FOLATUR'S DECLARATION
"ANTICOMPETITIVE FORCES CONTINUE MOVING FORWARD: A NECESSARY UPDATE."

DECLARATION

Last November 30th, 2017 FOLATUR made public a Declaration undersigned by its member associations across the Latin American continent. In it, FOLATUR expressed its increasing worries about the successive and persistent evolution towards a less competitive scenario in the air transportation industry in Latin America, either in the air services themselves or in its distribution channel. *Joint Business Agreements (JBA´s*) and common and cross equity investments among airlines were concentrating the market and making it less challengeable; the expansion of IATA from usual activities pertaining to a trade group into financial, commercial and strategic areas, accompanied by its open support to increased concentration in the industry she herself represented via promoting *JBA´s* among its members, were not only damaging the competitive scenario in the airlines business itself but were also unfairly affecting the independent sales distribution channels in favor of vertically integrated airlines. IATA´s sponsored articles such as *"**Strategizing for Success**, joint ventures up the ante in terms of airlines relationships, potentially boosting consumer benefits"*[1] that appeared in its official website reflected the above mentioned pattern. The Declaration ended up with an extended description of the various ways IATA´s actions and some of its members were damaging rival distribution alternatives that only needed and demanded a leveled playing field to operate, for the benefit of consumers.

Furthermore, back on March 11th, 2013, when IATA filed with the United States Department of Transportation a petition to approve of its proposed Resolution 787 that intended to create what was then called a *"New Distribution Capability" (NDC)*, FOLATUR´s members participated in the discussion of its approval process, opposing it because it "**would reduce competition between air carriers and have a negative impact on the consumer. They further argue that the Resolution discriminates against independent sales and distribution channels…**"[2]. It was a premonitory concern that has regrettably been transforming into a reality that urgently needs to be corrected.

[1] http://airlines.iata.org/analysis/joint-ventures-help-airlines-deliver-choice-to-consumers

[2] Agreement among Member Carriers of the International Air Transport Association concerning an agreement (Resolution 787) of the Passenger Services Conference, US Department of Transportation, Order to Show Cause, Docket OST-2013-0048.

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The next big change that was to confirm the negative and common trend towards a less competitive environment, and related to all these other changes, was the announcement on January 14th, 2016 that LATAM AIRLINES was starting a process for the approval of *Joint Business Agreements* with American Airlines and IAG, owner of British Airways and Iberia, for air passenger and cargo traffic between South America and the United States and Europe, respectively, considering that American Airlines already had a *JBA* with IAG for air traffic between the United States and Europe. The circle was being closed …

***JBA´s*, IATA´s influence and its coordinating role in areas that went beyond those of a trade group and an increased vertical integration in airlines are all pieces of the same picture**. It is high time all relevant antitrust authorities intervene in this market to make it effectively more competitive, erasing artificial barriers where they might exist, punishing anticompetitive practices wherever they are and enabling competitive challenges to a dangerously too closed *"cozy club".* Refusing the approval of proposed *JBA´s* would just be a starting point; correcting the obvious discriminatory objective against independent distribution channels should be simultaneously done.

Finally, this discriminatory scenario is aggravated by the action of some IATA member airlines, which unilaterally lower the fees they pay to travel agencies, ignoring the contractual obligation imposed on them by Article 9 of Resolution 824 that contains the "Passage Sales Agency Agreement", which expressly establishes that "For the sale of air transport and auxiliary services performed by the Agent under this Contract, the Carrier shall remunerate the Agent in the manner and for the amount that is opportunely Express and communicate to the Agent by the Carrier. That remuneration in accordance with the Rules for Sales Agencies: will constitute full compensation for the services rendered to the Carrier. ". - Therefore, it is clear that the commission can not be zero. -
The ARGENTINE FEDERATION OF ASSOCIATIONS OF TRAVEL AND TOURISM COMPANIES sued LATAM Airlines, founding its claim in the aforementioned Resolution 824. The Argentine Justice recently accepted in a first stage, the precautionary measure of not innovating, ordering LATAM Airlines to continue paying to the travel agencies, the commissions in force as of March 1, 2017 (the date on which the commission goes to zero), until the merits of the claim are resolved. -
The result of the lawsuit against LATAM can establish a precedent worldwide. –

All these events described above are not random but respond to a clear pattern of making air transportation and its sales distribution competition less efficient under an apparently loosely coordinated platform of a trade group such as IATA, controlled by airlines themselves. Competition in the air transportation market is being retrenched via *JBA´s*; competition in the sales distribution channel where vertically integrated airlines in South America are frequently dominant in concentrated markets, is being retrenched via vehicles such as *NDC, IFSS (present day New Gen ISS)* and *GDS´s* related surcharges or content discrimination that pointedly weaken the independent distribution channel.

IATA´s financial and complementary role beyond that of a standard trade group has been shown quite clearly by LATAM AIRLINES, which has periodically informed to its shareholders since 2011, when referring to *IFSS (IATA Financial Settlement Systems, present day New Generation IATA Settlement Systems, or New Gen ISS*), that "***a reduction in term and implementation of guarantees has been achieved through these entities***" [3]. This is then the case of a trade group being deliberatively used for commercial purposes for the benefit of its associates and to the detriment of the independent sales channel that competes with them – vertically integrated - in the distribution sphere. The immediate consequence is that a competing sales channel is being burdened with bigger working capital due to shortened payment periods to be able to sell air transportation tickets, collectively coordinated under a trade group which only represents the interests of air transportation services providers. Along this same pattern, what could be reasonably expected of programs associated to *New Gen ISS* such as that one of *PCI DSS Compliance (Payment Card Industry Compliance)* which considers unilateral certifications from IATA that would allow - or not - a sales travel agency to generate an air ticket to be paid with credit cards? Why is it the case that under *New Gen ISS* IATA would be setting commercial terms to travel agencies such as the ability to sell air tickets based on the average of the three biggest monthly sales for the last twelve months? Why is payment security being privileged towards airlines under *New Gen ISS* conditions while at the same time the needed certitude for air travelers to be able to fly in case of airlines bankruptcy or ceasing of their air transport operations is being neglected?

Let us go back to basics: this trade group (IATA), central in *New Gen ISS*, is also the same trade group that has been actively promoting the adoption of *NDC* and the implementation of *JBA´s* and some of whose associates are charging for using *GDS´*s alternatives or restricting its contents, overtly favoring the use of *NDC,* against explicitly stated DOT authorization conditions. IATA looks after its member interests, but in so doing has ended trespassing antitrust principles to the detriment of consumers and independent distribution channels.

[3] LATAM Airlines Group US SEC Form 20 F, years 2011 to 2018, Financial Risk Management:"One of the tools the Company uses for reducing credit risk is to participate in global entities related to the industry, such as IATA, Business Sales Processing (BSP), Cargo Account Settlement Systems(CASS), IATA Clearing House (ICH) and banks (credit cards). These institutions fulfill the role of collectors and distributors between airlines and travel and cargo agencies. In the case of the Clearing House, it acts as an offsetting entity between airlines for the services provided between them. A reduction in term and implementation of guarantees has been achieved through these entities."

We should again stress that competition authorities´ interventions from the United States, the European Union and those from each one of our South American countries are well overdue.

SIGNED BY

ASSOCIATIONS OF TRAVEL AGENCIES AND TOUR OPERATORS MEMBERS OF FOLATUR

(LATIN AMERICAN TOURISM FORUM)

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AVAVIT - Venezuela
FAEVYT - Argentina
GMA- México

Asunción, Paraguay. April 11th, 2018

ANNEXES

(A) An anticompetitive pattern born out of strategy and discriminatory practices from dominant airlines grouped under IATA and its favored *Joint Business Agreements* policy should be becoming self evident from the following recent events or news.

1. ***Some excerpts from LATAM AIRLINES' President press interview promoting a world with less and more disciplined airlines, based on impossible to replicate business models, clearly explain its objective as an incumbent carrier but point in the wrong direction for consumers, moving away from competitive challengeable markets (January 2018)*** [4]***.***

   "We should continue advancing towards the existence of much less airlines in the world".

   "If there is no discipline, there could be an incredible price war".

   "In South America we are 400 million people, there is a lot of movement and the best placed company in this region to offer superior connectivity is LATAM. That is a competitive advantage impossible to replicate, because it is too complex for anyone to create a network such as this one".

2. ***The Economist' article over competition misgivings related to airlines joint ventures, incredibly led by their own trade group (IATA) (March 2018)***[5]*:*

   "IATA, a trade group for legacy carriers, claims that JV's do indeed lower fares. Recent studies suggest they do not – at least where room for new entrants is limited -. Several have found that fares in markets dominated by JV's have risen significantly relative to routes with none. The JV between American Airlines and British Airways (BA) in 2010 resulted in higher transatlantic economy fares at BA, whose home hub, Heathrow, is Europe's most congested airport. Barriers to entry are rising; 19 European airports will be as full as Heathrow by 2035…"

   "Regulatory hostility is growing."

   "Although JV's are falling out of favor with authorities, airlines are still keen on consolidation. With scale, "I don't think we're ever going to lose money again", American's boss recently proclaimed."

   It so happens that American Airlines, IAG – owner of British Airways and Iberia – and LATAM AIRLINES are now trying to get approval of *Joint Business Agreements* for air passenger and cargo freight between South America and the United States and Europe, respectively, from competition

[4] "Debiéramos seguir avanzando a que existan muchas menos aerolíneas en el mundo"; "Si no hay una disciplina puede haber una guerra de precios increíble"; "En Sudamérica somos 400 millones de habitantes, y hay mucho movimiento y la compañía capaz de ofrecer la mejor conectividad en esta región del mundo es LATAM. Esa es una ventaja competitiva irreplicable, porque es muy complejo para alguien montar una red como ésta"; Ignacio Cueto, Presidente LATAM AIRLINES, La Tercera, 7 de enero de 2018.

[5] "Come fly with me; Airline joint ventures"; The Economist, March 17th, 2018.

authorities in the United States (Department of Transportation, DOT) and domestic ones in the countries involved, along with European Union authorities from whom an approval should also be requested on due time. It should also be informative that IAG's biggest shareholder – Qatar Airways - is LATAM AIRLINES' second biggest shareholder, with a board seat and a shareholders' agreement with its controlling group – Cueto family -, and that American Airlines already has a *JBA* with IAG for air traffic across the Atlantic between the United States and Europe – the expensive JV for consumers The Economist previously referred to -[6].

3. ***The Economist's article over how Chinese booming aviation market – as it is the case with South America - should avoid granting immunity from antitrust rules to Joint Ventures, contrary to what has happened in more developed markets that have evolved into less competitive ones (April 2018)*** [7]***:***

   "In theory, passengers have much to gain from a deal of this sort. In practice, open-skies deals open the door to joint ventures (JV's), which are granted immunity from antitrust rules and so can potentially lead to higher prices. In 2006-16 the share of long-haul passenger traffic controlled by such JV's leapt from 5% to 25%. Three JV's account for almost 80% of the trans- Atlantic market. The established American airlines would love to team up with Chinese rivals in order to dominate the Pacific, too. Neither shutout nor carve-up is good for passengers. In an ideal world, Europe and America would seek open-skies deals with China but design them to nurture competition rather than mute it. Airline JV's would be barred from gaining antitrust immunity. Airport slots would be allocated more fairly, so that the best landing and take-off times were not hoarded. State handouts would be transparent. Alas, the chances of reaching such a sensible accommodation with China's airlines are low. Rising trade tensions between America and China are only part of the explanation. The real problem is that big Western carriers would not much like such policies either."

The emerging Chinese market nears 550 million passengers; that of South America and Mexico, 300 million. What is valid for China is also valid for South America, especially when considering how to support market structures that promote competition instead of weakening it.

4. ***European Union Commissioner for Competition Mrs. Margrethe Vestager's worries about increasing concentration and market power and lower competitive forces due to common ownership structures, exemplified by the common shareholders of the biggest US airlines, leaders themselves of air alliances covering international flights in South America (February 2018)*** [8]***:***

   "But those levels of concentration might not always reflect how competitive our markets really are. Because we generally assume that companies are basically independent – that the different

[6] On April 12th, 2018 IAG announced that it had acquired a 4.61% stake in Norwegian Air Shuttle ASA intended "*to establish a position from which to initiate discussions with Norwegian, including the possibility of a full offer for Norwegian*". A related article from Wall Street Journal tittled "BA parent mulls bid for Norwegian Air, as Trans-Atlantic budget travel booms" stated that "*With a Norwegian takeover, IAG would also increase its dominance of the lucrative New York to London market. British Airways is already the biggest player on that route, in partnership with American Airlines Group Inc., the No. 1 US carrier by traffic.*"

[7] "Dragons fly; Airlines"; The Economist, April 7th, 2018.

[8] "Competition in changing times", Mrs. Margrethe Vestager, European Union Commissioner for Competition, February 16th, 2018.

companies in an industry are owned by different shareholders. So those shareholders have just one goal in mind – for their own company to succeed, at the expense of its rivals. But that picture of our markets might not always be right. Because we're seeing signs that companies are getting more closely linked. That it's becoming more common for the same investors to hold shares in different companies in the same industry. And for those investors, fierce competition might not seem so appealing."

"In 2016, for example, an article in the Harvard Business Review showed how four investment funds were among the top seven shareholders of every one of the four biggest US airlines… We need to look closely at what actually happens – whether they can really get companies to compete less hard."

In the South American air transport market, team members from OneWorld air alliance as American Airlines, LATAM AIRLINES and IAG – British Airways and Iberia –, all potentially interdependent through proposed JV's coordinating supply and prices and sharing revenues across the continent, would have less incentive to compete with "cousin" alliance members working under corresponding JV's led either by United Continental (Star Alliance) or Delta (Sky Team). The tendency to have three major actors from these three air alliances competing under "friendly terms" would be connatural to the common ownership structure of which the European Union Commissioner is aware, much more so given the highly concentrated markets already existing in this emerging world.

5. ***Brazilian CADE (Administrative Council for Economic Defense) abrupt and incomprehensible change of opinion within less than a year period that should be better explained by corresponding authorities(November 2016 to October 2017)****:*

Back in November 2016 CADE stated that proposed *Joint Business Agreements* between LATAM AIRLINES and American Airlines and IAG for air passenger and cargo freight between South America and the United States and Europe, respectively, could not be approved because potential and at times unconvincing benefits were out-weighed by high market concentration and risks of rising prices coming out of increased market power and lack of effective competitive discipline. Moreover, no remedies that could make them partially operative were recommended, but just a plain rejection of these proposed *JBA's*.

However, in March 2017 and October 2017 the same CADE approved of the same proposed *JBA's* with IAG and American Airlines, respectively, with no restrictions attached. It is quite difficult to explain such a radical change for anyone minimally informed about air transportation markets in this area, the more so when competitive conditions in Brazil and the South American market had not improved at all in less than a year and were (are) not expected to be structurally improved in the near future, the less so with this kind of antitrust immunity over *JBA´s.*

6. ***Potential violations by major airlines vertically integrated against independent distribution channels of US Department of Transportation (US DOT) conditioned authorization over New Distribution Capability (NDC) and related financial matters***:

On May 21st, 2014 the US Department of Transportation approved of Resolution 787 of IATA that established a process for developing a technical standard for data exchange in the air transportation marketplace using Extensible Markup Language (XML). Resolution 787 additionally established certain goals associated with using the new technical standard, including capability to provide personalized pricing offers to consumers who shopped for air transportation. These goals were called the *"New Distribution Capability" (NDC)*. Resolution 787 explicitly stated that any cost attributable to this new business model, from IT research development to implementation/operation, would not be incumbent on Members who did not wish to adopt it. The ensuing approval of Resolution 787 from US DOT said that it did not constitute approval of any agreement among IATA member airlines regarding any method or business model of distributing air transportation, nor the approval of any restriction on the use of any channels available for the distribution of air transportation, including indirect distribution by other than airlines. Furthermore, it made clear its determination that consumers' ability to shop anonymously would not be undermined and that there was no approval of any agreement among IATA member airlines to require the disclosure by any passenger of personal information of any kind.

Clear enough for US DOT but apparently not for some airlines under IATA. Since September 2015 Lufthansa Group carriers have levied a per ticket surcharge of € 16 on *GDS´*s bookings. Effective May 2018, Lufthansa will sell its "best fares" exclusively through direct channels or via *New Distribution Capability* – enabled application programming interfaces. Other carriers, British Airways and Iberia (both owned by IAG, the one looking for *JBA* approval with LATAM AIRLINES and holder of a trans-Atlantic *JBA* with American Airlines), targeted spring 2018 to opt out of full content deals and introduced in November 2017 a € 9.5 *GDS* surcharge per flight segment. In April 2018, Air France - KLM started charging € 11 per flight segment for the same reason.

It is not irrelevant to note that these carriers belong to each one of the three international air alliances. This is a global tendency that will not stop unless authorities decisively intervene on these matters.

Furthermore, last August, 2017 LATAM AIRLINES informed all travel agencies in South America that they were to face new conditions after a 30 day notice period, mainly associated with the ownership and exclusive use by LATAM of all information and data related to LATAM services, unless authorized by it to third parties, supporting these novel terms on IATA's Resolution 824 regarding Passenger Sales Agency Agreement and a unilateral right from LATAM to pay no commission for distribution services from third party independent agents[9][10][11].

[9] US Department of Transportation, Agreement among Member Carriers of the International Air Transport Association concerning an agreement (Resolution787) of the Passenger Services Conference, Order to Show Cause, May 21st, 2014, Docket OST-2013-0048.
[10] "Lufthansa to sell "best fares" exclusively through direct, NDC channels next month", The Beat ~ a travel business newsletter, March 14th, 2018.
[11] "Condiciones de ventas para agencias de viajes, Grupo LATAM, agosto 2017.

Complicating matters, IATA´s financial and complementary role beyond that of a standard trade group has been shown quite clearly by LATAM AIRLINES, which has periodically informed to its shareholders since 2011, when referring to *IFSS (IATA Financial Settlement Systems, present day New Generation IATA Settlement Systems, or New Gen ISS*), that "***a reduction in term and implementation of guarantees has been achieved through these entities***" [12]. This is then the case of a trade group being deliberatively used for commercial purposes for the benefit of its associates and to the detriment of the independent sales channel that competes with them – vertically integrated - in the distribution sphere. The immediate consequence is that a competing sales channel is being burdened with bigger working capital due to shortened payment periods to be able to sell air transportation tickets, collectively coordinated under a trade group which only represents the interests of air transportation services providers. Along this same pattern, what could be reasonably expected of programs associated to *New Gen ISS* such as that one of *PCI DSS Compliance (Payment Card Industry Compliance)* which considers unilateral certifications from IATA that would allow - or not - a sales travel agency to generate an air ticket to be paid with credit cards? Why is it the case that under *New Gen ISS* IATA would be setting commercial terms to travel agencies such as the ability to sell air tickets based on the average of the three biggest monthly sales for the last twelve months? Why is payment security being privileged towards airlines under *New Gen ISS* conditions while at the same time the needed certitude for air travelers to be able to fly in case of airlines bankruptcy or ceasing of their air transport operations is being neglected?

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[12] LATAM Airlines Group US SEC Form 20 F, years 2011 to 2018, Financial Risk Management:"One of the tools the Company uses for reducing credit risk is to participate in global entities related to the industry, such as IATA, Business Sales Processing (BSP), Cargo Account Settlement Systems(CASS), IATA Clearing House (ICH) and banks (credit cards). These institutions fulfill the role of collectors and distributors between airlines and travel and cargo agencies. In the case of the Clearing House, it acts as an offsetting entity between airlines for the services provided between them. A reduction in term and implementation of guarantees has been achieved through these entities."

(B) A case with surprising similarities worthwhile to recast: that of the European Commission against Google, a dominating actor vertically integrated accused of demoting operational capabilities of competitors[13].

On June 27th, 2017 the European Commission fined Google € 2.42 billion for abusing dominance as search engine by giving illegal advantage to its own comparison shopping service. Among other things, it stated the following:

"Google has systematically given prominent placement to its own comparison shopping service: when a consumer enters a query into the Google search engine in relation to which Google´s comparison shopping service wants to show results, these are displayed at or near the top of the search results.

Google has demoted rival comparison shopping services in its search results: rival comparison shopping services appear in Google´s search results on the basis of Google´s generic search algorithms. Google has included a number of criteria in these algorithms, as a result of which rival comparison shopping services are demoted…"

"This means that by giving prominent placement only to its own comparison shopping service and by demoting competitors, Google has given its own comparison shopping service a significant advantage compared to others."

"Market dominance is, as such, not illegal under EU antitrust rules. However, dominant companies have a special responsibility not to abuse their powerful market position by restricting competition, either in the market where they are dominant or in separate markets".

"There are also high barriers to entry in these markets, in part because of network effects: the more consumers use a search engine, the more attractive it becomes to advertisers. The profits generated can then be used to attract even more consumers. Similarly, the data a search engine gathers about consumers can in turn be used to improve results."

"Given Google´s dominance in general internet search, its search engine is an important source of traffic. As a result of Google´s illegal practices, traffic to Google´s comparison shopping service increased significantly, whilst rivals have suffered very substantial losses of traffic on a lasting basis."

"In particular, the Decision orders Google to comply with the simple principle of giving **equal treatment** to rival comparison shopping services and its own service: Google has to apply the same processes and methods to position and display rival comparison shopping services in Google´s search results pages as it gives to its own comparison shopping service".

[13] "Antitrust: Commission fines Google € 2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service", European Commission, Brussels, 27 June 2017.

"Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement prohibit abuse of a dominant position."

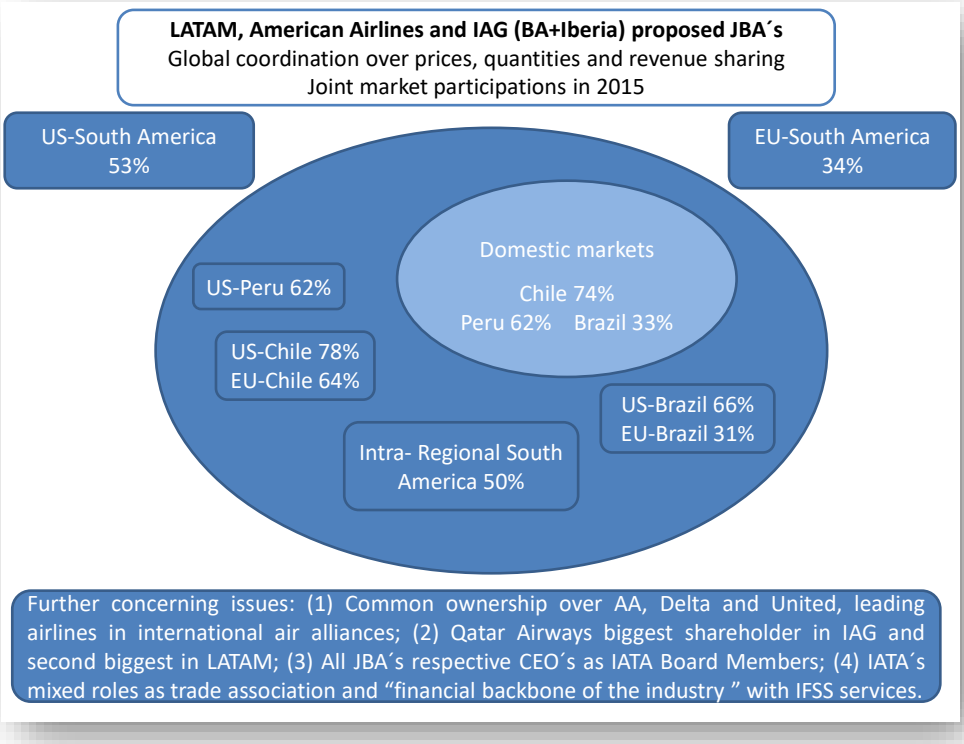
Similarities between European Union case against Google and that of IATA and major airlines practices, LATAM AIRLINES particularly included?

(1) IATA as a trade group is a dominant actor setting standards such as *NDC, IATA Financial Settlement Systems (IFSS, present day New Gen ISS), JBA´s* and other matters that benefit its airlines associates, notoriously trespassing into strategic and commercial issues that should be decided independently by each carrier under a competitive environment and never centrally coordinated and promoted by a trade group.

(2) Being dominant and vertically integrated, airlines should be extremely careful so as to giving equal treatment to rival independent sales distribution channels and their own distribution ones. Practices such as discriminatory commissions, "best fares" shown to some but not to others, *GDS´s* surcharges or others of a discretionary nature negatively affect marketplace neutrality and undermine the abilities of consumers to shop efficiently for their own benefit.

(3) A dominant position, such as that one of LATAM AIRLINES in South America, gets only stronger via *JBA´s* with major airlines from the United States and Europe, stressing the lack of competition as described by LATAM AIRLINES´s President when referring to the utmost complexities involved in trying to replicate its own network. Instead of joining forces, the system needs them to fiercely compete among them, converging to a common South American air transportation market with multiple actors and free from present artificial distortions.

© A reminder of what is at stake with proposed *JBA´s*, IATA´s controversial and unrelenting role and common and cross ownership structures.



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