THE MARKET RESERVES OF THE PASSENGER AIR TRANSPORT SERVICES IN THE REPUBLIC OF MOLDOVA FROM THE PERSPECTIVE OF TICKET COST REDUCTION

Author: Radu Bezniuc

Chisinau, 2011

The views expressed in this paper reflect exclusively the author’s position and do not necessarily represent the position of the donor.
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ABBREVIATIONS

ASAC - Civil Aviation Authority
ACI- Airports Council International
NACP-National Agency for Protection of Competition
ASAC- Civil Aviation Administration
CE-Council of Europe
IATA-International Air Transport Association
ICA- International Civil Aviation
ECAA – European Common Aviation Area
MTRI-Ministry of Transport and Road Infrastructure
CAR-FA Civil Aviation Regulations - Flight Authorization
USA-United States of America
EU- European Union
GENERAL DESCRIPTION OF THE PASSENGER AIR TRANSPORT MARKET IN MOLDOVA.

Over the last decade, air transport has become a more accessible way to travel. Market liberalization policies in the European Community led to increased competitive air transport market within EU. As a result of this competition, land transport system had to review its development strategies by changing prices and improving customer service quality. Thus, the clear winner of this competition between various types of means of transport is still the end consumer, i.e. the passenger.

Competition is one of the major tools that contributes directly and effectively to the improvement of customer service quality and decrease in price.

When restrictions on route entry, capacity, and frequency are dropped, liberalization allows airlines to optimize their network of flights and pricing strategies. This envisages expanding of air services, including to new destinations. As a result, passenger traffic can be stimulated substantially.

The bilateral nomination system currently applied to the transport market in Moldova requires a national airline designated to compete with appointed foreign air operators under bilateral agreements only.

The air services rendered by the Chisinau Airport are influenced by neighboring markets, especially by the Bucharest Airports (Otopeni and Baneasa) and Odessa Airport. Redirection of passenger traffic to neighboring airports and airports in neighboring countries is a phenomenon generated by the major differences between airline ticket prices available on neighboring markets.

PRICE SET-UP TO PASSENGER AIR TRANSPORT SERVICES

Many of the elements that make up a ticket price are influenced by international market developments (fuel, maintenance, leasing) and no”local” intervention can be performed. On the other hand, the „national/domestic” costs are driven by two key factors: airport charges and administrative overheads; they are variable and are subject to optimization.

Even within the EU, there is a tendency to eliminate distortions of competition between airports and also between airlines in the event of preferential treatment for national carriers. These charges currently pose a series of problems: they are out of proportion to real costs, different charges are levied for domestic and international flights and tariff systems are complicated and lacking in transparency.

The profitability of a flight depends on the airline seat occupancy. The general costs specific to a flight are incurred by airlines regardless of how many passengers are on the plane, however the situation is different for airport charges per passenger.

The issue of passenger traffic is treated differently in the classical and low-cost approaches.

**The classical approach** envisages that a stream of passengers at present will allow decreasing the fares of airtickets in the future. **The low-cost approach** stipulates: lower prices to airtickets at present will generate a greater flow of passengers in the future.

Confrontation of the two economic models (i.e. classical and low-cost) determined, in fact, occurrence of absolute competition on the EU and U.S. air transport markets. The final consumer has witnessed an unprecedented decrease in airtickets’ prices and entering into direct competition with the terrestrial/land transport.

In the early post liberalization of market, the increased competition has been the catalyst for price reduction and impressive growth of passenger traffic.

**Healthy competition** is a vital condition for the coherent development of the market. It is natural for the state to interfere to ensure that this development will take place in the public interest. The competition, however, is not an objective in itself, but just a way to achieve it, i.e. to meet the needs of society members. Inevitably, the interests of capital (entrepreneurs) do not coincide with those of general public; it is also natural that there are contradictions and rivalries among the entrepreneurs.
THE ROLE OF REGULATOR IN THE MARKET PRICE FORMATION/SET-UP

Legal regulations are the levers/tools by means of which the state ensures that this complicated equation will be solved for the benefit of all members of society. The regulatory intervention of the state does exist and is justified only if (1) it is determined by clear social objectives and (2) if performed by appropriate legal instruments. Otherwise, the effect is hijacked on unclear ways or even generates consequences contrary to initial intention displayed.

The Law on Civil Aviation contains summary provisions regarding air transport services market regulation. We rather find no rules on this. It is natural to be so, since the scope of the law is not to regulate the activity of civil aviation entrepreneurs. Although par. 1 of Article I of the Law stipulates: „This Law regulates relations arising in connection with use of the airspace of the Republic of Moldova and the civil aviation activities carried out in Moldova”, in fact, the rules contained in the text govern almost all aspects of public power on the airspace, civil aviation legal institutions structure and organization of flight safety system, but not also the conditions for entrepreneurship. The commercial aspect remains outside the Law.

It is obvious that the whole plot pertaining to access to the passenger air transport market focuses on the segment that has no legal coverage. The right to obtain a permit for regular flights constitutes a fiction in the absence of transparent and fair rules regarding the appointment of companies for certain routes.

Following the logic of the market, conflicts of interest concerning the rights to operate air flights inevitably occur. In Moldova the situation is more serious / the conflicts are more intense due to market size, unclear and unequal rules of the game, the state interest to maintain the dominant position of state enterprises in the field and due to subjective factors. All these can and shall be mitigated by establishing a fair market access mechanism.

In light of the above reasoning, it is striking that the discussion about market regulation reserve represents an advance made to authorities. Taking into account the declared intention of Moldova to accede the European Common Aviation Area, it is important to address institutional reform in the most serious way, to clearly define powers and formulate the rules for each component unit of the civil aviation field. In this context, the aspects of flight safety and security, those relating to the interests of traders and to consumers’ interests should be clearly distinguished. The great challenge for legislators is to find a compromise formula.

Currently MTRI as a body which formulates policies and regulations in this area lacks necessary institutional capacity and this leaves its mark on the way the field is managed; the public administration system in civil aviation is in total uncertainty now: the law stipulations are non-existent in fact and what does exist “de facto”, has a compromised legal status.

The Communication “Creation of a Common Aviation Area with the Republic of Moldova” issued on May 2, 2011 by the European Commission, stated in conclusions, inter alia, that „Open markets need a framework that ensures fair competition and high standards for safety and security”. While Moldova managed to achieve much in terms of ensuring security and flight safety, we are beginners in ensuring fair competition.

CORRELATION BETWEEN REGULATIONS AND PRICES

The regulatory role is decisive in creation of competitive environment and the impact on price levels. A favorable legal framework to create free market conditions for any airline to access air transport services will clearly stimulate increased competition between market players. Thus, fair rules for all air operators generate favourable market for the consumer, i.e. lower prices for air transport services and improved quality of service.

Today, the sharing scheme market for passenger air transport is based on ”first come - first appointed” principle. By default, the state involuntary appears as a supporter of unfair competition model.
Thus, we are witnessing a restrictive regulatory aviation market in Moldova. On the one hand, there is no clear legal framework to regulate the rules for designating air operators for a destination or another. On the other hand, NACP found out the obstruction of competition in respect of irregular flights and they requested MTRI to remedy the situation. Under these conditions, the impact of the regulations on competitive environment in the area of air transport industry has a negative character, limiting the competition on the market.

A solution to improve the competitive environment, within the existing regulatory framework could be organizing “regular annual competition to obtain operating rights for a certain destination”.

The experience of markets that have gone through the air transport services liberalization process shows, in most cases, increased degree of competition between airlines. Intensified competition has made many airlines to review their development strategies on the market and consequently their trade policy on setting up prices for air tickets. Some operators have taken over the low-fare type business model, others have stepped up efforts to optimize their business activity, and some of them have focused on developing new destinations.

Large reductions in air tickets price were registered due to increased competition, while the ultimate consumer has benefited from these changes the most.

The experience of transportation services market in Moldova has shown by means of quantifiable example the effect of increased competitive environment. After a new air operator entered an exact segment of the market (Chisinau-Istanbul), the prices to air tickets went down to 34% in the first year of operation.

**CONCLUSIONS AND RECOMMENDATIONS**

The Government is the one to ensure transparency through clear delineation of rules that establish certain technical requirements to be edicted as Aviation Regulations and standards that establish rules for various social situations. Clear separations should be made, since many civil aviation regulations contain legal rules that are infiltrated between technical regulations. From this perspective it is obvious that the Flight Authorization can only be a law approved by the government decision, having main elements already established within the modified body of the Civil Aviation Law.
INTRODUCTION

In October 2010 the Study on „Prospects for development of air transport sector services in the Republic of Moldova in the context of negotiating the future Free Trade Agreement between Moldova and the EU”\(^1\), that analyzed the impact the air transport liberalization process will have on the main actors in the field, in particular the possible entry of low-cost operators on the market was presented. Among principal conclusions of the study one can point out the positive impact the liberalization will have on passengers, in particular due to enhanced airline competition and lower prices for airtickets. The study established the basis for active discussion of the subject related to decrease of prices to airtickets and removed the label of “taboo” in addressing the frontal approach of causes why there are no cheep airtickets from and to Moldova.

This study proposes to develop the previous work in the area of competition and aims at identifying opportunities for airtickets price decrease for trips to and from Moldova upon liberalization of air transport services in Moldova, in the prospect of adherence to the European Common Aviation Area. The study will focus on two interrelated dimensions: quality of competitive environment and efficient market regulation.

Competition is one of the main tools that directly and effectively contribute to improvement of service quality and decrease in prices. This study aims to identify current mechanisms available, but unused to stimulate competition in the field of air transport in Moldova before the Global Air Transport Agreement between Moldova and the European Union will be signed.

"People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices... There is less prosperity in these cases than when free competition prevails; monopoly involves loss of welfare for consumers. To prevent this, public authorities must undertake the responsibility to interfere with competition laws and policies”, *Adam Smith, “The Wealth of Nations”.*

In the European Union air transport was one of the two markets, which were first opened up to competition. Following this opening, the average consumer prices have dropped substantially. The effect is more visible in markets that remain just partly-opened or closed, such as electricity, gas, rail transport and postal services, prices have remained unchanged or have even increased\(^2\)

In order to ensure fair competition in the air transport field, it is necessary to adopt a series of standards that will regulate relevant areas, such as business practices, prices, airport charges, etc. Passenger rights are also protected by the equivalent legislation.\(^3\)

Adjustment of existing air transport legislation in Moldova to the rigors of competition policy declared by the state will be a first step to finding internal market transport services reserves, which will inevitably lead to a decrease in air ticket prices.

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\(^{1}\) Frameworks for development of air transport sector services in the Republic of Moldova in the context of negotiating the future Free Trade Agreement between Moldova and the EU, Radu Bezniuc, Chisinau 2010, Soros Foundation Moldova //http://www.soros.md/publication/2010-11-05

\(^{2}\) COMPETITION, Chapter 5. Liberalization; http://www.eu4journalists.eu

1. GENERAL DESCRIPTION OF THE PASSENGER AIR TRANSPORT MARKET IN MOLDOVA

   a) MAIN ACTORS AND MARKET DEVELOPMENTS OF AIR TRANSPORT SERVICES

There are four international airports registered in Moldova:
- Chișinău
- Balti
- Marculești, and
- Cahul

FIGURE 1. MAP OF AIRPORTS IN MOLDOVA

Source: the author’s configuration

Regular commercial flights are operated only by the Chișinău International Airport. The Marculești Airport operates cargo flights only. This is due to the fact that the destination of the military airport (air base MIG29) was modified and still, there is no necessary infrastructure to develop the air transport of passengers.

Both scheduled and irregular flights are operated from the Balti and Cahul airports. The situation is caused by concentration of the passenger traffic in Chișinău Airport, in the immediate vicinity of the capital of Moldova and lack of interest on behalf of any air operator to perform flights from these airports.
Nowadays, 17 airlines, 4 home and 13 foreign carriers operate flights to 28 destinations all over the world from the Chisinau International Airport.

Air Moldova operates regular flights to 17 destinations: Frankfurt, Munich, Vienna, Istanbul, Lisbon, Madrid, London, Athens, Larnaca, Rome, Milan, Verona, Paris, Moscow, St. Petersburg, Bucharest and Kiev and seasonal flights to such destinations as Varna, Sofia, Antalya, Bodrum and Sharm el Sheikh. Thus, the market share in 2010 constituted over 49%.

The second largest national operator is Moldavian Airlines. It performs regular flights to Budapest and Istanbul with a market share of 2.93% in 2010.

Tandem Aero is the third largest domestic airline and serves traditional scheduled flights to Tel Aviv. The market share in 2010 was equivalent to 2.38%.

Another national operator is Noble Air. The airline is specialized in charter flights (business and private ones).

**FIGURE 2. THE SHARE OF PASSENGER TRAFFIC ON THE AIRLINES IN 2010**

![](image)

Source: Chisinau International Airport


*The passenger traffic* serviced in 2010 through Chisinau Airport constituted 937,030 passengers, which is 15% more against 2009. In comparison with March 2010, the highest growth rate of passenger traffic was recorded for the following destinations: Bucharest (+40.3%), Moscow (+12.1%), Athens (+11.4%), Vienna (+11.3%) and London (+7%).

At the end of 2010, the *cargo traffic* amounted to 1815 tonnes, by 11% more than in 2009.

According to the records of 2010, the *mail transportation* equalled to 584 tonnes, which is 49% more than in the previous year. The most popular destinations are Moscow (25.3%), Istanbul (15.8%), Munich (7.5%), Bucharest (5.9%) and Vienna (5.7%).

b) **THE EXISTING PRINCIPLES OF AIR TRANSPORT SERVICES MARKET SHARE**

Currently, the market share of air transport services is based on the principles governing bilateral agreements (bilateral system), and for the EU – based on Horizontal Agreement.
According to this configuration, the national operator Air Moldova (state-owned airline company) is the beneficiary of designation as operator of the Republic of Moldova in most bilateral agreements. This situation provides for Air Moldova a dominant position (over 49% market share in 2010).

Constraints due to existing agreements to share markets are treated differently by airlines operating on this market. Air Moldova considers that these restrictions must be maintained to protect the interests of the state airline. Justification for this position is made by resorting investment recovery factor of fleet modernization. Moldavian Airlines consider that the abolition of restrictions on such a nomination, capacity and frequencies will allow airlines to compete and operate more efficiently and this will lead to reduced prices and increased quality of service (frequency of flights, destinations, customer loyalty programs, etc.).

When restrictions on route entry, capacity, and frequency are dropped, liberalization allows airlines to optimize their network of flights and pricing strategies. This envisages expanding of air services, including to new destinations. As a result, passenger traffic can be stimulated substantially.

c) IMPACTS OF THE NEIGHBORING MARKETS ON THE EVOLUTION OF THE CHISINAU AIRPORT PASSENGER TRAFFIC

The air services rendered by the Chisinau Airport are influenced by neighboring markets. This applies in particular to the Bucharest Airports (Otopeni and Baneasa) and Odessa Airport. The airports in Bucharest are characterized by presence of a very wide offer of destinations serviced by low-cost airlines, which means lower prices for airtickets.

Odessa Airport has an attractive offer for holiday charter flights. The presence of a large number of tour operators leads to a fierce competition between airlines, namely lower prices for travel packages compared to those practiced in Moldova.

The Administration of Chisinau Airport states that preliminary data indicate a presumptive level of 6% to 7% of the total number of passengers in Moldova that are redirected to these two neighbouring airports. According to Air Moldova representatives, this proportion would be even up to 10%, with an annual growth rate of 3 to 4%.

Redirection of passenger traffic to neighboring airports and airports in neighboring countries is a phenomenon generated by major differences between the prices to airtickets available on neighboring markets.

d) THE IMPACT OF FOREIGN AIR OPERATORS ON THE AIR TRANSPORTATION MARKET IN MOLDOVA

The bilateral designation system that currently applies to the transport market in Moldova requires a designated national airline to compete with foreign air carriers nominated under bilateral agreements.

If for some destinations there are “tacit” agreements on the agreed level of tariffs, for others, such as Munich, the foreign company Lufthansa indirectly creates a significant competitive pressure through a series of promotional rates for point-to-point destinations, consolidated by the national operators.

Another example of limited competition presence is Austrian Airlines’ flight to Vienna, which undertook an important flow of business traffic, considered the most attractive for traditional airlines.

According to Air Moldova representatives, using its hub in Munich, the German operator generates strong indirect competition to Air Moldova for its direct flights to Paris, London, Rome, Milan, Verona, etc. In addition, Lufthansa has necessary financial resources to support promotional tariffs for a quite long period of time. In such conditions, the degree of competition increases significantly.

Moldavian Airlines representatives state that it can be hardly said that there is real competition on the market for air transport in Moldova. Even so, it is valid within the bilateral system only, i.e. the national operators versus the foreign ones. But there is also the experience when Air Moldova is trying to block the access of foreign air operators to the market, using all possible means. There are even examples of recent conflicts of Air Moldova versus Austrian Airlines, Lufthansa, Sibir, and Turkish Airlines when artificial barriers are created during each operating season, and the requests addressed by Moldavian
Airlines to MTRI to amend the bilateral agreements over the past two years were not met. The reasoning provided by MTRI was: “this could affect Air Moldova”.

e) CORRELATIONS BETWEEN VARIOUS TRANSPORT MARKETS (AIR, LAND (ROAD, RAIL)) AND GENERAL (EUROPEAN) TRENDS

Over the last decade, air transport has become a more accessible way to travel. Market liberalization policies in the European Community led to increased competitive market of EU air transport services. The direct result of applying these policies is the significant reduction in the price of airtickets. Thus, in some cases, a plane ticket from Paris to Milan may be cheaper than a train ticket.

The phenomenon of diverting the land traffic to the air one was stimulated by introduction of new point-to-point flights, through activating the role of regional airports entering into competition with basic airports.

A classical example to be presented is the situation on Romanian market. After liberalization of transportation services back in 2007, the land traffic underwent dramatic reductions in passenger traffic flow. Upon increased accessibility of air transport, passengers preferred to use air services.

The effect of diverting traffic had both sector (land-air) and geographical character. The advent of direct flights from Bucharest to the cities of Italy and Spain have determined many citizens of Moldova to travel from Chisinau to Bucharest by land transport to get cheaper and faster to cities in Europe, where they have established. Thus, many of those who used before buses or coaches to get from Moldova to Italy, for instance, have chosen to “shorten” their road and travel for the same money by air transport in taking into account the declared intention of Moldova to accede the European Common Aviation Area, it is important to address institutional reform in the most serious way, to clearly define powers and formulate the rules for each component unit of the civil aviation field. In this context, the aspects of flight safety and security, those relating to the interests of traders and to consumers’ interests should be clearly distinguished. The great challenge for legislators is to find a compromise formula.

Most of them would accept, of course to pay some 50-100 Euros more for a direct return flight from Chisinau versus the price of a low-cost ticket from Bucharest, but do not have this option. It is true that the offer made by Air Moldova for the direct round trip Chisinau-Bucharest is, in some cases, about 130 Euros, but this amount is still above the psychological limit of 100 Euros, accepted by passengers. Under these conditions the cheapest but uncomfortable solution remains taking a minivan to Bucharest (the cost of a round trip is around 40 Euros) and then buying an airticket at an affordable price and fly from Bucharest to your destination with a low-cost company.

It should be noted that the low-cost operators have served as catalysts for the drastic reduction of prices to airtickets and generation of significant competition with the land transport (trains, buses/coaches).

As a result of this competition, land transport had to review their development strategies by changing prices and improve services. Thus, the beneficiary of this competition between various types of transport is still the ultimate consumer - the passenger.
2. PRICE SET-UP TO PASSENGER AIR TRANSPORT SERVICES

a) GENERAL PRINCIPLES OF AIRLINE TICKETS PRICE SET-UP

The ticket price structure is complex and depends on several factors. The general practice highlights some basic elements that are constituents of the ticket price: aircraft fuel, costs for rental /depreciation of aircraft, servicing / maintenance of aircraft, general and administrative expenses, airport taxes.

The exact share of each element in the ticket price set-up structure varies from company to company, depending on the airline type (classic, low-fare, low-cost), but the trend is similar: about 30% constitute the fuel costs, aircraft leasing/depreciation costs-20%, aircraft maintenance - 20%, general and administrative costs about 10%, airport charges up to 10%.

In the opinion of Air Moldova administrators, the company optimized their general and administrative expenses a lot, which are now around 8%. The fuel represents around 30%, while the aircraft maintenance costs constitute 20% of the costs. At the same time it was remarked that the fees charged by the Chisinau Airport are too high. Thus, the high airport charges may be exemplified by a concrete case: the low-cost operator has expressed its intention to operate on the Chisinau Airport under a maximum total airport charge of 500 Euros for an aircraft type A320 (round trip). At present, Air Moldova pays to Chisinau Airport the amount of 4,782 Euros for these services.

Aircraft fuel price factor is very sensitive, with a major share in the costs of airlines. For instance, in March 2011 the price of one ton of fuel in KIV was about 970 USD, its value in May came to around 1250 USD per ton, i.e. increased by 29% in only two to three months” said the representatives of Moldavian Airlines.

Many of the elements that make up a ticket price are influenced by international market developments (fuel, maintenance, leasing) and no”local” intervention can be performed. On the other hand, the „national/domestic” costs are driven by two key factors: airport charges and administrative overheads; they are variable and are subject to optimization.

b) THE ROLE OF AIRPORTS IN THE MECHANISM OF AIRLINE TICKETS PRICE SET-UP

Airport taxes are an important element in the structure of airtickets price establishment. Passengers frequently hear the words “the airticket does not include airport charges”. Some promotions suggest a plane trip at the cost of 10 Euros or even 1 Euro only, but soon the “cold shower”comes when the final price of the airticket is announced, including airport taxes. Thus, we find out in many cases, that the airport charges are much higher than the rates charged by the airlines for travel.

Under these conditions contradictory discussions between airports and airlines are inevitable. The confrontation between airports and air carriers is reflected, most intensely, in the confrontation of representative bodies: ACI and IATA (International Air Transport Association). While airports want new investments in their infrastructures, airlines call for transparent mechanisms in setting airport charges, preferably with their participation in this process.

”The relationship between airports and airlines is still uneasy. With many carriers fighting for survival, the robust profits being turned in by the airport sector continue to raise suspicions and occasionally flare into open hostility. The exaggerated and unjustified investments made by airports represent a point of rivalry between airlines and airports. Thus, much heavier investment levels in projects of reconstruction or modernization of airports, including runways, will require greater airports‘ effort to recover the costs. Consequently, the airport will increase the airport charges, by making pressure on civil aviation authorities. Fair Investment-Effectiveness Reports are important for airlines and essential for low cost operators. The discussions about taxes are unavoidable and are part of the IATA and ACI relationship.”

4 Airline Business, December 2004, ”A thaw in relations”
According to Air Moldova representatives, the taxes imposed by Chisinau Airport, which are subject to agreement with the EBRD, are high, and the airport does not have a viable mechanism to stimulate its air operators for which this is a basic airport. Meanwhile, according to ICAO, upon development of regulations on airport charges, the airlines should be consulted as well to apply a reasonable profit level to the Airport.

Air Moldova considers that there should be equitable conditions for all operators, without applying dormant subsidiary instruments or preferential tariffs. At the same time, Air Moldova representatives believe that Chisinau Airport should focus on creating conditions for basic companies. In their view, the new companies do not attract new traffic, but redistribute the existing one. The Airport should focus on stimulating local business, since the competition is stimulated indirectly: after Air Moldova develops a new route / destination, a competing airline comes over a period of time, for example ROSSIA from Russian Federation for the route St. Petersburg-Chisinau.

This motivation should be made by means of bonus policy. Thus, application of reduction system is required for all airport taxes, including the passenger and this could lead to decrease in price of airtickets. To argument the last statement, Air Moldova presented a diagram on top of the airport taxes for a round trip with an aircraft type A320, which includes all Air Moldova destinations. According to this diagram, out of the total number of 16 airports in terms of operating costs, Chisinau Airport is ranked 5th, being “more expensive” than the airports in London or Rome.

**FIGURE 3. AIRPORT CHARGES**

<table>
<thead>
<tr>
<th>City</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paris</td>
<td>8.483 €</td>
</tr>
<tr>
<td>Athen</td>
<td>7.924 €</td>
</tr>
<tr>
<td>Frankfurt</td>
<td>6.050 €</td>
</tr>
<tr>
<td>Vienna</td>
<td>5.012 €</td>
</tr>
<tr>
<td>Chisinau</td>
<td>4.782 €</td>
</tr>
<tr>
<td>Londer</td>
<td>4.771 €</td>
</tr>
<tr>
<td>Larnaca</td>
<td>4.611 €</td>
</tr>
<tr>
<td>București</td>
<td>4.594 €</td>
</tr>
<tr>
<td>Roma</td>
<td>4.088 €</td>
</tr>
<tr>
<td>Sankt-Petersburg</td>
<td>3.901 €</td>
</tr>
<tr>
<td>Lisbon</td>
<td>3.824 €</td>
</tr>
<tr>
<td>Milan</td>
<td>3.456 €</td>
</tr>
<tr>
<td>Kiev</td>
<td>3.387 €</td>
</tr>
<tr>
<td>Moscova</td>
<td>3.268 €</td>
</tr>
<tr>
<td>Madrid</td>
<td>2.936 €</td>
</tr>
<tr>
<td>Istanbul</td>
<td>2.345 €</td>
</tr>
</tbody>
</table>

*Source: Air Moldova*

In view of the Moldavian Airlines, the prices to airtickets can be reduced by optimizing airlines’ costs in respect of renegotiating prices for airport services, airport charges, ground maintenance, etc.

The issue of airport charges is addressed in many EU actions as well. Even within the EU, there is a tendency to eliminate distortions of competition between airports and also between airlines in the event of preferential treatment for national carriers. These charges currently pose a series of problems: they are out of proportion to real costs, different charges are levied for domestic and international flights and tariff systems are complicated and lacking in transparency.
The Director General of Chisinau Airport says that the applicability of real instruments to reduce air tickets prices is dependent on political factors. The emergence of real competition on the market by gradually eliminating barriers characteristic to the bilateral nomination system can determine air carriers to review their pricing policies. Under these conditions, the airport can stimulate competition by applying a high degree of flexibility in relation to air carriers.

c) PASSENGER TRAFFIC FLOW AND ITS IMPACT ON AIR TICKETS PRICE VARIATION

The profitability of a flight depends on the airline seat occupancy. The general costs specific to a flight are incurred by airlines regardless of how many passengers are on the plane, however the situation is different for airport taxes per passenger.

Thus, apart from the item “airport charge per passenger” for example, the costs incurred by the airport operator are the same, whether the aircraft with a capacity of 150 seats has 130 passengers or 50 passengers on the board only (occupation degree). The revenues collected by airline from 130 passengers compared to 50 passengers are, however, different.

The classical approach envisages priority of statistical information over the decision making flow in the area of a trade/commercial airline policy and respectively, the forecast of occupancy degree based on previous periods and its update with the general growth rate, characteristic to the market on which the air operator operates.

The classical approach says: a greater flow of passengers at present will allow decreasing prices of air tickets in the future.

The low-cost approach takes some of the classical tools in setting pricing policy, but comes with an innovative element of the prize that lower rates will attract more passengers flow due to higher occupancy. In these circumstances, besides redistribution of traffic from traditional companies, it is counted on increasing frequency of air transportation use and redirection of a significant flow of passengers from land transport to the air one (in the circumstances when the ticket price of a passenger is comparable (aircraft / train)).

The low-cost approach stipulates: lower prices to air tickets at present will generate a greater flow of passengers in the future.

The confrontation of the two economic models (classical and low-cost) determined, in fact, occurrence of absolute competition on the EU and U.S. air transport markets. The final consumer has witnessed unprecedented decrease in air tickets’ prices and entering into direct competition with the terrestrial/land air transport.

In the early post liberalization of market, the increased competition has been the catalyst for price reduction and impressive growth of passenger traffic.
3. THE ROLE OF REGULATOR IN THE PRICE MARKET FORMATION/SET-UP

a) GENERAL HIGHLIGHTS

The analysis of legal aspects to ensure conditions for fair competition on the air services market must be started by reiterating some general elements, that although almost with a notorious character, in many cases however “get lost” among details and are damaged during legislative formulation, or are simply overlooked given the existence of private interests.

The legal basis thereof is found in the Constitution of the Republic of Moldova that stipulates under its Article 126 “The Economy”:

“(1) The economy of the Republic of Moldova is a socially-oriented market economy based on the coexistence of freely competing private and public properties.
(2) The State must ensure:
a) the regulation of economic activity, and the administration of the public property belonging to the State under the law;
b) the freedom of trading and of entrepreneurial activity, the protection of loyal competition, the setting up of an appropriate framework for developing all factors capable of stimulating production;”

All massive regulations by means of which the state intervenes to regulate social life, imposing political conditions, rigors and procedures are to be built on this foundation or, on the contrary, excluding certain requirements if harmonization of social relations requires so. The constitutional principles fulfill a dual function as a starting point for formulating rules of play in society and as a filter to check the quality of normative acts edicted within the process of regulatory creation.

Healthy competition is a vital condition for the coherent development of the market. It is natural for the state to interfere to ensure that this development will take place in the public interest. The competition, however, is not an objective in itself, but just a way to achieve it, i.e. to meet the needs of society members. Inevitably, the interests of capital (entrepreneurs) do not coincide with those of general public; it is also natural that there are contradictions and rivalries among the entrepreneurs.

Legal regulations are the levers/tools by means of which the state ensures that this complicated equation will be solved for the benefit of all members of society. The regulatory intervention of the state does exist and is justified only if (1) it is determined by clear social objectives and (2) if done by means of appropriate legal instruments. Otherwise, the effect is hijacked on unclear ways or even generates consequences contrary to initial intention displayed.

EU experience is relevant in this sense:
"For a long time, the Commission has not intervened in the civil service area, mainly because the Member States considered “public services” under their exclusive competence and they were reluctant to allow any intervention. Since 1990, however, the Commission began to systematically and actively play a role in services liberalization. While recognizing the concept of public services and the need to facilitate the achievement of their mission, the Commission considers beneficial opening of competition towards these services. The postal services, for example, were open to competition, provided that Member States render a minimum level of services to users as “universal service”, reserving some activities to one or more operators.”

Such reasoning remains often in the shadow of political concerns, whatever the social dimension or segment would be that comes with rules, results are, respectively, also overshadowed by considerations

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not listed in the public agenda or are affected by lack of capacity of ordinary authors and promoters of normative acts.

b) GENERAL DESCRIPTION OF THE LEGAL FRAMEWORK GOVERNING AIR TRANSPORT SERVICES IN MOLDOVA

The civil aviation is probably one of the most technologically advanced areas but also the industry where the greatest risks focus, i.e. a situation that is being acknowledged by all and needs no further explanation. Due to its enormous potential to risks aviation is and will be one of the most complex social subject areas.

The legislation governing civil aviation first draws its origins from the relevant international treaties, in particular the Convention on International Civil Aviation signed at Chicago on December 7, 1944 and which the Republic of Moldova joined by means of Parliament Decision No. 97-XIII of May 12, 1994. This document lays the foundation of international cooperation in civil aviation, both for the purpose of regulating use of international airspace, and to create conditions for flight safety. The Chicago Convention crystallizes, in legal terms, the whole system of international civil aviation and creates prerequisites for uniformization of practices and conditions for safe use of airspace for civilian purposes.

For the purpose of our study, this document (the Chicago Convention) is important for methodological reason only, as it focuses the basic principles of interaction between states in the process of international cargo and passenger traffic, expressing the philosophy of cooperation in this process.

It is important to mention here that this document, i.e. the Chicago Convention, to which Moldova has adhered, does not directly involve and does not impose conditions of market organization; it serves as reference that allows to separate the national legislation into:
- regulations derived from or inspired by international obligations (assumed by the state following the signing of international acts), and
- regulations that are strictly dictated by domestic considerations.

Either the Chicago Convention or any other international agreements Moldova joined do not impose conditions on air transport market organization. It can not be otherwise, since the configuration of the internal market is an exercise of sovereignty that can be achieved in exceptional circumstances only. However, even if there were such situations, for instance, following the accession of Moldova to the CEAS, the effects of such a situation would have only increased the competition, thus being in the interest of air services consumers.

The national law governing the air transportation market is quite squat. One can even say that the primary legislation (the legislation) relating to specific air transport market does not almost exist. This situation is partly justified by the fact that the activity on this market is a business one and it is regulated just like all other business activities. It is natural to be so because the legal treatment must be uniform and consistent.

However, certain features of the passengers’ air transport activity need to find separate legal settlement. The said features and the effect of regulatory gaps on the market, airlines’ interests and ultimately the interests of quality and the price of services that consumers get will be explained below.

Before turning to features, one needs to make a review of the general nature requirements to which airlines are also subordinating to in their quality of traders. Speaking of market access of any trader, including airlines, which are also retailers like everyone else, one needs to make an inventory of the types of restrictions imposed by the state before this trader can start operating. The principle applied here states that “everything that is not restricted or prohibited is allowed”.

"Presumption of permissibility”. This principle finds expression in many acts that establish conditions for entrepreneurship.

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First, the Civil Legislation that stipulates even from the very start in its Article 1 “Basic Principles of Civil Legislation” that „Natural persons and legal entities are free to establish their rights and duties on the basis of contracts, and to stipulate any contractual terms, insofar as they do not run counter the law”. The basic normative acts regulating business activities emphasize and materialize this principle.

The Law on Enterprise and Entrepreneurship No. 845 of January 3, 1992 Article 6 (The Rights of the Legal Entities) states, inter alia, that “any legal entity (entrepreneur) shall have the right to independently determine the types of its (his) business activity”. The Article 8 of the same Law envisages the state obligation “to create equal legal and economic conditions for all enterprises/legal entities” (par.1), while par. 2 provides for that “The government, public administration authorities as well as local public administration authorities can give instructions to enterprises only within the limits of their competence, established by law”. The law goes even further in promoting this principle, stating under par. 1 of Article 10 „Regulation of Entrepreneurial Activity” that „The enterprise shall undertake any sort of activity, except those, which are prohibited by the effective legislation”; while par.2 specifies that certain activities shall be subject to licensing: „, The enterprise shall have the right to undertake any sort of venture which is determined by the legislature only after obtaining state license on any stipulated activity.”

All these regulations are part of a coherent legal logic, designed to ensure the set out principle is followed to remove any impediments to the entrepreneurial initiative, of whatever nature they might be. The Law on Regulating Entrepreneurial Activity Through Licencing No.451-XV of July 30, 2001 brings this principle to a definite purpose, in par. 2 of Article 8 „Types of commercial activities regulated through licensing” any type of activity not stated in its bylaws shall be carried out without a license or without further administrative or similar effect, except for authorizations explicitly established by law to confirm technical requirements and rules as separate aspect.

Thus, we find a consistent and sufficiently coherent legal support that comes to support entrepreneurial initiative and ensure that any person wishing to intervene on the market as a trader has to follow very clear and consistent rules.

However, given that since its independence and until nowadays Moldova had to build foundation systems to create institutional and regulatory instruments, without the experience and knowledge of democracy and tested market economy mechanisms, the country's legislation, particularly regulations of the two legal acts adopted by the Government and local and central public authorities were affected by several shortcomings, which greatly distorted the fundamental principles enshrined by the Constitution. This is partly due to the fact that legal doctrine and spirit of political activities are still affected by past socialist over-regulation, control and limitations posed by a totalitarian ideology and a planned to the smallest detail economy.

Building the legal framework aimed at regulating the business activity went through a difficult path, the main legislative acts, such as the Law on Enterprise and Entrepreneurship, the Law on Regulating Entrepreneurial Activity Through Licencing, the Law on State Registration, and laws that have special character (Joint Stock Companies Law, Law on Limited Liability Companies) were subject to multiple significant amendments, some of them being completely redesigned and adopted in new versions, and others adopted just recently (ex. The Law on Limited Liability Companies No. 135 of June 14, 2007).

We shall emphasize that business activity, including passenger air transport services should be subject to rigors and conditioned only to the extent it is necessary for the state to ensure that the public interests, including those of the consumer are being respected. And this conditioning can take place only if justified in terms of social finality and if properly prescribed from the legal perspective.

This consideration underlies the rationale governing the public authority exercise in the private area and represents the optic through which the legal regulation of passenger air transport services must be
examined. In fact, the reality proved various states of affairs. To make order in this regard, two regulatory reforms were initiated, known as the “guillotine”. These reforms were aimed at unifying and make order within the legal framework governing business activities, eliminate unnecessary restrictions, simplify the exclusion of legal uncertainties and possibilities of bureaucratic and administrative abuse.

The Law on Reviewing and Optimisation of the Normative Framework Regulating Entrepreneurial Activity Regulation No. 424 of December 16, 2004 was the first and the most difficult step in improving the legal environment for business activities. In this context, it is worth examining the situation pertaining to the verification of the State Administration of Civil Aviation regulations. This will be done below in the context of examining the effects of Civil Aviation Law on passenger air transport service providers. To be mentioned that the Law No. 424 aims at filtering through all normative acts issued by the government and central public authorities to compile a list of those laws, which meet the requirements of Law No. 424.

Although designed as stipulated in Article 1 of the relevant Law, to establish the “principles and actions necessary to revise the legal framework in order to eliminate and avoid regulations that do not comply with the legislation and are not oriented to a market economy, as well as to ensure consistency and quality regulation to avoid barriers within business environment” in many respects the law did not achieve its objectives. In fact, more errors were committed during the verification process and primary because of the poor methodological device and lack of skills of the staff involved in the evaluation procedure. Consequently, several laws that have been recognized as appropriate to their criteria are not in fact. This refers to the Civil Aviation Regulations - Flight Authorization (CAR-AF) as well. The analysis of this act is given below.

To continue the process of building the legal framework to regulate business activity, the Law No.235-XVI on Basic Principles governing Business Activity/ Basic Principles regulating Entrepreneurial Activity was adopted on 20 July 2006. Meant to outline conditions to be respected in the regulation of entrepreneurial activity, the Law No. 235 aims to “create a legal framework that would favour business and investment activities with the aim of supporting social and economic development” (Article. 2).

For us it is important to highlight the principles to be followed (by state) while formulating regulations for entrepreneurs, as provided for by the Article 4:

a) predictability of entrepreneurial activity regulation;
b) transparency of decisions and transparency of regulation of entrepreneurial activity;
c) Regulatory Impact Analysis;
d) substantive and procedural rules on initiation, conduct and liquidation of business activity by legislation;
e) fairness (proportionality) between the State and entrepreneur.

These principles do not represent a result of lawmaking exercise that will enrich the legal doctrine only. They have paramount importance in determining the extent to which published state regulations are “favorable to business environment and investment climate for socio-economic development”. For this study these principles serve as basic references in the evaluation of legislation to determine gaps and deficiencies that impede the development of air transportation market by ensuring free competition.

Since the “flight authorization/authorization to perform flights” represents the main regulatory element in passenger air transport activities, we shall mention in particular that, in accordance with the principle of “transparency”, the Article 10 of the Law No. 235 states that:

1. A business may be started up and/or run based on an authorization, where the law provides so.
2. The authorization is a document, issued by the competent public administrative authority, which authorizes the applicant to start up and/or run a business, issuing a permissive act in the form of license - for the types of activities provided by the Law on Regulating Entrepreneurial Activity Through Licensing No.451-XV of 30 July 2001 and / or in form of authorization - to confirm certain technical requirements and separate standards, established by law. It comes out of this principle that no authorization may be required if not provided for by the law due to technical requirements to be met. For
instance, under the state Law on Public Health Surveillance, the epidemiological license/sanitary permit is the document confirming compliance of the subject with sanitary requirements. There is clear distinction between licensing as a tool to check to what extent the subject meets general criteria for the respective subjects, and authorization that, according to Law 235 represents an act of confirmation that the requesting entity complies with certain technical requirements. From this perspective, the flight authorization should be regarded as a tool for assessing the compliance of technical parameters of the flights and not as a way to access the passenger air transport market. The next item will explain that, in fact, the way the mechanism for authorizing flights is built, it operates as mechanism for air transport market management and not the way the State Civil Aviation Administration or MTRI are trying to present it.

| c) THE LAW ON CIVIL AVIATION AND ITS EFFECTS ON AIR TRANSPORTATION MARKET |

The Law on Civil Aviation No. 1237 of July 9, 1997 contains summary provisions regarding air transport services market regulation. We rather find no rules on this. It is natural to be so, since the scope of the Law No. 1237 is not aimed to regulate the activity of civil aviation entrepreneurs. Although paragraph 1 of Article 1 of the Law stipulates: „This Law regulates relations arising in connection with use of the airspace of the Republic of Moldova and the civil aviation activities carried out in Moldova”, in fact, the rules contained in the text govern almost all aspects of public power on the airspace, civil aviation legal institutions structure and organization of flight safety system, but not also the conditions for entrepreneurship. The commercial aspect remains outside the Law.

Speaking about the regulation of civil aviation one has to be noted that the Law No. 1237 has several weak points and contradictory provisions that leave their mark on the integral area, especially the massive amendments made to this Law. At the Government initiative, there have been made substantial changes to the structure of public administration in civil aviation by means of the Law. 12-XVI of February 3, 2009. This change was aimed at trying to reform the aviation administration following apparently a noble idea, i.e. to separate regulatory powers from the authorization (certification) and control ones.

In fact, the intention has failed in a legal and administrative mess up, in which the civil aviation area finds itself to nowadays. Thus, instead of the State Administration of Civil Aviation (ASAC), i.e. the public administration body in the field which since 1997 performed more or less coherent functions was replaced by two new authorities: the Agency of Transportation and the Civil Aviation Authority (ASAC). The Transport Agency has been attributed functions of State policy promoter in the area, while the Civil Aviation Authority was designated for policy implementation and supervision of flight safety and aviation security.

Neither the Transportation Agency or the Civil Aviation Authority do not exist as legal entities. The Transport Agency has operated for a very short period of time and was later reorganized into another state structure (Ministry of Transport and Road Infrastructure), while the second one (the Civil Aviation Authority) was never created.

In accordance with amendments made to the Civil Aviation Law, the Civil Aviation Administration had to be closed back in 2009 and part of its powers had to be taken over by the Transport Agency and the other part-by the Civil Aviation Authority. In fact ASAC was never reorganized. This institution is a unique legal phenomenon, since ASAC performs important public functions and operates as public authority without being defined by the Civil Aviation Law or any other legal framework.

For that is the case, we shall emphasize that the legislation related to civil aviation needs serious ordering and certain approaches should be reviewed. But since they are not part of this study, we shall avoid issues not directly related to the commercial size; let’s track how legal uncertainties leave their mark on the aviation market of passengers and goods, starting with the most sensitive issue: flight authorization.
d) EXISTING REGULATIONS ON NOMINATION/AUTHORIZATION OF AIR OPERATORS

As mentioned above, the special legislative act aimed at entrepreneurship (Law No. 235) defines authorization as „a document, issued by the competent public administrative authority, which authorizes the applicant to start up and/or run a business”. The civil aviation activity is not licensed, but authorized.

The Law on Civil Aviation specifies under its Article 3 “Basic Definitions” several types of authorization that are governed by Law:

- „authorizing an air operator to perform commercial air transport activities”; as a result of this operation an “air operator certificate” is issued.
- „authorizing an air operator to carry out general aviation and aerial work activities”; as a result of this authorization an “air operator permit” is issued.

There are no other types of authorizations under “Basic Definitions”. However, there is a number of other authorizations in the text. These are not formulated here, but occur as conditions for certain activities. Thus, the Article 9 “Authorization of Civil Aeronautical Personnel” contains the condition that the staff must have “special training, confirmed by an authorization issued by the Civil Aviation Authority (that, in fact, does not exist)”.

Next we find “certification (approval?) of airports” (Article 11), „authorization for reconstruction of airports” (Article 12), „authorization for other civil aviation activities” (ground operations, etc.. ) (Article 21). Moreover, one can find a sufficient number of other technical authorizations (authorization to transport dangerous cargos).

The issue of our concern, i.e. flight authorization is contained in Chapter VII “Air Transport” Article 17 „Certification and Licensing of Air Operators. Flight Authorization” par. 1, 5 and 6. Given the importance, the full text will be reproduced:

“(1) The commercial air transport of passengers, baggage, cargo and mail shall be made only by operators holding an air operator's certificate and operating license or flight permit. The commercial air transport is performed by means of scheduled/regular or irregular flights”.

“(5) The operating license or flight permit is issued to a certified aircraft operator as specified under paragraph. (4). The conditions for obtaining an authorization to operate air routes or flight authorization is determined by aviation regulations issued by the Ministry of Transport and Road Infrastructure.

”(6) The Ministry of Transport and Road Infrastructure is entitled to both suspend or revoke an authorization to perform air flights, if the air operator fails to comply with the requirements, on which basis it was issued....”

And that is all; the Law does not provide for any criteria that would form the basis of the authorization procedure. Although the Law No. 235 clearly stipulates in its Article 7 „Predictability of normative-technical documents”: „The technical and sanitary standards, similar documents (hereinafter referred to as legal and technical documents) are required if they are set by law”. The Law No. 235 states very explicitly that there can be no technical terms if they are not set by law. Based on this principle, we find out that whatever the regulations regarding flight authorization approved by the Ministry of Transport and Road Infrastructure (or any other authority) might be, they will be compromised by the lack of benchmarks in Civil Aviation Law, and no matter how brief they may be.

In addition, there is more confusion in relation to the circumstances described above. The Law No. 235 introduces two important terms in the article cited above, „authorization to operate air flights” and „flight authorization”, but provides no explanation of what these terms mean and there is full legal uncertainty.

Besides, the par. 1 of the Article 17 Law 1237 stipulates: „The commercial air transport is performed by means of scheduled/regular or irregular flights”- two more unknown notions, although in terms of aviation technology, these concepts are basic. Thus, the natural question on how do these two pairs of terms correlate remains unanswered.
To be emphasized that without a clear legal definition of key concepts and terms to authorize various types of flights or routes, there will be no transparency or order on the air service market.

It is appropriate to also report a gap in the Civil Aviation Law: Article 4 „Ministry of Transport and Road Infrastructure” par. 3 lit. c) Which stipulates that MTRI: „issues permits for scheduled air flights”. Leaving aside the fact that a new term (permission) was introduced, it is not clear how it correlates with the term “authorization”, provided in Article 17. Again, a natural question arises “why the central government authority that is empowered to formulate state policies on transport is mandated with purely technical tasks?” The feeling is even more confusing if we consider that this formula is in contradiction with the idea behind the Civil Aviation Reform—separation of political and regulatory powers from those of the authority and control. In fact, it did not happen.

Another detail worth to note is that MTRI has the power to issue permits for scheduled air flights only, while the permissions for irregular flights are under the responsibility of Civil Aviation Authority (Article 5 par. 3 lit. n). Why did they come to this division of powers remains a miracle. It is not justifiable from operational viewpoint, or it doubles the administrative costs and hinders achievement of aviation safety surveillance duties, since the Civil Aviation Authority (when it will exist “de facto”) must concentrate all the information that relates to business aircraft operators.

It should be noted that the terminology used in the text of the Law is quite uneven, besides the term “authorization”, the terms “certification” (Article 11 and Article 7) and “permission” (Article 4 par. 3, lit. c) and Article 5 par. 3 lit. n) are used and quite often the same operation is called differently, either “authorization” or “certification” or “permission”. The method and conditions in which these regulatory interventions are made (licensing, certification, permission, etc.) are not directly regulated by the Law on Civil Aviation, but by acts issued by public authorities that are obliged to oversee the Law.

„Aviation Regulations”– this is how the Law defines the technical and normative act issued by the Civil Aviation Public Authority, which contains specific rules, standards, and enforcement requirements and procedures and is subject to execution by natural persons and legal entities operating in civil aviation area” (Article 3).

It was emphasized that it is a technical and normative act since it is of crucial importance for understanding the aspects of this study theme. According to the Law on Civil Aviation, the Ministry of Transport and Road Infrastructure has the authority to approve such legislation (Article 4 par. 1, 2 and 3 let. l)). However, so far MTRI has no experience or necessary trained personnel to formulate regulations. All qualified staff is still concentrated in the ASAC, the explanation being very simple - the significant difference between the level of remuneration offered by the Ministry and the ASAC. Since the Law on Civil Aviation was amended to now, MTRI has approved some amendments made to the documents previously approved by ASAC. The attempt of the Ministry to regulate the authorization of flights is a particular case and deserves special consideration. This will be developed below in the CAR-FA Civil Aviation Regulations - “Flight Authorization” analysis.

Prior to this, one has to elucidate, perhaps the most important from the operational viewpoint, the most controversial in terms of organizational and the most unclear from legal perspective element of the flight authorization procedure, i.e. “air operator designation”.

The Law on Civil Aviation contains no statement regarding the procedure on air operator nomination. There is no even hint about the existence of the institution “air operator designation” in the Law.

At the same time, according to international practice derived from the Chicago Convention (Article 6), the international passenger air transport is carried out under interstate agreements by means of which signatory governments agree to a certain formula of reciprocity so, that each party ensures the market interests of their own airlines. All those twenty bilateral agreements concluded by the Republic of Moldova to organize air transport services define the term “designated airline” and specifies the way the nomination is done.
In a miraculous way, the national law has no stipulations regarding this important procedure. In fact, the air services market for Moldovan companies is formed exclusively from opportunities derived from international agreements (commercial operating rights).

By virtue of its size, Moldova does not even suggest the illusion that there will be sometime a local market of the passenger air transport.

Obviously, the whole plot pertaining to access to the passenger air transport market focuses on the segment that has no legal coverage. The right to obtain a permit for regular flights (as deduced from the Law on Civil Aviation and described in CAR-FA) constitutes a fiction in the absence of transparent and fair rules regarding the appointment of companies for certain routes.

If to continue the logical sequence, one can conclude that CAR-FA is a fiction, because once being designated, the company (it is not clear under which law) does not need any additional authorization since the nomination already happened.

e) CIVIL AVIATION REGULATIONS AND FEDERAL AVIATION (CAR-FA) ANALYSIS FOR “FLIGHT AUTHORIZATION; IMPLICATIONS IN COMPETITIVENESS ON PASSENGER AND CORGO AIR TRANSPORT MARKET

Speaking of regulations related to flight authorization, one need to mention that MTRI, however, made an attempt to clarify the situation and to introduce some regulations on air operator nomination procedure, which proved to be confusing, in fact.

By MTRI Order No. 7 of January 11, 2011 the Second Edition of CAR-FA Civil Aviation Regulations - “Flight Authorization” was approved. This document has been in force since January 28, 2011 (the date of its publication in the Monitorul Oficial) to April 12, 2011 when repealed by MTRI (under approval of the Ministry of Justice and the National Agency for Protection of Competition). This action left the “flight authorization” without any legal coverage.

In fact, that was an unfortunate attempt, because the most important segment, i.e. “designation of air operators” has been exposed “awkwardy” (Annex 1 to the basic document), suggesting that it was an optional element of the basic procedure. Moreover, it has not provided the expected regulatory solutions.

The explanation is the following: currently, all destinations (regular flights) under the international agreements are already occupied. The probability that other agreements will be signed or that new profitable destinations will occur is reduced. Thus, the possibility of using the standard contained in p. 2 of Annex 1 is almost non-existent. In fact, MTRI mimicked the creation of conditions for competition.

The MTRI intervention with the new version of CAR-FA was unsuccessful, while the abrogation of the normative act was a failure. The MTRI Order No. 88 of April 12, 2011 by means of which the MTD Order that approved the Second Edition of CAR-FA Civil Aviation Regulations - “Flight Authorization” was repealed, contains a provision lacking legal foundation and logical coherence: p.2 „Upon entry into force of this Order, the provisions of the Order on State Administration of Civil Aviation regarding the approval of CAR-FA Civil Aviation Regulations - “Flight Authorization” No. 33/GEN of June 19, 2002 shall apply, with subsequent amendments approved by January 11, 2011. “

This stipulation is a legal error, since the document referred to is no longer in the national legal framework, being repealed by p. 3 of the MTDI Order No. 7 of January 11, 2011. According to Article 19 of the Law on Normative Acts of the Government and Other Central and Local Public Administration Authorities No. 317 of July 18, 2003, repeal of a legislative act means it has no further action. In other words, the document does no exist any longer.

To regulate social relations related to the authorization of flights, one can not refer to “revitalization” of an abolished legislative act. Only re-approval of a legislative act will confer it legal validity.

It is remarkable that MTRI realized that there is a problem with the nomination procedure, but it is unclear why they did not go the right way. Given that the “designation” procedure is an undefined concept of law, it should have been first included in the Civil Aviation Law to have legal basis to start
developing detailed procedures. The way MTRI acted is in contradiction with the principles of Law No. 235 and it is natural that the Ministry of Justice and National Agency for Competition Protection Act disapproved the act issued by MTRI.

Although, from the legal point of view, there is no legal act regulating flight authorization, however, it is worth emphasizing few important elements related to the regulation of this segment that could possibly serve to prevent some errors.

In fact, the rules for accession of air transport services market are set by regulating air services market (designation and authorization). In this sense, the legal act that would regulate this area should be developed in accordance with the Laws No. 317, No. 235 and No. 424.

The CAR-FA Civil Aviation Regulations - “Flight Authorization” approved by ASAC on June 19, 2002, which, according to MTRI Order No. 88 of April 12, 2011 claims to regulate the field, managed to escape the “guillotine I” by mistake and, in accordance with provisions of the Law No. 424 to be included in the Register of Official Acts regulating the Entrepreneurial Activity, approved by the Government Decision No. 1030 of October 3, 2005. The State Commission for Regulating Business Activity established by law did not notice that the “flight authorization” is derived from the “airline designation” so that both are regulated together. Therefore, several provisions of the Law No. 424 (Articles 2 lit. a, e, g), Article 7 par. 2) have been violated.

The CAR-FA is a quite inconsistent regulatory substance, while its exposure technique is contrary to the Law 317. Besides not meeting the rigors of the Laws No. 235 and 424, the document contains very few regulatory elements at all. In many cases, the document reiterates the requirements already contained in other regulatory acts, such as CAR-AOC. The technique of text exposure is manifestly contrary to the Law No. 317. For reference, please consult the chapters “Amending Rules” and “Checklist of pages”.

The CAR-FA rule 01.50 “Admission Requirements Application for Issuance of Irregular Flight Authorizations” regarding the consent of the designated airline for the route for which a series of charter flights are requested is not only contrary to the Laws No. 424 and No. 235 but represents a direct support of unfair competition, i.e. asking a competitor’s consent to be acceeded on the market it operates seems to be illogical. In these circumstances, it is not clear what criteria should a competitor apply to give its consent, as well as what is the need for such an agreement. Thus, due to lack of transparent and fair rules on irregular flights, MTRI and ASAC faced a conflict with the Moldavian Airlines that has requested authorizations for a series of charter flights for Antalya. Following the procedure described in CAR-FA, the Moldavian Airlines got the refusal of its competitor (Air Moldova) to provide authorizations for these flights. By the prescription given on this subject, NACP found out the obstruction of competition by MTRI by means of CAR-FAR regulations, but to date MTRI and ASAC representatives did not consider it necessary to comply with the NACP requirements by finding a viable solution (eliminating competition obstruction) to regulate such flights.

| 5) MARKET REGULATION AND THE ROLE OF MTRI AND SACA |

Speaking of air services market regulation, one should to primarily mention the great confusion of the regulatory powers. As described, MTRI as a body that formulates policies and regulations in this area still lacks the necessary institutional capacity and this impacts the way the field is managed.

The above analysis clearly shows that currently, the Civil Aviation Public Administration System is in total uncertainty. The law stipulations are non-existent in fact and what does exist “de facto” has a compromised legal status.

In addition to the described, it should be noted that, although the intention to separate policy-making powers from those of control and service provision is much appreciated, as provided for by the Law No. 424 and No. 235, it remained unfulfilled (as demonstrated). However, in the Republic of Moldova, where there is a shortage of qualified human resources, this separation is seen somehow justified in terms of costs. Maintaining the two entities with interdependent tasks is a luxury that costs.
If to compare the MTRI responsibilities with those of the Civil Aviation Authority, stipulated by the Civil Aviation Law, we could find overlaps and provisions which undermine the concept of separation of powers, for instance, the Article 5, par. 3, lit.r) provides for that the Civil Aviation Authority “shall issue, within the limits of its competence, administrative decisions, regulations, instructions and other technical provisions, which contain enforceable standards and procedures (!) for natural persons and legal entities operating in the field of civil aviation”. Given that aviation regulations are technical and legal acts (Article 3 of the Civil Aviation Law) the following question arises “how do the MTRI competencies differ from those of the Civil Aviation Authority?”

One has to emphasize that the discussion regarding the correlation between AAC and MTRI functions is a strictly theoretical one, since AAC does not exist “de facto”. Since the objective of this study is to identify ways for improving business environment on passenger air transport market, it is worth mentioning that, from any participant’s on this market perspective, the most important thing is to have a set of clear rules, appropriate to the industry technological specific. Currently, such a set of rules does not exist, and the confusion is exacerbated by the fact that the field is managed by an entity undefined by the Civil Aviation Law.

In accordance with the law, SACA executes requirements, but is not entitled to claim to do so.

Conflicts of interest and ways to mitigate them. Following the logic of the market, conflicts of interest concerning the rights to operate air flights inevitably occur. In Moldova, the situation is more serious / the conflicts are more intense due to the market size, unclear and unequal rules of the game, the state interest to maintain its dominant position of a state enterprise in the field and due to subjective factors. All these can and shall be mitigated by establishing a fair market access mechanism.

g) BOOK MARKET REGULATION IN THE CONTEXT OF NEGOTIATING FUTURE FREE TARDE AGREEMENT BETWEEN MOLDOVA AND THE EUROPEAN UNION

In light of the above reasoning, it is obvious that the discussion about the market regulation reserve represents an advance made to authorities. Taking into account the declared intention of Moldova to accede the European Common Aviation Area, it is important to address institutional reform in the most serious way, to clearly define powers and formulate the rules for each component unit of the civil aviation field. In this context, the aspects of flight safety and security, those relating to the interests of traders and consumers’ interests should be clearly distinguished. The great challenge for legislators is to find a compromise formula.

The Communication issued by the European Commission on Developing a Common Aviation Area with the Republic of Moldova on May 2, 2011, outlines in conclusion that:” Open markets need a framework that ensures fair competition and high standards for safety and security”. While Moldova managed to achieve much in terms of ensuring security and flight safety, we are beginners in ensuring fair competition.

One can say that Moldova has a white sheet of paper to put down the the way the competition will be ensured, taking into account the fact that this involves regulation of several aspects:
– separation of normative regulations from the technical ones, so as to make it clear: what are the regulations covering safety and security and what are those pertaining to trade/commercial issues;
– establish clear conditions for admission on air transportation market;
– set-up control procedures and penalties for unfair competition;
– ensure ultimate users’ interests.
The task is quite complicated and requires significant attention on behalf of the state.

The EC conclusion reflected in the Communication from the Commission issued on May 2, 2011 outlines that:” Open markets need a framework that ensures fair competition and high standards for safety and security. A comprehensive mandate for the negotiations with Moldova would be based on two equally important strands: on the one side market opening and liberalisation and on the other hand regulatory harmonisation of safety and security standards beyond the EU borders”.

In this respect, the
very realistic and efficient steps the Government can make are initiating the process of liberalization, described in the previous study:” Prospects for Development of Air Transport Sector Services in the Republic of Moldova in the Context of Negotiating the Future Free Trade Agreement between Moldova and the EU”. This will help to create a competitive market and will demonstrate the seriousness of the allegations made concerning the desire to access the ECAA.

. the conclusion of an EU-Moldova Common Aviation Area agreement would make a major contribution to reaching the objectives of the European Neighbourhood Policy, the Eastern Partnership and the EU–Moldova Partnership and Cooperation Agreement.

h) EXPERIENCE FROM OTHER COUNTRIES ON THE ELIMINATION OF RESTRICTIVE REGULATIONS IN THE FIELD OF AIR TRANSPORT SERVICES

The countries that have the experience in eliminating barriers to free competition in air transport are, in fact, the signatory of the Multilateral Agreement on ECAA. Conditions imposed by the liberalization agreement provide for the elimination of any restrictions on frequencies, destinations, fares, capacity for common market for ECAA members.

A comprehensive description of this kind of experience was presented in the previous study "Prospects for Development of Air Transport Sector Services in the Republic of Moldova in the Context of Negotiating the Future Free Trade Agreement between Moldova and the EU”.

The period in which the restrictive rules were eliminated differ from country to country, sometimes very short periods were recorded (from two to three months) to comply with the conditions of accession to the ECAA. The result of each state to negotiate accession to the ECAA is also different in terms of benefits obtained. This situation was strictly dependent on the quality of negotiations and the negotiating team.
4. THE CORRELATION BETWEEN REGULATIONS AND PRICES

a) LIMITING REGULATION OF AIR TRANSPORT SERVICES MARKET AND ITS IMPACT ON THE COMPETITIVE ENVIRONMENT IN THE FIELD

Correlation between regulations and prices. As described in the MTRI - air transport market relationship, the role of regulations is crucial in respect of competitive environment creation and implicitly the impact on price levels. A favorable legal framework to create free market conditions of accession to air transport services for any airline will stimulate clear increased competition between market actors. Thus, fair rules for all air operators create favorable market conditions for the consumer, i.e. lower prices for air transport services and improved quality of services.

Restrictive regulation. At present, the scheme on passenger air transport market sharing is based on “first come - first designated” principle (to be mentioned, without any legal support); all the others are excluded from competition. The logic is: there is already a nominated company and that is. This model eliminates any opportunity for direct competition for certain destinations, redirecting competition only in the areas with new routes, thus attempting a traffic diversion of the competitor.

It is obvious that this principle has nothing to do with loyal competition and the state appears involuntary as a supporter of the unfair competition model. It was demonstrated here above that MTRI’s attempt to establish a model regulation of accession to air transport market has been compromised in essence, because it preserves the existing state of things.

Thus, we are witnessing a restrictive regulation of aviation market in Moldova. On the one hand, there is no clear legal framework to regulate the rules for designating air operators for a destination or another. On the other hand, NACP found out the obstruction of competition in respect of irregular flights and they requested MTRI to remedy the situation. Under these conditions, the impact of the regulations on competitive environment in the area of air transport industry has a negative character, limiting the competition on the market.

A solution to improve the competitive environment, within the existing regulatory framework could be organizing “regular annual competitions to obtain operating rights for a destination”.

According to the current situation (we do not say regulations, since they do not exist), the authorizations to operate air routes is issued on annual basis. The same could go with designation of airlines, while the authorization procedure could be dissolved into nomination procedure.

In the same context, the regulation on charter flights deserves special attention. The first step is to clearly define the legal status of the charter flights, since there are no stipulations on this. The direction of competition principle promotion being stated, any restrictions that would target the operation of charter routes on the same destination the regular flights operate shoule be excluded, provided that they meet the conditions that define the charter / irregular flights.

b) COMPETITION BETWEEN AIRLINES AND ITS EFFECTS ON THE AIRLINE TICKETS FINAL PRICE

The experience of markets that have gone through the air transport services liberalization process show, in most cases, increased degree of competition between airlines. The intensified competition has made many airlines to review their development strategies on the market and consequently their trade policy on setting up prices to airtickets. Some operators have taken over the low-fare type business model, others have stepped up efforts to optimize their business activity, and some of them have focused on developing new destinations.

Large reductions in airtickets price were registered due to this increased competition, while the final consumer has benefited the most from these changes.

A recent relevant example of the impact of competition between airlines over airtickets prices is the Chisinau-Istanbul flight. Since the entry of national operator Moldavian Airlines on this market segment...
on September 15, 2010, where two other companies were already present, i.e. Air Moldova and Turkish Airlines, the price to airtickets went down by 27% to 34%, depending on the time and dates for which the booking was made.

Thus, for reservations made on June 6, 2011 for the itinerary Chisinau-Istanbul-Chisinau, departing on August 17, 2011 and arriving on August 24, 2011 the price offer is: Moldavian Airlines 186 Euros, Air Moldova 279 Euros, Turkish Airlines 283 Euros. The difference in percentage between the most expensive and cheapest offer is 34%. This figure represents the quantified expression of the impact of increased competition on the price of airtickets, recorded on the air transport services market in the Republic of Moldova for a specific destination and visible progress.

**FIGURE 4. THE IMPACT THE ENTRANCE OF "MOLDAVIAN AIRLINES" ON ISTANBUL DESTINATION HAD ON AIRTICKETS PRICES**

![Graph showing airticket prices](image)

Source: Moldavian Airlines

c) CONDITIONS TO DECREASE PRICES TO AIRTICKETS

The objective terms of price reduction were set by the Air Moldova, Moldavian Airlines and the Airport Chisinau representatives during interviews. Thus, the following tools are identified to reduce prices to airtickets:

Developing fair and transparent regulatory framework on accession of air operators on air transport services market in Moldova, according to the limitations of existing bilateral system;

1. Improving the competitive environment by initiating renegotiation of bilateral agreements;
2. Providing clear principles for calculating airport charges and levels of reasonable profit while establishing airport charges in Chisinau;
3. Renegotiation by air operators of prices to ground services at both base airport and airports of destination or moving to secondary airports;
4. Increasing flexibility of Chisinau Airport program to stimulate airlines based on this airport;
5. Optimizing the services offered by airlines;
6. Technical reviving/upgrade of regional airports in Balti, Marculesti and Cahul, to create “cheap”options for local and foreign airlines to operate.
5. CONCLUSIONS AND RECOMMENDATIONS

The institutional reform of air transport in Moldova is currently suspended. This is due to the fact that the basic reason that was at the origin of the “reform” in aviation, i.e. separation of political powers (issue of regulations) from those of the authority and control has been compromised:

1. **from the institutional viewpoint:** the Civil Aeronautics Authority was conceived as a body subordinated directly to the Ministry of Transport and thus, there is no separation of powers in practice. Namely, MTRI appoints the AAC Director (Article 6. 2 of the Law on Civil Aviation) and establishes the legal activity of AAC subdivisions (Article 4, par. 3 lit. t)), the MTRI provisions are mandatory under the Law (Article 4 par. 4). There can be no real separation of powers when the policy authority has all eloquent levers to influence the activity of the controlling authority, including dismissing the head of the control body.

2. **in terms of the delimitation of powers:** in the current version of the law, MTRI has a multitude of tasks of “technical” nature: authorizing regular flights - the most “valuable” activity in the field (Article 4, par. 3 lit. c); designates (it is not clear what the term means) specialized bodies for various aviation activities (Article 4, par. 3, lit. d and g), investigates accidents (Article 4, apr. 3, lit. i), registers aerodromes and their reconstruction (Article 4, par. 3, lit. a and p), etc. In fact, these are concrete activities related to licensing, control and verification. The attempt to reform the existing institutional structure really confused things and worsened the situation. A good example is the recent string of scandals related to the issuance of permits for regular and irregular flights.

3. **from the conceptual point of view:** separation of powers, seen as a condition for improving the business climate and promoted by the two laws of guillotine (Law No. 424 and Law No. 235) should not be regarded as versatile, which would serve as a panacea. Aviation is a very technical field and this is why the specialists from this industry are very “expensive”, both in terms of training and “maintainance”. There are not enough resources to maintain two functional structures with qualified specialists, especially when the ICAO requirements specify that “remuneration of specialists within the aviation authority (of any kind) should be at the level of remuneration of specialists employed with airlines”. It is natural to be so; otherwise the idea of an impartial oversight has no chance to survive.

4. **from the operational viewpoint:** the flight safety and security surveillance technology has a clearly defined logic and a series of technological sequence subject to coherence. In this respect, the authority determining that a subject meets certain technical requirements to be “in air” (i.e. satisfies the technical requirements to perform some of the operations that can impact the flight safety and security) must have all necessary legal instruments throughout the technological chain, including penalties. This requires operative adoption of technical norms (not legal ones). These regulations shall be adopted by means of “aviation regulations”, which according to Article 3 of the Aviation Law are technical and normative acts. From this perspective it is obvious that the public authority vested with such powers of legislation is not justified to deal with issuance of technical standards as well, especially taking into account that it has no necessary resources for this.

At present, ASAC operates within a legal nebulosity, ASAC Regulations approved by Government Decision No. 1057 of October 19, 1998 are actually obsolete (Article 19, lit. e) of the Law No. 317, since the Regulations of the Civil Aviation Law that supported the validity of the Regulation was ignored. The Government which initiated the reform realized that there are too many negative consequences and dropped out the idea, leaving things “hanging”. The new government had other pressing priorities, therefore SACA found itself suspended from the legal point of view and in terms of operations - a MTRI appendix unable to solve anything without the preliminary approval of this Ministry.

Since 2009 MTRI has not initiated any renegotiation of bilateral agreements in order to create conditions to enhance the competitiveness of airlines and using this mechanism to reduce the prices to airtickets. Moreover, by means of the new Aviation Regulations CAR-FA, Second Edition, the instrument to obstruct competition was held in respect of the irregular flights.

The experience of the transportation services market in Moldova has shown, by eloquent example, the effect of increased competitive environment. After a new air operator entered an accurate segment of the market (Chisinau-Istanbul), the prices to airtickets dropped down by 34% in the first year of operation.
RECOMMENDATIONS

1. The Government should provide clear delineation of standards to establish certain technical requirements to be edicted as aviation regulations and standards to establish rules for different social situations. Clear separation has to be made, since many of the civil aviation regulations contain legal rules that are being infiltrated among technical regulations. From this perspective, it is obvious that the flight authorization can only be a legal act approved by Government Decision, with its main elements established within the Civil Aviation Law.

2. The Ministry of Transport and Road Infrastructure may initiate renegotiation of bilateral agreements for certain destinations, to ensure gradual liberalization of transport services market in Moldova. This will help the national operators to avoid a potential “shock” in respect of significant loss of share on certain markets.

3. The Chisinau Airport will ensure transparency in calculating airport charges and will follow air operators’ request to apply reasonable profits for rendered services.

4. The national air operators will consider moving flights to secondary airports, in case of an intense point-to-point traffic, to reduce operating costs.
METHODOLOGY

Getting a complete picture of the existing reserves on passenger air transport services market in Moldova from the perspective of reducing prices to airtickets was done using the selective direct method of research by applying specific tools:

1. information synopsis;
2. observation;
3. the economic model (simulation of market situations);

To better understand the situation of air transport industry, informations obtained by direct method of research were used. These methods have involved gathering information directly from their holders: institutional users, generators, air transport services, ultimate users, intermediaries.

1. The information for the study was obtained by the following basic ways:
   – investigation of legislative and statistical sources;
   – direct research;
   – modeling of air transport services market developments in Moldova.

Both categories of the selective direct research method were used in the study, grouped in terms of their mode of application:

I. Methods that involve conscious participation of information holders;

The research technique that was used, specific to this method was the interview. Techniques of interviewing based on structured interviews with a high degree of complexity, superior to exploratory interviewing procedures. The tools used for gathering information were:
   - written self-completion questionnaires at the place of research;
   - verbal questioning with notification of responses.

Representatives of the following institutions/enterprises/organizations were interviewed during the study:
1. Air Moldova: Mircea Malec, CFO and Vladimir Cebotari, Legal Department Director;
2. Moldavian Airlines: Nicolae Petrov, Director General and Anatolie Bzovii, Executive Director;
3. Chisinau International Airport: Roman Podcoritov, General Director

Representatives of the following institutions have refused to provide answers to questions in the questionnaire:
1. Ministry of Transport and Road Infrastructure
2. State Administration of Civil Aviation
3. Tourism Agency

II. Methods that do not involve conscious participation of the information holders.

The main research method of economic phenomena that does not involve conscious participation of information holders in research is the observation.

The observation was made directly (personally) and was used in combination with direct research methods, which envisages involvement of the investigated subject. The advantage is that it allowed recording the actual behavior and not the stated one.

Depending on the nature of the sources of information, both types of research were used: desk and field research. In terms of the existing research subject, the following range of researches was used:

a. exploratory research - to identify specific coordinates of aviation market phenomenon and the factors of its influence;
b. cause explanation research, based on cause-effect principle;
c. predictive research - followed the aim of the air transport competition development phenomenon prevision on short and medium term.

Observation helped to obtain information necessary for decision-making issues.
3. The model serves for both qualitative and quantitative analysis of the phenomenon, it provides for the most revealing hidden relations of economic phenomenon, being as the most advanced tool. Models were developed and used to structure the examination of options available as a result of amending the existing restrictive legal framework on air transport services in Moldova.

By definition, there can be no common point of view regarding a process shaped within the industry concerned - all views will be different. In these circumstances we must recognize that any model will serve as a compromise between the objectives to be achieved and the tools available for this process.

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