



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-261/16 P Kühne + Nagel International and Others v Commission, C-263/16 P Schenker v Commission, C-264/16 P Deutsche Bahn and Others v Commission and C-271/16 P Panalpina World Transport (Holding) and Others v Commission

## **The Court of Justice 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**

By decision of 28 March 2012,<sup>1</sup> 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

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<sup>1</sup> 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).

In its judgments of 29 February 2016<sup>2</sup>, the General Court upheld the amount of the fines imposed on Kühne + Nagel International, Schenker, Deutsche Bahn and Others, Panalpina World Transport (Holding), Ceva Freight (UK) and EGL<sup>3</sup>. Those companies, with the exception of Ceva Freight (UK) and EGL, brought an appeal before the Court of Justice asking that the General Court's judgments be set aside.

In today's judgments, the Court of Justice rejects all the arguments put forward by those companies and upholds the amount of the fines imposed. It declares in particular that the General Court was correct in holding that it is appropriate to base the calculation of the amount of the fines on the value of sales associated with freight forwarding services as a package of services on the trade routes concerned.

<b>NES cartel</b>	Fines imposed by Commission (in euros)	Decision of the General Court/Court of Justice
Ceva Freight (UK) and EGL	2 094 000	Fine upheld by the General Court No appeal before the Court of Justice
Kühne + Nagel International and Kühne + Nagel (UK)	5 320 000	Appeal dismissed Fine upheld
Schenker (UK) as an economic successor of Bax Global	3 673 000	Appeal dismissed Fine upheld
<b>AMS cartel</b>		
Kühne + Nagel International and Kühne + Nagel Management	36 686 000	Appeal dismissed Fine upheld
Schenker and Deutsche Bahn	23 091 000	Appeal dismissed Fine upheld
Panalpina Management and Panalpina World Transport (Holding)	23 649 000	Appeal dismissed Fine upheld
UTi Worldwide, UTi Nederland and UTi Worldwide (UK)	Total of the fine: 3 068 000  1 273 000 imposed jointly and severally on the companies  UTi Worldwide : 1 795 000 jointly and severally liable with UTi Worldwide (UK) (738 000) and UTi Nederland (954 000)	Action partially upheld by the General Court  Reduction of the fine  Total of the fine: 2 965 000  1 273 000 imposed jointly and severally on the companies  UTi Worldwide : 1 692 000 jointly and severally liable with UTi Worldwide (UK) (738 000) and UTi Nederland

<sup>2</sup> Case: [T-251/12](#) EGL and Others v Commission, [T-254/12](#) Kühne + Nagel International and Others v Commission, [T-264/12](#) UTi Worldwide and Others v Commission, [T-265/12](#) Schenker v Commission, [T-267/12](#) Deutsche Bahn and Others v Commission and [T-270/12](#) Panalpina World Transport and Others v Commission see also Press Release No [20/16](#).

<sup>3</sup> The General Court partially upheld the action of UTi Worldwide, UTi Nederland and UTi Worldwide (UK) and reduced the fine imposed on them.

		(954 000) No appeal before the Court of Justice
<b>CAF cartel</b>		
Kühne + Nagel International and Kühne + Nagel (Shanghai)	451 000	Appeal dismissed Fine upheld
Schenker China	2 444 000	Appeal dismissed Fine upheld
Schenker China and Deutsche Bahn	3 071 000	Appeal dismissed Fine upheld
Panalpina China and Panalpina World Transport (Holding)	3 251 000	Appeal dismissed Fine upheld
<b>PSS cartel</b>		
Kühne + Nagel International and Kühne + Nagel (Hong Kong)	11 217 000	Appeal dismissed Fine upheld
Schenker International (HK) and Deutsche Bahn	2 656 000	Appeal dismissed Fine upheld
Panalpina China and Panalpina World Transport (Holding)	19 584 000	Appeal dismissed Fine upheld

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**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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*The full texts of the judgments [C-261/16](#), [C-263/16](#), [C-264/16](#), and [C-271/16](#) are published on the CURIA website on the day of delivery.*

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