



General Court of the European Union

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Judgments in Cases T-323/17

Martinair Holland v Commission, T-324/17 SAS Cargo Group and Others v Commission, T-325/17 Koninklijke Luchtvaart Maatschappij v Commission, T-326/17 Air Canada v Commission, T-334/17 Cargolux Airlines v Commission, T-337/17 Air France-KLM v Commission, T-338/17 Air France v Commission, T-340/17 Japan Airlines v Commission, T-341/17 British Airways v Commission, T-342/17 Deutsche Lufthansa and Others v Commission, T-343/17 Cathay Pacific Airways v Commission, T-344/17 Latam Airlines Group and Lan Cargo v Commission, T-350/17 Singapore Airlines and Singapore Airlines Cargo v Commission

Press and Information

## **Cartel on the airfreight market: the General Court rules on actions brought by multiple airlines**

On 9 November 2010, the European Commission adopted a decision<sup>1</sup> against multiple undertakings operating on the airfreight market ('the carriers') which had participated in a pricing cartel between December 1999 and February 2006, and imposed a fine on those carriers in a total amount of € 790 million. Lufthansa and two of its subsidiaries, which had made an application for immunity application for immunity under the 2002 notice on immunity from fines and reduction of fines in cartel cases,<sup>2</sup> were granted immunity from fines. The Commission found that the carriers had infringed certain provisions of the Treaty on the Functioning of the European Union (TFEU), the Agreement on the European Economic Area (EEA) and the Agreement between the European Community and the Swiss Confederation on Air Transport (EC-Switzerland). The cartel related to a number of constituent elements of the price of services provided in that market, in particular the introduction of fuel and security surcharges, as well as the refusal to pay commission to freight forwarders on those surcharges. By judgments of 16 December 2015,<sup>3</sup> the General Court of the European Union upheld actions brought against that decision and annulled it on the grounds of internal contradictions likely to undermine the rights of defence of the companies in question and prevent the Court from conducting its review.

On 17 March 2017, the Commission adopted a fresh decision,<sup>4</sup> in which it amended the defective statement of reasons identified by the General Court.

The carriers that had challenged the Decision of 9 November 2010 brought fresh actions before the General Court, seeking annulment of the decision or a reduction of the amount of the fines imposed on them.

<sup>1</sup> 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).

<sup>2</sup> Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

<sup>3</sup> Judgments of the General Court of 16 December 2015: *Air Canada v Commission*, [T-9/11](#), *Koninklijke Luchtvaart Maatschappij v Commission*, [T-28/11](#), *Japan Airlines v Commission*, [T-36/11](#), *Cathay Pacific Airways v Commission*, [T-38/11](#), *Cargolux Airlines v Commission*, [T-39/11](#), *Latam Airlines Group and Lan Cargo v Commission*, [T-40/11](#), *Singapore Airlines and Singapore Airlines Cargo v Commission* ([T-43/11](#)), *Deutsche Lufthansa and Others v Commission* ([T-46/11](#)), *British Airways v Commission*, [T-48/11](#), *SAS Cargo Group and Others v Commission*, [T-56/11](#), *Air France-KLM v Commission*, [T-62/11](#), *Air France v Commission*, [T-63/11](#), *Martinair Holland v Commission*, [T-67/11](#) (see also PR No [147/15](#)).

<sup>4</sup> Commission Decision C(2017) 1742 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 AT.39258 – Airfreight).

**The General Court dismisses the actions brought by Martinair Holland, Koninklijke Luchtvaart Maatschappij (KLM), Cargolux Airlines, Air France-KLM, Air France, Lufthansa and Others, Singapore Airlines and Singapore Airlines Cargo and upholds the fines imposed on those companies by the Commission.**

However, it annuls the Commission decision in part, in so far as it concerns Japan Airlines, Air Canada, British Airways, Cathay Pacific Airways, SAS Cargo Group and Others, Latam Airlines Group and Lan Cargo.

**Japan Airlines:** as regards routes from third countries to the EEA, the General Court recalls that the Commission may find and penalise conduct adopted outside the territory of the European Union or the EEA, provided that that conduct has been implemented on that territory or that it was foreseeable that this conduct would produce an immediate and substantial effect. The General Court considers that the Commission did not err in finding that it was foreseeable that the infringement would produce such effects, including in so far as concerned those routes. It states that, as regards restrictions on competition 'by object', the Commission was not required to demonstrate the actual effects of that infringement.

As regards intra-EEA and EU-Switzerland routes, the General Court finds that the Commission wrongly found Japan Airlines liable in respect of intra-EEA and EU-Switzerland routes, since the decision at issue was adopted over ten years after the conduct at issue had ceased, that is, after the expiry of the limitation period.

**Air Canada and British Airways:** the General Court annuls the Commission decision in part, in so far as it finds that they participated in the element of the infringement relating to the refusal to pay commission on the surcharges. However, the Court finds that the Commission was entitled to take into account documents which were submitted in the context of Air Canada's leniency application and which the latter sought to have withdrawn subsequently.

**Cathay Pacific Airways:** according to the General Court, the Commission imputed the infringement to that carrier in respect of intra-EEA and EU-Switzerland routes in breach of the statute of limitation.

**Latam Airlines Group and Lan Cargo:** the General Court annuls the Commission decision in part, in so far as it found that those carriers participated in those elements of the single and continuous infringement relating to the security surcharge and the refusal to pay commission on surcharges. The Court also finds that the Commission failed to prove their participation in the element relating to the fuel surcharge prior to 22 July 2005, and that it breached the statute of limitation by finding them liable and penalising them for their participation in the infringement in respect of intra-EEA and EU-Switzerland routes, as well as routes between airports in countries that are Contracting Parties of the EEA Agreement but not Member States and airports in third countries.

**SAS Cargo Group and Others:** contrary to the Commission, the General Court finds that SAS AB, SAS Cargo Group A/S and Scandinavian Airlines System Denmark-Norway-Sweden did not participate in the element of the infringement relating to the refusal to pay commission on surcharges. It also observes that those carriers did not infringe the provisions of EU law and the EEA Agreement relating to cartels on routes from Thailand to the European Union for part of the period of the infringement as regards the element relating to the fuel surcharge. However, in order to ensure equal treatment of the incriminated carriers, the General Court increases part of the amount of the fines imposed, by including in its calculation the value of sales made on internal routes within Denmark, Sweden and Norway.

**Summary table of fines**

<b>Carriers</b>	<b>Amount of the fine set by the Commission (€ millions)</b>	<b>Amount of the fine set by the General Court (€ millions)</b>
<b>Martinair Holland</b>	15.40	Fine upheld (=)
SAS SAS Cargo Group Scandinavian Airlines System Denmark-Norway-Sweden	5.36 (Scandinavian Airlines System Denmark-Norway-Sweden only)  4.25 (SAS Cargo Group and Scandinavian Airlines System Denmark-Norway-Sweden, jointly and severally)  5.27 (SAS, SAS Cargo Group and Scandinavian Airlines System Denmark-Norway-Sweden, jointly and severally)  32.98 (SAS Cargo Group and SAS, jointly and severally)  22.31 (SAS Cargo Group only)	7.03 (↑) (Scandinavian Airlines System Denmark-Norway-Sweden only)  5.94 (↑) (SAS Cargo Group and Scandinavian Airlines System Denmark-Norway-Sweden, jointly and severally)  6.31 (↑) (SAS, SAS Cargo Group and Scandinavian Airlines System Denmark-Norway-Sweden, jointly and severally)  29.05 (↓) (SAS Cargo Group and SAS, jointly and severally)  21.69 (↓) (SAS Cargo Group only)
<b>Koninklijke Luchtvaart Maatschappij (KLM)</b>	2.72  124.44 (jointly and severally with Air France-KLM)	Fine upheld (=)
Air Canada	21.04	17.95 (↓)
<b>Cargolux Airlines International</b>	79.90	Fine upheld (=)
<b>Société Air France</b>	182.92 (jointly and severally with France-KLM)	Fine upheld (=)
<b>Air France-KLM</b>	182.92 (jointly and severally with Société Air France)  124.44 (jointly and severally with Air	Fine upheld (=)

	France-KLM)	
<b>Japan Airlines</b>	35.70	28.88 (↓)
<b>British Airways</b>	104.04	84.46 (↓)
<b>Deutsche Lufthansa Lufthansa Cargo Swiss International Air Lines</b>	0	0
<b>Cathay Pacific Airways</b>	57.12	47.14 (↓)
<b>Latam Airlines Group Lan Cargo</b>	8.22 (jointly and severally)	2.24 (↓) (jointly and severally)
<b>Singapore Airlines Singapore Airlines Cargo</b>	74.80 (jointly and severally)	Fine upheld (=)

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**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 text ([T-323/17](#), [T-324/17](#), [T-325/17](#), [T-326/17](#), [T-334/17](#), [T-337/17](#), [T-338/17](#), [T-340/17](#), [T-341/17](#), [T-342/17](#), [T-343/17](#), [T-344/17](#) and [T-350/17](#)) of the judgments is published on the CURIA website on the day of delivery.

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