5. Fifth plea in law, alleging that the Commission erred in its application of Article 101 TFEU/Article 53 EEA Agreement to coordination on surcharges for air freight services to/from certain countries due to the applicable legal and regulatory regimes and their practical effects, and the fine reduction applied in this respect was arbitrary and inadequate. The applicant further puts forward that in any case, as respects certain jurisdictions the Commission's reasoning is manifestly inadequate.

6. Sixth plea in law, alleging that the Commission erred in concluding that the applicant participated in an infringement concerning the (non)payment of commission of surcharges.

7. Seventh plea in law, alleging that the Commission erred in determining the 'value of sales' for the purpose of setting fines in the decision. According to the applicant, it should have determined that only revenue associated with surcharges was relevant and should have excluded turnover associated with services inbound into the EU/EEA.

8. Eighth plea in law, alleging that the Commission erred in finding that the applicant was the ninth leniency applicant and therefore was entitled to only a 10 % reduction in its fine, despite the applicant in fact being the first to apply for leniency after the immunity applicant, and to have added significant value.

9. Ninth plea in law, alleging that the Commission erred in its assessment of the starting date of the applicant's infringement. According to the applicant, the relevant starting date was October 2001, and the evidence put forward to attempt to prove a different earlier date does not satisfy the requisite legal standard.

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## Action brought on 30 May 2017 — Deutsche Lufthansa and Others v Commission

**(Case T-342/17)**

(2017/C 239/75)

*Language of the case: English*

### Parties

*Applicants:* Deutsche Lufthansa AG (Cologne, Germany), Lufthansa Cargo AG (Frankfurt am Main, Germany), Swiss International Air Lines AG (Basel, Switzerland) (represented by: S. Völcker, lawyer)

*Defendant:* European Commission

### Form of order sought

The applicants claim that the Court should:

— annul Article 1 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);

— order that the Commission bear the costs, including the costs of the applicants.

### Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision suffers from a detective statement of reasons by failing to unambiguously set out the geographic scope of the infringement in the operative part and the statement of reasons.

2. Second plea in law, alleging that the contested decision infringes Article 11 of the Agreement between the European Community and the Swiss Confederation on Air Transport by relying on contacts between competitors which took place in Switzerland and predominantly affected air freight transported between Switzerland and third countries.

3. Third plea in law, alleging that the contested decision infringes the principle of non-retroactive application of laws by relying on contacts affecting only routes outside of the EEA that took place before the entry into force of Regulation No 1/2003 ([1]).

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.

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([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).

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## 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.