



Reports of Cases

Judgment of the General Court (First Chamber) of 16 December 2015 —

Air Canada v Commission

(Case T-9/11)

(Competition — Agreements, decisions and concerted practices — European airfreight market — Agreements and concerted practices in respect of several elements of the pricing of airfreight services (imposition of fuel and security surcharges, refusal to pay commission on surcharges) — Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and Switzerland on Air Transport — Obligation to state reasons)

- 1. Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to apply competition rules — Decision of the Commission finding an infringement and imposing a fine — Requirements arising from the principle of effective judicial protection — Clarity and precision of the operative part of the decision (Arts 101(1) TFEU and 296 TFEU; EEA Agreement, Art. 53; EC-Switzerland Agreement on Air Transport, Art. 8; Council Regulation No 1/2003, Arts 2 and 23(5)) (see paras 31-35)*
- 2. Competition — Administrative procedure — Commission decision finding an infringement — Identification of the offences subject to sanction — Identification of the persons forming the subject-matter of a decision — Priority of the operative part over the statement of reasons (Arts 101(1) TFEU and 296 TFEU; EEA Agreement, Art. 53; EC-Switzerland Agreement on Air Transport, Art. 8; Council Regulation No 1/2003, Art. 2) (see para. 36)*
- 3. Agreements, decisions and concerted practices — Prohibition — Direct effect — Right of individuals to claim compensation for damage suffered — Procedures for exercising — Infringements forming the subject-matter of a decision of the Commission — Binding nature of the decision on national courts — Scope — Importance of the clarity and precision of the operative part of the decision (Arts 101(1) TFEU and 296 TFEU; EEA Agreement, Art. 53; EC-Switzerland Agreement on Air Transport, Art. 8; Council Regulation No 1/2003, Arts 2 and 16(1)) (see paras 37-43)*
- 4. Agreements, decisions and concerted practices — Agreements and concerted practices constituting a single infringement — Undertakings that may be held responsible for participating in an overall cartel — Criteria — Single objective and overall plan (Art. 101(1) TFEU; EEA Agreement, Art. 53; EC-Switzerland Agreement on Air Transport, Art. 8; Council Regulation No 1/2003, Art. 2) (see paras 57, 62)*

5. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to apply competition rules — Decision of the Commission finding an infringement and imposing a fine — Internal contradictions in the decision — Consequences — Annulment — Conditions — Defence rights of the penalised undertaking affected — Impossibility of the EU judiciary exercising its review (Arts 101(1) TFEU and 296 TFEU; EEA Agreement, Art. 53; EC-Switzerland Agreement on Air Transport, Art. 8; Council Regulation No 1/2003, Art. 2) (see paras 60, 76-78, 84, 85)*

6. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to apply competition rules — Correction of an error of reasoning during the proceedings before the Court — Not permissible (Arts 101(1) TFEU and 296 TFEU; EEA Agreement, Art. 53; EC-Switzerland Agreement on Air Transport, Art. 8; Council Regulation No 1/2003, Art. 2) (see paras 82, 83)*

7. *Actions for annulment — Competence of the EU judiciary — Claim seeking that directions be issued to an institution — Inadmissibility (Arts 263 TFEU and 266 TFEU) (see para. 88)*

Re:

APPLICATION for annulment of Commission Decision C(2010) 7694 final of 9 November 2010 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 COMP/39258 — Airfreight), in so far as it concerns the applicant, and, in the alternative, for the reduction of the fine imposed on the applicant.

Operative part

The Court:

1. Annuls Commission Decision C(2010) 7694 final of 9 November 2010 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 COMP/39258 — Airfreight), in so far as it concerns Air Canada;

2. Dismisses the remainder of the action;

3. Orders the European Commission to bear its own costs and to pay those of Air Canada.