TESTIMONY OF RICHARD B. HIRST
EXECUTIVE VICE PRESIDENT AND CHIEF LEGAL OFFICER
DELTA AIR LINES

BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE

JUNE 3, 2015

INTRODUCTION

Chairman Hensarling, Representative Waters, and members of the Committee, on behalf of Delta Air Lines and our hard-working employees, I want to thank you for giving me the opportunity to testify regarding the continuing need for strong congressional action to prevent the Export-Import Bank of the United States from causing harm to U.S. airlines and their employees. All of us at Delta appreciate the Committee's use of its time and resources on these important issues.

Almost a year ago, Delta's Chief Executive Officer, Richard Anderson, testified before this Committee regarding the harms inflicted on U.S. airlines by the Bank's practice of providing loan guarantees to subsidize foreign airlines' purchases of wide-body aircraft. We are resubmitting Mr. Anderson's testimony as an attachment to mine because Delta's position regarding the Bank has not fundamentally changed. We still believe that competition for the business of international airline passengers should take place on an even playing field. We still believe that the Bank's policy of subsidizing our foreign competitors tilts that playing field, harming U.S. companies and their workers. In addition, developments in the last year show even more clearly that Congress must – and only Congress can – put a stop to the continuing subsidies that the Bank continues to provide to foreign airlines by deploying the full faith and credit of the United States to support their aircraft purchases.

Among other things, the Bank has continued its massive support of foreign airlines, providing them with $6.8 billion in Treasury-backed loan guarantees in fiscal year 2014. It has also continued its embrace of our state-owned and state-supported competitors, such as Emirates – companies that already receive market-distorting assistance from their own governments and do not need more from the United States. It has refused to give any substantive consideration to the economic impact of its actions, and has instead adopted procedures designed to frustrate any such review. Recent rulings from Delta's long-running litigation against the Bank make clear that the courts will not rein in the Bank. Congress must now act to do so.

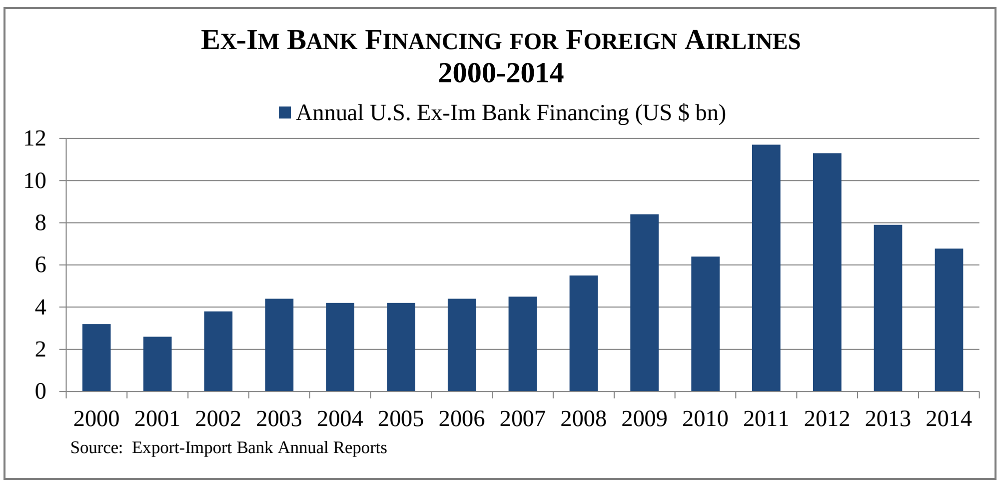
If the Bank is to be reauthorized, it can only be in the context of meaningful reform – reform that strictly limits the Bank's role to serving as a lender of last resort where private financing is not available. That is the role that Congress contemplated for the Bank when it provided that "the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital."[1] By removing the Bank's authority to compete with private sources of financing, Congress can ensure that the United States leads the world in reducing government subsidies through export financing. Our exporters, including Boeing, can and should win

[1] 12 U.S.C. § 635(b)(1)(B)(ii).

business on the merits of their products in free and fair competition rather than by relying on government aid. Such decisive and immediate congressional action, moreover, can revitalize international negotiations over aircraft financing that have been stalled for years.

THE BANK SUBSIDIZES OUR FOREIGN COMPETITORS

As Mr. Anderson's detailed testimony explained last year, the Bank's aircraft financing program allows foreign airlines to receive loan guarantees backed by taxpayer dollars for their purchases of wide-body aircraft. Because they allow those airlines to borrow at below-market rates, those guarantees are subsidies, plain and simple – as the Government Accountability Office has recognized,[2] though the Bank has long denied it. Loan guarantees to foreign airlines, moreover, have long been the mainstay of the Bank's business. Over the past five fiscal years, an astonishing 46% of the Bank's total financial exposure has been devoted to air transportation. In 2014, the Bank reported that it had almost $51 billion in outstanding loans and loan guarantees solely for air transportation.[3] No other sector in which the Bank operates comes close to these amounts. As the chart below shows, the Bank has issued hundreds of aircraft loan guarantees worth billions of dollars in the preceding decades.



Taking into account the spike in transactions in 2011 and 2012 as airlines sought to have financing approved under the previous, lower rate structures, the Bank's volume of business remains at historic levels. The Bank's subsidies to our foreign competitors remain enormous, including Treasury-backed guarantees of approximately $6.8 billion for 20 transactions in 2014. Considered over time, the Bank's guarantees have reached well into the billions of dollars for a host of foreign airlines. All or most of the airlines on this list can readily access commercial financing markets when purchasing aircraft. The list includes some of the most profitable

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[2] *See* U.S. Government Accountability Office, *Export-Import Bank: Recent Growth Underscores Need for Continued Improvements in Risk Management*, at 21-22 (Mar. 2013), *available at* http://www.gao.gov/assets/660/653373.pdf.

[3] 2014 Annual Report, *Export Import Bank of the United States*, at 62 (Exhibit 8) ("Ex-Im 2014Annual Report"), *available at* http://www.exim.gov/sites/default/files/reports/annual/EXIM-2014-AR.pdf.

airlines in the world. For instance, Emirates reported 2014 profits of $1.2 billion,[4] Ryanair reported 2014 profits of $944 million,[5] Turkish Airlines reported 2014 profits of $845 million,[6] and Korean Air reported 2014 profits of $355 million.[7]

TOP AIRLINE RECIPIENTS OF EX-IM FINANCING 2000-2014

Rank	Airline	Ex-Im Financing (millions)
1	Ryanair	$6,033
2	Air India	$5,216
3	Korean Air	$4,998
4	Emirates	$4,206
5	LATAM	$4,205
6	Cathay Pacific Airways	$3,403
7	Air China	$3,289
8	Turkish Airlines	$3,070
9	Ethiopian Airlines	$2,578
10	Thai Airways Intl Ltd.	$2,173
11	WestJet Airlines	$1,935
12	Virgin Australia	$1,844
13	KLM Royal Dutch Airlines	$1,769
14	Air Canada	$1,586
15	China Airlines	$1,503
16	Jet Airways Ltd.	$1,433
17	Asiana Airlines	$1,379
18	Kenya Airways	$1,379
19	Copa Airlines	$1,336
20	Norwegian Air Shuttle ASA	$1,298

Emirates – which has received $4.2 billion in Treasury-backed loan guarantees since 2000 – is perhaps the best example of unneeded ExIm assistance. In 2014, Emirates ranked highest in the world in widebody capacity. It has ready access to private financing, boasts $5.5 billion in cash reserves,[8] reported operating profits of $1.2 billion last year,[9] and is exempt from a range of

[4] The Emirates Group Annual Report: 2014-2015, at 4 ("Emirates 2014-15 Annual Report") (assuming a 1 AED to 0.27 USD conversion rate), *available at* http://www.theemiratesgroup.com/english/facts-figures/annual-report.aspx.
[5] Lewis Dean, *Ryanair results: Irish airline profits soar to £613m after increase in passenger numbers*, Int'l Business Times, May 26, 2015, *available at* http://www.ibtimes.co.uk/ryanair-results-irish-airline-profits-soar-613m-after-increase-passenger-numbers-1502906.
[6] Turkish Airlines, *Turkish Airlines recorded 845 million USD net profit, 638 million USD operating profit in 2014* (Feb. 2, 2015), *available at* http://www.turkishairlines.com/en-int/corporate/press-room/press-releases/press-release-detail/turkish-airlines-recorded-845-million-usd-net-profit-638-million-usd-operating-profit-in-2014.
[7] Ellis Taylor, *Korean Air swings to big operating profit in 2014*, Flightglobal (Feb. 12, 2015), *available at* http://www.flightglobal.com/news/articles/korean-air-swings-to-big-operating-profit-in-2014-408973/.
[8] Emirates 2014-15 Annual Report at 4 (assuming a 1 AED to 0.27 USD conversion rate), *available at* http://www.theemiratesgroup.com/english/facts-figures/annual-report.aspx.

taxes in its home jurisdiction, making it a formidable competitor even when it borrows at unsubsidized rates. Emirates has publicly stated that it has used Ex-Im financing for 12% of its entire Boeing fleet.[10] In the last few years, Emirates received an Ex-Im loan guarantee worth $297 million in December 2011,[11] another worth $436 million in November 2012,[12] and another worth $284 million in January 2014.[13] It has also applied for another guarantee just this past month.[14] Each subsequent loan guarantee comes with a subsidy courtesy of U.S. taxpayers – a subsidy that Delta estimated last year was worth $20 million per plane, as the chart below demonstrates. Emirates is able to use these immense savings to compete aggressively with us and with other American carriers, cutting ticket prices and adding capacity on already competitive international routes.

ExIm Subsidies Benefit Foreign Carriers; Harm U.S. Airlines

In 2012 and 2013, Emirates conducted both ExIm-backed and market-based (EETC) financings. The benefits of using ExIm support are highlighted in the chart below.

	Emirates **ExIm** (June 2012)	Emirates **Market*** (June 2012)	Emirates **Market*** (June 2013)
Type and Number	2 Boeing 777s	4 Airbus A380s	4 Airbus A380s
Coupon	2.00%[1]	5.48%[2]	5.48%[2]
Loan-to-Value	80%[3]	66%	69%
Loan-to-Value Price Adjustment	0%	.69%	.54%
Annualized ExIm Fees	1.41%[4]	0%	0%
Total Annual Rate	**3.41%**	**6.17%**	**6.02%**

Emirates saves approx $20m per plane by using ExIm

*EETC through a lessor to fund four A380 aircraft.

1 2.00% is actual rate from 6/18/12 ExIm bond. Average life was 6.12 years, similar to the EETC of 5.7. In July 2012 Emirates issued another ExIm bond at 1.55% coupon, but with a shorter average life of 4.93 years (which based on yield curve would be expected to be lower rate).

2 5.48% is blended average coupon of the A/B tranches as priced on 6/21/12 and 6/24/13. The issuer of the EETC was "Doric Nimrod Air Finance Alpha" and "DNA Alpha but the credit was Emirates'.

3 Assumes 80% LTV, maximum allowed for a Risk Category 1 credit.

4 141 bps is average quarterly MPR for Risk Category 1 credit from the beginning of the 2011 ASU up to and including the July 2012 quarter.

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[9] *Id.*

[10] Emirates Airline, *Airlines and subsidy: our position* at 14 (2012), *available at* http://www.emirates.com/english/images/airlines%20and%20subsidy%20-%20our%20position%20new_tcm233-845771.pdf.

[11] 2012 Annual Report, *Export-Import Bank of the United States*, at 40, *available at* http://exim.gov/sites/default/files/reports/annual/exim_2012annualreport.pdf.

[12] 2013 Annual Report, *Export-Import Bank of the United States*, at 37, *available at* http://archive.exim.gov/about/library/reports/annualreports/2013/annual-report-2013.pdf.

[13] Ex-Im 2014 Annual Report at 49.

[14] Export-Import Bank of the United States, *Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088934XX*, Public Notice 2015-0009, 80 Fed. Reg. 25,290 (May 4, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-05-04/pdf/2015-10250.pdf.

The Bank Ignores the Effect of Its Subsidies on U.S. Airlines

When Congress last reauthorized the Bank in 2012, it incorporated several reforms, including an requirement that the Bank give public notice and respond to comments on certain large exports – those exceeding $100 million in value – that "may be used to . . . provide services in competition with . . . the provision of services by a United States industry."[15] Combined with the Bank's long-standing statutory obligation to "take into account any serious adverse effect of [any] loan or guarantee on the competitive position of United States industry . . . and employment,"[16] those new provisions should have signaled clearly to the Bank that it should give serious consideration to the economic impact of its subsidies on U.S. airlines and their employees. Indeed, in theory, the Bank agrees that is required to consider such impact. In practice, however, the Bank applies a set of procedures it calls "screens" that exclude any such harm from substantive consideration. As Mr. Anderson explained in his testimony last year, those screens "function in the vast majority of cases to allow the Bank to approve guarantees without ever having to give serious consideration to their effects on U.S. airlines."

Since that time, it has become clear just how the Bank designed its new screening and analysis procedures – and why they function as they do. In November 2014, after delaying for years, the Bank finally released documents in response to a Freedom of Information Act request from Delta's counsel. Those released documents show that the Bank designed the majority of its screens with the help of Boeing and with the deliberate purpose of excluding the vast majority of commercial aircraft transactions.[17] Policy analysts at the Bank reached out to a senior manager in Boeing's "Airline Financial Analysis" group to ask how long the economic impact analysis period should last. He explained that an 18-month period might end up "capturing too many customers" and "recommend[ed]" a shorter "rolling 12-18 month[]" period.

The newly released documents also show that the Bank asked for Boeing's help because it knew that most of the transactions would *not* go forward if they were subjected to detailed economic impact analysis. For example, Robert Morin, then the head of the Bank's Transportation Division and now its senior Vice President for Business and Product Development in Export Finance, wrote to Boeing employees that it was "important [to] establish the correct procedures" because "[s]ubjecting and applying other transactions to detailed analysis under economic impact procedures has had the effect of killing most of those deals." He added: "if Boeing expects Ex-Im Bank to continue supporting wide-body aircraft, we need to get this right."

The Bank's screens have had their intended effect of removing any possibility that the 2012 Reauthorization Act would seriously affect the Bank's subsidies to foreign airlines. Under the new procedures, the Bank has completed only one "detailed economic impact analysis" – that is,

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[15] Export-Import Bank Reauthorization Act of 2012 ("2012 Reauthorization Act"), Pub. L. No. 112-122, § 9, 126 Stat 350, 354 (codified at 12 U.S.C. § 635a(c)(10)(C)(ii)(I)).
[16] 12 U.S.C. § 635(b)(1)(B).
[17] *See* Timothy P. Carney, *Here are the emails between Export-Import Bank officials and Boeing officials*, Washington Examiner, Mar. 30, 2015, *available at* http://www.washingtonexaminer.com/here-are-the-emails-between-export-import-bank-officials-and-boeing-officials/article/2562276.

one transaction that passed its "screens."[18] The Bank thus has never analyzed the harmful effects on U.S. airlines of its transactions with its largest state-owned and -supported foreign airline beneficiaries, despite pledging billions of taxpayer dollars to these airlines. Indeed, the Bank has *withdrawn* more detailed economic impact analyses than it has conducted, including one withdrawn after the foreign airline modified a loan-guarantee application to fall within one of the Bank's "screens."[19]

The Bank also routinely provides financing to airlines without seriously considering whether that financing is necessary for Boeing to win a particular order. As an example, Emirates placed the largest-ever civil aircraft order with Boeing in November 2013,[20] an order which will generate work for Boeing for years, but canceled a multibillion-dollar order for 70 aircraft with Airbus this past summer.[21] There can be no doubt that Emirates is committed to the Boeing 777. Yet Emirates filed an application for financing with the Bank this past month and will receive a loan guarantee in the hundreds of millions of dollars. The bank even provides financing to all-Boeing airlines such as LOT, to which it issued a nearly $475 million loan guarantee, and Ryanair, which has received over $6 billion in Ex-Im financing despite only operating Boeing narrowbody 737s. To be clear, the decision to maintain a fleet of one aircraft type is strategic and long-term. These airlines are committed to this model because of the cost-savings they believe can be realized from a simplified maintenance and operations structure. A deviation from that model to purchase Airbus would destroy their strategic advantage and send costs spiraling. For such airlines, there is no meaningful competition from Airbus to justify the Bank's financing.

RECENT COURT RULINGS HAVE INDICATED THAT CONGRESS MUST TAKE ACTION

Delta has previously sought to enforce the Bank's statutory duties through several challenges to its actions. Recently, a federal court dismissed Delta's complaints against the Bank.[22] The Bank has treated those rulings as vindicating aircraft subsidies; but in fact they do nothing of the kind, and instead only underscore the need for Congress to act. In rejecting Delta's challenges, the court stated that "the Bank Act creates far more questions than it answers regarding how the Bank should implement the statutory scheme. Indeed, the obligations imposed on the agency by the Bank Act are, at best, modest and, at worst, riddled with gaps that must be filled by the

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[18] *See* Export-Import Bank of the United States, *Intent To Conduct a Detailed Economic Impact Analysis*, 78 Fed. Reg. 69,669 (Nov. 20, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=EIB-2013-0006-0010.

[19] *See* Export-Import Bank of the United States, *Intent To Conduct a Detailed Economic Impact Analysis*, 78 Fed. Reg. 66,929 (Nov. 7, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=EIB-2013-0006-0011; *see also* Export-Import Bank of the United States, *Intent To Conduct a Detailed Economic Impact Analysis*, 79 Fed. Reg. 57,930 (Sept. 26, 2014), *available at* http://www.regulations.gov/#!documentDetail;D=EIB_FRDOC_0001-0341.

[20] Emirates Airline, *Emirates announces largest-ever aircraft order*, Nov. 17, 2013, *available at* http://www.emirates.com/english/about/news/news_detail.aspx?article=1443077.

[21] Nicola Clark, *Emirates Cancels Major Order From Airbus*, N.Y. Times, June 11, 2014, *available at* http://www.nytimes.com/2014/06/12/business/international/emirates-cancels-major-order-from-airbus.html?_r=0.

[22] *See Delta Air Lines, Inc. v. Export-Import Bank of the United States*, No. 13-0192, 2015 WL 1421206 (D.D.C. Mar. 30, 2015); *Delta Air Lines, Inc. v. Export-Import Bank of the United States*, No. 13-424, 2015 WL 1424021 (D.D.C. Mar. 30, 2015); *Delta Air Lines, Inc. v. Export-Import Bank of the United States*, No. 14-42, 2015 WL 1424152 (D.D.C. Mar. 30, 2015).

Bank."[23] These gaps and ambiguities, the court concluded, gave the Bank near-total discretion about how and whether to consider economic impact.

The district court thus took the view that only Congress – not the courts – can impose any meaningful restrictions on the Bank's discretion, and that Congress had not yet done so either in the Bank's original statutory charter or in the 2012 Reauthorization Act. Delta believes strongly that the court misunderstood Congress's intent and that Congress meant the Bank's existing economic impact obligations to be real and substantive, with a remedy in the courts when the Bank has failed to comply. Nevertheless, the recent rulings demonstrate that current law is far too unclear, and that Congress must give clear instructions if the Bank is to operate under any real constraints at all. Indeed, the court invited just such instructions, stating that "as part of th[e] next reauthorization process, Congress will have another opportunity to clearly communicate to all interested parties what role it wants the Bank to play in financing aircraft transactions."[24]

NEGOTIATIONS TO ELIMINATE EXPORT CREDIT SUBSIDIES MUST BE PART OF REFORM – AND THE UNITED STATES MUST LEAD THE WAY

The other major avenue for reform that Congress attempted to introduce in the 2012 Reauthorization Act was to instruct the Treasury Department to undertake negotiations "with all countries that finance air carrier aircraft with funds from a state-sponsored entity, to substantially reduce, with the ultimate goal of eliminating, aircraft export credit financing."[25] Delta fully supported that initiative at the time and continues to support it today; negotiations to reduce export credit financing to zero are ultimately the best solution for both Boeing and U.S. airlines, as well as for air travelers worldwide, who will be the ultimate beneficiaries of the increased competition made possible by a truly level playing field. To date, however, there has been essentially no progress. When Mr. Anderson testified before this Committee, negotiations had not even commenced. That remains the situation today.

Delta believes that the only way to secure real movement on this front is for the United States to lead by example by sharply curtailing the Export-Import Bank's role in subsidizing aircraft exports. Doing so will create an immediate incentive to press our allies and trading partners to reduce their own subsidies, and will bolster our credibility when we do so. America has historically led the world as an advocate of free markets and open competition; it is well suited to lead the way in reducing aircraft export subsidies, and we already have partners in Europe that would like to see this issue addressed. Legislation that significantly reduces the Bank's role will ensure that the comfortable status quo is no longer an option.

Indeed, the present situation is a uniquely good time for such a move. Boeing – the principal domestic beneficiary of the Bank's aircraft financing program – is currently in extraordinarily strong competitive position. In 2014, Boeing delivered a record-setting 723 aircraft, breaking the previous year's record of 648 aircraft.[26] As of April 2015, it is on track to break 2014's record, with 250 deliveries in the first four months of this year, and with a production backlog of 5,667

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[23] *Delta*, 2015 WL 1424021, at *18.
[24] *Id.* at *2 n.1.
[25] 2012 Reauthorization Act § 11(a), 126 Stat. 357.
[26] The Boeing Co., *Orders & Deliveries, available at* http://www.boeing.com/commercial/#/orders-deliveries.

aircraft.[27] If Boeing maintains its current record-breaking production rate, it will still take seven-and-a-half years to complete the work it has currently lined up. And Boeing continues to generate new work at a rapid pace, having added 1,432 aircraft to its order book in 2014.[28]

Boeing's remarkably strong order book cannot be attributed to the Bank's help. Financing terms are generally unknown at the time that initial orders are placed. Boeing is able to achieve its success because it is a strong competitor that wins on the strength of its product. Airlines like Emirates buy Boeing planes because they fit with its business strategy; the Bank's subsidy is simply a bonus. That is why financial analysts at Goldman Sachs concluded last year that "[i]f the Export-Import [Bank's] charter is not renewed, we believe the overall impact [on Boeing] in the near-to-medium term would be fairly limited."[29]

REFORM OF THE BANK IS MORE IMPORTANT THAN EVER

It is clear that the instructions that Congress gave the Bank in the 2012 Reauthorization Act have not had any real effect upon it, legally or practically. Instead, the Bank has given them mere lip service. Similarly, the negotiations that Congress directed in order to end export credit subsidies were never seriously pursued, leaving in place a status quo unacceptable to U.S. airlines and their employees.

Delta understands that the Committee is giving serious consideration to the question whether to reauthorize the Bank at all. Consistent with our past position, we believe that significant, meaningful changes are required if the Bank is to be reauthorized. We believe that the most important reform this Committee can put in place is to subject the Bank to legally binding constraints that require it to serve only as a lender of last resort by clearly prohibiting it from expending Treasury funds or committing Treasury guarantees where private market financing is available. The Bank should not use Treasury loans or loan guarantees to subsidize creditworthy or state-owned or -supported enterprises.

Coupled with that prohibition – which will demonstrate America's commitment to leading an effort to end aircraft subsidies globally – Congress should reiterate its past directive that the executive branch actively pursue negotiations to achieve that end, and require regular reports on the progress of those negotiations. We believe it is much more likely that such negotiations will succeed once it is clear that business as usual is no longer an option.

CONCLUSION

Thank you for giving me an opportunity to reiterate and further explain Delta's position on why reform of the Export-Import Bank is needed. Delta believes that reforming the Bank offers a real opportunity for American leadership in support of the free market. I look forward to answering any questions you may have.

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[27] *Id.*
[28] *Id.*
[29] Goldman Sachs, *Equity Research – Global: Aerospace & Defense*, July 20, 2014, at 10.

TESTIMONY OF RICHARD H. ANDERSON
CHIEF EXECUTIVE OFFICER
DELTA AIR LINES

BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE

JUNE 25, 2014

INTRODUCTION

Chairman Hensarling, Ranking Member Waters, and members of the Committee, I want to thank you on behalf of the nearly 80,000 employees of Delta Air Lines for the opportunity to provide testimony about the need for substantial reform of the Export-Import Bank of the United States. I am here to testify about Delta's experience with the Bank, and in particular the harms caused to U.S. airlines by the Bank's widebody financing; but I first want to emphasize how much Delta and our employees appreciate the Committee's use of its valuable and limited time to examine the important issues raised by the Bank's financing practices.

President Franklin D. Roosevelt established the Export-Import Bank in 1934, when America was pulling itself out of the Great Depression. Worldwide capital markets as we know them today did not exist. Without the help of the U.S. government, foreign purchasers primarily operated on a local scale. The aviation industry was in its infancy, with fewer than 250 commercial planes in operation in the United States. The most advanced passenger aircraft at that time – Douglas Aircraft Company's DC-3 – had only 21 seats and took 15 hours to travel from New York to San Francisco. Today, the world is very different. We live in a global economy; foreign airlines now significantly compete with U.S. airlines on a global scale and have access to robust capital markets. The conditions that gave rise to the Bank's formation have long since passed.

Delta and other U.S. airlines have been raising concerns for some time about the Bank's use of billions of dollars in Treasury-backed loan guarantees to support foreign airlines' purchase of widebody aircraft. Many of those airlines are themselves owned or heavily subsidized by foreign governments. Emirates, for example, is owned by Dubai and receives benefits from that ownership that make it an extraordinarily strong competitor. The credit markets are well aware that Emirates is backed by Dubai's ruling family; it is not subject to corporate or income taxes; and it is not subject to a wide range of fees and excise taxes in the United Arab Emirates that are imposed on U.S. airlines in their home jurisdiction – fees and taxes that together make up over 20% of the average ticket price that U.S. airlines must charge for a domestic flight.

Yet Emirates is backed not only by *its* government, but also by our own. Delta has prepared an analysis, presented as part of my testimony today, that illustrates how the Bank's loan guarantees save Emirates as much as about $20 million in financing costs per plane under the Bank's current fee structure – and Emirates likely actually saved even more than that under the Bank's prior fee structure, which was in place when Emirates acquired the majority of its fleet. Although the Bank's and Emirates's lack of transparency makes it impossible to know the full magnitude of the Bank's subsidy to Emirates, that $20 million per-plane advantage alone suggests that Emirates is essentially getting a *free* additional widebody plane for every eight new planes it buys. That kind of deal is simply not available to airlines that must rely on market financing.

The Bank's subsidies have gone too far, and it is time for reform. We have proposed five measures that would help to reduce the Bank's impact on U.S. airlines. *First*, the Bank should be prohibited from financing widebody aircraft to airlines that are owned by foreign states, supported by foreign states, or creditworthy in their own right. Those airlines do not need U.S. government subsidies. *Second*, the Bank should be required to be completely transparent in its widebody aircraft financing – it is committing public money and it should do so in an open and accountable manner. *Third*, the Bank should be required to conduct a full economic impact analysis of every widebody aircraft transaction that it finances, to ensure that any harm to U.S. airlines and our employees is properly taken into account. *Fourth*, as part of that economic analysis, the Bank should be required to give affected parties (including Delta and other U.S. airlines) enough information and time that they can comment on the transaction; to consider those comments in its decision; and to provide a public, reasoned justification if it chooses to go ahead with the transaction after concerns have been raised. *Fifth*, and finally, Congress should reaffirm the directive it gave in 2012 that the Treasury negotiate with its European counterparts to eliminate widebody aircraft financing. Previous efforts to reduce the subsidies from export credit financing have not been enough, and the United States should lead the way to embrace market principles and eliminate government subsidies in this highly competitive industry.

THE STATE OF THE AIRLINE INDUSTRY

Delta is proud to be part of a group of U.S. airlines that are among the most innovative companies in the world. The product of more than 30 years of fierce competition in a deregulated market, U.S. airlines are capable of winning any fair competitive fight. But the competitive fight for international passengers is not fair. Instead, that fight is heavily tilted in favor of foreign airlines receiving government subsidies, both from those airlines' home governments, and – amazingly – from our own.

Traditionally, the U.S. government has fostered a policy of discouraging state-subsidized competition in the international aviation marketplace. By securing Open Skies Agreements with well over 100 nations, the U.S. government has replaced the highly regulated regimes of the past in which foreign governments, to the detriment of consumers and commerce, restricted entry and service levels to protect national flag carriers.

The Airline Deregulation Act of 1978 set the framework for those international Open Skies Agreements. That legislation recognized the importance of a level playing field by emphasizing the need for

> maximum reliance on *competitive market forces* and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital.[1]

That policy of maximum reliance on competitive market forces is still part of the government's core legislative mandates for air transportation policy today.[2] Likewise, the Department of Transportation has historically pursued Open Skies Agreements that reflect a policy of

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[1] The Airline Deregulation Act of 1978, Pub. L. No. 95-504, § 3, 92 Stat. 1705, 1706 (emphasis added).
[2] *See* 49 U.S.C. § 40101(a)(6).

"[e]nsur[ing] that competition is fair and the playing field is level by eliminating marketplace distortions, such as government subsidies" and an understanding that "national governments [that] continue to give their national airlines financial aid . . . . distort competition and deprive the aviation system and consumers of the benefits that greater cost efficiency and lower prices would encourage."[3]

Allowing U.S. airlines to compete in international markets free of government distortions is also consistent with the current Administration's policy to minimize the benefits afforded to and the impact of state-owned enterprises across international trade. Through the Trans-Pacific Partnership negotiations, for example, the Obama Administration has sought to achieve competitive neutrality, or an environment in which state-owned enterprises receive no competitive advantages beyond those enjoyed by private sector companies.[4] Past administrations have similarly acknowledged and attempted to minimize the impact of state owned enterprises as part of the U.S. government's free trade agreements.[5]

In spite of our government's stated goal to foster open markets free of state subsidized competition, U.S. airlines today face that very competition from our own government in the form of Ex-Im loan guarantees – subsidies that are both massive and unnecessary. The following chart shows the combined scope of that subsidy across the world's largest 20 state owned or supported airlines:

LARGEST 20 STATE OWNED OR SUPPORTED AIRLINES

International Widebody Capacity Rank (2013)	Airline	Ex-Im Funding
1	Emirates Airline	✓
6	Singapore Airlines	✓
11	Thai Airways International	✓
12	Qatar Airways	
17	Etihad Airways	✓
18	Japan Airlines International	✓
21	Turkish Airlines	✓
23	Air China	✓
24	Malaysian Airlines	
28	Saudi Arabian Airlines	
29	Aeroflot Russian Airlines	✓
31	China Eastern Airlines	
32	South African Airways	✓
33	Air New Zealand	✓
36	China Southern Airlines	✓
37	Air India	✓
38	TAP Portugal	
40	Finnair	
43	Ethiopian Airlines	✓
44	Pakistan International Airlines	✓

[3] *Statement of United States International Air Transportation Policy*, 60 Fed. Reg. 21,841, 21,843-44 (1995).
[4] *See* Congressional Research Service, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress* 46 (2013).
[5] *See*, *e.g.*, USTR, *United States-Singapore Free Trade Agreement*, ch. 12 (May 2003).

U.S. GOVERNMENT SUPPORT TO FOREIGN AIRLINES

For many foreign airlines, the U.S. government, through Ex-Im Bank, provides a significant subsidy. Over the past five years, an astonishing 47% of the Bank's total financial exposure has been devoted to air transportation.[6]

TOP AIRLINE RECIPIENTS OF EX-IM FINANCING 2000-2013

Rank	Airline	Ex-Im Financing (Millions)
1	Ryanair	$6,033
2	Air India	$5,216
3	Korean Air	$4,502
4	LATAM	$4,270
5	Emirates	$3,922
6	Cathay Pacific Airways	$3,258
7	Turkish Airlines	$2,900
8	Ethiopian Airlines	$2,282
9	Air China	$2,131
10	WestJet Airlines	$1,936
11	KLM Royal Dutch Airlines	$1,769
12	Virgin Australia	$1,705
13	Jet Airways Ltd.	$1,433
14	Asiana Airlines	$1,379
15	Copa Airlines	$1,336
16	Etihad Airways	$1,294
17	Lion Air	$1,124
18	Qantas Airways Ltd.	$851
19	Egyptair	$408
20	China Southern Airlines	$337

Most of those foreign airlines are creditworthy and do not need U.S. government support to finance their aircraft purchases on the private market; but the foreign airlines that receive Bank subsidies compete head-to-head with U.S. airlines on hundreds of international routes to and from the United States. A study commissioned and submitted to the U.S. Treasury Department by Delta in 2012 found that 90% of widebody aircraft financed with export credit in 2011 went to foreign airlines with medium- and low-risk credit ratings, all of which had a history of using private markets to finance aircraft purchases. The Bank uses the full faith and credit of the United States to make those foreign airlines stronger, healthier competitors – to the detriment of U.S. companies and their employees.

THE HARM TO U.S. AIRLINES AND OUR EMPLOYEES IS REAL

Ex-Im provides a tangible competitive advantage to foreign carriers. We have prepared an illustration of the difference between the financing available to Emirates Airline on the market

[6] 2013 Annual Report, *Export Import Bank of the United States*, at 50 (Exhibit 8) ("Ex-Im 2013Annual Report"), *available at* http://www.exim.gov/about/library/reports/annualreports/2013/annual-report-2013.pdf.

and the financing that it receives when it is supported by Ex-Im. Emirates is the world's largest operator of both the Boeing 777 (135 aircraft with 150 more on order) and the Airbus A380 (47 aircraft with 12 more on order). As of March 2014, Emirates had $4.5 billion in cash on hand;[7] last year, it generated an operating profit of $1.2 billion.[8] Despite Emirates's ability to leverage its strong financial position to obtain private-market financing, in the transaction described below we estimate that Ex-Im support under Ex-Im's current fee structure would have saved Emirates approximately 250 basis points by financing its aircraft with Ex-Im guarantees. Based on a $120 million loan with a 12-year term, that makes a difference of more than $20 million in cost-of-capital savings per aircraft.

EX-IM SUBSIDIES BENEFIT FOREIGN CARRIERS; HARM U.S. AIRLINES

In 2012, Emirates conducted both Ex-Im-backed and market-based (EETC) financings. The benefits of using Ex-Im support are highlighted in the chart below.

	Emirates **Ex-Im Financing (June 2012)**	Emirates **Market Financing* (June 2012)**
Type and Number	2 Boeing 777s	4 Airbus A380s
Coupon	2.00%[1]	5.48%[2]
Loan-to-Value	80%[3]	66%
Loan-to-Value Price Adjustment	0%	.69%[4]
Annualized Ex-Im Fees	1.41%[5]	0%
Total Annual Rate	3.41%	6.17%

EMIRATES WILL SEE SAVINGS OF $20.3M PER PLANE BY USING EX-IM AT THESE RATES.

*EETC through a lessor to fund four A380 aircraft. See Emirates's May 8, 2014 earnings release.

1. 2.00% is actual rate from 6/18/12 Ex-Im bond. Average life was 6.12 years, similar to the EETC of 5.7. In July 2012 Emirates issued another Ex-Im bond at 1.55% coupon, but with a shorter average life of 4.93 years (which based on yield curve would be expected to be lower rate).
2. 5.48% is blended average coupon of the A/B tranches as priced on 6/21/12. The issuer of the EETC was "Doric Nimrod Air Finance Alpha" but the credit was Emirates's. Avg. life 5.7 years.
3. Assumes 80% LTV, maximum allowed for a Risk Category 1 credit.
4. The adjustment to the total annual rate to reflect the loan-to-value ratio is an estimate derived from a regression analysis (using information about other public transactions) of the rate that would have been required to obtain market financing with an 80% ratio.
5. 141 bps is average quarterly MPR for Risk Category 1 credit from the beginning of the 2011 ASU up to and including the July 2012 quarter.

Our estimate of roughly $20 million in savings is based on two actual transactions that took place in June 2012: one in which Emirates financed 2 Boeing planes with Ex-Im's help, and one in which Emirates financed 4 Airbus planes on the open market. We know the terms of the market financing because those were publicly disclosed. We know some, but not all, of the terms for the Bank-guaranteed financing and have used those where available. We have also made an adjustment to the market rate to reflect the fact that with Bank support, Emirates was eligible for a higher loan-to-value ratio (80%) without having to pay the premium that would have been

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[7] The Emirates Group Annual Report: 2013-2014, at 4 ("Emirates 2013-14 Annual Report"), *available at* http://www.theemiratesgroup.com/system/aspx/download.aspx?id=tcm:409-1644932.
[8] *Id.*

necessary in the private markets. We note, however, that neither the Bank nor Emirates disclosed the actual loan-to-value ratio for the June 2012 transaction.[9]

The actual fees that Emirates paid the Bank itself were also not disclosed. For our illustration, we have estimated the fees under the terms of the 2011 Aircraft Sector Understanding ("ASU"). The 2011 ASU is a new agreement reached by the Organization for Economic Cooperation and Development that replaced an earlier 2007 ASU. It sets forth increased risk-based fees export credit agencies ("ECAs") are to charge, largely beginning in January 2013, in an effort to neutralize the effect of export credit. Because the 2011 ASU did not come into effect until January 2013, the subsidy Emirates *actually* received in its 2012 Ex-Im financing was almost certainly substantially larger. As our analysis shows, however, even taking the 2011 ASU fees into account, Ex-Im provides airlines like Emirates with substantial savings.

When viewed across its entire fleet, a multi-million dollar per-plane subsidy gives Emirates a significant competitive advantage. As of March 2014, Emirates operated 217 aircraft – 134 Boeing 777s, 2 Boeing 747s, and the rest Airbus.[10] Of those aircraft, Emirates purchased 51 Boeing 777s itself.[11] Emirates has publicly stated that the airline uses Ex-Im financing for 12% of its *entire fleet*,[12] which means that it used Ex-Im financing for about 26 – more than half – of the 51 Boeing 777s the airline purchased.

In addition, looking at purchased planes alone does not tell the full story. Emirates also operates 85 *leased* Boeing widebody aircraft.[13] It is common for leasing companies – even though they are themselves usually creditworthy and able to obtain financing from private sources – to receive Ex-Im loan guarantees for aircraft which they intend to lease to foreign airlines such as Emirates. Emirates does not disclose information about how its lessors finance the aircraft leased to Emirates, and does not include these aircraft in its export credit percentages. It is possible that the actual percentage of Emirates's Boeing fleet that has received Ex-Im financing is as high as 80%, including both owned and leased aircraft. We cannot give a number with certainty, but it is at least fair to say that the total number of Ex-Im financed planes operated by Emirates is significantly more than the 12% number that Emirates presents to the public. Further, because leasing companies compete with one another for Emirates's business, it is also fair to assume that all or nearly all of the Bank's subsidy is passed through to Emirates in the form of reduced payments on the aircraft it leases.

At the outer bound, if the full $20.3 million subsidy from our illustration is representative of Emirates's savings for all of its Bank-financed aircraft (purchased and leased) and if all of Emirates's leased Boeing planes are Bank-financed, Emirates may be receiving a total subsidy on all its Bank-backed Boeing aircraft of up to *$188.7 million* per year. To put that in

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[9] The adjustment to reflect the loan-to-value ratio is an estimate derived from a regression analysis (using information about other public transactions) of the rate that would have been required to obtain market financing with an 80% ratio.
[10] *Id.* at 56.
[11] *Id.*
[12] Emirates Airline, *Airlines and subsidy: our position* at 14 (2012), *available at* http://www.emirates.com/english/images/airlines%20and%20subsidy%20-%20our%20position%20new_tcm233-845771.pdf.
[13] Emirates 2013-14 Annual Report at 56.

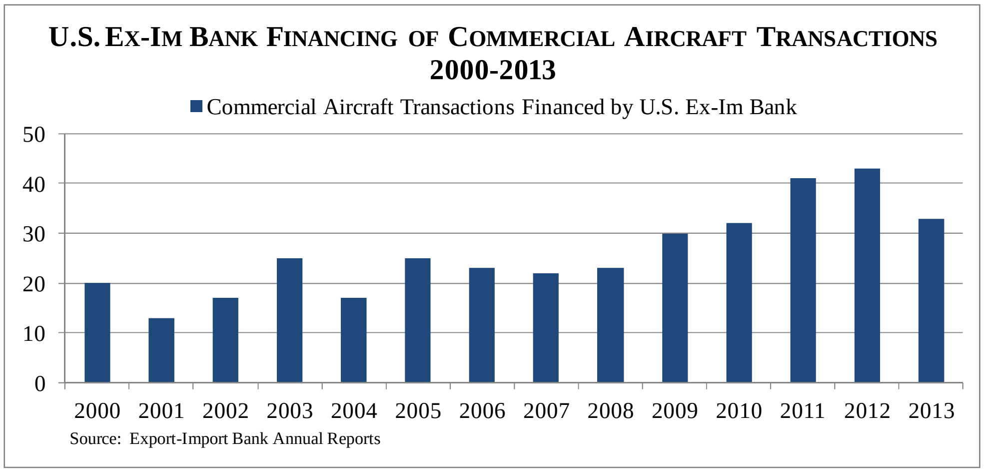
perspective, it means one free plane a year based on the savings in financing costs alone. If we make the more conservative assumption that half of Emirates's leased fleet is Ex-Im financed, Emirates still saves roughly *$116 million* per year – more than two free planes every three years. Further, because Emirates financed most of its fleet under the earlier, lower 2007 ASU fees, our estimates based on the 2011 ASU likely significantly *understate* Emirates's actual savings.

Emirates can devote a substantial portion of its Ex-Im sponsored savings to enhance its competitive position vis-à-vis U.S. carriers. For example, Emirates recently introduced service between New York's John F. Kennedy Airport and Milan, quickly surpassing the capacity of existing service providers on that route. As of mid-2013, before Emirates introduced this route, three U.S. carriers (Delta, United, and American) and Italy's flag carrier (Alitalia) offered service between New York and Milan. Emirates started non-stop service in November 2013, using a Boeing 777-300ER – a substantially larger aircraft than the aircraft used by the existing airlines – and offering more seats on this route than did any other airline. By April of this year, total capacity on the New York to Milan route was up 62%, based largely if not entirely on Emirates's Bank-backed entry. In short, the Bank has fueled Emirates's expansion, providing nearly $2.5 billion in loan guarantees to the state-owned airline since 2009, including one guarantee in 2013 for nearly $500 million and another in January of this year for likely well over $100 million. The Bank has issued these guarantees without regard to the impact of Emirates's international expansion on U.S. airlines and our employees.

Emirates is not the only beneficiary of Ex-Im's largesse. Since July 2012, the date after which Congress required the Bank to begin telling the public about the type of export at issue in its largest transactions, we estimate that the Bank has approved about 30 applications for widebody financing, many of which benefit our competitors. Etihad Airways has received nearly $1.3 billion from the Bank since 2009. This year, the Bank approved an approximately $1.6 billion loan guarantee to Aeroflot, the Russian-owned airline, through the Russian-owned leasing company VEB Leasing. And in September 2011, the Bank approved $3.4 billion to Air India to support that airline's purchase of 30 new widebody aircraft. Air India provides an especially revealing example of the Bank's disregard of the adverse impact its financial guarantees impose on U.S. airlines. Only two years earlier, Air India had used separate guarantees to secure below-market financing for the purchase of Boeing 777s and deploy them between JFK and Mumbai, in direct, head-to-head competition with Delta at significantly reduced ticket prices. Delta had no choice but to exit that market. I personally presented this problem to the Bank following the Bank's September 2011 deal, but my concerns fell on deaf ears. With its latest round of Ex-Im guarantees, Air India continues to take delivery of subsidized widebodies to this day.[14]

The Bank has claimed that the 2011 ASU is enough to solve the problem, but that is not the case. The Bank's activity in the aircraft market has not slowed since the 2011 ASU went into effect on January 1, 2013. Although the Bank's historical data shows a spike in transactions before that date – which likely reflected foreign airlines wanting to benefit from the old rates – the Bank since that time has approved 40 aircraft transactions,[15] on pace with its activity in prior years.

[14] *See* Boeing Orders & Deliveries, User Defined Reports, http://active.boeing.com/commercial/orders/index.cfm?content=userdefinedselection.cfm&pageid=m15527 (last visited June 19, 2014).
[15] *See* Ex-Im 2013 Annual Report; Export-Import Bank Meeting Minutes, *available at* http://www.exim.gov/newsandevents/boardmeetings/board/ (last visited June 20, 2014).



Such strong continued demand for Ex-Im financing alone demonstrates that a significant gap continues to exist between market and Ex-Im supported rates – otherwise, foreign airlines would have no reason to come to the Bank so often.

THE BANK IGNORES ITS STATUTORY OBLIGATIONS TO CONSIDER ECONOMIC IMPACT

Congress has long recognized that the Bank's activities can do more harm than good. In 1968, Congress required the Bank's Board of Directors to "take into account the possible adverse effects [of the Bank's loans and guarantees] upon the United States economy."[16] Since then, Congress has made numerous changes to the Bank's charter, but has always required the Bank to weigh the effects of its financing on the competitive position of American industries.

Indeed, the particular effects of the Bank's financing on U.S. airlines and our employees have featured in Congressional debates for nearly forty years, dating back to 1975, when the Senate Committee on Banking, Housing, and Urban Affairs received data from the airline industry about a $383 million loan to a "major competitor of U.S. airlines in the Pacific[]" that reduced its cost to purchase aircraft by "more than $7 million."[17] Responding to those and other concerns, Congress strengthened the Bank's mandate to consider economic impact, requiring the Bank to "take into account any serious adverse effect of [any] loan or guarantee on the competitive position of United States industry . . . and employment in the United States."[18]

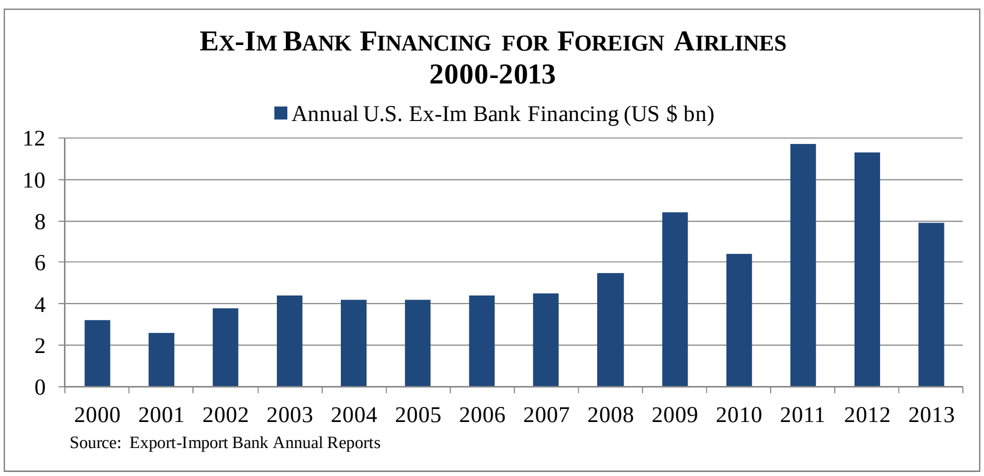
That requirement remains in force today, and it is supported by two additional provisions that Congress added later. Section 635a-2 requires the Bank to "insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries . . . and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States."[19] Finally, Section 635(e)(1) specifically prohibits the Bank from providing loans or financial guarantees for establishing or expanding the production of any commodity for export by another country if "the

[16] Export-Import Bank Act Amendments of 1968, Pub. L. No. 90-267, § 1(b), 82 Stat. 47, 47.
[17] S. Rep. No. 93-1097, at 7 & n. 1 .
[18] 12 U.S.C. § 635(b)(1)(B).
[19] *Id.* § 635a-2.

extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity."[20]

When it comes to widebody aircraft transactions, the Bank has consistently ignored those mandates. Indeed, the harm that the Bank has caused to U.S. airlines is only recently coming to light, and the full extent of that harm is still unknown. Delta became directly involved in this controversy in 2011, when we began working with the Air Transport Association of America ("ATA"; now Airlines for America) to challenge the Bank's support of its $3.4 billion transaction with Air India to support the airline's purchase of 30 Boeing widebody aircraft. Those guarantees allowed Air India – a foreign competitor known for aggressively competing with U.S. airlines – to purchase 30 Boeing aircraft, including 27 state-of-the-art Dreamliner aircraft.[21]

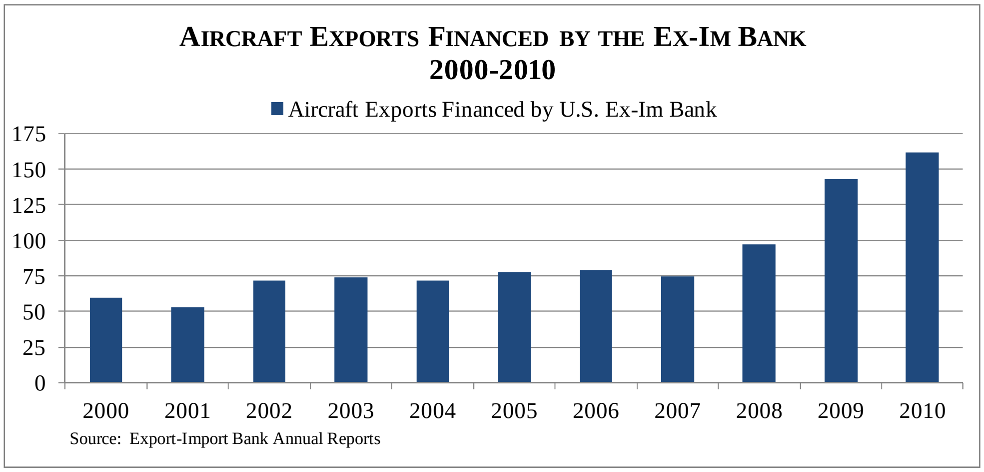
ATA, Delta, and the Air Line Pilots Association International ("ALPA") asked the Bank to rethink its massive support for Air India and consider the harm that transaction would do to U.S. airlines and our employees, but the Bank refused, and we filed a challenge to that action in federal court.[22] In the course of that action, we discovered that, since at least 2001, the Bank had been conducting *no* analysis of the adverse economic impact of its aircraft financing on U.S. airlines and our employees – the very requirement Congress enacted to force the Bank to review injury to U.S. airlines – while at the same time approving nearly $80 billion in loan guarantees to foreign airlines for the purchase of Boeing aircraft.[23] As the chart below shows, from 2000 to 2013, the Bank sent billions of dollars in guarantees to foreign airlines every year, peaking in 2011 at a staggering $11.7 billion. In no case did the Bank provide meaningful consideration to whether any of these commitments would harm U.S. airlines or our employees.



As further shown in the next chart below, those billions of dollars in government-subsidized loans helped foreign competitors like Emirates purchase over 950 new aircraft, at cheaper rates

[20] *Id.* § 635(e)(1).
[21] *Air Transportation Association of America, Inc. v. Export-Import Bank of the United States*, No. 11-2024, Dkt. No. 1, at ¶ 31 (D.D.C. Nov. 16, 2011) ("*ATA*").
[22] *See id*.
[23] Export-Import Bank Annual Reports, 2001-2013 ("Ex-Im Annual Reports"), *available at* http://www.exim.gov/about/library/reports/annualreports/.

than would otherwise have been possible.[24] To put that number in perspective, in 2011, only 721 widebody Boeing aircraft were in service in the *entire* U.S. air transportation industry (including 262 planes used for cargo, not passenger, service).[25]



In a notable series of transactions over the course of 2012 and 2013, the Bank authorized roughly $2.2 billion in loan guarantees to help five foreign airlines – including Emirates and Etihad, two state owned airlines that count among the fastest growing in the world – purchase numerous aircraft, again without providing any meaningful consideration of their impact on U.S. airlines.[26]

If the committee has any doubt about the Bank's refusal to analyze adverse economic impact, simply consider the Bank's recent admission, in response to a question from the Senate Banking Committee, that from May 2009 until February 2014 – a period covering thousands of transactions – it conducted detailed economic impact analyses for only 24 transactions and only a single one for an airline transaction (involving Aeroflot), which the Bank ultimately approved. Fortunately, the Bank's procedures received their first real scrutiny in over a decade when Congress, in the Export-Import Bank Reauthorization Act of 2012, instructed the Bank to "develop and make publicly available methodological guidelines to be used by the Bank in conducting economic impact analyses or similar studies."[27]

Forced back to the drawing board by the 2012 Reauthorization Act, the Bank put out new proposed economic impact procedures for public comment in September 2012, made them final in November 2012, and began applying them to transactions in April 2013.[28] Those rules are a colossal disappointment that disregard both the letter and the spirit of Congress's directions to the Bank in the 2012 Reauthorization Act. Instead of simply exempting all aircraft transactions

[24] We do not know how many of those 950 Bank-financed planes were widebody aircraft because the Bank did not disclose which of those financings were widebody aircraft and which were narrowbody. We also cannot give even total aircraft figures for 2011 or for later years, because in 2011 the Bank stopped making this minimal disclosure and currently does not disclose in its annual reports the total number of aircraft exports financed.

[25] *See Delta Air Lines, Inc. v. Export-Import Bank of the United States*, No. 13-424, Dkt. No. 39-2, at 1801 (D.D.C. Mar. 2, 2014) ("*Delta III*").

[26] *Delta III*, Dkt. No. 31-1, at 5-6.

[27] Export-Import Bank Reauthorization Act of 2012, Pub. L. No. 112-122, § 12(a), 126 Stat. 350, 357 ("2012 Reauthorization Act").

[28] 77 Fed. Reg. 59,397 (Sept. 27, 2012).

from any meaningful economic impact analysis as it had done since at least 2001, the Bank has now adopted a series of screens that – without *technically* excluding aircraft transactions from *all* economic review – function in the vast majority of cases to allow the Bank to approve guarantees without ever having to give serious consideration to their effects on U.S. airlines.

To give just one example, the Bank has adopted a policy of refusing to consider economic impact where a foreign airline represents that it will not use the *specific* planes financed by the Bank to compete *directly* with U.S. airlines on direct or one-stop, same-plane routes. Of course, everyone who has ever taken an international plane flight knows that this is a completely unrealistic view of the way airlines actually compete. Consider a simple example. Delta serves Dubai from Dallas via our hub in Atlanta. Emirates, on the other hand, offers a direct flight to Dubai from Dallas. In the Bank's view, Emirates and Delta do not compete at all for passengers between Dubai and Dallas because Emirates flies directly while Delta uses a connection. That is absurd. No industry experience is needed to know that Emirates can and does take passengers from Delta by offering direct routes using Bank-subsidized planes – all that is needed is common sense, or one look at any booking website on the Internet that displays both direct and connecting flights right next to each other.

OTHER AVENUES FOR CHANGING THE BANK'S POLICIES HAVE FAILED

Other efforts to move the Bank away from its policy of automatic support for foreign airlines have been similarly unsuccessful. For example, in the 2012 Reauthorization Act, Congress specifically instructed the Secretary of the Treasury to engage in negotiations "with all countries that finance air carrier aircraft with funds from a state-sponsored entity, to substantially reduce, with the ultimate goal of eliminating, aircraft export credit financing."[29] Delta fully agrees that negotiation to reduce aircraft subsidies is an excellent goal. An even playing field benefits everyone, and frees taxpayers from having to subsidize a race to the bottom between the Bank and the European export credit agencies.

Yet, despite Congress's unambiguous mandate to the Treasury, negotiations have not even commenced.[30] Still worse, the Administration has accepted the Bank's position that the fees *currently* charged for export credit financing of aircraft under the 2011 ASU – which were already in place *before* Congress directed the Treasury to engage in negotiations – will sufficiently discourage airlines from using the Bank to obtain subsidies.[31] As I've already explained, the behavior of foreign airlines tells a different story. If the Bank's financing did not advantage foreign airlines, they would not seek it out. But in fiscal years 2012 and 2013 – the first two full years after the ASU came into effect – the Bank authorized 75 commercial aircraft guarantees with a total value of more than *$19 billion*.[32] Moreover, by Delta's calculations, even accounting for the fees charged under the ASU, if U.S. airlines had access to the Bank's financing rates, their last eight aircraft financings comparable to those done by the Bank would

[29] 2012 Reauthorization Act § 11(a), 126 Stat. 357.
[30] *See* Treasury Report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on Export Credit Negotiations, at 1-2 (Nov. 2012) ("Nov. 2012 Treasury Report").
[31] *Id.* at 3-4. The Bank has also repeated this point many times. *See, e.g.*, Response One at 15-16.
[32] These calculations come from the Bank's annual reports, which may be accessed at http://www.exim.gov/about/library/reports/annualreports/.

have been almost $12.5 million less expensive on average. One particular transaction would have been over $70 million less expensive.

The Bank has likewise given short shrift to the requirements of the 2012 Reauthorization Act that were intended to ensure greater transparency and reliability in its transactions. For example, the Bank is now required to publish "a brief non-proprietary description of the purposes of the transaction[,] . . . the anticipated use of any item being exported, . . . [and] the identit[y] of the obligor."[33] Yet in cases where the Bank gives a loan guarantee to a lessor or other party to purchase a widebody aircraft that will then be leased to a foreign airline, the Bank refuses to disclose the identity of the foreign airline that will actually *use* the plane, making it virtually impossible to evaluate the competitive effect of the transaction. Similarly, the Bank is required to "provide to a commenter on [an] application" a "non-confidential summary of the facts found and conclusions reached in any detailed analysis . . . with respect to the loan or guarantee." But by construing the statute not to require a "detailed" analysis, the Bank has rendered this requirement a dead letter. Every time we have requested such a summary, the Bank has replied with a form letter stating only that it did not carry out a detailed economic impact analysis.

THE BANK'S COUNTERARGUMENTS ARE MISLEADING

In trying to justify its aircraft financing program, the Bank has made numerous inaccurate and misleading arguments. Consider its argument that its financing supports jobs here at home. Delta knows firsthand that the Bank's statements on this front are unreliable.

The Bank has repeatedly touted two deals it financed involving Delta TechOps and the Brazilian airline GOL, asserting that these guarantees "support[ ] an estimated 400 jobs at Delta TechOps, according to Ex-Im Bank's jobs-calculation methodology"[34] – which GAO has criticized.[35] Contrary to the Bank's public pronouncements, however, that financing did not support, much less create, a single job at Delta TechOps. The guarantees helped GOL to issue cheap debt in 2012, ostensibly to pay the costs of a Delta TechOps contract to provide maintenance service for GOL's narrowbody aircraft engines. The truth is that the contract was signed in 2010 and the Bank's support arrived only after the contract had been finalized, the work was underway, and payments were being made. If the Bank is willing to publicize a deal where it is so wrong on the facts, it raises the question of what the Bank is doing in the vast majority of transactions as to which it discloses little if any information. Worse, the Bank reported to Congress that the reason it approved these two guarantees was to "overcome maturity or other limitations in private-sector financing."[36] That statement is misleading (if not outright false) because it implies that GOL

[33] 2012 Reauthorization Act § 9(a), 126 Stat. 355.
[34] Export-Import Bank of the United States, *GOL Issues $41 Million Ex-Im Bank-Guaranteed Bond for Services Exported by Delta TechOps, MRO Division of Delta Air Lines* (Mar. 25, 2014), *available at* http://www.exim.gov /newsandevents/releases/2014/GOL-Issues-41-Million-Ex-Im-Bank-Guaranteed-Bond-for-Services-Exported-by-Delta-TechOps-MRO-Division-of-Delta-Air-Lines.cfm.
[35] United States Government Accountability Office, *Export-Import Bank: More Detailed Information about Its Jobs Calculation Methodology Could Improve Transparency* (May 2013), *available at* http://www.gao.gov/assets/660 /654804.pdf
[36] Export-Import Bank of the United States, *FY 2013 Long-Term Loans and Guarantee Authorizations*, at 32 (2013), *available at* http://www.exim.gov/about/library/reports/annualreports/2013/FY2013-long-term-guarantees-auth.pdf; Export-Import Bank of the United States, *FY 2012 Loans and Long-Term Guarantee Authorizations*, at 34 (2013), *available at* http://exim.gov/about/library/reports/annualreports/2012/files/exim_2012annualreport.pdf.

needed help to pay its bills or that Delta would have lost the deal without the Bank's support. In fact, the contract was signed in 2010 for a five-year term, and was being fully performed, without GOL's needing, seeking, or receiving Ex-Im support. Although the Ex-Im guarantees were nominally related to the 2010 TechOps contract, their actual effect was to provide GOL with low-cost working capital in 2012 and beyond. The Bank's statutory justification and motive to provide financing for a contract that was already in place, was proceeding in a normal commercial manner, and did not involve competition from a subsidized foreign competitor is not apparent to us.

Such misrepresentations are common currency with the Bank. To give a different illustration, the Bank has tried to deflect attention from its consistent support for foreign competitors by pointing to Delta's use of Brazilian and Canadian export financing. But this financing supports the purchase of *regional* jets used for purely short-haul routes. Our competitors on these routes are other American carriers, all of whom have equal access to the same kinds of financing. That level playing field has nothing in common with the Bank's unqualified support for our foreign competitors – support no American carrier has access to.

Also incorrect is the Bank's oft-repeated claim that if it does not support foreign airlines' purchases of Boeing aircraft, those sales will go to Airbus.[37] Many of these foreign airlines have committed to buying U.S.-made planes through private financing. Emirates is again a good example. According to Emirates's own figures, roughly half (25 of 51) of its purchased Boeing planes were privately financed[38] through a diverse range of sources, ranging from conventional bond offerings to Islamic financing.[39] Emirates, like many other airlines, has shown a strong commitment to Boeing – it placed the largest-ever civil aircraft order with Boeing this past November,[40] but recently canceled a multibillion-dollar order for 70 aircraft with Airbus.[41] Boeing itself has expressed confidence that foreign airlines will continue to buy its aircraft and "could find alternative funding sources" absent the Bank's financing.[42]

PROPOSED 2014 EX-IM REFORM

Congress should take the opportunity presented by the need to reauthorize the Bank to substantially and effectively reform the Bank's practice of financing our competitors. Delta and others have proposed five amendments that will ensure U.S. airlines and our employees are not put at a further competitive disadvantage through U.S. government subsidies to foreign airlines.

First, Congress should prohibit the Bank from financing widebody aircraft to creditworthy or state owned or supported airlines. These airlines can obtain financing on the private market and

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[37] *See, e.g., Delta Air Lines, Inc. v. Export-Import Bank of the United States*, 14-42, Dkt. No. 14-1, at 41-42 (D.D.C. Apr. 11, 2014).
[38] Emirates Airline, *Airlines and subsidy: our position*, at 14.
[39] *See* Airfinance Journal, *Treasury team of the year 2012: Emirates* (May 10, 2013).
[40] Emirates Airline, *Emirates announces largest-ever aircraft order* (Nov. 17, 2013), *available at* http://www.emirates.com/english/about/news/news_detail.aspx?article=1443077.
[41] Nicola Clark, *Emirates Cancels Major Order From Airbus*, N. Y. Times (June 11, 2014), *available at* http://www.nytimes.com/2014/06/12/business/international/emirates-cancels-major-order-from-airbus.html?_r=0.
[42] Doug Cameron, *Boeing Cites Jitters Over Airplane Financing From Ex-Im Bank*, Wall St. J. (Aug. 7, 2013), *available at* http://online.wsj.com/news/articles/SB10001424127887323477604578654180186390150.

therefore do not need subsidies from our government to do so. Although Boeing and the Bank claim that airlines prohibited from tapping Ex-Im for widebody purchases would purchase those aircraft from Airbus with European ECA support instead of from Boeing, we have yet to see any data to substantiate that claim. Indeed, the Bank's position that the Bank's subsidies are necessary to help Boeing prevail cannot be reconciled with its simultaneous assertion that under the 2011 ASU its rates do not provide an advantage over private financing. In any event, any jobs actually created or supported by the Bank's widebody guarantees to creditworthy or state owned or supported airlines are not more valuable than the pilot, flight attendant, and other jobs created by U.S. carriers flying international routes. The U.S. government should not be picking winners and losers in this complicated market, especially where many of these particular airlines already receive substantial benefits from their own governments.

Second, Congress should require the Bank to be 100% transparent in its widebody financings. Currently, the Bank is not required to – and routinely does not – disclose significant details about its widebody transactions, such as the number of widebody aircraft it plans to finance or the routes on which those aircraft will be deployed. In some cases, such as where the applicant is a leasing or similar shell company, the Bank does not disclose the expected end user of the widebody aircraft at all. As recently as the 1990s, by contrast, the Bank's annual reports disclosed the number and type of aircraft in its annual reports.[43] No sound reason exists to allow the Bank to keep confidential the details of its commitment of public funds.

Third, Congress should require the Bank to conduct a detailed economic impact analysis in *all* transactions involving widebody aircraft, and should prohibit the Bank's current practice of "screening" such transactions from review without giving them a serious, hard look. That practice is illustrated by the Bank's recent acknowledgment that, from May 2009 to February 2014, the Bank conducted only *one* detailed economic impact analysis for an aircraft transaction,[44] even though the Bank's annual reports and meeting minutes show that during that same time period it approved *173* transactions for the export of Boeing aircraft.[45] Further, we know from the Bank's prior practice that it also did not conduct *any* detailed economic impact analyses of aircraft from 2001 to 2009, even though during that same time period it approved 160 transactions for the export of Boeing aircraft. One out of 333 is not a credible attempt by the Bank to fulfill its statutory mandate.

Fourth, Congress should require the Bank, as part of its economic analysis of each widebody transaction, to give U.S. airlines and other interested parties enough information and time to comment on each transaction; to consider those comments in its decisionmaking process; and to provide a public, reasoned justification if it chooses to go ahead with a transaction after concerns are raised. As we have noted, the Bank has so far interpreted the notice-and-comment requirements of the 2012 Reauthorization Act so narrowly as to make them a dead letter. Congress should make clear that those requirements must be important and meaningful. Because the Bank has demonstrated a consistent unwillingness even to examine the strong evidence that

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[43] *See, e.g.*, 1999 Annual Report, *Export Import Bank of the United States*, at 20-27, *available at* http://www.exim.gov/about/library/reports/annualreports/1999.cfm.

[44] Responses to Questions for the Honorable Fred Hochberg, Chairman and President, Export-Import Bank of the United States, from Senator Toomey, at 29 (questions dated Jan. 28, 2014).

[45] *See* Ex-Im 2009-2013 Annual Reports; Agendas & Minutes of the Meetings of the Board of Directors (October 2013-February 2014), *available at* http://www.exim.gov/newsandevents/boardmeetings/board/.

its widebody transactions are hurting U.S. airlines and our employees, legislation is needed that requires the Bank to take that evidence seriously and to live up to its responsibility to refrain from using U.S. taxpayer dollars to create a net negative impact on U.S. companies and our employees.

Fifth, Congress should reaffirm the requirement in the 2012 Reauthorization Act that the U.S. government negotiate with European export credit agencies to eliminate widebody financing altogether.[46] In response to the 2012 Reauthorization Act, the U.S. Department of Treasury reported to Congress that it "will be in a position to further refine the ASU so that [ECA widebody financing] complements the commercial markets without crowding them out."[47] In light of the analysis presented in this testimony, it is clear that the 2011 ASU is insufficient. ECAs continue to provide a substantial benefit to our competitors unlike anything found on the private markets. Earlier in my testimony I referred to the U.S. government's long-standing policy to eliminate the effect of state subsidies on international competition and trade. If that policy is to have any meaning in the market for international air travel, the U.S. government must address the substantial adverse impact ECA subsidies continue to have on U.S. airlines.

CONCLUSION

Thank you for holding a hearing on this important issue and for giving me the opportunity to explain the need for reform at the Export-Import Bank. Delta believes that the changes we have proposed would help fulfill the U.S. policy of minimizing the influence of state-sponsored competition, allowing airlines to succeed in the international marketplace based on their competitive merit rather than relying on government subsidies. I look forward to answering any questions you may have.

[46] *See* 2012 Reauthorization Act § 11(a), 126 Stat 357.
[47] Nov. 2012 Treasury Report at 4.