25 September 2021).
\item \textsuperscript{8} Ibid.
\item \textsuperscript{9} See, e.g., Steven Truxal, ‘State Aid and Air Transport in the Shadow of COVID-19’, 45 (Special Issue) Air and Space Law 61 (2020); Jae Woon Lee and Michelle Dy, ‘Nationalism, Consolidation and Rationalization in the Aviation Industry’, in Victor V. Ramraj (ed.), Covid-19 in Asia: Law and Policy Contexts (Oxford: Oxford University Press, 2021) 379–93; OECD, Policy Responses to Coronavirus (COVID-19) COVID-19 and the Aviation Industry: Impact and Policy Responses (Paris: OECD, 2020), http://www.oecd.org/coronavirus/policy-responses/covid-19-and-the-aviation-industry-impact-and-policy-responses-268521c1/ (visited 25 September 2021).
\item \textsuperscript{10} Andrew T. Guzman, How International Law Works (Oxford: Oxford University Press, 2008) 25–27.
\item \textsuperscript{11} Ibid, at 27.
\end{itemize}
Government Bailouts of Airlines in the COVID-19 Crisis

(ICAO), the United Nations’ special agency, has sponsored so many multilateral aviation law treaties and why a large number of states are parties to those treaties. Starting with the Convention on International Civil Aviation (Chicago Convention 1944), the overarching treaty for international aviation that also created ICAO, many multilateral treaties related to aviation safety, aviation security, and airline liability have received strong support from states.

However, the economic governance of air transport by multilateral treaties has never been successful. This topic dates back to 1944, a year before the end of World War II, when the International Civil Aviation Conference was held in Chicago. On the invitation of President Franklin D. Roosevelt, states gathered to discuss the principles and methods of adopting a new aviation convention. Although much of the Chicago Conference turned on the question of how to govern the multilateral exchange of economic rights for international air transport, states were unable to reach a meaningful compromise. This is illustrated by Article 6 of the Chicago Convention, which confirms that there are no universal freedoms and that ‘special permission or other authorization’ is required for international air transport.

Apart from the Chicago Convention 1944, states at the Chicago Conference adopted two separate and distinct instruments: the International Air Services Transit Agreement (often called the ‘Transit Agreement’) and the International Air Services Transport Agreement (also called the ‘Transport Agreement’). Largely because the Transit Agreement does not grant any commercial rights (only dealing with the freedoms of overflight and technical landing), the number of contracting states is relatively high, at 133 states. On the other hand, there are only 11 contracting states to the Transport Agreement, which involves commercial freedoms, meaning that it has had little practical significance. These commercial freedoms include the freedom to take on and put down passengers and cargo (or both) between home state and other states as well as the freedom to access to the third country but are only in effect vis-à-vis the 11 parties.

Since 1944, when the states attending the Chicago Conference failed to agree upon a comprehensive multilateral solution to the economic governance of international aviation, commercial rights for international air transport have been negotiated largely on a bilateral basis. The USA and the UK succeeded in reaching an agreement in 1946 in Bermuda; this protectively written bilateral air services agreement (ASA), the so-called Bermuda type 1 agreement, became the prototype for many bilateral ASAs throughout the world. ASAs stipulate mutual restrictions on market access that include the designation of airlines by other states, nationality requirements for designated airlines, the routes that designated airlines are entitled to fly, frequency, and capacity.

Since the late 1970s, when ‘deregulation’ and ‘liberalization’ became key words in international air transport, ICAO has made several attempts to initiate global multilateral governance of the economic aspects of air transport. However, ICAO could not build sufficient consensus on international economic rules for air transport that a majority of countries would be willing to adopt. Most recently, ICAO’s Air Transport Regulation Panel, at a meeting in April 2019,

12 See ICAO, ‘Current Lists of Parties to Multilateral Air Law Treaties’, https://www.icao.int/secretariat/legal/Lists/Current%20lists%20of%20parties/AllItems.aspx (visited 25 September 2021); see also Jae Woon Lee, Regional Liberalization in International Air Transport: Towards Northeast Asian Open Skies (Netherlands: Eleven International Publishing, 2016) 11–15.
13 See U.S. Department of State, Proceedings of the International Conference on Civil Aviation, Chicago, Illinois, 1 November–7 December 1944 (Washington, DC: Government Printing Office, 1949) vol. 1, 11–13.
14 See Paul Stephen Dempsey, Public International Air Law (Montreal: Institute of Air and Space Law, 2008) 25, 29.
15 For the details, see Jae Woon Lee, ‘Revisiting Freedom of Overflight in International Air Law: Minimum Multilateralism in International Air Transport’, 38 Air and Space Law 351 (2013), at 361.
16 Dempsey, above n 14, at S22.
17 Ibid, at S24.
18 See Isabella H. Ph. Diederiks-Verschoor, An Introduction to Air Law, 9th revised ed. (Alphen aan den Rijn: Kluwer Law International, 2012) 48.
19 ICAO has held six Air Transport Conferences: in 1977, 1980, 1985, 1994, 2003, and 2013.
concluded that international agreements on market access and air cargo liberalization could not be developed in the short term.\footnote{See Máté Gergely, 'Fair Competition in International Air Transport', 45 Air and Space Law 1 (2020), at 12–13.}

In the 1990s, there was an opportunity to establish global governance of air transport with the General Agreement on Trade in Services (GATS) under the World Trade Organization (WTO). However, the Annex on Air Transport Services excluded traffic rights and services directly related to traffic, the core of the air transport services,\footnote{WTO, ‘Air Transport Services’, https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_air_e.htm (visited 25 September 2021).} and confirmed that GATS would not revoke or otherwise affect bilateral ASAs to which a member state was a contracting party.\footnote{General Agreement on Trade in Services, 1 January 1995, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994), Annex on Air Transport Services, Article 1.}

There are three main reasons why coverage of air transport services was avoided when GATS was finalized in 1994. First, the Uruguay Round negotiators understood that international air transport was governed by an intricate system of then over 3500 bilateral ASAs based on a reciprocal exchange of rights between states.\footnote{IATA, 'Liberalization of Air Transport and the GATS', IATA Discussion Paper to WTO, http://www.wto.org/english/tratop_e/serv_e/transport_e/transport_r30.pdf (visited 25 September 2021), at 2.} Second, the principles of non-discrimination under the WTO system (most-favored nation (MFN) treatment and national treatment) contrasted with the existing bilateralism in air transport based on bilateral reciprocity.\footnote{Henri A. Wassenbergh, ‘The Future of International Air Transport Law: A Philosophy of Law and the Need for Reform of the Economic Regulation of International Air Transport in the 21st Century’, 20 Annals of Air and Space Law 405 (1995).} Application of MFN to the air transport sector would effectively mean that if traffic rights were granted to one party under the WTO agreement, all parties to the agreement would enjoy the same benefits or rights, which was considered to be ‘radical reform’.\footnote{P.M.J. Mendes de Leon, ‘The Long and Lonely Road from a Regulated Air Transport Industry to Multilateral Liberalisation: Bilateralism Versus WTO Principles’, 4 (3) The Aviation and Maritime Journal 1 (2005).} It was also widely held at the time that implementing MFN could hold back the ongoing liberalization of air transport between like-minded states.\footnote{Ibid, at 3.}

Third, neither states nor airlines wished to see a dual regulatory regime emerge for air traffic rights, in which some states applied GATS obligations while others held to existing bilateral ASAs.\footnote{Paul V. Mifsud, ‘New Proposals for New Directions: 1992 and the GATT Approach to Trade in Air Transport Services’, 13 Air and Space Law 154 (1988).} In other words, both ICAO and WTO had chances to assume global governance of air transport, but states decided to use ASAs as the principal instruments for dealing with the economic aspects of air transport.

The economic aspects of air transport are excluded not only from multilateral aviation treaties but also from Free Trade Agreements (FTAs). Air transport was not included in the FTA that the USA and Canada signed on 3 October 1987, one of the first bilateral FTAs, even though it was then ‘the most liberal agreement between the most cordial of trading partners’.\footnote{2007 ASEAN-China Aviation Cooperation Framework, adopted in Singapore on 2 November 2007, https://web.archive.org/web/20120512151542/http://www.aseansec.org/21154.htm (visited 25 September 2021).} Although air transport has never been treated by governments as an ordinary part of international trade, the correlation between FTAs and ASAs has been noted. For instance, the Association of Southeast Asian Nations (ASEAN)-China FTA was the explicit justification for the ASEAN-China Regional Air Services Agreement that was subsequently adopted in 2010. The 2007 ASEAN-China Aviation Cooperation Framework stated that the ASEAN-China Regional Air Services Agreement should be concluded by 2010 ‘to support the realisation of the ASEAN-China Free Trade Agreement in 2010 [and] to implement the agreement thereafter in line with the establishment of the ASEAN-China FTA.’\footnote{IATA, above n 23.} The ASEAN-China Free Trade Area came into effect on 1 January 2010, and the Air Transport Agreement between ASEAN and China was adopted in November 2010.
International air transport has stood outside of the body of foreign investment law, too. Since 1990, the field of foreign investment law has expanded dramatically. Although there are more than 3300 entries in the directory of investment treaties, investment treaties generally exclude air transport activities from their coverage.

In brief, global economic governance is limited in the field of international air transport. Neither ICAO nor the WTO possesses a regulatory mandate with respect to the economic aspects of air transport, although the author will suggest that ICAO could play a revitalizing role in Section VI.

III. CURRENT INTERNATIONAL CONVENTIONS RELATING TO GOVERNMENT BAILOUTS OF AIRLINES

One may expect the WTO, as primary organization for subsidies disciplines, would regulate airline subsidies even if indirectly. However, government bailouts of airlines are doubly exempt from the WTO rules. First, as noted above, air transport services are excluded from GATS. Second, subsidies to service sectors are excluded from the WTO rules. Thus, the issue of fair competition by state-subsidized airlines is not squarely confronted at the WTO, in stark contrast to the aircraft manufacturing sector. Article XV of GATS discusses subsidies to the service sector generally without setting out specific rules and simply proposes developing multilateral disciplines on such subsidies in future negotiations. However, no meaningful progress has been made so far.

After examining the multiple factors affecting the negotiations on subsidy disciplines in the service sector, Sauvé and Soprana predict that the WTO members are unlikely to reach a consensus on this matter anytime soon. In the context of the COVID-19 crisis, it is worth noting the view of Horlick and Clarke, who wrote about subsidies after the financial crisis in 2007–09. They argue that ‘[even] if there had been any rules disciplining subsidies in the financial services sectors, they would have been ignored, as the disciplines on domestic subsidies for goods were often ignored during the crisis’. Although we cannot completely rule out the possibility of the WTO playing an expanded role on governments’ financial contributions, in all likelihood, there will be no change to the current framework in the near future.

There are some openings, however, for addressing such issues in other fora, including those noted above, given their foundations for concepts and information sharing.

A. Chicago Convention 1944

Although ICAO has only played a limited role in the economic sphere of international air transport thus far, the Chicago Convention empowered the ICAO Council to ‘request, collect, examine and publish information relating to the... particulars of subsidies paid to airlines from public funds’ in Article 54 paragraph (i):

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30 Brian F. Havel and Gabriel S. Sanchez, The Principles and Practice of International Aviation Law (Cambridge: Cambridge University Press, 2014) 131.
31 UNCTAD, ‘International Investment Agreements Navigator’, https://investmentpolicy.unctad.org/international-investment-agreements (visited 25 September 2021).
32 Havel and Sanchez, above n 30, at 132.
33 Brian Havel, ‘Rethinking the General Agreement on Trade in Services as a Pathway to Global Aviation Liberalization’, 44 Irish Jurist 47 (2009), at 70.
34 Pierre Sauvé and Marta Soprana, ‘Disciplining Service Sector Subsidies: Where Do We Stand and Where Can We (Realistically) Go?’ 21 Journal of International Economic Law 599 (2018).
35 Gary N. Horlick and Peggy A. Clarke, ‘WTO Subsidies Discipline During and after the Crisis’, 13 Journal of International Economic Law 859 (2010).
Article 54 (Mandatory Functions of Council)

The Council shall:

... (i) Request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds.36

The origin of this language is unknown, and there is no record so far of the ICAO Council making a decision under paragraph (i) of Article 54.37 However, Allan I. Mendelsohn, a former US Deputy Assistant Secretary of State (Transportation Affairs), argues that ‘the framers of the Chicago Convention ... expressly desired and authorized the international community to keep careful track of “the particulars” about what subsidies were paid by which governments’.38

Indeed, the language of Article 54 paragraph (i) is straightforward and clearly charges ICAO with monitoring subsidies to airlines. However, the ICAO Council’s monitoring function has been dormant since 1944.

In addition, the ICAO Council has notable permissive functions under Article 55 of the Chicago Convention. The Council may conduct research into all aspects of air transport, communicate the results of its research to the contracting states, and facilitate the exchange of information on air transport between contracting states.39

The Council may also study any matters affecting the operation of international air transport and submit related plans to the ICAO Assembly.40 Similar to the monitoring function, however, the ICAO Council has not proactively used its research function thus far.

One practical difficulty is that there is no widely accepted legal definition of ‘subsidy’ in the context of airlines. Although the 1995 Agreement on Subsidies and Countervailing Measures (the SCM Agreement) defined a subsidy for the first time in the history of the General Agreement on Tariffs and Trade and WTO, the SCM Agreement applies only to subsidies on trade in goods and does not apply to subsidies to service providers and consumers. Thus, it is not applicable to airlines’ air transport services. But since the SCM Agreement undoubtedly is the most authoritative multilateral agreement in the area of subsidies, its definition and interpretation of subsidies undoubtedly provide a useful guideline.41 To borrow the definition of the SCM Agreement, airline subsidies are a financial contribution by a government or direct government intervention in the market that serves to benefit the airline.

Under which circumstances the SCM Agreement applies to state-owned enterprises is a hotly debated question in legal academia.42 Nonetheless, the WTO Appellate Body in US-Large Civil Aircraft (2nd complaint) notes that ‘one of the examples of a “direct transfer of funds” given in Article 1.1(a)(1)(i) [of the SCM Agreement] is that of “equity infusion”, which refers to

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36 Convention on International Civil Aviation (‘Chicago Convention’), 7 December 1944, 15 UNTS 295, ICAO Doc 7300/6, entered into force 4 April 1947, Article 54(i).
37 Michael Milde, International Air Law and ICAO, 3rd ed. (Utrecht: Eleven International Publishing, 2016) 166.
38 Allan I. Mendelsohn, ‘Unravelling Open Skies’, 40 Annals of Air and Space Law 767 (2015), at 784.
39 Chicago Convention Article 55 (c).
40 Chicago Convention Article 55 (d).
41 Jae Woon Lee, ‘Airline Subsidies: Can the Law Play a Role in Regulating Them?’ 52 Journal of World Trade 897 (2018), at 899–903.
42 See, e.g., Robert Howse, ‘Making the WTO (Not So) Great Again: The Case Against Responding to the Trump Trade Agenda Through Reform of WTO Rules on Subsidies and State Enterprises’, 23 Journal of International Economic Law 371 (2020); Ines Willemsy, ‘Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?’ 19 Journal of International Economic Law 657 (2016); Minwoo Kim, ‘Regulating the Visible Hands: Development of Rules on State-Owned Enterprises in Trade Agreements’, 58 Harvard International Law Journal 225 (2017), at 238.
situation in which a government “purchases” something (i.e. shares in a company).\textsuperscript{43} Similarly, the WTO Appellate Body in \textit{Korea—Commercial Vessels} concluded that debt-for-equity swaps are a financial contribution under the SCM Agreement.\textsuperscript{44} Thus, equity infusions and debt-for-equity swaps by a ‘government or any public body’ can be a ‘financial contribution’ that meets the definition of subsidy under the SCM Agreement. In the absence of a clear definition of airline subsidies, the SCM Agreement and its interpretations can shed light on the question of definition.\textsuperscript{45}

B. Air services agreements

Government bailouts have not fallen under the scope of ASAs with a few exceptions. When the USA and the UK adopted the first bilateral ASA in 1946 (an agreement whose language was subsequently followed by many bilateral ASAs throughout the world),\textsuperscript{46} they did not address fair competition.\textsuperscript{47} In the 1960s, however, language about fair opportunity, which broadly includes the concept of subsidies, began to regularly appear in ASAs.\textsuperscript{48} Typical wording is that ‘[T]here shall be a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specific routes between their respective territories’.\textsuperscript{49} It is important to note that this language originated in the Preamble of the Chicago Convention, which uses the words ‘equality of opportunity’. The ‘fair and equal opportunity’ clause was understood merely to mean the balanced operation under equal circumstances by airlines from the contracting states.

In the early 1990s, a new perspective on bilateral ASAs was offered through what are called open skies agreements. The pioneering agreement was concluded between the USA and the Netherlands in 1992.\textsuperscript{50} Since 1992, more states have started to shift from a protectionist aviation policy to a more liberalized stance by concluding open skies ASAs. The open skies regime removes restrictions on market access such as routes, capacity, and frequency. As the market was being deregulated, the principle of fair competition became more important. Consequently, the ‘fair and equal opportunity’ clause was replaced with new wording: ‘fair and equal opportunity to compete’. Typical language is as follows: ‘[E]ach Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement’.\textsuperscript{51}

Under open skies ASAs, therefore, the focus is no longer ensuring that each side has the same number of available air services but rather considering whether each side has fair and equal conditions under which they may operate their services.\textsuperscript{52} In other words, the key question is whether there is a level playing field.

\textsuperscript{43} WTO Panel Report, \textit{United States—Measures Affecting Trade in Large Civil Aircraft (Second Complaint)}, WT/DS353/R, circulated 31 March 2011, para 7.954.
\textsuperscript{44} WTO Panel Report, \textit{Korea—Measures Affecting Trade in Commercial Vessels}, WT/DS273/R, adopted 11 April 2005, para 7.411; see also para 7.420 ‘…Equity infusions and debt-for-equity swaps have the same effect, in the sense that equity changes hands against consideration in both cases (and subsidization arises if the amount of consideration is less than the market would have provided). Also, a debt/equity swap comprises an element of equity infusion.’
\textsuperscript{45} Lee, above n 41, at 903.
\textsuperscript{46} Dempsey, above n 14, at 523.
\textsuperscript{47} Sean McGonigle, ‘Fair Competition, Subsidy and State Aid Clauses in International Air Services Agreements’, 37 Annals of Air and Space Law 199 (2012), at 201.
\textsuperscript{48} Ibid.
\textsuperscript{49} See, e.g., Agreement between the Government of the Commonwealth of Australia and the Austrian Federal Government relating to Air Services, signed in Vienna on 22 March 1967, Australian Treaty Series 1967 No. 10, \url{www.austlii.edu.au/au/other/dfat/treaties/1967/10.html} (visited 25 September 2021), Article 8.
\textsuperscript{50} Treaty on Open Skies, signed in Helsinki on 24 March 1992, \url{https://2009-2017.state.gov/t/avc/trty/102337.htm} (visited 25 September 2021).
\textsuperscript{51} For instance, United States: Model Bilateral Air Transport Agreement, 20 March 1995, 35 I.L.M. 1479, Article 11.
\textsuperscript{52} McGonigle, above n 47, at 207.
Since the early 2000s, the European Union (EU) has openly objected that the current ASAs are not capable of dealing with concerns about subsidies. Under this position, the EU started to amend bilateral ASAs by inserting a specific subsidy provision that was first adopted in its agreement on air transport with the USA in 2007.\(^53\) Article 14 of the Agreement (Government Subsidies and Support) explicitly discusses airline subsidies. In brief, the Agreement recognizes that government subsidies can adversely affect international air transport competition and authorizes parties to submit ‘observations’ to one another if either party considers or provides a subsidy with potential or actual adverse effects. However, the Agreement does not provide any measure for redress. In other words, the only option is carrying out negotiations through ‘observations’ unless the aggrieved party were to take the route of arbitration or termination.\(^54\)

The EU–Canada Air Transport Agreement, signed in 2009, deals with airline subsidies more comprehensively in Article 14 (Competitive Environment).\(^55\) If one party has concerns about the effects of a subsidy, it can refer those to a Joint Committee that is to be established under the Agreement. If no consensus is reached in the Joint Committee, the aggrieved party may take unilateral action. Paragraph 5 of Article 14 states that ‘[A]ny 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’. Even though the EU–USA and EU–Canada ASAs include subsidy-specific provisions, they are exceptional, together with the ASEAN-China ASA, which will be discussed separately in Section VI. Most ASAs do not address subsidies directly and only contain the vague ‘fair and equal opportunity’ clause.

IV. TYPES OF GOVERNMENT BAILOUTS FOR AIRLINES IN THE COVID-19 SLUMP

Many countries have provided pandemic-related government support to their airlines since early 2020. These governments’ financial support can be broadly categorized as follows: (i) loans and loan guarantees, (ii) equity acquisitions, (iii) hybrids (a mix of debt and equity financing), (iv) wage subsidies, and (v) flight subsidies. There are also indirect financial assistance measures such as tax exemptions, tax deferments, and waivers of airport-related charges. Some governments have taken more than one measure. To be clear, the categorization in this section is not complete, and the list of bailout cases is not exhaustive. Since there is no centralized source of information (an issue that will be discussed in Section V), the bailouts are ongoing, and some cases are not covered in the English-speaking media or legal circles, the author acknowledges that cases tend to be underreported. It is also beyond the scope of this article to provide a detailed analysis of the different types of financing provided by government or government-backed financial institutions; however, the information below provides a useful snapshot of the diverse bailouts that governments have been funding.

A. Loans and loan guarantees

The most accessible form of external finance is a loan from a financial institution. Larger companies (such as airlines) that need more loan capital can also tap the loan capital markets for funds in a normal situation. However, the COVID-19 crisis affected the airlines’ credit rates,
and they needed immediate financial support to stay afloat. Thus, multiple governments have decided to extend loans or guarantee loans in different forms to the airline industry or specific airlines through state-owned banks or state-owned development banks (See Table 1).

B. Equity acquisition

State ownership is a common practice in the airline industry. In a 2016 study conducted by ICAO, 225 of 395 airlines (57%) worldwide were wholly or partially state-owned (27% and

| Provider                | Airline                | Model                                                                 |
|-------------------------|------------------------|----------------------------------------------------------------------|
| Austrian government     | Austrian Airlines      | €150 million subordinated loan (convertible into a grant)\(^a\)        |
| Belgian government      | Brussels Airlines      | €287 million loan with a government-subsidized interest rate\(^b\)      |
| Danish government       | SAS                    | Guarantee of revolving credit facility of up to €137 million to compensate damages, which are to be quantified after the pandemic\(^c\) |
| Dutch government        | Air France-KLM\(^d\)    | €2.4 billion loan from a consortium of banks, as well as providing €1 billion in loans itself\(^e\) |
| Estonian government     | Nordica                | Subsidized interest loan of €8 million\(^f\)                           |
| Finnish government      | Finnair                | The state guarantee covers 90% of a €600 million loan\(^g\) An unsecured hybrid loan in the amount of €351.38 million compensates for damages resulting from travel restrictions\(^h\) |
| French government       | Air-France KLM         | €7 billion consisting of a state guarantee on loans and a shareholder loan\(^i\) |
| German government       | Condor                 | €550 million loan guaranteed by the state\(^j\)                         |
| New Zealand government  | Air New Zealand        | NZ$900 million ($580 million)\(^k\)                                  |
| Norwegian government    | Norwegian Airlines     | Loan guarantee of up to NOK 3 billion (€277 million)\(^l\)             |
| Portuguese government   | Tap Air Portugal       | €1.2 billion\(^m\)                                                   |
| Romanian government     | Blue Air               | Loan guarantee of up to €62 million\(^n\)                             |
| Spanish government      | Iberia                 | €750 million\(^o\)                                                   |
|                        | Vueling Airlines       | €260 million\(^p\)                                                   |
| Swiss government        | Edelweiss and Swiss    | €1.4 billion loan and guarantee to the airlines\(^q\)                  |
| UK government           | EasyJet                | €690 million from the HM Treasury and Bank of England’s Coronavirus Corporate Financing Facility (CCFF)\(^r\) A further government-backed loan of €1570 million in January 2021\(^s\) |
|                         | Ryanair                | £600 million (€670 million) from the CCFF\(^t\)                       |
|                         | Wizz Air               | £300 million (€344 million) from the CCFF\(^u\)                       |
|                         | IAG-British Airways    | £300 million (€343 million) CCFF loan at pre-crisis commercial interest rates A further loan of £2 billion (€2.21 billion) was granted to IAG by the British government\(^v\) |

(continued)
Table 1. (Continued)

| Provider         | Airline        | Model                                                                 |
|------------------|----------------|----------------------------------------------------------------------|
| US government    | Various        | Up to $25 billion for loans and loan guarantees to passenger air carriers |
|                  |                | Up to $4 billion for loans and loan guarantees to cargo air carriers |

*a European Commission, ‘State Aid: Commission Approves €150 Million Austrian Subordinated Loan to Compensate Austrian Airlines for Damages Suffered Due to Coronavirus Outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1275 (visited 25 September 2021).

*b European Commission, ‘State aid: Commission approves €290 million Belgian support to Brussels Airlines in the context of the coronavirus outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1507 (visited 25 September 2021). May be drawn down in disbursements of minimum €30 million upon request.

*c European Commission, ‘State Aid: Commission Approves Danish Public Guarantee of up to €137 Million to Compensate Airline SAS Damage Caused by Coronavirus Outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_667 (visited 25 September 2021).

*d European Commission, ‘State Aid: Commission Approves Dutch Plans to Provide €3.4 Billion in Urgent Liquidity Support to KLM’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1333 (visited 25 September 2021).

*e KLM, ‘KLM Secures Financing of EUR 3.4 Billion to Weather the COVID-19 Crisis’, https://news.klm.com/klm-secures-financing-of-eur-34-billion-to-weather-the-covid-19-crisis/ (visited 25 September 2021).

*f European Commission, ‘State Aid: Commission Approves €30 Million Estonian Measure to Support Nordica in the Context of the Coronavirus Outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1473 (visited 25 September 2021).

*g European Commission, ‘State Aid: Commission Approves €7 Billion Air France-KLM Bailout’, https://www.iairgroup.com/en/newsroom/press-releases/newsroom-listing/2020/ib-vy-loan-agreements (visited 25 September 2021).

*h European Commission, ‘State Aid: Commission Approves €550 Million German State-Guaranteed Loan to Compensate Airline Condor for Damage Caused by Coronavirus Outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_752 (visited 25 September 2021).

*i Air New Zealand, ‘2020 Annual Financial Results’, https://p-airnz.com/cms/assets/PDFs/air-nz-2020-financial-results.pdf (visited 25 September 2021), at 45.

*j The Government of Norway, ‘Omfattende Tiltakspakke for Norsk Luftfart: 6 Milliarder i Lånegaranti’, https://www.regjeringen.no/no/aktuelt/omfattende-tiltakspakke-for-norsk-luftfart-6-milliarder-i-lanegaranti/id2694265/ (visited 25 September 2021).

*k European Commission, ‘State Aid: Commission Approves Around €350 Million Finnish Support to Compensate Finnair for Damages Suffered Due to Coronavirus Outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_809 (visited 25 September 2021).

*l European Commission, ‘State Aid: Commission Approves French Plans to Provide €7 Billion in Urgent Liquidity Support to Air France’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_796 (visited 25 September 2021); FINN, ‘European Commission Approves €7bn Air France-KLM Bailout’, https://www.weenefinn.com/topics/posts/european-commission-approves-e7bn-air-france-klm-bailout/ (visited 25 September 2021).

*m European Commission, ‘State Aid: Commission Approves €550 Million German State-Guaranteed Loan to Compensate Airline Condor for Damage Caused by Coronavirus Outbreak’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1473 (visited 25 September 2021).

*n European Commission, ‘State Aid: Commission Approves €1.2 Billion Portuguese Urgent Liquidity Support to TAP’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1029 (visited 25 September 2021).

=o European Commission, ‘State Aid: Commission Approves €62 Million Romanian Loan Guarantee to Compensate Blue Air for Damage Suffered Due to Coronavirus Outbreak and Provide the Airline with Urgent Liquidity Support’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1508 (visited 25 September 2021).

*p International Airlines Group, ‘Iberia and Vueling Sign Syndicated Loan Agreements’, https://www.iairgroup.com/en/newsroom/press-releases/newsroom-listing/2020/ib-vy-loan-agreements (visited 25 September 2021).

$q Ibid.

*r The Federal Council, ‘COVID-19: Federal Council Fleshes Out Support for Airlines’, https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-78944.html (visited 25 September 2021).

+s House of Commons Transport Committee, ‘The Impact of the Coronavirus Pandemic on the Aviation Sector’, https://committees.parliament.uk/publications/1452/documents/13275/default/ (visited 25 September 2021), at para 39.

+t EasyJet, ‘EasyJet Trading Statement for the Quarter Ended 31 December 2020’, https://corporate.easyjet.com/~/media/Files/E/Easyjet/pdf/investors/results-centre/2021/aq1-2021-ims.pdf (visited 25 September 2021), at 6.

+u House of Commons Transport Committee, above n 73, at para 39.

+v Ibid.

+w IAG, ‘British Airways Receives Commitments for £2.0 Billion UK Export Finance Guaranteed 5-Year Loan Facility’, https://www.iairgroup.com/en/newsroom/press-releases/newsroom-listing/2020/uk-export-finance (visited 25 September 2021).

+x U.S. Department of the Treasury, ‘Loans to Air Carriers, Eligible Businesses, and National Security Businesses’, https://home.treasury.gov/policy-issues/cares/loans-to-air-carriers-eligible-businesses-and-national-security-businesses (visited 25 September 2021).
Table 2. Governments’ equity acquisitions

| Provider                  | Airline                        | Model                                      |
|----------------------------|--------------------------------|--------------------------------------------|
| Finnish government        | Finnair                        | €286 million for the shares<sup>a</sup>    |
| German government         | Lufthansa Group                | €300 million for subscription of shares<sup>b</sup> (20% stake) |
| Hong Kong government      | Cathay Pacific                 | HK$19.5 billion for the shares<sup>c</sup> (6.1% shareholding) and USD 34 million (for the newly issued shares)<sup>d</sup> Combined with previous shares, new shares amount to a total stake of 14%<sup>e</sup> |
| Israeli government        | EL Al                          |                                                |
| Latvian government        | Air Baltic                     | €250 million for 10.95% of shares<sup>f</sup> (for a total stake of 96%)<sup>g</sup> |
| Portuguese government     | Tap Portugal                   | €55 million for subscription of shares<sup>h</sup> Acquired 22.5% stake from another shareholder (for a total stake of 72.5%)<sup>i</sup> |
| Singaporean government    | Singapore Airlines (through wholly state-owned holding company Temasek) | S$986 million right shares at S$3 per share<sup>j</sup> Pro-rata entitlement: no increase in shareholding percentage |
| Swedish and Danish governments | Scandinavian Airlines          | €194 million for subscription of new shares, shared between the two governments<sup>k</sup> €292 million equity participation through the subscription and underwriting of new shares in a rights issue, shared between the two governments<sup>l</sup> The two governments each held around a 14% stake prior to the plan<sup>m</sup> After acquisition, each government will hold up to 22%<sup>n</sup> |

<sup>a</sup>European Commission, ‘State Aid: Commission Approves €286 Million Finnish Measure to Recapitalise Finnair’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1032 (visited 25 September 2021).  
<sup>b</sup>European Commission, ‘State Aid: Commission APPROVES €6 BILLion German Measure to Recapitalise Lufthansa’, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1179 (visited 25 September 2021).  
<sup>c</sup>‘The Government of the Hong Kong Special Administrative Region, ‘Gov’t to Invest in Cathay Pacific’, https://www.news.gov.hk/eng/2020/06/20200609/20200609_161908_002.html (visited 25 Sep. 2021); Cathay Pacific Airways Limited, ‘Completion of the Preference Shares and Warrants Issue’, https://www1.hkexnews.hk/listedco/listconews/sehk/2020/20200812/2020081200904.pdf (visited 25 September 2021).  
<sup>d</sup>El Al Israel Airlines Ltd, ‘Financial Statements as of September 30, 2020’, https://ir.elal.com/Lists/InformationInterimReport/EL%20AL%20Financial%20Statements%20-%2030.09.20.pdf (visited 25 September 2021), at B-8, C-49; FlightGlobal, ‘State Takes 14% of EL Al as Nkafaim Is Displaced as Main Shareholder’, https://www.flightglobal.com/airlines/state-takes-14-of-el-al-as-nkafaim-is-displaced-as-main-shareholder/140249.article (visited 25 September 2021).  
<sup>e</sup>El Al Israel Airlines Ltd, ‘Financial Statements as of September 30, 2020’, https://ir.elal.com/Lists/InformationInterimReport/EL%20AL%20Financial%20Statements%20-%2030.09.20.pdf (visited 25 September 2021).  
<sup>f</sup>‘El Al Israel Airlines Ltd, ‘Financial Statements as of September 30, 2020’, https://ir.elal.com/Lists/InformationInterimReport/EL%20AL%20Financial%20Statements%20-%2030.09.20.pdf (visited 25 September 2021).  
<sup>g</sup>‘European Commission, ‘State Aid: Commission Approves €1 Billion Danish and Swedish Measure to Recapitalise SAS’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1488 (visited 25 September 2021).  
<sup>h</sup>‘Ibid.  
<sup>i</sup>‘Ibid.  
<sup>j</sup>Singapore Airlines, ‘Results of Rights Issue’, https://www.singaporeair.com/saar5/pdf/Investor-Relations/Rights-Issue/Rights-Issue-Results-Announcement.pdf (visited 25 September 2021).  
<sup>k</sup>‘European Commission, ‘State Aid: Commission Approves €1 Billion Danish and Swedish Measure to Recapitalise SAS’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1488 (visited 25 September 2021).  
<sup>l</sup>‘Ibid.  
<sup>m</sup>State Aid SA.57543 (2020/N)—Denmark State Aid SA.58342 (2020/N)—Sweden COVID-19: Recapitalisation of SAS AB, Brussels, 17.8.2020 C(2020) 5750, at 7.  
<sup>n</sup>‘SAS, ‘SAS Annual and Sustainability Report Fiscal Year 2020’, https://www.sasgroup.net/files/Main/290/3277514/release.pdf (visited 25 September 2021), at 105.
Table 3. Hybrid financing by governments

| Provider                          | Airline                  | Model                                                                 |
|----------------------------------|--------------------------|----------------------------------------------------------------------|
| German government                | Lufthansa                | €1 billion silent participation with the features of a convertible debt instrument<sup>a</sup> This is part of a larger aid package from German government and would only be activated in case of a hostile takeover bid. It would give the government an additional stake of 5% plus one share<sup>b</sup> |
| Indonesian government            | Garuda Indonesia         | The airline will issue 7-year convertible bonds with a maximum value of Rp. 8.5 trillion (USD 600 million)<sup>c</sup> |
| Korean government                | Korean Air               | KRW 300 billion for perpetual bonds<sup>d</sup> Can be converted to a 10.8% stake in the airline<sup>e</sup> |
| New Zealand government           | Air New Zealand          | Loan of NZ 900 million (USD 596.34 million)<sup>f</sup> The government already owned a 52% ‘hands-off’ stake in the airline before this<sup>g</sup> Option to seek repayment by raising capital after 6 months or converting the loan to equity<sup>h</sup> |
| Singaporean government (through wholly state-owned holding company Temasek) | Singapore Airlines       | The airline issued S$3,496,128,555 of mandatory convertible bonds pro rata to all existing shareholders<sup>i</sup> Temasek, a 55% shareholder in Singapore Airlines, pledged to take up its pro rata convertible bonds as well as any that were not taken up<sup>j</sup> |

<sup>a</sup>European Commission, ‘State Aid: Commission Approves €6 Billion German Measure to Recapitalise Lufthansa’, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1179 (visited 25 September 2021).

<sup>b</sup>Lufthansa Group, ‘Economic Stabilization Fund Approves Lufthansa’s Stabilization Package’, https://www.lufthansa-group.com/en/newsroom/media-relations-north-america/news-and-releases/economic-stabilization-fund-approves-lufthansastabilization-package.html (visited 25 September 2021).

<sup>c</sup>Garuda Indonesia, ‘Perubahan Dan/Atau Tambahan Atas Keterbukaan Informasi Kepada Pemegang Saham’, https://www.garuda-indonesia.com/content/dam/garuda/files/pdf/investor-relations/corporate-governance/Perubahan%20dan%20atau%20Tambahan%20Keterbukaan%20Informasi%20Kepada%20Pemegang%20Saham.pdf (visited 25 September 2021), at 3.

<sup>d</sup>Korean Air, ‘Korean Air to Secure KRW 2.2 Trillion to Overcome COVID-19’, https://www.koreanair.com.sg/en/footer/about-us/newsroom/list/200513—2-2-trillion-to-overcome-covid (visited 25 September 2021).

<sup>e</sup>Nikkei, ‘Virus-Hit Korean Air and Asiana Offered $2bn Bailout’, https://asia.nikkei.com/Business/Transportation/Virus-hit-Korean-Air-and-Asiana-offered-2bn-bailout (visited 25 September 2021).

<sup>f</sup>Air New Zealand, above n 66, at 45.

<sup>g</sup>Reuters, ‘Air New Zealand to Draw on Government Loan After First Annual Loss in 18 Years’, https://www.reuters.com/article/us-air-new-zealand-results-idUSKBN25M2S0 (visited 25 September 2021).

<sup>h</sup>Ibid.

<sup>i</sup>Theinvestquest, ‘SIA Issues S$850m of Convertible Bonds: What Does it Mean for Shareholders and MCB Bondholders?’, https://theinvestquest.com/sia-issues-s850m-of-convertible-bonds-what-does-it-mean-for-shareholders-and-mcb-bondholders/ (visited 25 September 2021).

<sup>j</sup>Ibid.

<sup>k</sup>Singapore Airlines, above n 90.

<sup>l</sup>Ibid.
### Table 4. Wage subsidies by governments

| Provider                  | Airline                                                                 | Model                                                                                                                                                                                                                                                                                                                                 |
|---------------------------|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Danish government         | Danish Air Transport and other airlines holding Danish air operator certificate | Each beneficiary enjoys a maximum of €500,000 in direct state grants, which covers wages between 1 October and 31 December 2020 for staff responsible for certain specific safety-critical functions |[State Aid SA.59370 (2020/N)—Denmark COVID-19—Temporary Framework/3.1 Measure to Support Airlines Holding a Danish Air Operator Certificate, Brussels, 27 November 2020 C(2020) 8561](https://www.icao.int/sustainability/SiteAssets/Pages/Eap_ER_Databases/FINAL_Airlines%20Privatization.pdf). |
| Hong Kong government     | Multiple airlines with employment in Hong Kong                          | Employment Support Scheme: The government will pay 50% of the actual wages of each employee in the specified month, with a maximum subsidy per employee of HK$9,000.                                                                                                                       |[The Government of the Hong Kong Special Administrative Region, 'Gov’t Unveils Employment Measures',](https://www.news.gov.hk/eng/2020/04/20200420/20200420_175816_569.html) (visited 25 September 2021); [The Government of the Hong Kong Special Administrative Region, 'Approved List',](https://www.ess.gov.hk/en/granted_companies.html) (visited 25 September 2021). |
| Singaporean government   | Multiple airlines with employment in Singapore                           | SGD 400 million scheme to subsidize a portion of airline employees’ monthly wages                                                                                                                                                                                     |[Singaporean Government, 'Budget 2020, Resilience Budget',](https://www.singaporebudget.gov.sg/budget_2020/resilience-budget/supplementary-budget-statement) (visited 25 September 2021), at B53. |
| US government             | Multiple US airlines (354 airlines)                                      | Various |[For a full list of airlines receiving the subsidy and the relevant amount, see US Department of the Treasury, ‘Payroll Supporting Program’,](https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments) (visited 25 September 2021). |

30%, respectively). In the past two decades, however, privatization has been one of the main factors driving the restructuring of the global aviation industry. Facing unprecedented challenges during the COVID-19 crisis, many airlines either became state-owned for the first time or saw governments increase their stake in response (See Table 2).

#### C. Hybrids

Some governments bailed out their airlines in the form of ‘hybrid’ instruments that combine features of both debt and equity (See Table 3). These instruments have grown so complex that it has become virtually impossible to classify them consistently. Broadly speaking, however, convertible bonds and debt-for-equity swaps were used in the bailout.

Under a convertible bond scheme, the government is given bonds upon providing cash capital. These bonds are usually limited by a maturity period. During the maturity period

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56 ICAO, ‘List of Government-Owned and Privatized Airlines. International Civil Aviation Organization,’ [https://www.icao.int/sustainability/SiteAssets/Pages/Eap_ER_Databases/FINAL_Airlines%20Privatization.pdf](https://www.icao.int/sustainability/SiteAssets/Pages/Eap_ER_Databases/FINAL_Airlines%20Privatization.pdf). (visited 25 September 2021).
57 ICAO, ‘Liberalization of Air Carrier Ownership and Control’, ICAO Working Paper ATConf/6-WP/12 presented at the 6th meeting on Worldwide Air Transport Conference, Montreal, 18–22 March 2013, [https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf6-wp012_en.pdf](https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf6-wp012_en.pdf) (visited 25 September 2021).
58 Lorenzo Sasso, *Capital Structure and Corporate Governance: The Role of Hybrid Financial Instruments* (Netherlands: Kluwer Law International, 2013) 73.
Table 5. Flight subsidies by governments

| Provider             | Airline                                      | Model                                                                 |
|----------------------|----------------------------------------------|-----------------------------------------------------------------------|
| Australian government| Eligible domestic regular public transport (RPT) airlines operating on identified routes | 'Domestic Aviation Network Support' helps the aviation industry maintain minimum connectivity within Australia

|               |                                                                 | 'Regional Airline Network Support' helps airlines maintain a basic level of connectivity across their network of regional routes during COVID-19 |
|               | Eligible domestic RPT airlines | 'Tourism Aviation Network Support' subsidy is open to airlines that have been operating RPT flights to designated destinations for the last 2 years

|                     |                                                                 | Prices halved for 800,000 tickets on various interstate routes connecting 13 key regions |
|----------------------|----------------------------------------------|-----------------------------------------------------------------------|
| Cyprus government    | Airlines that land/take off in Cyprus        | Airlines receive €7–17 per passenger if their load factor falls between 41% and 70% (capped at €800,000 for each airline) |
|                       |                                                                 | Scheme provides for discounts on domestic airline ticket fares to and from Bornholm and Sønderborg airports. The discount will correspond to 50% of the average ticket price for adults |
|                       | Open to all airlines that operate domestic flights to/from Bornholm and Sønderborg airports in Denmark | All airlines serving scheduled passenger flights from/to any of the 13 airports in Denmark

| Danish government    | Open to all airlines that operate domestic flights to/from Bornholm and Sønderborg airports in Denmark | Scheme provides for discounts on domestic airline ticket fares to and from Bornholm and Sønderborg airports. The discount will correspond to 50% of the average ticket price for adults |
| Greek government     | Any airline flying to Greece                 | Commercial flights during the months of April and May 2020 were reimbursed in the amount of 20 euros per offered seat; 6 m euros was paid out in total. |
| Icelandic government | Icelandair                                   | Airline to continue operating flights to Boston and London or Stockholm 2 days a week

|                                 | ISK 100 million (644,000 euros) to support operations (March 2020) |
| Slovenian government            | Any airlines flying to Slovenia | A total of €5 million to be distributed in three rounds of applications

|                       | Paid directly to the airlines, not through credit or financial institutions |

(continued)
Table 5. (Continued)

| Provider | Airline | Model |
|----------|---------|-------|
|          |         | Airlines must have either maintained flights to Slovenian airports from May to September 2020 or contractually committed to operate scheduled flights at a specific frequency from October 2020 to May 2021 |

a Australian Government, ‘Assistance to the Aviation Sector Domestic Aviation Network Support (DANS) Regional Airline Network Support (RANS) Fee Waiver on Air Services Charges’, https://www.infrastructure.gov.au/aviation/files/dans-rans-fee-waiver-extensions-fact-sheet-march-2021.pdf (visited 25 September 2021).

b Australian Government, ‘Assistance to the Aviation Sector’, https://www.infrastructure.gov.au/aviation/ (visited 25 September 2021).

c Ibid.

d Australian Government, ‘GO4740’, https://www.grants.gov.au/Go>Show?GoUuid=0124e935-8da7-4cc6-907b-4a0ab07577e4 (visited 25 September 2021).

IATA, ‘Government Action for Market Stimulation’, https://www.iata.org/contentassets/9413a9e7360d4e4bb34d4bc86767a29a/government-action-market-stimulation.pdf (visited 25 September 2021); State Aid SA.57691 (2020/N)—Cyprus—COVID-19—Incentive scheme towards airlines, Brussels, 1 July 2020 C(2020) 4551.

State Aid SA.59378 (2020/N)—Denmark—Aid of a Social Character to Passengers on Domestic Flights to and from Bornholm and Sønderborg, Brussels, 30 November 2020 C(2020) 8566.

Ríkisútvarpíð, ‘Ríkið hyggst greiða upp tap Icelandair að hluta til’, https://www.ruv.is/frett/rikid-hyggst-greida-upp-tap-icelandair-ad-hluta-til (visited 25 September 2021).

Ibid.

State Aid SA.59124 (2020/N)—Slovenia—COVID-19—Re-Establishment of Air Connectivity of Slovenia, Brussels, 16 November 2020 C(2020) 8077.

(e.g. 10 years), the government will receive periodic interest payments. The government can choose to convert the bond into stock during that period; otherwise, it will be paid the face value of the stock or the principal (with the exception of Singapore Airlines, which issued ‘mandatory convertible bonds’). That choice will depend on the value of shares at the end of the maturity period; that is, if the value of the promised number of shares is higher than the total loan, it is likely the government will convert those bonds. In essence, conversion occurs when the company performs well.

A debt-for-equity swap is a way to restructure the debts of a financially distressed company.\(^59\) It presupposes that the company is not economically distressed but merely financially distressed.\(^60\) Even if an airline is cash-flow insolvent, it can still be economically viable and thus worth saving.

D. Wage subsidies

One of the main goals of government bailouts of airlines is protecting the jobs that airlines provide. As a labor-intensive industry, major airlines have tens of thousands of employees. Before COVID-19, 3.6 million people worked for airlines.\(^61\) In the USA alone, airlines cut 90,000 full-time positions in 2020.\(^62\)

\(^{59}\) Jennifer Payne and Louise Gullifer, Corporate Finance Law: Principles and Policy, 3rd ed. (Oxford, NY: Hart, 2020) 797.

\(^{60}\) Ibid.

\(^{61}\) Air Transport Action Group, above n 1.

\(^{62}\) CNBC, ‘U.S. Airline Employment to Reach Lowest Levels in Decades After Pandemic Cuts 90,000 Jobs’, https://www.cnbc.com/2020/11/12/us-airline-employment-to-reach-lowest-levels-in-decades-after-pandemic-cuts-90000-jobs.html (visited 25 September 2021).
Wage subsidies have been implemented in two ways. Some governments have given airline employees subsidies directly. For instance, Singapore, Hong Kong, and Denmark have taken this approach (See Table 4). Other governments have taken the indirect approach of financially supporting airlines on the condition of keeping employees on the payroll. The US Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is the most noteworthy. This $2.2 trillion economic stimulus bill was enacted in response to the economic fallout of the COVID-19 pandemic. The CARES Act authorizes the US Department of the Treasury to provide up to $32 billion to compensate aviation industry workers and preserve jobs. Funds received by these airlines and contractors under the program must exclusively be used to continue the payment of employee wages, salaries, and benefits. In exchange for funds under the program, airlines were prohibited from laying off or involuntarily furloughing workers before the end of September 2020.

E. Flight subsidies

Ensuring essential connectivity during the pandemic is another goal for government bailouts of airlines. Since the number and frequency of aviation connections are strongly correlated with economic growth, national air transport development policies are often centered on ensuring domestic and international aviation connectivity. Apart from the economic rationale, many governments subsidize airline connections to nonprofitable destinations to provide essential services under public service obligations. Hence, some governments provided flight subsidies to maintain essential connectivity during the pandemic (See Table 5).

V. AIRLINE BAILOUTS CAUSE INCREASING PROBLEMS DURING THE COVID-19 CRISIS

The ongoing government bailouts have more significant implications for the international aviation market than domestic aviation markets. Despite their obvious connections, the international aviation market and domestic aviation market have a significantly different regulatory structure. Two regulatory hurdles for domestic aviation markets are ‘nationality rules’ and the prohibition of cabotage rights. Nationality rules stipulate that an airline must be substantially owned and effectively controlled by the citizens of the airline’s home state. Most countries prohibit cabotage or foreign airlines moving passengers or cargo between two points within their territory. One exception is the EU, which created a single aviation market through adopting a series of laws that allow EU community carriers to exercise the same rights as national carriers. For the rest of the world, foreign airlines cannot enter domestic aviation markets. Thus, the level of competition in domestic aviation markets is predominantly determined by the sector-specific regulations of the respective government.

The competitive dynamics of the international aviation market are different from those of domestic aviation markets, and the international aviation market is more competitive than domestic aviation markets. Although an ASA decides the level of competition (i.e. the number of airlines and the number of flights that may operate agreed-upon services between the

63 Coronavirus Aid, Relief, and Economic Security Act, Title IV, Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy, Subtitle B—Air Carrier Worker Support, Section 4112.
64 Ibid.
65 Ibid, Section 4114.
66 Eric Tchouamou Njoyaa, Panayiotis Christidis and Alexandros Nikitasa, ‘Understanding the Impact of Liberalisation in the EU-Africa Aviation Market’, 71 Journal of Transport Geography 161 (2018).
67 Rico Merkert, ‘Determinants of European PSO Airline Efficiency – Evidence from a Semi-Parametric Approach’, 29 Journal of Air Transport Management 11 (2013).
68 See Brian F. Havel and Gabriel S. Sanchez, ‘The Emerging Lex Aviatica’, 42 Georgetown Journal of International Law 639 (2011), at 648.
69 Lee, above n 12, at 45–62.
two states), a passenger can take transfer flights. For instance, although direct flights between Singapore and London are regulated by the UK–Singapore ASA, there are multiple options for traveling from Singapore to London on other airlines (e.g. via Dubai, Doha, Paris, Amsterdam, or Bangkok). Therefore, massive government bailouts can make winners and losers in the international aviation market. While airlines with strong government support can survive or even grow in the COVID-19 slump, airlines that do not receive (sufficient) financial support will struggle to overcome the distortion of the competitive conditions.

The competitive dynamics of the international aviation market explain why countries that contain international aviation hubs have proactively bailed out their national carriers. For instance, when Singapore Airlines received SGD 19 billion worth of assistance, the financial assistance given by other governments paled in comparison. The CEO of Temasek, an entity wholly owned by the government of Singapore that holds a majority of Singapore Airlines shares, said, ‘This transaction will not only tide SIA [Singapore Airlines] over a short term financial liquidity challenge, but will position it for growth beyond the pandemic.’

Indeed, a study by Abate, Christidis, and Purwanto confirms the close relationship between governments’ financial support and the international passenger market in those countries during the COVID-19 crisis. The study shows that countries that rely on international passengers for revenue and traffic tend to provide more government aid while countries that generate most of their passengers and revenue in the domestic market do not appear to provide much aid. Since domestic passenger flights are in general free from quarantine requirements, bigger domestic aviation markets have the advantage of recovering before international borders are fully opened.

By the same token, countries and airlines that heavily rely on international passengers will have to prepare for COVID-19 to have a longer impact.

Of the government bailout measures previously discussed, state ownership, either by direct equity acquisition or by hybrid approaches, can make the government more interventionist. It is important to recall that the airline industry has largely been in the process of privatization since the 1980s. Under the view that state ownership would lead to inefficiency and a greater likelihood of failure in competition with private firms, many of the world’s formerly state-owned airlines privatized. To a certain extent, however, COVID-19 is reversing that trend by revitalizing state ownership of national airlines.

A difficult question for governments is how to maintain fair competition in moments of heightened nationalization. Governments are under pressure to shield airlines in which they hold equity from competition to make those airlines profitable. Favoritism for state-owned airlines is expected and could lead governments to discriminate against foreign airlines as well as domestic airlines in which they do not hold a stake. The issue of ‘competitive neutrality’ could have significant implications on competition in the aviation market. The Organisation for Economic Co-operation and Development (OECD) defines competitive neutrality as ‘a legal and regulatory environment in which all enterprises, public or private, face the same set of rules, and government ownership or involvement does not confer unjustified advantages on any entity’.

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70 Singapore Airlines, ‘Singapore Airlines to Issue S$5.3 Billion in New Equity and Raise up to S$9.7 Billion via Mandatory Convertible Bonds’, https://www.singaporeair.com/zh_TW/hk/media-centre/press-release/article/?q=en_UK/2020/January-March/ne0720-200326 (visited 25 September 2021).
71 Megersa Abate, Panayotis Christidis, Alloysius Joko Purwanto, ‘Government Support to Airlines in the Aftermath of the COVID-19 Pandemic’, 89 Journal of Air Transport Management 101872 (2020), at 7.
72 Ibid.
73 See Centre for Public Impact, ‘Privatising the UK’s Nationalised Industries in the 1980s’, https://www.centreforpublicimpact.org/case-study/privatisation-uk-companies-1970s/ (visited 25 September 2021).
74 Truxal, above n 9, at 69.
75 Lee and Dy, above n 9, at 387.
76 OECD Policy Roundtables, ‘State Owned Enterprises and the Principle of Competitive Neutrality’, DAF/COMP(2009)37, http://www.oecd.org/daf/competition/46734249.pdf (visited 25 September 2021), at 11.
Although a full analysis of competitive neutrality is beyond the scope of this article, it is worth noting that the OECD Council recently adopted the 2021 Recommendation on Competitive Neutrality.\(^{77}\)

In essence, governments’ increasing interventions could make business less dynamic, and favoritism could distort competition. Regardless of the actual distortion, this is very likely to prompt foreign states or airlines to claim that government interventions distort fair competition, claims that will be denied by the other side. The fundamental problem is uncertainty about which laws or principles apply to this issue. Since governments’ financial support to the airlines remains untouched by rule-based measures (except in the EU, as discussed in the following section), this could become a more serious problem. While noting such challenges, the next section will make practical recommendations.

**VI. RECOMMENDATIONS FOR BETTER ECONOMIC GOVERNANCE OF INTERNATIONAL AIR TRANSPORT**

**A. Multilateral: how ICAO’s monitoring function could aid transparency**

When the international aviation market eventually rebounds, the various pandemic-related government bailouts will cause controversies. One of the major problems with the government bailouts of airlines is the lack of transparency. There is no centralized place for other governments and the public to access information, which is scattered and often underreported. As a consequence, controversy about the facts (i.e. whether and to what extent the airlines in question have received bailouts from their governments) is expected in the future. A similar controversy was observed in 2015 when US carriers accused Gulf carriers of receiving subsidies. As there is no neutral body or authoritative organization to examine the factual grounds of airline subsidies, such conflicts continue until the relevant parties reach a bilateral compromise.\(^{78}\)

ICAO is the best-positioned organization to serve as a central repository for this information. Not only does it have a mandate under the Chicago Convention, but it also has considerable experience with requesting, collecting, examining, and publishing information from member states in other fields, such as aviation safety.\(^{79}\) Notably, ICAO has taken the lead in responding proactively to COVID-19. Among other activities, the ICAO Council, through the Council Aviation Recovery Task Force, adopted a report and recommendations for helping the aviation sector make a better recovery.\(^{80}\) Indeed, the COVID-19 crisis should be seen as an opportunity to design better governance for the future aviation market, and ICAO should take the helm on the issue of government bailouts by activating Chicago Convention 1944 Article 54 paragraph (i).

To be clear, the Chicago Convention 1944 cannot completely solve the unfair competition problems arising from the subsidies. The Chicago Convention is silent on what steps ICAO or member states can take when they find subsidies. However, vesting ICAO with the responsibility of regularly monitoring all forms of alleged and actual subsidies provided to airlines by governments around the world would significantly increase transparency.

**B. Bilateral: adding a subsidy-specific clause to ASAs**

As discussed in Section III, nearly all ASAs do not have a subsidy clause but only the ambiguous ‘fair and equal opportunity’ clause. The COVID-19 pandemic presented the aviation industry

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\(^{77}\) OECD, ‘Competitive Neutrality in Competition Policy’, [https://www.oecd.org/competition/competitive-neutrality.htm](https://www.oecd.org/competition/competitive-neutrality.htm) (visited 25 September 2021).

\(^{78}\) Jae Woon Lee, ‘Airline Subsidies: Can the Law Play a Role in Regulating Them?’ 52 Journal of World Trade 897 (2018), at 912.

\(^{79}\) Ibid, at 911.

\(^{80}\) ICAO, ‘CART’ Report - Executive Summary’, [https://www.icao.int/covid/cart/Pages/CART-Report—Executive-Summary.aspx](https://www.icao.int/covid/cart/Pages/CART-Report—Executive-Summary.aspx) (visited 25 September 2021).
with unprecedented challenges and, at the same time, provided an opportunity to review what changes may be needed in the aviation market. For a more rule-based approach, government negotiators should add a subsidy-specific clause to ASAs. The best practice among current ASAs is the Air Transport Agreement that China and the ASEAN adopted in 2010. Specifically, Article 10 (Safeguards) of the Agreement stresses the transparency of subsidies:

2. The grant of state aid and/or subsidy shall be transparent among the Contracting Parties, and shall not distort competition among the designated airlines of the Contracting Parties. The Contracting Parties concerned shall furnish other interested Contracting Parties, upon their requests, with complete information on such grants and any revision to or extension of such grants. Such information shall be treated with the utmost sensitivity and confidentiality.  

Essentially, this approach is two-fold: information sharing needs to be transparent, and subsidies must not distort competition. Thus, a subsidy is allowed as long as it is granted transparently and its level does not jeopardize other airlines of the contracting parties. Rather than rejecting all subsidies and thereby encouraging secretive behavior and misunderstanding, the states are encouraged to communicate with each other about the exact nature of their subsidy programs. Support for dialogue enables better understanding between parties, which leads to better solutions. In addition, this provision implies that transparency can deter unfair subsidies in the international aviation market.

Most recently, the EU-Qatar Air Transport Agreement, which was initialed in March 2019 but has yet to be published, made a significant step forward by including definitions of discrimination and subsidies. Gergely notes that provisions on fair competition in the Agreement are in line with EU laws on subsidies, state aid, and competition. Interaction between the EU’s rules and bilateral ASAs to which the EU is a party will be further examined in the section below.

C. Unilateral: the ‘Brusselseffect’in international air transport

Anu Bradford, the author of The Brussels Effect: How the European Union Rules the World, defines the ‘Brusselseffect’ as ‘the EU’s unilateral ability to regulate the global marketplace’. There are two variants of this: the de facto Brussels effect, which describes how global companies respond to EU regulations by adjusting their global conduct to EU rules, and the de jure Brussels effects, which refers to the adoption of EU-style regulations by foreign governments. The broader definition of the de jure Brussels effect includes ‘the diffusion of EU norms through international treaties and institutions’.

The Brussels effect has been particularly powerful in the field of aviation regulation. Two good examples are the application of the EU Emissions Trading Scheme (EU ETS) to international

81 2010 ASEAN Multilateral Agreement on the Full Liberalisation of Passenger Air Services, signed in Brunei Darussalam on 12 November 2010, https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2010-ASEAN-Multilateral-Agreement-on-Full-Liberalisation-of-Passenger-Air-Services.pdf (visited 25 September 2021), Article 13 (Safeguards); The ASEAN-China Air Transport Agreement also provides a measure to redress in paragraph 5 of Article 10 (Safeguards): ‘Each Contracting Party shall have the right to withhold, revoke, suspend, impose conditions on or limit the operating authorisations with respect to an airline designated by another Contracting Party temporarily, should there be reasonable ground to believe that unfair or anti-competitive practices related to paragraphs 1 and 2 of this Article committed by a Contracting Party or its designated airline seriously affect the operation of its designated airline.’
82 Lee, above n 41, at 908.
83 European Commission, ‘EU and Qatar Reach Aviation Agreement’, https://ec.europa.eu/transport/modes/air/news/2019-03-04-eu-and-qatar-reach-aviation-agreement_en (visited 25 September 2021).
84 Gergely, above n 20, 15–16.
85 Anu Bradford, The Brussels Effect: How the European Union Rules the World (Oxford: Oxford University Press, 2020) 1.
86 Ibid, at 2.
87 Ibid, at 3.
aviation and the EU’s action in the area of air passenger rights. The EU ETS, which is ‘a cornerstone of the EU’s policy to combat climate change and its key tool for reducing greenhouse gas emissions’, was a catalyst of the Carbon Offsetting and Reduction Scheme for International Aviation, a global market-based scheme developed by ICAO in 2016. Since the EU enacted EU 261/2004, a regulation that deals with compensation and assistance for passengers who are denied boarding or whose flight is cancelled or delayed for a long time, more and more states have been adopting passenger protection laws, which many jurisdictions have modeled on EU 261/2004.

Along with environmental protection and consumer protection, fair competition is another well-established norm in the EU. The EU debate on fair competition in international air transport was linked to the objective of establishing a single aviation market. One of the reasons the EU gradually liberalized its air transport sector from 1987 to 1997 was to enable the heavily subsidized national flag carriers to restructure their operations before competing on a level playing field. Article 107 of the Treaty on the Functioning of the European Union generally prohibits state aid for specific undertakings with multiple exceptions. The main purpose of Article 107 is to maintain fair competition between the EU member states.

Recognizing that EU airlines compete with airlines from outside the bloc that benefit from subsidies, the EU introduced Regulation 868/2004, which aimed to protect EU airlines against such subsidies. Modeled on the SCM Agreement, the essential requirements for action were the existence of a subsidy and consequent injury to the EU airline industry. However, it is both difficult to detect a subsidy and extremely complicated to prove injury. These practical difficulties explain why Regulation 868/2004 did not have a meaningful effect. In the 15 years that the Regulation was in force (i.e. from 2004 until 2019, when it was eventually repealed), it was never applied. Regulation 868/2004 was replaced by Regulation 2019/712, which entered into force on 30 May 2019.

Although Regulation 2019/712 was not intended to deal with pandemic-related subsidies, it has become highly relevant in the post-COVID-19 era. Regulation 2019/712 addresses several deficiencies of Regulation 868/2004. One important innovation is that Regulation 2019/712 regulates its interface with the ASAs concluded by EU member states (or the EU as a party) with non-EU countries. Unlike Regulation 868/2004, which gave priority to ASAs, Regulation 2019/712 gives the European Commission discretion to either conduct an investigation under the Regulation or to address the issue in the context of its ASA with the non-EU country concerned.

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88 See Antigoni Lykotrafiti, ‘What Does Europe Do About Fair Competition in International Air Transport? A Critique of Recent Actions’, 57 Common Market Law Review 831 (2020), at 833.
89 EU, ‘EU Emissions Trading System’, 2015, https://ec.europa.eu/clima/policies/ets_en (visited 25 September 2021).
90 See ICAO, ‘Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)’, https://www.icao.int/environmental-protection/CORSIA/pages/default.aspx (visited 25 September 2021).
91 European Parliament and Council Regulation (EC) No. 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and repealing Regulation (EEC) No 295/91 O.J. 2004, L 46/1.
92 Vincent Correia and Noura Rouissi, ‘Global, Regional and National Air Passenger Rights – Does the Patchwork Work?’, 40 Air and Space Law 123 (2015).
93 Lykotrafiti, above n 150, at 839.
94 Ibid.
95 European Parliament and Council Regulation (EC) No. 868/2004 of 21 April 2004 concerning protection against subsidization and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community, O.J. 2004, L 162/1.
96 Lee, above n 41, at 906.
97 Lykotrafiti, above n 150, at 847.
98 European Parliament and Council Regulation (EU) 2019/712 of 17 April 2019 on safeguarding competition in air transport and repealing Regulation (EC) 868/2004, O.J. 2019, L 123/4.
99 See Lykotrafiti, above n 150, at 848–50.
Lykotrafiti argues that Regulation 2019/712 and fair competition clauses in ASAs are ‘interlocking’, which is to say that the Regulation reinforces compliance with the fair competition commitments in the ASAs and, in the event of default, with the relevant enforcement mechanisms and redressive measures.\textsuperscript{100} Considering the EU’s clout in international air transport, Regulation 2019/712 could add to the Brussels effect. In doing so, the goal should be to maintain fair competition rather than to protect EU airlines. The legitimacy of the EU regulations affecting aviation, such as EU ETS, passenger protection, and the state aid rules, stems from the EU’s strictness towards its own airlines.\textsuperscript{101}

\section*{VII. CONCLUDING REMARKS}

It is well understood why governments have supported the airline industry during the COVID-19 slump. Connectivity is essential for trade and for the flow of people, and it will also be vital in repairing the economic and social damage that COVID-19 has caused. Apart from airlines’ role in economic development, to a lesser extent, there is a notion that national carriers have played an important symbolic role.\textsuperscript{102} For both economic and noneconomic reasons, many governments cannot allow their major airlines to shut down. Nevertheless, competition in the international aviation market can be distorted by the ongoing massive government bailouts, and governments should strike a balance between financial support to the airline industry and the need to maintain competition.

Sauvé and Soprana concluded back in 2018 that ‘prospects for the adoption of multilateral disciplines on services subsidies are generally grim’\textsuperscript{103} and COVID-19 made those prospects even grimmer. Nevertheless, government bailouts of airlines are not (and should not) be entirely unregulated. Rule-based approaches with institutional mechanisms should be implemented to maintain fair competition in international air transport.

To sum up, ICAO has a mandatory obligation to collect and publish information relating to airline subsidies, which could include most (if not all) bailouts that airlines have been receiving. ICAO’s monitoring function should be reactivated. Bilateral ASAs will continue to be the principal regulatory framework for international air services. The new subsidy clause in ASAs can serve as a mechanism for reinforcing transparency. EU Regulation 2019/712 has the potential to augment the Brussels effect in international air transport in the post-COVID-19 era. This article does not recommend major legal reforms, which would be too ambitious and unrealistic at this stage. That said, transparency can be significantly improved by the recommendations provided. Transparency, a key principle of the system of trade, makes trade relations more predictable and legally certain and gives regulatory authorities more accountability and legitimacy.\textsuperscript{104}

\textsuperscript{100} Ibid, at 857–58.
\textsuperscript{101} Ibid, at 856–57.
\textsuperscript{102} Jae Woon Lee, ‘Chapter 18: Concluding Remarks and Smart Regulation in the Post COVID-19 Era’, in Jae Woon Lee (ed.), \textit{Aviation Law and Policy in Asia: Smart Regulation in Liberalized Markets} (Netherlands: Brill, 2020) 347.
\textsuperscript{103} See Sauvë and Soprana, above n 34, at 616.
\textsuperscript{104} Pietro Poretti, \textit{The Regulation of Subsidies Within the WTO’s General Agreement on Trade in Services: Problems and Prospects} (Netherlands: Kluwer Law International, 2009) 164.