DAVID KNIBB SEATTLE

Export credit under scrutiny again

US airline association's legal challenge to Exim Bank deal reopens national interest debate on financing

A legal challenge to the export credit offered by US Export-Import Bank is troubling the air finance sector at a time when it is already worried about Europe's debt crisis and shrinking access to commercial loans.

The former Air Transport Association of America, recently renamed Airlines for America (A4A), has asked a federal court in Washington DC to block the export credit guarantee given by Exim Bank to Air India on a $3.4 billion aircraft order from Boeing covering 787 and 777 aircraft.

A4A complains about alleged secrecy in Exim Bank's approval process for this guarantee and questions Air India's credit-worthiness. But its core complaint is that Exim Bank has ignored a statutory duty to consider the impact of its export credit on US industries and jobs.

EXTRA CAPACITY

A4A cites the example of Delta Air Lines, which operated New York-Mumbai non-stops until 2008. Between 2006 and 2009, Exim Bank guaranteed $3.3 billion in aircraft purchases by Air India. According to A4A, these allowed Air India to flood the USA-India market with extra capacity and crowd out competitors such as Delta Air Lines. As a result, Delta dropped the route and furloughed 64 pilots.

During the past decade, A4A contends that Exim Bank has provided $52 billion in guarantees to foreign carriers, allowing them to boost capacity on US routes 12% more than they would have without that favourable financing.

Like most export-import banks, the USA created its Exim Bank primarily to help domestic industries by facilitating the export of their goods and services.

Over the years, however, US lawmakers added some requirements to protect domestic companies that compete with the foreign buyers of those US goods and services. These are the sections of the law on which A4A case relies.

This is the first lawsuit to challenge Exim Bank's grant of export credit on these grounds, and lawyers disagree over how the statute applies. Exim Bank is not commenting beyond saying A4A's complaint is "without merit", and the federal judge handling this case refused an initial request to block the guarantee to Air India before trial.

Still, the statute is open to debate. Among other things, it says that Exim Bank should not extend credit to any foreign producer of a "commodity" that might cause substantial injury to US producers "of the same, similar, or competing commodity". Many would read this as applying to agriculture or mining, but A4A claims airline seats are also a commodity, so the statute applies.

Predicting the argument that what is good for Boeing is good for the USA, A4A adds that Boeing outsources much of its work offshore, and US airlines hire five times as many employees as Boeing. Hence, so the argument goes, helping Boeing at the expense of US carriers has a net negative effect on US jobs.

Some of these arguments raise policy as well as legal issues. Perhaps for this reason, Exim Bank has retained former White House counsel to advise it on the case.

A4A's legal challenge centres on Exim financing for Air India's Boeing order

William Alderman, of Alderman & Company Capital, a broker specialising in the aerospace industry, sees the lawsuit in terms of the current US preoccupation with jobs and its national debt. "A4A is trying to manipulate this crisis to ensure that US tax dollars are used to help US airlines rather than Air India. But the real winner in this debate is Airbus," says Alderman.

ECHOES OF THE PAST

Arguments similar to those in A4A's lawsuit have been raised before. In the 2010 negotiations over a new Aircraft Sector Understanding between nations in the Organisation for Economic Cooperation and Development (OECD), US and European airlines argued that OECD should ditch or rewrite the "home market rule". This rule denies the cheaper export credit to airlines in the home countries of either Boeing or Airbus. Then, as now, these airlines complained that export credit gave their foreign rivals an unfair advantage.

The OECD took other steps to level the competitive field, mainly by raising fees charged for export credit, but it left the home-market rule itself untouched. Dropping that rule might have made export credit available to domestic airlines on the same terms as for foreign airlines.

If A4A wins its current lawsuit, that could deprive many foreign airlines of US export credit. However, it would not make that credit available to US airlines, it would simply eliminate export aid from the competitive equation.

Or would it? As one insider observes: "If Boeing wasn't able to sell to Air India, then Airbus would swoop in. Air India would end up flying Airbus planes instead of Boeing planes, but the alleged damage to the US carriers would be exactly the same." ■

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