

- The Commission has committed errors of law and fact when it applied Article 101 TFEU to conduct affecting markets outside the EU, thereby breaching the rules limiting EU's jurisdiction on such conduct; and
 - The Commission has committed errors of law and assessment when it refused to take into account the fact that in foreign jurisdictions that feature prominently in the decision, the decision does not properly reflect the fact that conduct was actively supervised and effectively required by government agencies.
4. Fourth plea in law alleging that the Commission has committed a number of errors in inputting the alleged infringement to Singapore Airlines Cargo PTE Ltd, as:
- The Commission has committed several errors of law and assessment when it analyzed and took into account contacts prior to 1 May 2004, contacts regarding demands by forwarders for payments of commissions, contacts regarding the security surcharge, contacts regarding the fuel surcharge outside the EU and contacts regarding the fuel surcharge in the EU;
 - The Commission has committed errors of law and appreciation regarding the use of WOW alliance contacts to establish Singapore Airlines Cargo PTE Ltd's participation in the alleged infringement; and
 - The Commission has not established that Singapore Airlines Cargo PTE Ltd knew or should have known about the alleged infringement or its constituent elements.
5. Fifth plea in law alleging that the Commission has breached its duty, pursuant to the principle of sound administration, to examine carefully and impartially all the elements of the case.
6. Sixth plea in law, alleging that the decision has made several errors of law and assessment in calculating the fine imposed on the applicants, as:
- The Commission has infringed the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006, C 210, p. 2), the principle of proportionality and the principle of equality in calculating the value of sales, as it has not taken into account:
 - The limited geographic scope of the conduct in relation to which the decision finds an infringement;
 - The relative role of the applicants; and
 - The fact that the supposed coordination only involved surcharges.
 - The Commission failed to give proper weight to the scope and duration of the Singapore Airlines Cargo PTE Ltd's alleged participation in the infringement; and
 - The failure of the decision to grant a reduction for limited participation to Singapore Airlines Cargo PTE Ltd constitutes a breach of principle of equality of treatment.

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**Action brought on 24 January 2011 — Fraas v OHIM
(Dark grey, light grey, black, beige, dark red and light red
coloured checked pattern)**

(Case T-50/11)

(2011/C 89/44)

Language in which the application was lodged: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz, Germany) (represented by G. Würtenberger and R. Kunze, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 November 2010 in Case R 1316/2010-4;

- Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a dark grey, light grey, black, beige, dark red and light red coloured checked pattern for goods in Classes 18, 24, and 25

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EC) No 207/2009⁽¹⁾, as the Community trade mark at issue has distinctive character, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009, as the Board of Appeal did not examine the extensive factual and legal submissions of the applicant.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 25 January 2011 — SAS Cargo Group and Others v Commission

(Case T-56/11)

(2011/C 89/45)

Language of the case: English

Parties

Applicants: SAS Cargo Group A/S (Kastrup, Denmark), Scandinavian Airlines System Denmark-Norway-Sweden (Stockholm, Sweden), and SAS AB (Stockholm, Sweden) (represented by: M. Kofmann, B. Creve, lawyers, I. Forrester, QC, J. Killick and G. Forwood, Barristers)

Defendant: European Commission

Form of order sought

- annul the decision in whole or in part;
- declare that the applicants bear no responsibility for the global single, continuous and complex infringement as described in the decision, and, if necessary, annul the decision to the extent that it may find the applicants so responsible;
- further, or in the alternative, reduce the level of the fine;
- order the Commission to pay the costs;
- make such other order as may be appropriate in the circumstance of the case.

Pleas in law and main arguments

Application for annulment of the Decision of the European Commission of 9 November 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union in Case COMP/39.258 — Airfreight concerning the coordination of various elements of the price to be charged for airfreight services in relation to fuel surcharge, security surcharge and the payment of commission on surcharges to freight forwarders

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging an infringement of essential procedural requirements, as well as the applicants' rights to good administration, rights of defence and the general principle of equality of arms, by refusing the applicants

access to relevant evidence, both inculpatory and exculpatory, which the Commission received after notification of its statement of objections, yet (the inculpatory evidence) is relied on in the contested decision.

2. Second plea in law, alleging the lack of competence in so far as the decision applies Articles 101 TFEU/53 EEA to airfreight services that were inbound into the EEA by applying the effects criterion when this is not relevant to the territorial jurisdiction of Articles 101 TFEU/53 EEA, and in incorrectly applying the implementation criterion to sales outside the EEA.
3. Third plea in law, alleging a manifest error in assessing the conduct in which the applicants were involved, and in concluding that these proved the applicants' participation in, or knowledge of, a global single and continuous infringement; moreover a number of instances of conduct relied on do not constitute an infringement of the relevant competition laws.
4. Fourth plea in law, alleging that the fine was unjustifiably and disproportionately high, taking into account the fact that the applicants were not involved in a global single and continuous infringement, as well as the relevant elements (including mitigating factors) that should have been taken into account when determining the amount of any fine imposed on the applicants.
5. Fifth plea in law, alleging a selective and arbitrary prosecution of the applicants (and others), while 72 other carriers which, according to the statement of objections and the decision, participated in supposedly illegal meetings or discussions and were never prosecuted. This raises serious issues under the European Convention on Human Rights and the Charter of Fundamental Rights of the EU.
6. Sixth plea in law, alleging an infringement of the applicants' right to an independent and impartial tribunal enshrined in Article 47(2) of the Charter of Fundamental Rights of the EU, in so far as the decision was adopted by an administrative authority which holds simultaneously powers of investigation and sanction.

Appeal brought on 25 January 2011 by Michel Nolin against the judgment of the Civil Service Tribunal delivered on 1 December 2010 in Case F-82/09, Nolin v Commission

(Case T-58/11 P)

(2011/C 89/46)

Language of the case: French

Parties

Appellant: Michel Nolin (Brussels, Belgium) (represented by S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Other party to the proceedings: European Commission