General Court of the European Union
PRESS RELEASE No 147/15
Luxembourg, 16 December 2015

Judgments in Cases T-9/11 Air Canada, T-28/11 Koninklijke Luchtvaart Maatschappij, T-36/11 Japan Airlines, T-38/11 Cathay Pacific Airways, T-39/11 Cargolux Airlines International, T-40/11 Latam Airlines Group and Others, T-43/11 Singapore Airlines and Others, T-46/11 Deutsche Lufthansa and Others, T-48/11 British Airways, T-56/11 SAS Cargo Group and Others, T-62/11 Air France-KLM, T-63/11 Société Air France and T-67/11 Martinair Holland v Commission

Press and Information

The General Court annuls the decision by which the Commission imposed fines amounting to approximately €790 million on several airlines for their participation in a cartel on the airfreight market

According to the Court, the grounds and the operative part of the decision are contradictory

On 7 December 2005, the Commission received an application for immunity under 'the 2002 Leniency Notice',[1] lodged by Deutsche Lufthansa and its subsidiaries, Lufthansa Cargo and Swiss International Air Lines. According to that application, anticompetitive contacts existed between a number of undertakings operating in the freight market with respect, inter alia, to the fuel surcharge and the security surcharge (the latter having been introduced to address the costs of certain security measures imposed following the terrorist attacks of 11 September 2001).

On 14 and 15 February 2006, the Commission carried out unannounced inspections. On 9 November 2010, the Commission adopted a decision,[2] the grounds of which describe a single and continuous infringement of EU competition rules in the European Economic Area and Switzerland. According to the Commission, several carriers (see table) coordinated their behaviour as regards the pricing of freight services. The operative part of the decision mentions four infringements, relating to different periods and routes. Whereas some of the infringements were found to have been committed by all the carriers concerned, others were found to have been committed by a more limited group of carriers. The Commission imposed fines on all of the carriers concerned, with the exception of Lufthansa and its subsidiaries, which were granted immunity.

The carriers concerned[3] brought actions before the General Court against the Commission's decision. Some carriers submitted, inter alia, that the decision did not allow them to determine the nature and scope of the infringement or infringements that they were alleged to have committed. The operative part of the decision refers, in Articles 1 to 4 thereof, to four infringements relating to different periods and routes and committed by different carriers, whereas the grounds refer to one single and continuous worldwide infringement covering all the routes. In the course of the proceedings, all of the applicant companies submitted that there was a contradiction between the grounds and the operative part of the decision.

In today's judgments, the Court emphasises, first of all, that the principle of effective judicial protection requires that the operative part of a decision adopted by the Commission, finding infringements of the competition rules, must be particularly clear and precise and that the undertakings held liable and penalised must be in a position to understand and to contest that

[1] The Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).
[2] Commission Decision C(2010) 7694 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 COMP/39258 — Airfreight).
[3] With the exception of Qantas.

imputation of liability and the imposition of those penalties, as set out in the wording of that operative part.

The Court notes that national courts are bound by the decision adopted by the Commission, and consequently the meaning of the operative part of that decision must be unambiguous. In particular, the national courts must be in a position to understand the scope of that infringement and to identify the persons liable, in order to be able to draw the necessary inferences as regards claims for damages brought by persons harmed by that infringement.

Likewise, the Court points out that the wording of the operative part of a decision finding an infringement of the competition rules is such as to establish mutual rights and obligations of the persons concerned.

In the present case, it is apparent from an overall reading of the grounds of the decision that the Commission describes a single cartel, constituting a single and continuous infringement in relation to all of the routes covered by the cartel and in which all of the carriers at issue participated. Those carriers, in the context of a single overall plan and by means of a single network of bilateral and multilateral contacts, allegedly coordinated their behaviour in relation to the development of the fuel and security surcharges and the payment of commissions on those surcharges to the freight forwarders with which they worked. That coordination is said to have taken place at a worldwide level and therefore affected simultaneously all the routes referred to in the decision.

However, the operative part of the decision refers to either four separate single and continuous infringements or just one single and continuous infringement, liability for which is attributed only to the carriers which, as regards the routes mentioned in Articles 1 to 4 of the contested decision, participated directly in the unlawful conduct referred to in each of those articles or were aware of the collusion on those routes. **The Court therefore finds that there is a contradiction between the grounds of the decision and its operative part.**

The Court rejects the argument that the differences between the grounds and the operative part of the decision can be explained by the fact that the carriers which are not mentioned in certain articles of the operative part did not operate the routes referred to in those articles. That explanation goes against the idea set out in the grounds of the decision of there being a single and continuous infringement composed of a complex of anticompetitive conduct for which all the participants are liable, irrespective of the routes concerned. In addition, the carriers are held liable for the entirety of the infringement referred to in each article, and no distinction is made between the routes which were operated by those carriers and those which were not. Accordingly, to accept such an explanation would result in an operative part based on two contradictory lines of reasoning.

Furthermore, the Court notes that the grounds of the contested decision themselves are not entirely internally consistent. Indeed, those grounds contain assessments which are difficult to reconcile with the existence of a single cartel covering all of the routes referred to in the operative part, as described in those grounds.

Lastly, the Court concludes that the internal inconsistencies in the contested decision were liable to infringe the applicant's rights of defence and prevent the Court from exercising its power of review.

Accordingly, the Court annuls the Commission's decision in so far as it relates to the carriers concerned.

Summary table

Companies concerned	Fine imposed by the Commission (in €)	Result
Air Canada	21 037 500	Annulment
Air France-KLM	182 920 000 (jointly and severally with Société Air France) 124 440 000 (jointly and severally with Koninklijke Luchtvaart Maatschappij)	Annulment
Société Air France	182 920 000 (jointly and severally with Air France-KLM)	Annulment
Koninklijke Luchtvaart Maatschappij	2 720 000 124 440 000 (jointly and severally with Air France-KLM)	Annulment
British Airways	104 040 000	Annulment
Cargolux Airlines International	79 900 000	Annulment
Cathay Pacific Airways	57 120 000	Annulment
Japan Airlines Corp. Japan Airlines Co.	35 700 000 (jointly and severally)	Annulment
Latam Airlines Group (anciennement LAN Airlines) Lan Cargo	8 220 000 (jointly and severally)	Annulment
Lufthansa Cargo Lufthansa Swiss	0	Annulment
Martinair Holland	29 500 000	Annulment
Qantas Airways	8 880 000	No action brought

SAS SAS Cargo Group Scandinavian Airlines System Denmark-Norway-Sweden	22 308 250 (SAS only) 4 254 250 (jointly and severally between SAS Cargo Group and Scandinavian Airlines System Denmark-Norway-Sweden) 32 984 250 (jointly and severally between SAS Cargo Group and SAS) 5 355 000 (Scandinavian Airlines System Denmark-Norway-Sweden only) 5 265 750 (jointly and severally)	Annulment
Singapore Airlines Cargo Singapore Airlines	74 800 000 (jointly and severally)	Annulment

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

The full texts (T-9/11, T-28/11, T-36/11, T-38/11, T-39/11, T-40/11, T-43/11, T-46/11, T-48/11, T-56/11, T-63/11, T-62/11 and T-67/11) of the judgments are published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355