



EU Aviation & Competition Framework

Legal Structure, Institutional Design and Enforcement Logic

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OBJECTIVE OF THE SESSION

This session focuses on the **European Union competition framework as applied to aviation.**

→ It aims to:

- Explain how competition law operates in a **liberalised aviation market**
- Clarify the **legal and institutional architecture**
- Illustrate how rules are **implemented and enforced in practice**
- Identify **key structural elements that may inform other regions**

This is **not a technical course on competition law**, but a **system-level analysis.**



The EU and its Member States

Founded:

in 1951 after the Second World War by six countries Belgium, France, Germany, Italy, Luxembourg, and the Netherlands

Current Member States:

27 countries.

Institutional setup:

EU has a specific setup of institutions, bodies and agencies

7 European institutions,
9 EU bodies,
over 30 decentralised agencies

KEY ELEMENT : INSTITUTIONAL COOPERATION

- ❑ The EU institutions and bodies **cooperate extensively** with **the network of EU agencies and organisations across the EU.**
- ❑ **The primary function of these bodies and agencies is to translate policies into realities on the ground.**

HOW FAR THE EU CAN GO ?



**...ONLY WHAT IT HAS BEEN
EMPOWERED TO DO BY THE
MEMBER STATES (PRINCIPLE
OF “CONFERRAL”)**



**TO ACHIEVE THE
OBJECTIVES LAID
DOWN IN THE **TREATIES****

EU can go only as far as the Treaties say it's necessary in each policy area



Principles governing the exercise of competences

Subsidiarity

- EU action only if objective cannot be reached sufficiently at national (or sub-national) level.

Proportionality

- Only do as much as needed to achieve the objective.

Main legal instruments

Regulations.	Directly applicable and binding in all Member States without transposition
Directives.	Bind Member States to achieve a particular result, while leaving them flexibility in implementation.
Decisions.	Binding upon those to whom they are addressed.
Recommendations and Opinions.	Non-binding but influential in guiding national legislation.

Instrument Choice and Policy Objectives

In aviation (safety), the EU selects its legal instruments based on:

- ❑ The need for **legal uniformity** (use of regulations for safety and certification)
- ❑ The need of a **centralised oversight** (eg: EASA)
- ❑ The complexity and technicality of rules, which benefit from **direct application**
- ❑ The requirement to ensure **equal conditions across the internal market**



EU Single Market.. and aviation single market



The 27 Member States form a Single Market, including Iceland, Norway, and Switzerland.

Freedom to establish and provide services

Free movement of goods and capital

Free trade with harmonised standards

Businesses can reach over 450 million consumers without restrictions

EU Single Aviation Market =
Economic liberalisation
founded on unified regulations
(common rules)

Total liberalisation of traffic rights (*included cabotage*)

No restrictions on routes or city-pairs

Freedom of pricing

No restriction on capacities or frequencies

EU-level regulation of aviation aspects

- Security
- Safety
- Air Traffic Management –Single European Sky
- Strict competition aid rules
- Drones
- Decarbonisation of aviation

- Licences, fares, market access (*in the EU*)
- Airport charges
- Air passenger rights
- Allocation of slots
- Groundhandling
- Computer Reservation Systems
- Noise



LIBERALISATION IS NOT SUFFICIENT

A liberalised market creates:

- More competition
- More actors
- More complexity

But also:

- Risk of market concentration
- Risk of anti-competitive practices

ROLE OF COMPETITION LAW

Competition law acts as:

→ a **corrective mechanism to preserve market fairness**

It:

→ does not organise the market

→ does not regulate operations

→ but prevents distortions

KEY IDEA

Competition law is **reactive and corrective**, not structural.

This is fundamentally different from:

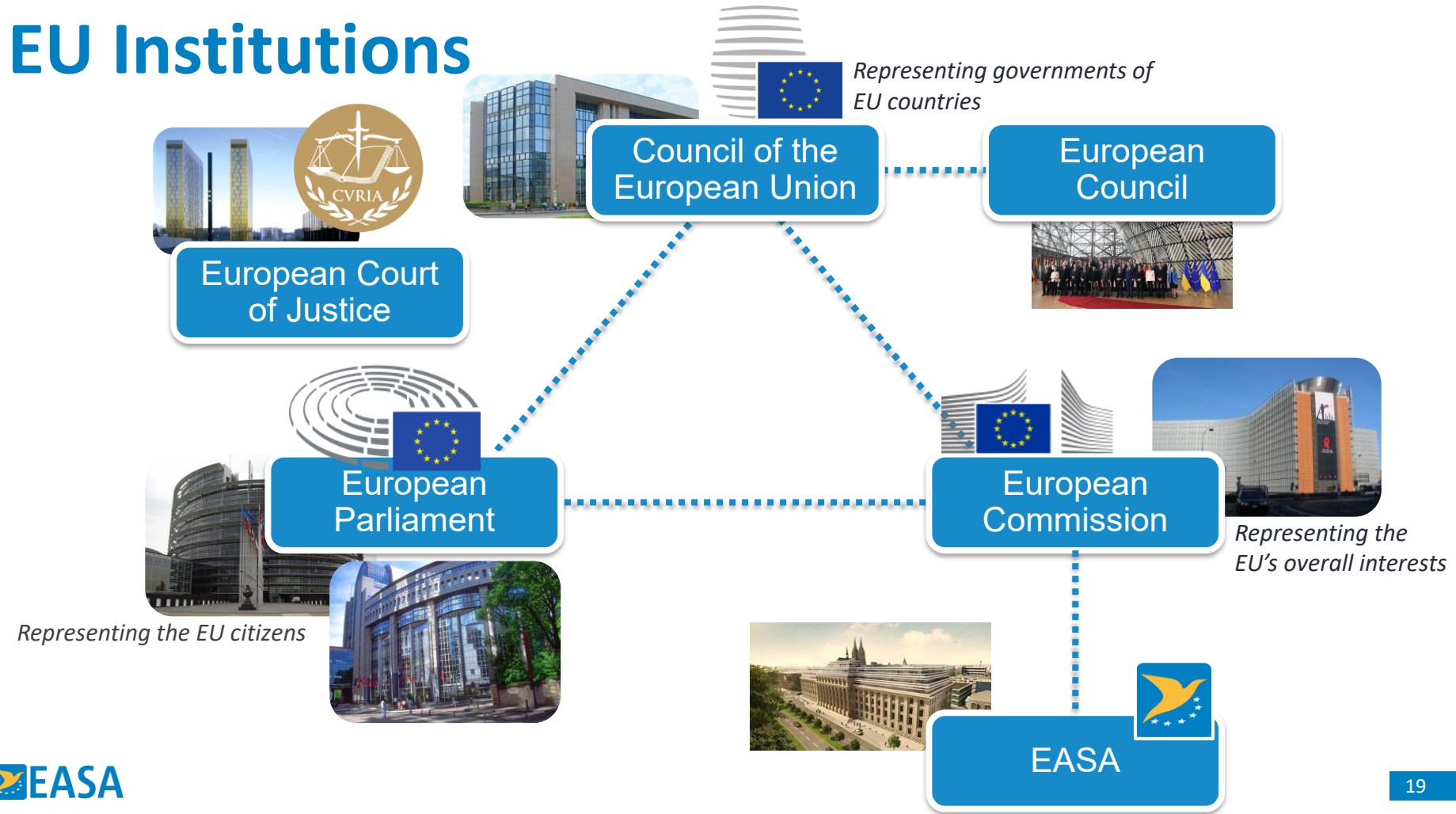
→ **safety aviation regulation**

→ technical regulation

A low-angle, silhouette photograph of a group of graduates against a bright, clear sky. Several graduates are holding up their black mortarboards and rolled-up diplomas, celebrating their achievement. The scene is filled with a sense of triumph and accomplishment.

Institutional architecture

EU Institutions



INSTITUTIONAL ARCHITECTURE

Competition law in the EU is enforced through a **multi-level system**:

- EU level
- National level
- Judicial level

Shared but coordinated system

1. EUROPEAN COMMISSION

Core actor:

- Investigates
- Enforces
- Adopts binding decisions

2. COURT OF JUSTICE

- Ensures uniform interpretation
- Reviews Commission decisions

3. NATIONAL AUTHORITIES

- Apply EU competition law
- Work in parallel with Commission

- Member States are generally prohibited from enacting competition legislation that conflicts with EU rules, but they play **a crucial role in enforcement.**
- **Shared Enforcement:** National Competition Authorities (NCAs) and national courts apply Articles 101 and 102 TFEU parallel to the Commission.

- **National Legislation:** Member States retain competence to act where the EU has not exercised its own. However, national rules cannot negatively affect the functioning of EU law.
- **State Aid:** While the Commission approves state aid, national courts play a role in enforcing the duty to obtain authorization before Member States put a state aid measure into effect.

NETWORK OF AUTHORITIES

The system relies on:
a **network of national competition authorities**

Key features:

- Decentralised enforcement
- Coordination mechanisms
- Case allocation

EU COMPETITION LAW: DIVISION OF COMPETENCES

Substantive Rules → Exclusive EU Competence

- EU defines competition rules (Articles 101 & 102 TFEU)
- EU adopts binding legal framework
- Member States cannot legislate independently in this area

Enforcement → Shared and Decentralised System

European Commission

- Investigates major cases
- Adopts decisions and sanctions
- Sets enforcement priorities

Member States (NCAs & Courts)

- Apply EU competition law at national level
- Handle a large number of cases
- Ensure local enforcement

Coordination Mechanism

- European Competition Network (ECN)
- Case allocation and cooperation
- Ensures consistent application across the EU

COMPARISON WITH SAFETY SYSTEM

EU aviation safety is:

- Highly integrated
- Centralised (EASA)
- Based on harmonised technical rules

COMPETITION SYSTEM FEATURES

- General legal framework
- Decentralised enforcement
- Case-by-case intervention
- No sector-specific regulator

WHY THIS DIFFERENCE?

Because the objectives differ:

→ Safety → **risk prevention**

→ Competition → **market fairness**



Competition law- elements

LEGAL BASIS OF EU COMPETITION LAW

- The EU competition framework is based on:
 - **Articles 101–109 TFEU**
 - **Regulation 1/2003** (enforcement powers)
 - **Merger Regulation (EC) No 139/2004**
 - **State Aid rules (Articles 107–109 TFEU)**
- These rules apply **fully to the aviation sector**

CORE PRINCIPLES

- EU competition law is structured around **four** pillars:
 - **ANTI TRUST, Prohibition of anti-competitive agreements** (Art. 101)
 - **ABUSE OF DOMINANCE, Prohibition of abuse of dominant position** (Art. 102)
 - **MERGERS, Control of mergers and concentrations**
 - **STATE AID: Control of State aid**

I. ANTITRUST (ARTICLE 101 TFEU)

Prohibits agreements that restrict competition, including:

- Price fixing
- Market sharing
- Capacity coordination
- Exchange of sensitive information

Key principle:

- Agreements that distort competition are **void**
- Example (aviation): Air freight cartel (fuel surcharge coordination)

II. ABUSE OF DOMINANT POSITION (ARTICLE 102 TFEU)

Important distinction:

- Dominance = **allowed**
- Abuse = **prohibited**

Typical aviation-related abuses:

- Slot hoarding
- Predatory pricing (eg: BA)
- Exclusion of competitors
- Bias in reservation systems

How do we know if a company is dominant?

Assessment focuses on:

- **Market power**: ability of a company to influence the market.
- **Barriers to entry**: limited airports slots / high investment costs/ regulatory constraints/ brand/ network effect
- **Ability to act independently**: The company can act without worrying about competitors, customers, or market pressure

III. MERGER CONTROL

Mergers are assessed **before implementation**.

Key objective:

- Prevent concentrations that significantly reduce competition

Specific features in aviation:

- Analysis based on **routes (origin–destination)**
- Focus on **overlapping services**
- Risk of **hub dominance**

Possible outcomes:

- Approval
- Conditional approval (remedies)
- Prohibition

IV. STATE AID CONTROL

State aid = **public support to companies**

In the EU:

- Strictly controlled
- Must be **notified to the European Commission**
- Allowed only under specific conditions

Objective:

- Ensure a **level playing field** between airlines

Key tension:

- Economic policy vs competition neutrality

Aviation Guidelines (2014)

State aid is particularly relevant in aviation due to:

- High infrastructure costs (airports)
- Financial vulnerability of airlines
- Strong public ownership and intervention
- Regional development objectives

POLICY OBJECTIVE OF THE EU

- Ensure a **level playing field** between airlines and airports
- Avoid **distortion of competition**
- Promote **efficient use of public resources**
- Support **connectivity and regional development**, where justified

Economic efficiency vs territorial cohesion

→ Important structural elements:

Many regional airports are **not profitable**

→ Public funding is often used to:

- cover operating costs
- attract airlines

Risk of:

- overcapacity
duplication of infrastructure

WHEN DOES PUBLIC FUNDING = STATE AID?

Public funding constitutes State aid if:

- It confers an economic advantage
- It is selective
- It distorts competition
- It affects trade between Member States

Applies to:

- airports
- airlines
- airport–airline agreements

IMPORTANT DISTINCTION: ECONOMIC vs NON-ECONOMIC

Non-economic (NO State aid):

- air traffic control
- police / security
- customs

Economic (State aid rules apply):

- airport operations
- services to airlines
- commercial activities

MARKET ECONOMY OPERATOR PRINCIPLE (KEY CONCEPT)

Core test:

- Would a private investor have taken the same decision?
- If YES → no State aid
- If NO → potential State aid

Assessment based on:

- profitability expectations
- business logic
- ex-ante analysis

AIRPORT–AIRLINE RELATIONSHIPS (CRUCIAL)

Many distortions arise from:

- Incentives to airlines
- Marketing support
- Reduced airport charges

Key test:

- Does the agreement generate **profitability for the airport?**
- **If not → risk of State aid**

TYPES OF AID IN AVIATION

Main categories:

- Investment aid (airports)
- Operating aid (airports)
- Start-up aid (airlines)
- Public service compensation (PSO/SGEI)

COMPATIBILITY TEST (VERY IMPORTANT)

Even if aid exists → it can be approved if:

- It serves a **common interest objective**
- It is **necessary**
- It is **proportionate**
- It has an **incentive effect**

CASE STUDY: AIRPORT–AIRLINE AGREEMENTS (CHARLEROI / RYANAIR)

Context:

- Regional airport (Charleroi, Belgium)
- Agreement with Ryanair to develop traffic
- Reduced airport charges + marketing support

Issue:

- Do favorable conditions granted to an airline constitute State aid?

Commission approach

Assessment based on **Market Economy Operator Principle (MEO)**

Key question: Would a profit-driven airport have accepted these conditions?

Findings:

- Some advantages considered **State aid**
- Others accepted if:
 - commercially justified
 - generating expected profitability

CASE STUDY: STATE AID IN CRISIS CONTEXT (LUFTHANSA)

Context:

- COVID-19 crisis (2020)
- Severe financial distress of airlines
- German State support to Lufthansa (~€6 billion)

Legal issue:

- Can massive State intervention be compatible with EU competition rules?

Commission approach

Application of **State aid rules + Temporary Framework**

Assessment based on:

- necessity
- proportionality
- impact on competition

Decision:

- Aid approved **with strict conditions**, including:
 - slot release at congested airports
 - limits on expansion
 - governance restrictions

FINAL TAKEAWAY ON STATE AID

In aviation, public intervention is often necessary

BUT it must be carefully controlled to preserve market fairness.



Enforcement

Enforcement

- Administrative Enforcement by the European Commission
- Infringement Proceedings (Articles 258–260 TFEU)
- Judicial Enforcement via the CJEU
- National Enforcement under EU Law

ENFORCEMENT MECHANISMS- COMPETITION

The European Commission has strong enforcement powers:

- Investigations
- Binding decisions
- Financial penalties
- Structural and behavioural remedies

Examples of remedies:

- Slot release
- Divestitures
- Access obligations

Enforcement is **central to system credibility**.

Enforcement/Administrative Enforcement by the European Commission

The European Commission exercises enforcement powers particularly in competition, State aid, and sector-specific areas.

- ☐ *Binding decisions (e.g., prohibition of anti-competitive practices)*
- ☐ *Remedies (divestitures, behavioural obligations)*
- ☐ *Fines and periodic penalty payments under Regulation 1/2003*

Enforcement / Infringement Proceedings (Articles 258–260 TFEU)

Used against Member States that fail to comply with EU law obligations.

Managed by the **Commission** and adjudicated by the **CJEU**.

- ☐ *Letter of formal notice*
- ☐ *Reasoned opinion*
- ☐ *Referral to the Court of Justice (CJEU)*
- ☐ *Sanctions: fixed, one-time financial penalty and/or daily penalties*

ROLE OF NATIONAL LEVEL

- Courts apply EU law
- Private enforcement possible

4. Enforcement / National Enforcement under EU Law

National courts and regulators implement EU law through the principles of direct effect and primacy.

- ☐ National courts may disapply conflicting national law
- ☐ Private enforcement (e.g., damages actions in competition law)

3. Enforcement / Judicial Enforcement via the CJEU

CJEU ensures uniform interpretation and legality of EU acts.

- ☐ *Preliminary rulings (Art. 267 TFEU)*
- ☐ *Actions for annulment or failure to act*
- ☐ *Appeals and competition enforcement*



Conclusion

WHY AVIATION IS A SPECIAL SECTOR

Competition law applies to aviation, but the sector has specific features:

- High fixed costs
- Network effects
- Limited infrastructure (slots, airports)
- Historical State involvement

Higher risk of:

- Market concentration
- Anti-competitive behaviour

EXTERNAL DIMENSION: FAIR COMPETITION

The EU also promotes competition externally:

- Inclusion of **fair competition clauses** in air agreements
- Requirement for:
 - Transparency
 - Non-discrimination
 - Control of subsidies
- Ensures equal conditions between EU and third-country airlines

KEY TAKEAWAYS

→ The EU model is based on:

- **A liberalised market**
- **A strong legal framework**
- **Independent enforcement institutions**

Key lessons

- Competition law is essential **after liberalisation**
- Rules alone are not sufficient → **enforcement is critical**
- Institutional capacity is key

- Balance is needed between:
 - Market forces
 - State intervention

Many thanks for your attention!



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