

EU Regulation 712/2019 and the New EU Aviation Strategy

*Checkmate in two moves or another benign
failure?*



By

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Abstract

In the highly fragmented context of international fair competition the EU published in 2004 Regulation 868/2004, which, despite its best intentions of protecting EU carriers from unfair practices, has been deemed an utter failure. A decade later in 2015, the Commission published a new strategy for aviation which promised to level the playing field on two grounds, a legislative one with the revision of Regulation 868/2004 and a non-legislative one with the promotion of EU competition values via comprehensive agreements. This paper aims to evaluate the new Regulation 712/2019 revising and repealing the aforementioned one. Special attention is given to the interplay of said Regulation with the first post-2015 comprehensive agreement signed between the EU and Qatar, in an attempt to evaluate the new EU strategy. The analysis is conducted based on the text of the Regulation with the complementary usage of academic literary works where necessary.

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1. Introduction

It is perhaps the starting point of any competition discussion concerning international air transport to acknowledge the absence of an international legal framework to regulate it. Indeed, States around the world demonstrate varying opinions about what constitutes fair competition¹ and how to achieve a level playing field², a reality which has given rise to multiple claims and allegations. In that context, the 2015 White Paper³ produced by the three major US Carriers (Delta, United and American Airlines) claiming that the three biggest Gulf Carriers (Emirates, Etihad Airways and Qatar Airways) had received over \$40 billion in subsidies, raised some questions about the practices of the implicated states. In that same year, and allegedly following the concerns of certain European carriers⁴, the EU Commission published its 2015 “An Aviation Strategy for Europe”⁵, whereby special attention is given to achieving a level playing field for its carriers. This goal is approached in a pincer; by revising and repealing Regulation 868/2004 concerning protection against subsidisation and unfair pricing practices of third States on one hand, and by concluding comprehensive aviation agreements with important international partners on the other.

The elements of this approach are by no means new. Establishing a legal framework for unilateral remedial action against unfair aviation practices exists at least since 1974 with the US International Air Transportation Fair Competitive Practices Act (IATFCPA 1974)⁶. However, its European counterpart, Reg.868/2004 has been characteristically dubbed a “toothless tiger”⁷, with its inadequacy mandating its revision. On the other hand, the EU had already concluded by that time two comprehensive agreements with the US and Canada, which established a strong competition framework. What is novel, however, is the holistic approach of combining the two into a new dual strategy, whereby both elements work to complement each other in promoting an international level playing field, thus establishing a new approach to safeguarding fair international competition⁸.

The aforementioned revision birthed the new Regulation 712/2019, which amidst the Covid crisis has not been invoked yet. Consequently, it is the scope of this paper to examine the prospects of this new strategy to determine to what extent the EU is rightly equipped to combat unfair practices. This paper will first examine the improvements and drawbacks of the new Regulation and subsequently its place in a bilateral context. The context selected, is that of the EU-Qatar Comprehensive Air

¹ Gergely, Máté. ‘Fair Competition in International Air Transport’ Air & Space Law 45, no.1(2020):2-3

² Mike Tretheway n, Robert Andriulaitis ‘What do we mean by a level playing field in international aviation?’ TransportPolicy 43(2015)96–103

³ <https://fairskies.org/the-white-paper/>

⁴ Supra n.2 pg.96

⁵ Communiqué of the Commission SWD(2015)261 (final) [<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0598>]

⁶ U.S.C.49 Sec.41310

⁷ Opinion 2018/C 197/09 of the European Eco-Soc Committee, point 3.3.

⁸ Ibid, point1.3.

Transport Agreement, concluded in the same year as the Regulation. The “CATA”, is not only a result of the 2015 Commission strategy, but also seems to address certain of the concerns expressed as regards the Gulf carriers. As a consequence it offers a prime opportunity to evaluate this new EU approach.

2. Regulation 712/2019

2.1. Improving on the lessons of the past

The new Regulation⁹ has been unanimously dubbed a fundamental improvement on its predecessor. In seeking to boost its effectiveness, the EU has both widened its scope and the available tools for remediation. The threshold for initiating procedures has also been toned down significantly, supposedly facilitating its use. Lastly, it appears considerably better adapted to the bilateral system that governs international air transport. An overview of the main improvements of the new Regulation follows.

2.1.1. The Scope

As established in Article 1, the subject matter of Reg.712/2019 is “practices distorting competition between Union air carriers and third-country air carriers and causing, or threatening to cause, injury to Union air carriers”. A reading of this provision yields two major observations. Firstly, the scope has been expanded to include “practices distorting competition”, whereas such practices are further specified as discrimination and subsidies¹⁰. Subsidies (or “Subsidisation”) are given considerably expansive definitions¹¹ which other than a few discrepancies¹² are rather similar. Discrimination excluded as it was from the scope of the previous Regulation, is now given a dedicated definition¹³.

Another significant element of the new Regulation that widens its scope is that it no longer refers to cases where the injury derived from the aforementioned practices has already been caused. On the contrary, it may apply even in cases where no injury has yet occurred but where it is clearly forecasted to occur imminently as a causal result of such anti-competitive practices. It is noteworthy, however, that the injury invoked or the threat thereof needs to be clearly foreseen as imminent, with the new regulation dedicating a whole article fleshing out the specifics of how such an instance ought to be determined¹⁴.

⁹ Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport and repealing Regulation (EC) No 868/2004

¹⁰ Art.2(6)

¹¹ Art.2(9)

¹² Reg.712/2019 is more expansive in its non-exhaustive lists of examples

¹³ Art.2(8)

¹⁴ Art.2(7) and Art.12(2)

2.1.2. Evidential Threshold for Initiation of Procedures

According to Art.7 of Regulation 868/2004, proceedings may be initiated “*if there is sufficient evidence of the existence of countervailable subsidies [...] or unfair pricing practices [...], injury and a causal link*”. This high evidential threshold poses as one of the main reasons why no such complaints were ever lodged in the fifteen years until its repeal. Said burden has been significantly reduced by Regulation 712/2019, which only requires the submission of prima facie evidence of injury or threat thereof. Should such evidence be produced, the Commission may initiate an investigation on the allegations brought. This empowerment of the Commission is fundamental in establishing, in the absence of any international competition authority, the EU’s role towards an international level playing¹⁵.

The exact nature, however, of what constitutes sufficient prima facie evidence remains uncertain. Such uncertainty may prove a useful political tool in the hands of the Commission, but it also poses considerable risk to the credibility of the defensive mechanism established in the Regulation.

2.1.3. Redressive Measures

Regulation 868/2004 has been dubbed by some a “toothless tiger”, largely due to the ineffectiveness of its redressive measures. The latter were restricted to the imposition of financial duties, a clear influence of trade law, which ignored the intricacies of international air transport and its bilateral framework. Furthermore, it remained unclear how the value of such duties were to be calculated, given the difficulty of determining the extent of the benefits allotted to foreign carriers as a result of foreign subsidies and/or unfair pricing practices¹⁶.

The new Regulation has affirmed said approach, however enriching it with the option of further imposing operational measures. It is not entirely clear what this addition truly entails as it is used as an umbrella term with the only but a few examples given being just as vague (e.g. “suspension of concessions, of services owed or of other rights”).

What is clear, however, is the red lines that the EU has drawn as regards their extent. More specifically, such operational measures may not include the suspension of Traffic Rights granted by a Member State or violate any bilateral obligations¹⁷. These exclusions appear to considerably limit the extent of the operational measures, leaving in their wake an awkward confusion as to what options may then remain at the Commission’s disposal. It is interesting to note that said limitation to the afforded measures was the result of a compromise between the view of the three main EU bodies (specifically the Council was reluctant to accept a non-limited version)¹⁸, a fact which indicates the political considerations associated with such an instrument.

¹⁵ Andrea Trimarchi, *The EU External Aviation Strategy at a Crossroads - The New Regulation (EU) No. 2019/712 on Safeguarding Competition in Air Transport*, 68 ZLW (2019), p.585

¹⁶ *Ibid.* pg. 589

¹⁷ Art.14(5-6)

¹⁸ ACP views on the ongoing trilogue discussions regarding the new regulation [Brussels, 30/10/2018]

It is important to note that such measures are teleologically oriented in that they are meant to restore competition rather than impose punitive sanctions. To that end, the new Regulation establishes certain occasions, under which the redressive measures may be halted or even repealed. Such occasions pertain to the compliance of the third state responsible for the distortion of the level playing field, or to considerations through the scope of “Union Interest”. Their remedial nature is further reinforced by the explicit proportionality established¹⁹.

2.1.4. Bilateral Precedence

Regulation 868/2004 has been disregarded as incompatible with international bilateral agreements²⁰. In attempting to rectify this weakness, Reg.712/2019 makes due reference to the precedence of the dispute settlement mechanisms of ASAs, thus maintaining for itself an aura of a last resort, to be used only where such mechanisms have proven ineffective. Explicitly accounted for on several occasions in the preamble and duly respected throughout the main body of the Regulation, the significance of such mechanisms is placed at the forefront of the options afforded to the Commission. Consequently, the latter is granted ample room to negotiate and seek an amicable solution while observing the EU’s international obligations.

From another angle, however, it could be argued that said bilateral precedence may as well result in the new Regulation losing priority when considering the means available. Such a prospect would not be detrimental on its own (see the IATF CPA 1974 below for example), but could, somewhat ironically, lead down the same path of irrelevance that doomed its predecessor.

2.2. Unresolved Issues

Despite its many improvements, the new Regulation is not without weaknesses. In fact, due to its nature as a unilateral defense mechanism, it suffers from certain shortcomings, which may significantly increase the threshold for action by the Commission.

2.2.1. Extraterritoriality and Unilateralism

The EU’s capacity to export legislation and standards to its international partners is well known. However, such export relies on acceptance by such partner States. When exported unilaterally it is likely the case that the international community would resist such exports. One needs only mention the EU ETS and the heated outcry it incited in the international aviation community. In this case too, the EU seems ready to unilaterally enforce competition standards based on the new Regulation.

¹⁹ Art.15(4)

²⁰ Pablo Mendes de Leon & ICAO (EU/NA Office), Workshop Proceedings: Competition in Air Transport, (Policy Department for Economic, Scientific and Quality of Life Practices 2018)

R.Wish and D.Bailey identify two major elements upon which a State's extraterritorial jurisdictional competences to regulate competition may be based. Subject matter jurisdiction on the one hand refers to the competence of a state to establish a legal framework, whereas enforcement jurisdiction alludes to the competence of a state to enforce such legal framework²¹. An extraterritorial jurisdiction established on a legislative level may not cause conflict where no enforcement is attempted.

Enforcement jurisdiction on the other hand may be established based on three doctrines (single economic entity doctrine, implementation doctrine, qualified effects doctrine). The scope of Regulation 712/2019 seems to relate closer with the qualified effects doctrine whereby jurisdiction is assumed insofar as the effects of an unfair practice external to the EU has foreseeable, immediate and substantial effects on the internal market²². This was clearly demonstrated in the Commission's decision of 17th March 2017²³ pertaining to the Airfreight Cartel Case, and later upheld by the Court of Justice of the European Union²⁴.

Nonetheless, even where such enforcement jurisdiction is indeed established, resistance by third states is not preempted. In fact, it is often the case that a state perceiving an extraterritorial application as overreaching and infringing on its sovereign right to regulate its nationals may resist by passing blocking statutes or executive orders in order to counter such attempts. That is especially true in international competition law, where the definition of a level playing field or even its necessity for the international market is not shared among all States. By the aforementioned example of the Gulf States, their views on an international competition regulatory framework²⁵ renders them unlikely candidates to accept the export of EU competition values without adequate incentives.

On the other hand, the International Air Transport Fair Competitive Practices Act of 1974 ("IATFCPA 1974" or "the Act") has been deemed a highly useful tool at the disposal of the US Department of Transportation (DoT) for almost half a century, begging the question; what has rendered its extraterritorial application such a success? The question is in fact misleading; the value of the IATFCPA 1974 does not lie with its application, which has been astoundingly scarce, but with its deterrent value. In practice, the US authorities have been able to promote a diplomatic solution to occasional disturbances of the level playing field by employing the proverbial "carrot

²¹ Richard Wish & David Bailey, "Competition Law" (Tenth Edition), Oxford University Press, 2021, p.516

²² Case C-413/14 P Intel v Commission EU:C:2017:632

²³ Commission Decision C(2017) 1742 final relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on air transport (Case AT.39258 – Airfreight)

²⁴ CJEU PRESS RELEASE No 53/22 (30/03/2022) accessed via <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-03/cp220053en.pdf> (accessed on 10/02/2023)

²⁵ Supra n.1, p.9

and stick” approach, with the Act always at the ready to supplement unsatisfactory consultations.

However, the lesson learned from Regulation 868/2004 makes it evident that the threat of regressive measures alone is not sufficient. Indeed, the IATFCPA does in fact boast one more advantage; in the simplicity of its structure lies a strong discretionary power entrusted with the DoT, an approach which the new Regulation does not seem to follow. Where the new Regulation 712/2019 establishes a series of prerequisites before any procedure may begin, the IATFCPA only recognises the competence of the Secretary of Transportation to survey allegations of discrimination should they be deemed plausible. And where the Regulation restricts the ground for redressive action and adds caveats such as “union interest”²⁶, the IATFCPA is satisfied with a simple decision that discrimination exists to initiate consultations. That is not to say that the considerations mentioned in the IATFCPA would not in fact allude to a similar conceptual checklist as the Regulation, however those requisites, unlike the Regulation, are not given a mantle of mandatoriness, thus allowing for greater flexibility. In conclusion, the US defence mechanism shows a degree of versatility and directness which compliments the tangibility of its applicability, thus rendering it a real alternative to the amicable solution that it is meant to promote. The Regulation on the other hand appears more complex, a fact which may to some eyes grant a transparent credibility, but at the same time it undeniably stiffens its rigid applicability.

In conclusion, the Regulation’s applicability in a foreign jurisdiction appears uncertain where the EU’s competition values are not shared. On the other hand, even beyond the need for applicability, the value of the Regulation as a deterrent mechanism is questionable due to its cumbersome prerequisites, its many red lines but also in light of the long history of inadequacy that it carries with it.

2.2.2. Third State Compliance

One other concern, which has been carried over from the older Regulation 868/2004, is the question of the compliance of third states. Both subsidies and discrimination are given definitions which inextricably connect them to state practices. Such practices are not always transparent and it would be admittedly somewhat naïve to expect third states to facilitate any relevant investigation leading to redressive measures. Though Article 5(8) recognises the right of the Commission to extend the investigation to the territory of another state, where such state has consented, it leaves the subject of the practical feasibility of such a task almost entirely ignored.

There is a small caveat to this naivety in Article 9, pursuant to which, where important information are unavailable or withheld, the Commission may conclude the

²⁶ Which as per Art. 13 might be invoked to end all procedures without any redressive measures

investigation according to the available evidence. However, this is a provision that offers little in the way of ensuring the legitimacy of the conclusions drawn and the redressive measures derived thereof.

To some extent, the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, where an inter-State requirement to assist with evidence gathering is established, might offer a solution. However, it is an uneasy reality that neither said Convention, nor the overarching Hague Conference on Private International Law (HCCH) for that matter, find universal approval. It is characteristic that the latter, though composed of a respectable 91 Members (90 States and the European Union), does not in fact include States found at the forefront of unfair practices allegations such as Qatar and the United Arab Emirates²⁷. Even between member states to the treaty, cooperation might be strenuous at times, especially with national legislation often establishing restrictions to the disclosure of confidential competition information²⁸. As a consequence it is often the case, that States resort to bilateralism²⁹ to establish a common understanding in inter-jurisdictional cooperation.

3. A Novel Solution – The EU-Qatar CATA

The second part of the new EU strategy for international fair competition revolves around the establishment of a robust bilaterally agreed framework, by means of Comprehensive Agreements. To that end, the Commission had already since 2016 received the mandate by the Council to negotiate such agreements with ASEAN, Qatar, UAE and Turkey³⁰. Of those, the first two have by now been concluded, the third and fourth have been rejected by the UAE³¹ and Turkey respectively.

The focus of this paper follows the EU-Qatar CATA, the first one to be concluded after 2015. It is notable that the CATA encompasses a variety of different subject matters, from labour and social standards, to environmental declarations and, most importantly for our study, competition-safeguarding mechanisms. Qatar has always shown a certain degree of openness to international cooperation³², reportedly seeking an agreement with the EU from an early stage, mainly due to the opportunities the weighty EU market would offer.

²⁷ <https://www.hcch.net/en/states/hcch-members> (accessed 27/07/2023)

²⁸ *Supra* n.21, pg.518

²⁹ Multilateralism is also observed, though rarely, as is the case with the relatively recent Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities between the UK, Australia, Canada, New Zealand and the US of September 2020

³⁰ *Supra* n.7 point 5.3.

³¹ Antigoni Lykotrafiti, 'What Does Europe Do About Fair Competition In International Air Transport? A Critique of Recent Actions', *Common Market Law Review* 57 2020, pg.845

³² Characteristically, its state-owned national carrier, Qatar Airways, is the only one of the three major Gulf Carriers who is member to an international airline alliance, while its business model relies heavily in international investment and expansion (Qatar Airways holds considerable equity shares in airlines from Europe and Asia); Piraux, Nicolas. 'The competition challenges between the European airlines and the Gulf airlines and the strategies to implement in order to better face this competition'. Louvain School of Management, Université Catholique de Louvain, 2019, p.29

The CATA is of interest to this paper due to its striking similarities with Reg.712/2019, which appear to connect both in a manner that addresses our aforementioned concerns. Upon closer inspection, it becomes apparent, that both documents are on the same page in matters of competition. The analysis below will demonstrate those connections and the interplay that is derived thereof.

3.1. Definitions

Article 7 of the CATA deals with fair competition issues. It obliges all parties to “eliminate [...] any forms of discrimination and unfair practices” and to “not grant or permit subsidies”. Not only are such practices the subject matter of Regulation 712/2019, but also both terms are given definitions which bear a striking resemblance to the Regulation. As regards discrimination, the definition is the exact same, however Regulation 712/2019 further offers an expansive list of non exhaustive examples of discrimination. When defining subsidies on the other hand, some minor discrepancies may be observed, of limited significance in their majority. A noteworthy difference would be the explicit exclusion of “general infrastructure” as a form of subsidies, from the scope of the CATA; perhaps an EU compromise due to Qatar Airways’ reliance on efficient hub and spoke models, which are by nature infrastructure intensive.

The CATA, by following the paradigm of the EU definitions, has essentially placed both partners on the same page in matters of fair competition. More importantly, however, it has done so by means of a mutual agreement, thus creating a binding legal framework for both parties, an *acquis* of considerable significance in the fragmented world of international air transport competition. In other words, the EU in that instance has exported its standards not by means of a questionable extraterritorial application but by promoting a common understanding.

3.2. Transparency Mechanisms

Another novelty of the CATA, and one closely related to Reg.712/2019, is the transparency mechanisms and informational assistance established by Article 7. Pursuant to paragraph 4:

“The Parties shall ensure that each of its air carriers providing air transport services under this Agreement publicly issues, on at least an annual basis, a financial report and accompanying financial statement”,

Paragraph 5 takes informational cooperation one step further:

“Each Party shall, at the request of the other Party, provide [...] financial reports and any other information as may be reasonably available”

As mentioned above, though the investigation established in Reg.712/2019 may be extended to third countries, it is unclear how such states may be incentivised

to consent or even contribute to this investigation. This perhaps optimistic approach of the Commission is supplemented by the imposition of a transparency duty upon the contracting parties of the CATA. Based on such duties, not only are the financial dealings of Qatar Airways expected to be shared with the public on an annual basis, but Qatar may be required, to a reasonable extent, to share any further information as required by the Commission.

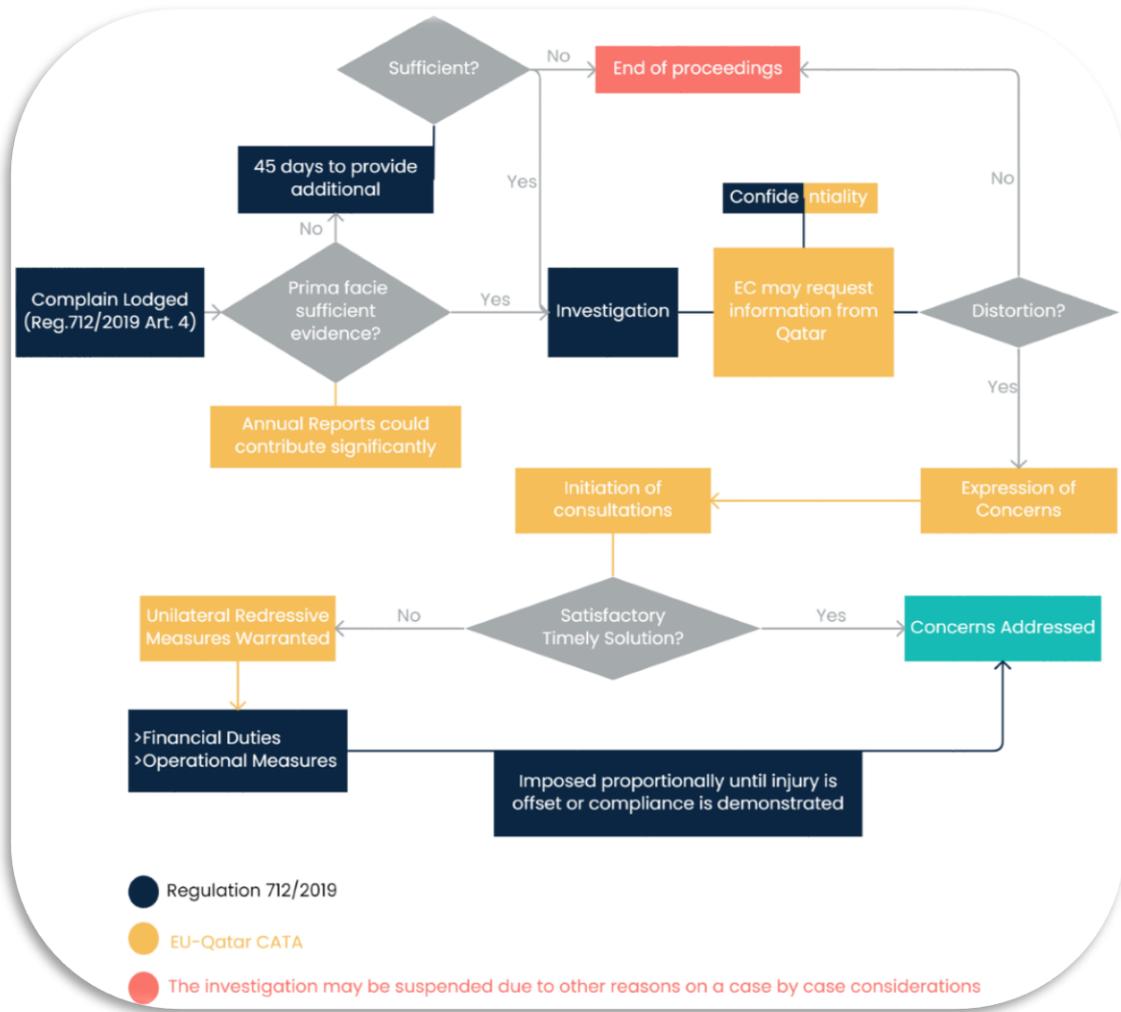
It is interesting to note, that both documents treat such information found at the disposal of the Commission with the utmost deference. Both Art.7(5) of the CATA and 8(1) of the Regulation explicitly establish the confidentiality of any sensitive information acquired. Especially in a highly competitive market such as that of air transport, the sensitivity of certain information ought to be respected; in assuring such confidentiality, the Commission attempts to alleviate any concerns impeding upon the willingness to cooperate.

Though undeniably an important success of the CATA, those provisions are by no means a panacea and their value may only be judged in due time. However, a particularly sobering situation may be observed already. The Qatari financial report published for the fiscal year of 2022, concerns the revenues and financial dealings of the entirety of the Qatar Airways Group³³, thus rendering the task of determining whether any subsidies have been acquired as daunting as searching for a needle in a haystack. It becomes apparent then, that though the obligations of the CATA are technically observed in that instance, their intended purpose is far from being fulfilled.

3.3. The Interplay of Enforcement Mechanisms

It has been established already that unlike its predecessor, Reg.712/2019 allows for a synergy with the bilaterally set dispute settlement mechanisms. The CATA indeed does establish one such mechanism in Article 7(8-9). Should the ensuing consultations fail to produce a mutually satisfactory solution within the specified timeframe, the CATA recognises the right of the concerned state to impose, subject to the principle of proportionality, any appropriate redressive measures it sees fit. Interestingly, this provision seems to allude to measures akin to the unilateral redressive measures afforded to the Commission by Regulation 712/2019. In essence, the interplay of the two documents appears to have coded an algorithm of steps to be taken in the hypothetical event that a complaint is lodged, as showcased in the following flowchart:

³³ Qatar Airways Group Annual Report Fiscal 2022 – English version – as may be accessed at <https://www.qatarairways.com/en/about-qatar-airways/annual-reports.html> [last visited 12/01/2022]



3.4. Conclusion

The Regulation and the CATA, both established at the same time, demonstrate a particularly fitting synergy on more than one levels. This synergy appears to be addressing the aforementioned shortcomings inherent to the defense mechanism of Reg.712/2019 in an appropriately fitting manner, while also supporting the effectiveness of the CATA by means of prioritizing a mutual solution, though a unilateral one may be resorted to should negotiations fall short. It ought to be mentioned that the recently signed EU-ASEAN CATA seems to have followed this new strategy in establishing fair competition clauses, transparency provisions and a dispute settlement mechanism³⁴.

4. Concluding Remarks - The Way Forward

As of yet, it is difficult to decisively assess the future of Reg.712/2019 and the new EU strategy. The Covid parenthesis and its immense repercussions for aviation shifted the spotlight and indeed the priorities of the EU elsewhere. It is only now, three years later, that the Regulation returns to the forefront of stakeholders' interests.

³⁴ https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_6125 [last visited 27/07/2023]

In that context and due to the absence of any developments, it remains unclear whether the aforementioned concerns regarding the Gulf Carriers may be satisfactorily addressed through it. However, there are two important observations to be made in that regard.

On the one hand, the interplay of the Regulation with the CATA may be for the most part meritorious for the new EU Aviation strategy, but it also appears to impede upon the Regulation's effectiveness. Relying on the bilateral system to address the inadequacies carried over from the failed Regulation 868/2004 would only weaken its successor's position, by depending its fruitfulness on the aptitude of the Commission to negotiate new comprehensive agreements, as well as on the willingness of its international partners to enter into such arrangements.

On the other hand, if we are to take into consideration the lessons of the IATFCPA 1974, the Regulation would find greater value as a deterrent or as a negotiations tool. However, its own complexity and many restrictions seem to drive it away from what has rendered the IATFCPA a success. The latter, though never used, has been hailed as a success due to its power to inspire compliance and/or promote diplomatic solutions, allegedly even resolving the aforementioned situation following the "Big3" White Paper. Its straightforward structure is integral to its efficacy, but it is a trait its European counterpart is missing. Whether the complexity of the Regulation gives it a transparency advantage should its application ever be challenged before the Court of Justice, or simply renders its success burdensome has yet to be determined in practice.

The new Regulation, in conclusion, is not (yet) the benign failure that its predecessor came to be. Its revised structure and improvements render it considerable more relevant to the modern reality of international competition in air transport. However, there are certain niches which remain yet to be explored. The uncertainty that lies in its details, augmented by the history of inadequacy of its predecessor is likely its biggest weakness. This uncertainty is not only academic as it also impedes on the credibility of its deterrent value. As for its interplay with comprehensive bilateral agreements, which could indeed offer a checkmate in two moves, it grants little in the way of independent credibility. As it stands now, its usefulness is on a limbo, needing a small nudge to fall in place; only via a successful implementation can the remaining doubts be dispelled. With the Covid distraction behind us, one can only hope that such a nudge will occur in the near future.