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BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE

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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

[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

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[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

[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.

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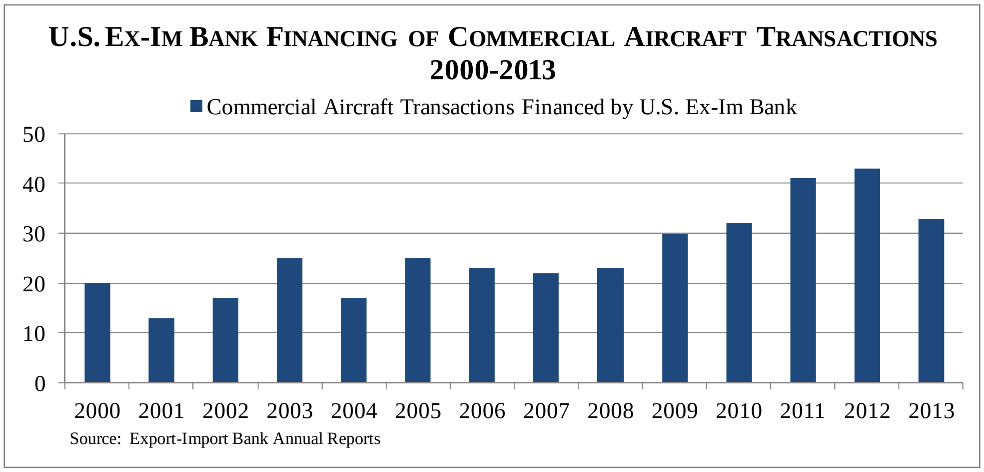
[14] *See* Boeing Orders & Deliveries, User Defined Reports, http://active.boeing.com/commercial/orders/index.cfm?content=userdefinedselection.cfm&pageid=m15527 (last visited June 19, 2014).

[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

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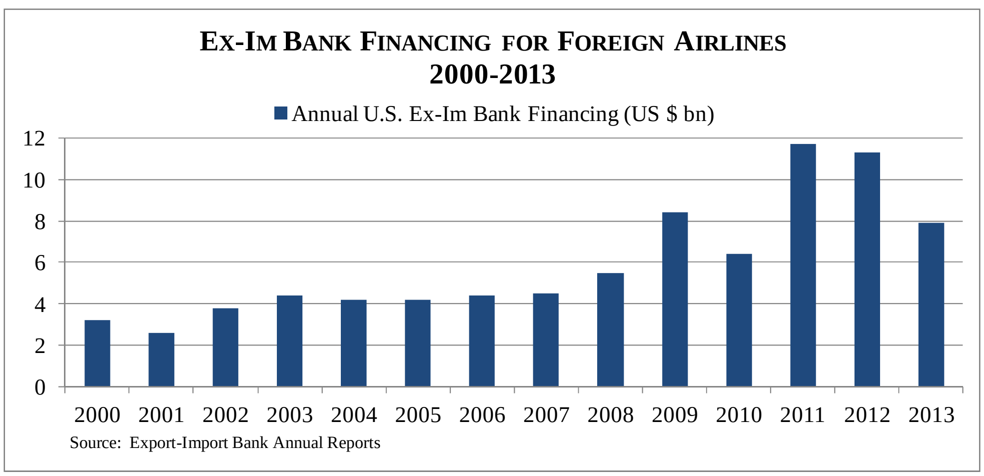
[16] Export-Import Bank Act Amendments of 1968, Pub. L. No. 90-267, § 1(b), 82 Stat. 47, 47.
[17] S. Rep. No. 93-1097, at 7 & n. 1 .
[18] 12 U.S.C. § 635(b)(1)(B).
[19] *Id.* § 635a-2.

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]

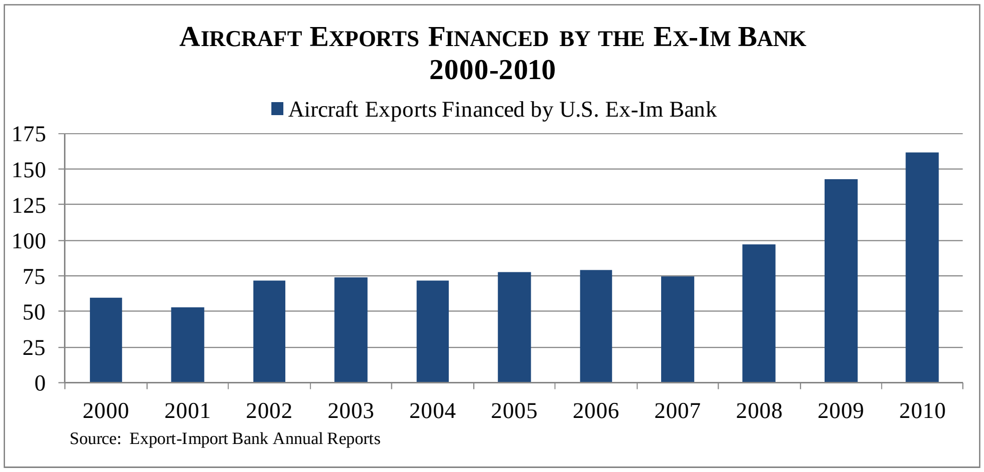
ATA, Delta, and the Air Line Pilots Association International ("ALPA") asked the Bank to rethink its massive support for Air India and consider the harm that transaction would do to U.S. airlines and our employees, but the Bank refused, and we filed a challenge to that action in federal court.[22] In 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

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[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

[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.