Volume 18 Number 2, 2017 www.usask.ca/esteyjournal

The Estey

Journal of International Law and Trade Policy

Abstract

Application of the Theory of Contracts to Open Skies Agreements in Air Transport

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The spat between the three United States carriers – American, Delta and United Airlines on the one hand and the carriers of the United Arab Emirates on the other — where the former accused the latter of unfair practices buffered by state aid and allegedly practiced under an open skies agreement between the United States and UAE brought to bear a global inquiry on whether an open skies agreement which gave unlimited rights on market access could result in the erosion of the "equality of opportunity" to compete embodied in the Chicago Convention. The U.S. carriers alleged that the UAE carriers received zero-interest loans from the UAE government with no arrangements for repayment; grants of land which could be regarded as subsidies; development of massive airports, built and paid for by the state, and very cheap rent facilities and landing charges; low labour rates because the home state bans unions; and low personal and corporate tax rates to promote the growth of business. The UAE carriers countered that they had not received subsidies and were not operating into and out of the United States with undercut pricing and therefore were within their rights under the agreement. The 2016 award of the Nobel Prize in economics to two economists for their Theory of Contracts highlights the significance of the theory in its application to open skies agreements, which this article analyses in some detail.

Keywords: Chicago Convention; competition; equality of opportunity; open skies; Pareto optimal contract; Theory of Contracts

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