



General Court of the European Union

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Judgments in Cases T-251/12 EGL, Inc. and Others v Commission, T-254/12 Kühne + Nagel International AG and Others v Commission, T-264/12 UTi Worldwide, Inc. and Others v Commission, T-265/12 Schenker Ltd v Commission, T-267/12 Deutsche Bahn AG and Others v Commission and T-270/12 Panalpina World Transport Ltd and Others v Commission

Press and Information

The General Court upholds the fines imposed by the Commission on a number of companies for their participation in cartels in the international air freight forwarding services sector

However, the overall fine of €3.07 million, imposed initially on UTi Worldwide, is reduced to €2.97 million

By decision of 28 March 2012,¹ the Commission imposed fines amounting in total to €169 million on a number of companies by reason of their participation, in periods between 2002 and 2007, in various agreements and concerted practices on the market for international air freight forwarding services. Those services included the organisation of transportation of items, and could also include activities such as customs clearance, warehousing or ground services on behalf of customers according to their needs.

The Commission held that the anti-competitive conduct of the companies, which agreed on the fixing of various pricing mechanisms and surcharges, gave rise to four distinct cartels.

The 'new export system' (NES) cartel concerned a pre-clearance system for exports from the UK to countries outside the European Economic Area which was introduced by the UK authorities in 2002. A group of freight forwarders agreed to introduce a surcharge for NES declarations.

The 'advanced manifest system' (AMS), introduced after the terrorist attacks of 11 September 2001, describes legislative provisions of the United States customs authorities that require companies to submit in advance data on goods that they intend to ship to the United States. A number of freight forwarders coordinated the introduction of a surcharge applicable to the AMS service, for the electronic communication of the data concerned to the United States authorities.

The 'currency adjustment factor' (CAF) cartel was designed to achieve agreement on a common tariff strategy in order to deal with a risk of a fall in profits owing to the decision of the People's Bank of China in 2005 that it would no longer peg the Chinese currency (renminbi or RMB) to the United States dollar (USD). A number of international freight forwarders decided to convert all contracts with their customers into renminbi and to introduce a CAF surcharge, setting the amount.

Last, the 'peak season surcharge' (PSS) cartel concerned an agreement between a number of international freight forwarders relating to the application of a temporary rate adjustment factor. That factor was imposed as a reaction to increased demand in the air freight forwarding sector at certain times, which led to a shortage of transportation capacity and an increase in transport rates. The agreement was designed to protect the freight forwarders' margins.

A number of the companies concerned brought actions before the General Court for the annulment of the Commission's decision or for a reduction in their respective fines.

¹ Decision C(2012) 1959 final of 28 March 2012 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39462 — Freight forwarding).

As regards **UTi Worldwide**, the parent company of UTi Nederland and UTi Worldwide (UK), the General Court states that where the liability of a parent company is purely derivative of that of its subsidiary and where no other factor individually distinguishes the conduct for which the parent company is held liable, the liability of the parent company cannot exceed that of its subsidiary.

In this case, the Commission chose, for the purposes of setting the fine, to round down the infringement periods imputed to the subsidiaries, while no such rounding down was carried out for the benefit of the parent company. The General Court holds that the parent company whose liability is entirely derived from that of its subsidiaries must benefit from the same reduction in liability as that enjoyed by its subsidiaries. Consequently, **the General Court recalculates the overall fine of €3.07 million imposed initially on UTi Worldwide and decides to reduce it to €2.97 million.**

As regards the other companies concerned, the General Court rejects all their arguments and decides to uphold the fines imposed on them. The Court holds in particular that it is appropriate to base the calculation of the fines on the value of sales linked to freight forwarding services as a package of services on the trade lanes concerned.

| NES cartel | Fines imposed by Commission (in euros) | Decision of the General Court |
|--|--|---|
| Ceva Freight (UK) and EGL | 2 094 000 | Action dismissed Fine upheld |
| Kühne + Nagel International and Kühne + Nagel (UK) | 5 320 000 | Action dismissed Fine upheld |
| Schenker | 3 673 000 | Action dismissed Fine upheld |
| AMS cartel | | |
| Kühne + Nagel International and Kühne + Nagel Management | 36 686 000 | Action dismissed Fine upheld |
| UTi Worldwide, UTi Nederland and UTi Worldwide (UK) | Total fine : 3 068 000 - 1 273 000 for which the companies are jointly and severally liable - UTi Worldwide : 1 795 000 jointly and severally liable with UTi Worldwide (UK) (738 000) and UTi Nederland (954 000) | Action partly upheld Reduction of the fine Total fine : 2 965 000 - 1 273 000 for which the companies are jointly and severally liable - UTi Worldwide : 1 692 000 jointly and severally liable with UTi Worldwide (UK) (738 000) and UTi Nederland (954 000) |

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|--|------------|---------------------------------|
| Schenker and Deutsche Bahn | 23 091 000 | Action dismissed Fine upheld |
| Panalpina Management and Panalpina World Transport (Holding) | 23 649 000 | Action dismissed Fine upheld |
| CAF Cartel | | |
| Ceva Freight Shanghai and EGL | 935 000 | Action dismissed Fine upheld |
| Kühne + Nagel International and Kühne + Nagel (Shanghai) | 451 000 | Action dismissed Fine upheld |
| Schenker China | 2 444 000 | Action dismissed Fine upheld |
| Schenker China and Deutsche Bahn | 3 071 000 | Action dismissed Fine upheld |
| Panalpina China and Panalpina World Transport (Holding) | 3 251 000 | Action dismissed Fine upheld |
| PSS Cartel | | |
| Kühne + Nagel International and Kühne + Nagel (Hong Kong) | 11 217 000 | Action dismissed Fine upheld |
| Schenker International (HK) and Deutsche Bahn | 2 656 000 | Action dismissed Fine upheld |
| Panalpina China and Panalpina World Transport (Holding) | 19 584 000 | Action dismissed Fine upheld |

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.

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The full texts of the judgments [T-251/12](#), [T-254/12](#), [T-264/12](#), [T-265/12](#), [T-267/12](#), [T-270/12](#) are published on the CURIA website on the day of delivery

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