

Second part: The General Court infringed its duty to state reasons, erred in law and violated Article 101 TFEU in concluding that inbound freight services sorted probable effects in the EEA.

Third part: The General Court erred in law by relying on arguments and evidence not advanced by the Commission.

Fourth part: The General Court erred in law and violated Article 101 TFEU by concluding that the single and continuous infringement can extend the Commission's jurisdiction over conduct outside the EEA.

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**Appeal brought on 16 June 2022 by Cargolux Airlines International SA against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 30 March 2022 in Case T-334/17, Cargolux Airlines v Commission**

**(Case C-401/22 P)**

(2022/C 303/38)

*Language of the case: English*

### **Parties**

*Appellant:* Cargolux Airlines International SA (represented by: E. Aliende Rodríguez, abogada)

*Other party to the proceedings:* European Commission

### **Form of order sought**

The appellant claims that the Court should:

- set aside the judgment under appeal in full;
- in the first instance, annul Articles 1(1) and 1(4) of the Commission Decision C(2017) 1742 final of 17 March 2017 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 Decision) in full, insofar as they relate to the appellant;
- in the alternative, annul Articles 1(1) and 1(4) of the Decision in part insofar as they relate to the appellant and to the conduct related to commissioning and/or the security surcharge, and/or annul Articles 1(2) and 1(3) insofar as they relate to the appellant and to inbound routes, and in each case reduce the fine imposed on the appellant in Article 3(f) of the Decision accordingly;
- annul the fine imposed on the appellant in Article 3(f) of the Decision on full or alternatively, substantially reduce it;
- in the alternative, if this Court finds it cannot give final judgment, refer the case back to the General Court;
- order the Commission to pay the appellant's costs of the proceedings before this Court and the General Court; and
- make any other order as may be appropriate in the circumstances of the case.

### **Pleas in law and main arguments**

In support of the appeal, the appellant relies on the following four grounds in law.

In the first ground of appeal, the appellant submits that the General Court erred in law by upholding the Commission's jurisdiction to find and sanction an infringement of Article 101 TFEU and Article 53 EEA Agreement in respect of airfreight services from third countries to countries within the EEA (i.e. inbound routes). Specifically, the appellant submits that the Commission erred in law by applying the incorrect legal test to assert jurisdiction on the basis of public international and not EU law, and in any case, misapplied the qualified effects standard under public international law.

In the second ground of appeal, the appellant submits that the General Court erred in law in upholding the Commission's finding that the conduct in which the appellant participated amounted to an infringement by object. In particular, the General Court erred in law by upholding the Commission's finding that the conduct related to the non-payment of commissions on surcharges amounted to a by-object-infringement.

In the third ground of appeal, the appellant submits that the General Court erred in law by misstating and misapplying the legal test for establishing a single and continuous infringement and wrongly upholding the Decision sanctioning the appellant for such single and continuous infringement. In particular, the General Court erred in law in holding that the Commission correctly established the complementary and continuous nature of the conducts comprising the single and continuous infringement.

In the fourth ground of appeal, the appellant submits that, in the alternative, the General Court erred in law by finding the appellant liable for all aspects of the single and continuous infringement when it in fact had a limited participation, including by breaching the principle of equal treatment as regards its assessment of the appellant's participation in the non-payment of commissions on surcharges, and wrongly establishing the appellant's continued participation in the security surcharge during periods for which no evidence of such participation was adduced.

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**Appeal brought on 17 June 2022 by SAS Cargo Group A/S, Scandinavian Airlines System Denmark-Norway-Sweden, SAS AB against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 30 March 2022 in Case T-324/17, SAS Cargo Group e.a. v Commission**

**(Case C-403/22 P)**

(2022/C 303/39)

*Language of the case: English*

#### **Parties**

*Appellants:* SAS Cargo Group A/S, Scandinavian Airlines System Denmark-Norway-Sweden, SAS AB (represented by: B. Creve and M. Kofmann, advokater, and J. Killick and G. Forwood, avocats)

*Other party to the proceedings:* European Commission

#### **Form of order sought**

The appellants claim that the Court should:

- set aside the judgment under appeal insofar as it dismissed the appellants' action for annulment;
- annul in whole or in part the Commission Decision C(2017) 1742 final of 17 March 2017 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) insofar as it relates to the appellants;
- cancel or substantially reduce the fine imposed;
- in the alternative, refer the matter back to the General Court for determination in accordance with the judgment of the Court of Justice; and
- order the Commission to pay the costs of the appeal and the proceedings before the General Court.