

EUROPEAN AIR TRAVEL TAX

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ABSTRACT

This paper evaluates the air travel tax in Europe and focuses on the tax levied in Germany. The current status quo and disputes of the air travel tax in Germany and in Europe are explored and recent decisions by the European Union Grand Court and the European Commission with regards to the tax are given. The paper contributes to the existing literature by analyzing the role the tax has on possible distortion of competition in Europe and argues that airlines with a point-to-point business model are placed at a competitive disadvantage with respect to their hub-and-spoke counterparts, when the tax is reasoned to encourage environmentally-balanced behavior in air travel.

Keywords: aviation, tax, distortion, competition, Europe, Germany

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1. INTRODUCTION

Taxation on air travel has been a major issue of dispute in several European countries for the past decades. The German air travel tax, aimed at generating additional revenue to the state's treasury, is intended by the German legislators to encourage a more environmentally-balanced air travel behavior and considered by its opponents to negatively affect the development of a competitive aviation industry in the country (Bundesverfassungsgericht.de 2015 a).

The objective of this paper is to evaluate the German air travel tax with regards to the European Union competition laws. The research questions are: (i) what constitutes the German air travel tax; (ii) how is the situation in other European countries; (iii) how do different lobbying organizations support or fight against the tax: (iv) and does the German air travel tax distort competition in Europe.

The research design of the paper is set by reviewing the existing literature and analyzing the air travel tax in Germany and in the European Union with respect to the competition laws. The paper begins by presenting studies of various scholars and distinguishing the air travel tax from other taxes and charges in the aviation industry. Current information on the levied air travel tax in Europe is given and recent decisions and rulings on air travel tax of the European Commission and the General Court of the European Union are explored. The paper continues by explaining the evaluation of the German air travel tax and presents main arguments in favor and against its application. Statistical evaluations of the levied tax in Germany are analyzed and observations are drawn. The paper ends by discussing the scenarios in which the German tax may distort competition under the competition laws of the European Union.

2. LITERATURE REVIEW

2.1 Aviation charges vs. aviation taxes

Various scholars in recent decades have been studying the differences between charges and taxes on air travel, which constitute the final price of flight tickets. Abeyratne (1993) considers taxes as general burdens imposed on the population or on various industries of a state, which benefit the government's own treasury with no straight-forward reallocation of levied revenue in return. Charges, on the contrary, are specific levied fees, which benefit particular public properties or entities and are, therefore, seen as justified. According to Abeyratne, taxation on air travel, which aims to support the development of the tourism industry, or taxation on tourism, which aims to support the aviation industry would be 'self-defeating' measures due to the strong correlations of both industries (Abeyratne 1993).

Odoni (1985) relates to aviation charges as a general label of 'user charges', which include various fees collected by aeronautical facilities (e.g. airports and air navigation service providers), and which are imposed on the users of air travel in order to recover the costs of facilitating air travel activities (Odoni 1985). These levied fees are segregated between aeronautical and non-aeronautical charges. Aeronautical charges relate to fees levied in direct relation with the facilitating of air travel activity, such as landing, security and ground handling fees. Non-aeronautical charges, on the contrary, are fees collected in an ancillary form of charges generated by commercial activities of facilities and amenities at airports (Odoni 2007). The aeronautical charges constitute the aeronautical revenues of the airport levying the charges, whereas the non-aeronautical charges represent the concession revenues benefiting the concerned airports (with relatively more airports), both private owned and state owned. Their share of concession revenues has increased over recent years (Zhang and Zhang 2003).

Pelger et al. (2003) segregate between airport aeronautical charges and government aeronautical charges. This segregation is highlighted due to the fact that airport aeronautical charges contain charges solely, whereas the government aeronautical charges contain both charges as well as taxes. Aeronautical taxes relate to cases, in which the government levies a specific Air Travel Tax (ATT) for each departing passenger (Pelger et al. 2003).

Graham (2013) follows Pelger et al. and distinguishes the taxes levied by governments from other aeronautical charges. Graham indicates the difficulty passengers often face with the term 'airport taxes and charges' shown on flight tickets. The scholar claims that it is difficult to distinguish between levied taxes benefiting the government from airport charges, which constitute revenue for the airport operator (Graham 2013).

2.2 The characteristics of the air travel tax

Smith (2010) claims that the aviation industry is considered an easy target for taxation. Politicians are little motivated to fight against such taxes, due to the fact that passengers are unaware of the real amount of taxes they pay when flying. In addition, passengers lack lobbying groups, which are able to advocate their interests against the payment of the ATT (Smith 2010). ATT is stated by Keen and Strand (2007) as an indirect tax on aviation and defined as 'a charge that is levied on passengers as a fixed amount per trip, at a common rate for all trips within some wide class' (Keen/Strand 2007 p6). Imposing ATT is explained by governments' motivation to address the environmental polluting damage caused by air transport and to raise revenue for non-transport initiatives. The scholars address the implications of ATT on competition distortion and suggest that ATT should be designed in accord-

ance to other means of transportation and compared with the extent other transportation modes are subsidized (Keen/Strand 2007).

Adam and Chote (2008) relate to the situation in the United Kingdom (UK), where ATT was first introduced 1994 by the British government under the form of Air Passenger Duty (APD). APD was proposed as a tool for generating revenue for the state at a time of difficult financial situation on the British island. The initial APD rate has been increased throughout the years and has never been withdrawn. Efforts to correlate and consider APD as environmental tax were at the focus of lobbying groups. Policy makers in the British parliament had justified the rate increase of APD due to environmental concerns (Adam and Chote 2008). Truby (2010) suggested reforming the APD to meet such concerns. Under such reform, APD should be imposed per departing aircraft and not per departing passenger, as per-plane-tax holds incentives for airlines to operate flights with high load of passengers or cargo. It is also suggested that generated revenue of the APD would be used in order to provide tax credits for airlines to renew their polluting older fleet of airplanes (Truby 2010).

2.3 The impacts of the air travel tax

Gordijn and Kolkman (2011) studied the implications and effects of the Dutch ATT on the Dutch economy. Their findings first and foremost warn that quantifying, relating and attributing any change in passenger demand from a given airport due to ATT is complicated and should be analyzed with other factors and variables affecting airports-choice by passengers. The two scholars suggest that the Dutch ATT is responsible for a diversion of approximately one million Dutch passengers, who chose tax-free neighboring airports in Germany² and Belgium for their departure. They also claim that ATT does not change the demand for outbound tourism, but rather divert air travel movement accordingly (Gordijn/Kolkman 2011).

The main focus of scholars with regards to ATT was centered to address its impacts on the economy and in particular on tourism and air travel demand. Seetaram et al. (2013) studied the impacts of the APD on the outbound tourism demand from the UK. Using a demand-model specially adjusted according to data of the British market, the scholars found that APD has a marginal effect on outbound tourism demand. It seems that passengers might change their travel destination or be more aware of other costs related to their trip, but would not cancel the trip completely because of the imposed APD. However, it was found that APD does have a negative effect on choosing air travel when alternative modes of surface transportation are available (Seetaram et al. 2013).

² Gordijn and Kolkman (2011) had published their study before ATT was introduced in Germany.

Forsyth et al. (2014) explored the effect of the Australian ATT on inbound and outbound tourism on the Australian continent. The Australian ATT, called Passenger Movement Charge (PMC), is relevant only for airplanes departing from Australia to an international destination outside of the continent and does not apply to domestic routes. PMC has generally been manifested in order to benefit the state treasury and support local tourism. Their study concludes that both inbound and outbound tourism industries have been negatively affected by the PMC to such an extent that the proposed increase of domestic tourism cannot substitute the overall losses the tourism industry incurs (Forsyth et al. 2014).

3. AIR TRAVEL TAX IN EUROPE

3.1 The air travel tax policy in the European Union

3.1.1 Current air travel tax in Europe

ATT has been imposed throughout Europe since its introduction in 1994 by the British government, with countries in Europe levying the tax gradually. ATT is currently levied in five Member States (MS) of the European Union (EU) according to different distance bands³ as depicted in figure 1 (Langner 2015).

Figure 1: Current levied air travel tax in Europe in EUR for economy class passengers – own illustration based on Anon (2014); Gov.uk (2015); Langner (2015): Bmf.gv.at(2015); and Developpement-durable.gouv.fr (2015)

Current levied air travel tax in the Europe in EUR			
Great Britain	Up to 3,200km:	More than 3,200km:	
	Economy 18€ Premium 36€	Economy 103€ Premium 206€	
Germany	Up to 2,500km :	between 2,501km and 6,000km :	More than 6,001km:
	7.5€	23.43€	42.18€
Austria	Short haul:	Medium haul:	Long haul:
	7€	15€	35€
Italy	Any airport other than Rome:	From Rome:	Transit and Transfer pasengers departing from Rome:
	6.5€	7.5€	1€ extra
France	Destination in in EU:	All other destinations:	
	4.31€	7.75€	

The ATT levied in the UK is subjected to the passenger’s relevant seating class. ATT for premium classes are twice more expensive than economy class. In addition, the ATT in France

³ Bands relate to the shortest-distance band A to the longest-distance band C, where applicable.

and in Italy shows several differences compared to the ATT levied from the other three MS. In Italy, ATT is a fixed tax of 6.50 EUR for flights departing from any Italian airport other than for airports in Rome, where a higher tax of 7.50 is imposed. Transit passengers departing from Rome are required to pay an extra 1 EUR as well. In France, the tax is levied not according to flight-distance, but rather according to two groups of destinations. The first group, or Band A, relates to domestic destinations in France, destinations in other EU MS as well as for destinations grouped under the Economic Area Agreement of the EU. Band B in France relates to all other destinations. Moreover, the French authorities levy 1.29 EUR ATT per tons of air cargo freight (Anon 2014; Langner 2015).

3.1.2 Tax policy in the European Union

MS in the EU are free to decide upon their tax systems according to each individual State's priorities and national needs. Any intervention by the EU ought to consider principles of subsidiarity and proportionality and may only take place when efforts to find a solution by the MS fail (Ec.europa.eu 2015 a). The EU is active in ensuring free and fair taxation of cross-border activities in Europe. The European Commission (EC) encourages MS to respect fundamentals non-discrimination tax regime and to acknowledge the importance of free competition and free-movement in the internal European market (Anon 2015).

3.1.3 Air travel tax on domestic and intra-EU flights

The policy of the EU towards domestic and intra-EU flights can be comprehended by decisions and rulings of the EC and the General Court of the EU on the Irish ATT, as summarized in table 1 (European Commission 2011). The EC had raised its concerns on the ATT imposed by the Irish Government in March 2009 in a discriminatory manner favoring airlines, which operate short-haul domestic flights of up to 300km from Dublin airport, and discriminate airlines operating cross-border intra-EU flights with a flight-distance of more than 300km. ATT on flights greater than 300km from Dublin was set at the rate of ten EUR per ticket, whereas the levied ATT for shorter flights was eight EUR less. The EC complained that such tax distorts competition and constitutes a barrier to the freedom of providing air services across borders. The EC had sent the Irish authorities a formal letter of notice on this matter, which has led Ireland to change its policy and to levy a fixed ATT rate regardless of the destination as of March 2011⁴ (European Commission 2015). Following, the EC has claimed that the discriminatory Irish ATT constituted state aid incompatible with the internal market (General Court of the European Union 2015). Article 107(1) of the Treaty of the Functioning of the European Union (TFEU) provides the following definition for illegal State Aid:

⁴ The Irish ATT was completely withdrawn by the Irish authorities in April 2014.

'Aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between member states, be incompatible with the internal market' (OPOCE 2008).

Table 1: Summary of the dispute regarding different ATT rates in Ireland based on European Commission (2011); European Commission (2015)

Matter of Complaint	Position of Member State	EC Decision	Ruling of the EU Grand Court
<p>Different ATT rates in Ireland constitute illegal State Aid, which selectively favor specific air carriers and is, therefore, incompatible with the internal market:</p> <p>D > 300km = 10 €</p> <p>D < 300km = 2 €</p> <p>D = Distance from Dublin airport</p>	<p>Lower rate for short haul flights is proportional to the ticket price.</p> <p>No distortion of competition – the tax is imposed on consumers and not on the airline operators.</p> <p>The tax is imposed equally on all airlines.</p>	<p>Different ATT rates between domestic routes and long-haul routes contradict common rules for the operation of air services in the Community.</p> <p>Hence, the different rates constitute state aid and are incompatible with the internal market.</p>	
		<p>Beneficiaries of the lower ATT are requested to recover the rate difference by paying back 8€ for each passenger retroactively.</p>	<p>The automatic setting of the recovery rate on 8€ per passenger is problematic.</p> <p>The airlines might recover back a higher amount than the real ATT originally charged.</p>

State aid does not only cover direct payments to undertakings by a member states, but it also refers to any advantages given to the undertakings of the aid. In addition, the aid must be attributed to the state resources of the granting member state. Funds originating from the European Union itself do not fall under the definition of state aid (Schmauch 2012).

The EC had ordered Aer Lingus and Ryanair to retroactively recover the difference of the levied eight Euros on each passenger the airlines had flown between the given periods of the discriminatory ATT. A recent ruling of the General Court of the EU goes out against this EC decision, stating that the EC cannot automatically consider the advantage given to the airlines to amount in all cases to eight EUR per passenger, and new negotiations are now being held to solve the case (General Court of the European Union 2015).

3.1.4 Non-application of the air travel tax to transfer and transit passengers

The non-application of the ATT to transfer and transit passengers has also been investigated by the EC in two different cases regarding Ireland and the Netherlands⁵. In both cases, the EC concluded that exempting transfer and transit passengers from paying ATT does not constitute state aid. Table 2 summarizes the Irish dispute by indicating the different considerations of the EC and the General Court of the EU in this matter (European Commission 2011).

Table 2: Summary of the dispute over the exemption of ATT to transfer and transit passengers in Ireland based on General Court of the European Union (2015); Gilmore (2011); Cyndecka (2014); European Commission (2011); and Nicolaides (2014)

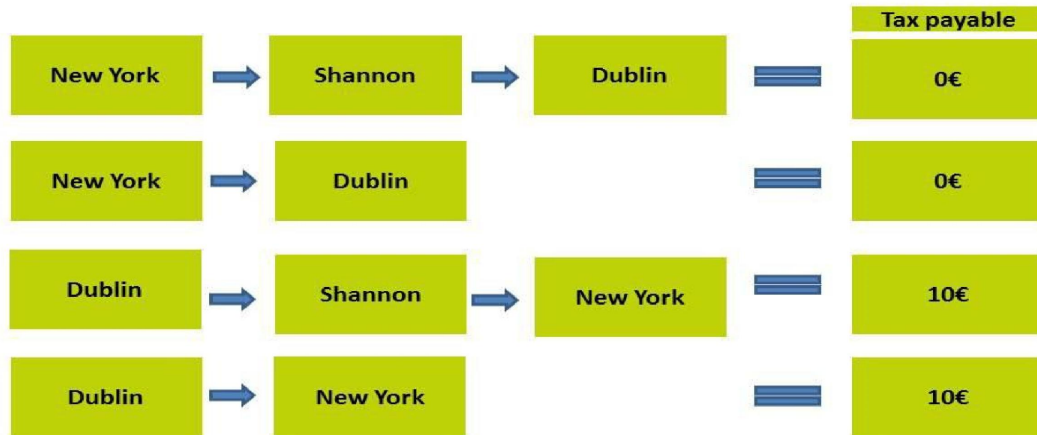
Matter of Complaint	Position of Member State	EC Decision	Ruling of the EU Grand Court
Non-application of the ATT to transit and transfer passengers	The non-application of the ATT is not selective - it does not differentiate between airlines at stake.	The exemption is not selective and is justified.	The exemption is inconsistent – the Irish ATT applies to any departure from an airport in Ireland regardless of the leg number. ATT should be levied as well in the opposite direction of inbound transfer and transit flights to Dublin via other airports in Ireland.
	Neutrality - avoiding the risk of double tax-	The exemption meets reasons of tax neutrality – avoidance of dou-	The Irish ATT cannot be compared with the nature of the British APD, which specifically considers the application of the tax to the first flight in

⁵ The ATT in the Netherlands was introduced in July 2008 and withdrawn completely twelve months later.

	<p>ation if route involves a departure from a state, which levies ATT as well</p>	<p>ble taxation</p>	<p>the entire journey only.</p>
	<p>Similar procedure is executed by other countries levying ATT such as the case with the British APD</p>		

The Irish dispute regarding the above exemption has been investigated by the EC after LCC Ryanair complained against the non-application of ATT to passengers transferring via Ireland, claiming that the exemption constitutes unlawful state aid to traditional airlines. The EC had issued a preliminary investigation procedure set to investigate Ryanair's claims. The investigation had lasted more than two years with a final EC decision ruling favoring the Irish authorities. The EC explained its decision by the fact that (i) Ireland is allowed to decide exclusively on its taxation system and (ii) the non-application of ATT to transit and transfer passenger is not selective, falls between the logic of tax neutrality and therefore does not constitute state aid according to the meaning of TFEU. This ruling is consistent with the similar Dutch dispute. The EC has accepted the reasons given by the Irish authorities, claiming for neutrality from the passengers' point of view, who should be punished for paying the tax twice in cases, which passengers begin their journey from a MS imposing ATT as well. The Irish authorities had also provided the EC with the following example, illustrated in figure 2, concerning the application of the ATT to transfer and transit passengers, which was supported by the EC (Gilmore 2011). This example shows that the Irish authorities consider the application of the ATT to the entire journey of a passenger rather than considering it to individual legs of journey. Therefore, a direct flight segment between Dublin to New York has the same legal and factual situation compared to a flight from Dublin to New York with a stopover at Shannon. Hence, in both cases, ATT is levied the same and only once (Gilmore 2011; Cyndecka 2014).

Figure 2: Taxing transit and transfer passengers in Ireland based on Gilmore (2011)



Nevertheless, the above ruling of the EC was partially annulled by the General Court of the European Union in November 2014, which criticized the long time it took the commission to reach a decision and disrespected the procedure carried by the EC. In addition, the court revoked the claim for neutrality and avoidance of double taxation. The court rejected the EC’s claim for tax neutrality for exempting transfer and transit passengers, who might be taxed twice if their airport of departure is located in a MS, which levies ATT as well. The court noted that ATT can be applied on either the first or the second leg of a journey. The court referred to the examples provided by the Irish authorities and noted, under paragraph 88 of the ruling, that the EC had failed to explain why passengers travelling in the opposite direction from New York to Dublin via Shannon are exempted from paying ATT upon their departure from Shannon airport, which is located in Ireland and falls with the logic and legal situation of the objective of the Irish ATT. The General Court of the EU has forced the commission to reopen its investigation in this matter (General Court of the European Union 2015).

3.1.5 Air travel tax and other forms of transportation

Other modes of transportation such as maritime, rail and road transportation are free from taxes similar to ATT. Efforts have been made to address whether this fact places air travel at a competitive disadvantage and whether other modes of transportation receive illegal State Aid. The EC policy towards this matter has been addresses by claiming that other modes of transportation cannot be compared with aviation, due to the fact that these modes are nei-

ther legally nor factually comparable to the situation of air travel operators (European Commission 2011).

3.2 The German air travel tax

3.2.1 The evolution of the German air travel tax

The ATT in Germany was first introduced on January 1st, 2011 as part of the yearly German Federal budget. The German government's aim of levying an ATT in its territory is to collect additional revenue to its treasury. In addition, the German legislatures opted to use the tax as an incentive effect in order to encourage a more environmentally-balanced behavior in air travel (Bundesverfassungsgericht.de 2015 a).

The German ATT is levied on all German and foreign air carriers operating in the country determined per capita and according to bands of flight distance in km from the main German airport in Frankfurt as follows:

- Band A: Distance from Frankfurt is less than 2,500km
- Band B: Distance from Frankfurt is more than 2,501km but less than 6,000km
- Band C: Distance from Frankfurt is more than 6,001km (Gesetze-im-internet.de 2015).

The German ATT rates for each Band was reduced in 2012 by 6.3% from the original setting to the actual levied rates as described in table 3 (Destatis 2015a):

Table 3: The development of the German air travel tax rates according to flight-distance based on Gesetze-im-internet.de (2015)

D= distance from Frankfurt airport	Initial period 01.01.2011- 31.12.2011	Current period 01.01.2012- present	Difference
Band A D<2,500km	8€	7.5€	0.5€
Band B 2,501km<D<6,000km	25€	23.43€	1.57€
Band C D>6,001km	45€	42.18€	2.82€

The German ATT is applicable to the first segment of a journey. In case of multiple segments of a stopover flight, the tax is levied only if the flight commences from a German airport and in all cases the tax is levied on the first flight segment only (OECD 2014 p81). Further exemptions of the German ATT are listed as follows:

1. Children under two years of age, who do not occupy a seat on board the airplane.
2. Departures of passengers in airplanes or helicopters if the flights are carried for military, medical or state-sovereign circumstances.
3. Renewed departure of passengers, who are forced to return to their domestic original place of departure due to an aborted or interrupted flight.
4. Passengers departing to the remote islands in the northern Germany.
5. All-cargo flights.
6. Departures of aircrew (Gesetze-im-internet.de 2015).

The non-application of the tax to transfer and transit passengers is supported by the German authorities due to two important aims. First, the German government wishes to avoid the double-taxation of passengers under this category. Second, this special exemption is intended to make sure international German airports remain important hubs for international transfer and transit flights (Bundesverfassungsgericht.de 2015 b). In addition, passengers on domestic flights in Germany are double taxed with regards to ATT⁶. They are levied on each departure of their journey and the value added tax is added to that amount as well as depicted in figure 3 (Steppler 2011).

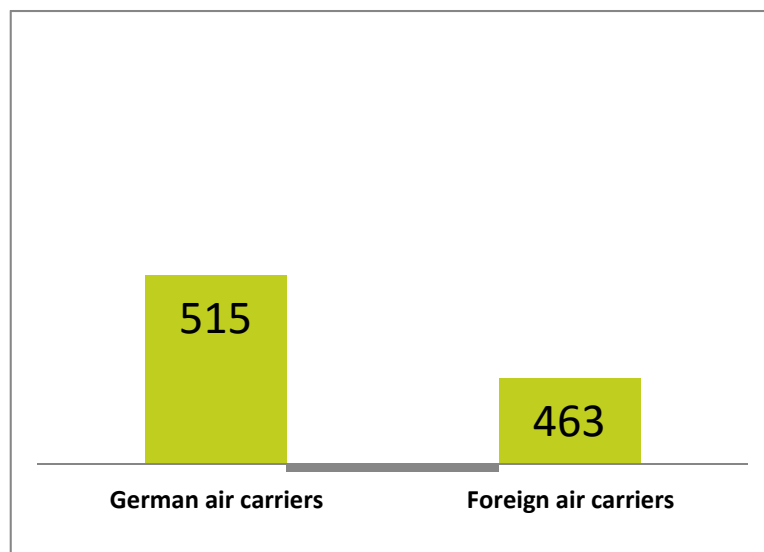
Figure 3: Taxation of direct, transfer and domestic flights to and from Germany – own illustration

				Tax payable	
Brussels	→	Frankfurt	→	Hamburg	0€
Brussels	→	Hamburg			7.5€
Hamburg	→	Frankfurt	→	Brussels	7.5€
Hamburg	→	Brussels			7.5€
Hamburg	→	Frankfurt			8.92€
Frankfurt	→	Hamburg			8.92€
New York	→	Frankfurt	→	New Delhi	0€
Frankfurt	→	New Delhi			23.43€

⁶ On domestic flights in Germany a value added tax of 1.42€ (19% of the total amount) is added on each band.

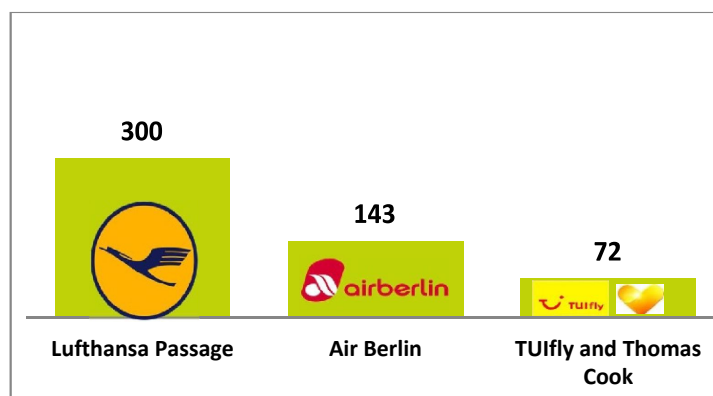
During the past three years, the German ATT has generated revenue of approximately 3.834 billion EUR to the German treasury (Destatis.de 2015 b). The vast majority of the revenue is generated by the four German air carriers: Lufthansa Passage⁷, Air Berlin, TUIfly and Thomas Cook. In year 2013, for example, the contribution revenue of the German carriers was higher than the contribution of all other foreign air carriers by 52 million EUR and covered 515 million EUR out of the total sum of 978 million EUR as depicted in figure 4 (destatista 2015 a):

Figure 4: The levied amount of the German air travel tax in 2013 in million EUR - own illustration based on destatista (2015 a).



The 515 million EUR levied from the German carriers was split differently among the four carriers as illustrated in figure 5 (destatista 2015 a; Deutsche Lufthansa AG 2014; and Ir.airberlin.com 2015).

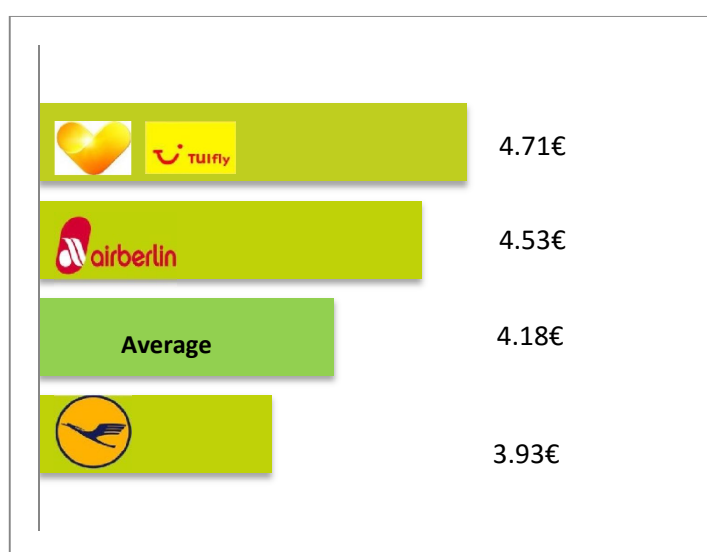
Figure 5: The segregation of levied ATT among the German air carriers in 2013 in million EUR - own illustration based on destatista (2015 a); Deutsche Lufthansa AG (2014); and Ir.airberlin.com (2015)



⁷ Lufthansa Passage includes Germanwings. The Group's subsidiaries are excluded.

In-depth observation of the above levied amount reveals a disproportion of payment by each individual carrier in respect to its number of passenger. Dividing the EUR amount each carrier had to pay for the ATT in 2013 by the number of passengers flown by each airline respectively, it is shown that the least affected airline was Lufthansa Passage, which on average had to pay 3.93 EUR tax for each ticket it had sold that year. In contrast, TUIfly and Thomas Cook had paid a higher amount of 4.71 EUR in respect to their passenger volume as shown in figure 6 (destatista 2015 a; Deutsche Lufthansa AG 2014; and Ir.airberlin.com 2015):

Figure 6: Average air travel tax paid by individual German air carriers per passenger in 2013 in EUR - own illustration based on destatista (2015a); Ir.airberlin.com (2015); and Deutsche Lufthansa AG (2014)



Airline	All German Carriers	TUIFLY and Thomas Cook	Air Berlin	Lufthansa
PAX in 2013	123,076,867	15,280,000	31,535,867	76,261,000
Total paid ATT	515,000,000€	72,000,000€	143,000,000€	300,000,000€
Average per passenger	4.18 €	4.71 €	4.53 €	3.93 €

3.2.2 Lobbying in favor of the air travel tax

Supporters of the German ATT consist of governmental, semi-governmental and non-governmental organizations. The main arguments in favor of the tax relate to the direct and indirect effects aviation has on the environment. The leading lobbying associations, which support the ATT, are the German environmental organizations 'Bund', 'Brot für die Welt', 'Robin Wood' and 'Greenpeace'. These associations are supported by the German organiza-

tion for ecologic transportation called 'VCD' and 'FÖS', the forum for green budget in Germany. The supporters mainly claim that there are no indications for any significant influence on the German aviation caused by the imposed ATT in Germany. The aim of these lobby association is not to withdraw the tax at all, but to develop it towards financing of environmental initiatives. The lobbyists strongly defend the tax by indicating that the passengers in air travel grew in the years 2011-2012 by 1.1% while the German Gross Domestic Product increased only by 0.7% (Thießen/Haucke 2013).

3.2.3 Lobbying against the air travel tax

Opponents of the German ATT consist of lobbying associations from the aviation industry as well as from other industries, which are directly and indirectly dependent on air travel transportation such the tourism and exhibition industries. The main lobby associations, which are actively working on withdrawing the tax, are the 'Bundesverband der Deutschen Luftverkehrswirtschaft (BDL)' - the German aviation association and the 'Flughafenverband' (ADV) – the German airports association. Both BDL and ADV represent key players of the German aviation industry and have been lobbying against the tax since it has been proposed (Bdl.aero 2015).

The non-application of the tax to transit and transfer passengers is attributed to strong lobbying activities by Fraport AG and Lufthansa German airlines, which managed to shape the conditions of the proposed tax in order fit the new ATT to their business model, which is dependent on transfer passenger volume (airliners.de 2015; Flottau 2010). Lobbying against the tax is also backed by foreign entities, which have raised their concern of potential damage to their inbound tourism from Germany, claiming that German tourists usually spend more during their visits, thus catalyzing indirect and inductive economic effects on the visited region, and imposing tax on flights from Germany would directly negatively impact the number of Germans flying long distances, who may choose different and closer destinations for their holidays (Anon 2010).

The main arguments plead against the tax focus on arguing that taxation on aviation in Germany would shift passenger volume away from the country. The lobby associations support their claims by studies conducted by independent and objective institutions, which show that the aviation industry in Germany has not developed and increased accordingly with the general growth of the German economy, unlike the situation in other MS. The lobby associations attribute this negative increase to the ATT, which diverts passenger volume outside of Germany. In addition, the associations claim that the tax, though imposed on all airlines operating routes from Germany, harms the German airlines specifically due to the high passen-

ger volume of these airlines compared to the volume of their foreign counterparts. The aviation lobby associations also emphasize a direct impact of the ATT in the loss of passenger volume at close-border German airports to neighboring airports from France and the Netherlands (Anon 2013). The associations indicate the problematic effects on regional airports and LCC. The concern amongst the lobby groups is that LCCs may choose to base airplanes and conduct flights outside of Germany (Anon 2012).

4. DISCUSSION

4.1 The European competition laws

The distortion of competition can occur either by actions of private undertakings or by actions and principles of MS. According to article 81 section 1(d) of the EC Treaty, it is prohibited and incompatible with the common market to have any kinds of agreements between undertakings or associations of undertakings which may affect trade between MS of the EU. The treaty highlights the prohibition of applying dissimilar conditions to equivalent transactions with other trading parties, which might place them at a competitive disadvantage (Ec.europa.eu 2015 b).

Distortion of competition by a MS can be claimed in case of prohibited state aid. According to the TFEU, undertakings, which are affected by measures of a MS, may place an official complaint in front of the EC and claim for illegal aid, which has placed them at a competitive disadvantage in respect to their competitors. The EC initiates an investigation on such claims and the MS must supply the Commission all necessary information and explanation for its actions (Ec.europa.eu 2015 c). MS, which are accused of providing illegal state aid, often try to prove that their actions were not selective to benefit specific undertakings, such as companies or industries.

4.2 The German air travel tax and distortion of competition in Europe

The ATT offers an interesting paradoxon of conflicted authority and interests in the EU. On the one hand, each MS is allowed to decide upon its own tax regime with no veto power given to the EC. On the other hand, a discriminating taxation regime is against competition law in the EU, which is heavily regulated by the EC. The Commission is authorized to execute operative measures against MS if aid is proven to selectively favor specific undertakings and if it is incompatible with the internal market.

In order to claim that the German ATT distorts competition in Europe, it has to be proven that the actions and the principles of the ATT by the German government favor particular undertakings and constitute illegal state aid. These allegations must consider both reasons

for imposing the tax in the first place: (i) generate additional revenue to the German Treasury; and (ii) encourage more environmentally-balanced air travel behavior. This paper identifies the following three principles in the German ATT which may be proven to constitute illegal State Aid:

1. Non-application of the ATT to flights to the northern islands of Germany: possible favoring specific airlines which mainly operate to and from these regions.
2. Different ATT rates based on distance: possible favoring specific airlines, which mainly operate short-haul routes.
3. Non-application of the ATT to transit and transfer passengers: possible favoring specific airlines with mainly hub-to-spoke business model.

With regards to the first principle, it is found that exempting flights to and from the remote islands cannot be claimed to distort competition in Europe. The German government had asked the EC to approve this non-application of the tax and to declare this exemption as an approved state aid. The Commission had approved this exemption and endorsed its decision by emphasizing the importance, of which passengers who reside in these remote islands will be able to travel to the economic and administrative centers on the mainland, thus supporting the accessibility and the development of these remote regions (Anon 2011).

The second principle of imposing different distance-based ATT rates may resemble the Irish case explained in subchapter 3.1.3, in which Ryanair accused the Irish authorities of favoring its competitors on short-haul routes from Dublin. The commission concluded this case by declaring the lower short-haul tax rates as illegal state aid, which had placed Ryanair at a competitive disadvantage. However, this scenario does not seem to be applicable with regards to the German ATT. The distance under dispute in Ireland was set to maximum 300km from Dublin airport, which had not included any cross-border flights. The lowest rate of the German ATT relates to a distance of up to 2,500km from Frankfurt airport, which includes cross-border flights within the EU, and therefore does not favor specific airlines.

In addition, the different rate system based on distance length seems to fairly communicate the reasoning of the tax in encouraging a more environmentally-balanced behavior in air travel. However, levying ATT based on environmental grounds conflicts with the already imposed EU Emission Trade Scheme charges, which are specifically designed to target the environmental effects of air travel. Consequently, airlines are placed at a situation of double-taxation on environmental reason, in which the German air carriers will be affected more heavily due to their large share of the German air travel market. Nevertheless, this fact cannot be claimed to place the German airlines at a competitive disadvantage, due to the

fact that all other foreign airlines operating flights from a German airport pay the tax according to flight-distance as well, even though their share of the German market is relatively smaller.

This paper argues that the non-application of the German ATT to transfer and transit passengers differentiates between airlines with different business models of point-to-point versus hub-to-spoke. This argument is supported by paragraphs 54-56 of the General Court decision in the matter of the Irish ATT in February 2015. According to the Court's decision, the German authorities consider the application of the tax only from the origin to the destination, regardless of stop-overs in between. This argument is supported by figure 6 in chapter 3.2.3. According to the analysis, airlines such as Thomas Cook and TUIfly, which operate mostly on a point-to-point basis, have paid more ATT per average passenger (4.71 EUR) than Lufthansa Passage (3.93 EUR) and Air Berlin (4.53 EUR) did.

However due to the German government's intention to use the German ATT as a revenue-generating tool, it is not sufficient to determine that the German ATT distorts competition, or in other words places pure point-to-point airlines at competitive disadvantages with respect to traditional carriers with hub-to-spoke business models. Though supporters of point-to-point airlines may claim that they pay more tax per passenger volume, this occurs because the majority of their passengers originate from Germany. Claiming that traditional airlines like Lufthansa Passage enjoy more favorable conditions does not hold. Every airline operating to and from Germany on a point-to-point basis is subjected to the same rules, including Lufthansa Passage and all foreign carriers. Furthermore, under the current circumstances, and due to the lack of official guidelines by the EC, it is plausible that the effects arising from the German ATT for hub-to-spoke and point-to-point airlines are not the same.

Notwithstanding, this paper argues that distortion of competition does occur when the German ATT is reasoned by the authorities to encourage a more environmentally-based air travel behavior. If the government's intention is to reason the tax based on environmental grounds, any exemption would be immediately discriminatory. It is argued that under environmental reasoning it would be difficult for the German authorities to prove that the exemption is not selective because first, it contradicts the objective of the reference of the tax to levy passengers departing from German airports and second, hub-and-spoke flights are less environmental friendly than point-to-point flights. Therefore, point-to-point air carriers are placed at a competitive disadvantage with respect to their hub-and-spoke counterparts.

5. CONCLUSION

The objective of this paper was to evaluate the German ATT with regards to the EU competition laws. The methodology used was to review the existing literature, evaluate recent ATT disputes in the EU, present actual investigations by the EC, study relevant rulings by the General Court of the EU and analyze statistical data recordings of the ATT in Germany.

It was found that airlines pursuing a point-to-point business model pay more ATT on average per flying passenger than airlines with a hub-and-spoke business model. In addition, the components and principles of the German ATT were compared with the EU competition laws, the rulings of the General Court of the EU and various decisions by the EC. It was argued that the German ATT is a burden to the airlines. However, as long as it is reasoned by the authorities as a revenue-generating tool, it is difficult to claim that the tax is imposed selectively, placing particular airlines at a competitive disadvantage. However the introduction of the ATT was also justified by the authorities to encourage a more environmentally-based behavior in air travel. Under this reasoning, the non-application of the tax to transfer and transit passengers conflicts with the official intention to promote a more environmentally-based behavior and thus places airlines of a point-to-point business model at a competitive disadvantage.

Future research should focus on comparing the components and legal conditions of the EU Emission Trade Scheme with the German ATT and offer new guidelines for the EC in order to regulate MS' taxation on aviation.

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