4. Fourth plea in law alleging that the contested decision infringes Article 101 TFUE and Article 53 of the EEA Agreement to the extent that it is premised on the notion that contacts between competitors taking place outside the EEA constitute infringements of Article 101 TFUE and of Article 53 of the EEA Agreement on their own, i.e. irrespective of whether they constitute part of the same single and continuous infringement with contacts between competitors that took place at the headquarter level. Agreements or concerted practices with respect to EEA-inbound cargo shipments do not restrict competition within the EEA, nor do they affect trade between Member States. Moreover, government intervention in a number of relevant jurisdictions precludes the application of Article 101 TFUE and Article 53 of the EEA Agreement.

([1]) Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector, OJ L 374, p. 1

Action brought on 24 January 2011 — British Airways v Commission

(Case T-48/11)

(2011/C 80/57)

Language of the case: English

Parties

Applicant: British Airways plc (Harmondsworth, United Kingdom) (represented by: K. Lasok, QC, R. O'Donoghue, Barristers, and B. Louveaux, Solicitor)

Defendant: European Commission

Form of order sought

— annul the decision in so far as it finds that the applicant was party to an infringement concerning commission on surcharges and/or to remit the matter to the Commission for the reconsideration of its decision on that issue;

— annul the decision in so far as it finds that the start date of the applicant's infringement was 22 January 2001 and to substitute 1 October 2001 for that date and/or to remit the matter to the Commission for the reconsideration of its decision on that issue;

— annul the decision in so far as it finds that matters relating to Hong Kong, Japan, India, Thailand, Singapore, Korea, and Brazil violated Article 101 TFEU, Article 53 EEA, and Article 8 Swiss Agreement and/or to remit the matter to the Commission for the reconsideration of its decision on that issue;

— annul or substantially reduce the fine imposed on the applicant pursuant to the decision by reference to each or every one of the points above and/or the General Court's unlimited jurisdiction;

— order the Commission to pay the applicant's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Decision C(2010) 7694 final of 9 November 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union, 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/39.258—Airfreight) concerning the coordination of various elements of the price to be charged for airfreight services on: (i) routes between airports within the EEA; (ii) routes between airports within the EU and airports outside the EEA; (iii) routes between airports in EEA countries that are not Member States of the EU and third countries; and routes between airports within the EU and Switzerland. The coordination found in the decision relates to fuel surcharge, security surcharge, and the payment of commission on surcharges to freight forwarders.

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging a manifest errors of assessment and inadequate grounds inasmuch as the Commission did not provide sufficiently precise evidence that the applicant participated in the coordination of the payment of commission on surcharges whilst ignoring the significant body of evidence that it had in its possession that demonstrated the opposite.

2. Second plea in law, alleging a manifest error of assessment and breach of the defendant's duty to prove to the requisite legal standard the starting date of the applicant's infringement. In this regard the applicant submits that:

   — the evidence put forward does not satisfy the criteria of precision and consistency in relation to the duration of the infringement;

   — the Commission's finding on the starting date is contrary to the principle *in dubio pro reo*.

3. Third plea in law, alleging the errors in law and of fact and manifest errors of assessment on the ground that the Commission lacked jurisdiction to apply Article 101 TFEU and/or Article 53 EEA in respect of the situation regarding the aviation regulatory legislation and administration regimes in Hong Kong, Japan, India, Thailand, Singapore, Korea, and Brazil, and/or failed to exercise its powers in accordance with the principle of international comity and/or failed to take any or any proper account of the principle of international comity when exercising its powers.

4. Fourth plea in law, alleging the infringement of the principle of proportionality, the principle that penalties must fit the offence and the principle of equal treatment, since the fine imposed on the applicant is disproportionate to the gravity of the infringement. In this regard the applicant submits that:

   — in the case of an object infringement, the Commission is bound to have regard to the "nature" and "capability" in its proper market and economic context assessing and calibrating its gravity;

   — properly analysed, there were powerful reasons in the present case to regard the applicant's infringement as less grave that the Commission did in applying its gravity multiplier.

5. Fifth plea in law, alleging the breaches of the duty to state adequate reasons and the principle of proportionality in increasing the basic amount of the fine by an additional amount of 16 % for deterrence.

6. Sixth plea in law, alleging an error in law and of fact and manifest errors of assessment, and infringement of the principles of legitimate expectations and/or equal treatment and the Leniency Notice, insofar as the Commission granted the applicant the lowest level of reduction in fine in respect of leniency despite being the first undertaking to apply for a reduction in fine under the Leniency Notice.

7. Seventh plea in law, alleging a manifest error of assessment and infringement of the principle of equal treatment and the principle of proportionality in not granting the applicant a reduction of the fine by way of mitigation, insofar as the Commission failed to take equal account of the fact that the applicant had limited participation in the infringement and did not participate in all elements of the infringement.

Action brought on 27 January 2011 — Spain v Commission

(Case T-54/11)

(2011/C 80/58)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Decision C(2010) 7700 of 16 November 2010 reducing the financial assistance from the European Regional Development Fund (ERDF) to the Objective 1 integrated operational programme for Andalucía (2000-2006) CCI No 2000.ES.16.1.PO.003, in so far as it imposes a financial correction of 100 % on the ERDF-financed expenditure for contracts No 2075/2003 and No 2120/2005;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of Article 39(3) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), as the Commission failed to take a decision within the period of three months from the date of the hearing or, as the case may be, from the date on which the supplementary information was supplied by the Spanish authorities.

2. Second plea in law, alleging infringement, by reason of incorrect application, of Article 39(3)(b) of Regulation No 1260/1999, since the Commission applies a financial correction to contracts No 2075/2003 and No 2120/2005 on the ground of alleged irregularities in the procedure followed in awarding those contracts, whereas the use of the negotiated procedure without prior publication of a tender notice was perfectly justified by the provisions of Article 6(3)(b) and (c) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

Action brought on 27 January 2011 — Castelnou Energía v Commission

(Case T-57/11)

(2011/C 80/59)

Language of the case: Spanish

Parties

Applicant: Castelnou Energía, S.L. (Madrid, Spain) (represented by: E. Garayar, lawyer)

Defendant: European Commission

Form of order sought

— declare the application for annulment admissible;

— pursuant to Article 263 of the Treaty on the Functioning of the European Union, annul the Decision;