

4. Fourth plea in law, alleging that the contested decision infringes 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 by characterizing, without proper analysis, contacts taking place outside the EEA, contacts relating to the WOW alliance (alliance among Japan Airlines Cargo, Lufthansa Cargo, SAS Cargo and Singapore Airlines Cargo) and contacts relating to the commissioning of surcharges as part of the same single and continuous infringement with contacts between competitors that took place at headquarter level.
5. Fifth plea in law, alleging that the contested decision infringes Article 101 TFEU and Article 53 of the EEA Agreement in so far as it is premised on the notion that contacts between competitors taking place outside the EEA constitute infringements of Article 101 TFEU and Article 53 of the EEA Agreement. According to the applicants, agreements or concerted practices with respect to EEA inbound cargo shipments do not restrict competition within the EEA, nor do they affect trade between the Member States. Moreover, so the applicants claim, the contested decision applies the wrong legal standard in analysing whether government intervention in a number of relevant jurisdictions precludes the application of Article 101 TFEU and Article 53 of the EEA Agreement.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1).

Action brought on 31 May 2017 — Cathay Pacific Airways v Commission

(Case T-343/17)

(2017/C 239/76)

Language of the case: English

Parties

Applicant: Cathay Pacific Airways Ltd (Hong Kong, China) (represented by: R. Kreisberger and N. Grubeck, Barristers, M. Rees, Solicitor and E. Estellon, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul each of the findings of infringement set out in Article 1(1) to 1(4) of 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 they concern the applicant;
- annul Article 3 of the contested decision insofar as it imposed a fine of EUR 57 120 000 on the applicant or alternatively reduce the amount of that fine, and
- order the Commission to pay the applicant's costs of making this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in law and/or in fact and/or failed to meet the applicable standard of proof by including the applicant in Article 1(1) and 1(4) of the operative part of the contested decision and finding that the applicant participated in the alleged single and continuous infringement.
 - The applicant puts forward that there is no lawful basis for being included in the intra-European infringements.
 - The applicant further claims that there is no adequate factual basis for being included in the intra-European infringements.
 - The applicant further alleges that the Commission's reliance on new reasons is in breach of its rights of defence.

- The applicant finally puts forward that the Commission's unlawful inclusion of the applicant within Article 1(1) to 1(4) is fatal to its attempt to establish that the applicant participated in the alleged single and continuous infringement.
2. Second plea in law, alleging that by adopting a second decision against the applicant, which imputes new infringing conduct to it, the Commission has violated Article 25 of Regulation 1/2003 as well as the principles of legal certainty, justice and the good administration of justice.
 3. Third plea in law, alleging that the Commission failed to establish to the requisite standard of proof that the applicant is liable for participation in the alleged single and continuous infringement.
 - According to the applicant, the Commission failed to deal with the applicant specifically and to establish the individual components of the single and continuous infringement in relation to the applicant.
 - The applicant furthermore claims that the Commission failed to show an overall plan pursuing a common objective.
 - The applicant further alleges that the Commission failed to show that the applicant participated or had the requisite intention to participate in the single and continuous infringement.
 - The applicant finally puts forward that there is no finding that it had the requisite knowledge.
 4. Fourth plea in law, alleging that the Commission failed to give adequate reasons to support its finding that the applicant participated in the alleged single and continuous infringement.
 5. Fifth plea in law, alleging that the Commission erred in relying on the applicant's activities in third-country regulated jurisdictions as evidence of participation in the alleged single and continuous infringement and failed to give reasons in that regard.
 - According to the applicant, the Commission failed to meet the applicable burden of proof in respect of the applicant's conduct in Hong Kong and/or failed to give adequate reasons.
 - The applicant further claims that the Commission failed to establish that the applicant's conduct in Hong Kong has an anti-competitive objective.
 - The applicant further alleges that it was compelled by Hong Kong law to submit collective applications.
 - The applicant finally claims an infringement of the principles of comity and non-interference.
 6. Sixth plea in law, alleging that the Commission had no jurisdiction to apply Article 101 TFEU to conduct relating to inbound flights, *i.e.* airfreight services from third countries to Europe.
 7. Seventh plea in law, alleging that the Commission erred in law in calculating the fine imposed on the applicant.

Action brought on 31 May 2017 — Latam Airlines Group and Lan Cargo v Commission
(Case T-344/17)
(2017/C 239/77)

Language of the case: English

Parties

Applicants: Latam Airlines Group SA (Santiago, Chili), Lan Cargo SA (Santiago) (represented by: B. Hartnett, Barrister, O. Geiss, lawyer and W. Sparks, Solicitor)

Defendant: European Commission