— 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

Form of order sought

The applicants claim that the Court should:

— annul 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 it relates to the applicants;

— in addition or in the alternative, reduce the fines imposed on the applicants; and

— order the defendant to pay the costs of the proceedings.

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 fact and in law by misinterpreting the evidence cited against the applicants, misapplying Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Swiss Agreement, and failing to provide adequate reasoning, when attributing liability to the applicants for the infringement so far as it relates to the security surcharge and non-commissioning.

   — The applicants put forward that the Commission wrongly finds that they were aware of anticompetitive conduct in relation to the security surcharge and non-commissioning.

   — Furthermore, the applicants claim that these aspects of the alleged single and continuous infringement are not severable from the whole and consequently the contested decision has to be annulled in full.

2. Second plea in law, alleging that the Commission erred in fact and in law by misinterpreting the evidence cited against the applicants, misapplying the relevant provisions, and failing to provide adequate reasoning, when finding that the applicants participated in the infringement concerning the fuel surcharge.

   — The applicants put forward that the Commission has failed to prove to the required standard that they participated in the alleged infringement so far as it related to the fuel surcharge.

   — The applicants further claim that their receipt of press releases was not capable of making them aware of the alleged cartel.

   — The applicants finally allege that the limited evidence adduced of their contacts with carriers does not prove any anticompetitive conduct by the applicants or show that they knew of or could have foreseen the anticompetitive conduct of other carriers.

3. Third plea in law, alleging that the Commission committed manifest errors in fact and in law by finding the applicants liable for infringement on the routes identified in Articles 1(1), 1(3) and 1(4) of the contested decision, and failed to provide adequate reasoning.

   — The applicants put forward that the Commission wrongly included them in the finding of liability in Articles 1(1), 1 (3) and 1(4) of the contested decision because the limitation period has expired.

   — The applicants further claim that the Commission has no jurisdiction to find them liable for an infringement of Article 101 TFEU on intra-EEA routes before 1 May 2004, or of Article 53 EEA Agreement before 19 May 2005.

   — The applicants further allege that the Commission has no jurisdiction to find the applicants liable for an infringement in relation to EU-Swiss routes.

   — Finally, the applicants put forward that the findings violate the principle of non bis in idem.

4. Fourth plea in law, alleging that the Commission committed manifest errors in fact and in law in finding the existence of the alleged cartel, and failed to provide adequate reasoning.

   — The applicants put forward that the Commission's finding that they participated in the alleged cartel is vitiated by a lack of evidence.

— The applicants further claim that this is based on the incorrect assumption that the infringement affected all routes.

— The applicants further allege that it exceeds Commission's jurisdiction and leads to ambiguity as regards the geographical scope of the alleged infringement.

— The applicants finally put forward that it leads to discrepancies between the grounds and the operative part in relation to its object, which do not allow the applicants to understand the nature and the scope of the infringement alleged.

5. Fifth plea in law, alleging that the Commission committed manifest errors in fact and in law by finding that the alleged conduct constitutes a single and continuous infringement, and failed to provide adequate reasoning for such finding.

— The applicants put forward that the conduct in question did not pursue a single anticompetitive aim.

— The applicants further claim that the conduct in question did not concern a single product or service.

— The applicants further allege that the conduct in question did not concern the same undertaking.

— The applicants further put forward that the alleged infringement did not have a single nature.

— The applicants further claim that the elements of the alleged infringement were not discussed in parallel.

— The applicants finally put forward that the Commission provided insufficient evidence and failed to carry out an analysis under Article 101(3) TFEU in relation to non-commissioning.

6. Sixth plea in law, alleging that the Commission violated the applicants' rights of defence and failed to provide adequate reasoning.

— The applicants put forward that they could not address the Commission's finding that they knew about the infringement relating to security surcharge and non-commissioning.

— The applicants further claim that new allegations were made to support the Commission's finding of the alleged cartel.

— The applicants further allege that the Commission relies on evidence that is inadmissible against them.

— The applicants further put forward that discrepancies between the grounds of the contested decision and the operative part lead to a defective statement of reasons.

— The applicants finally claim that they could not provide their views on the decision to remove 13 carriers and three aspects of the infringement from the investigation after the Statement of Objections, and the Commission provided no reasoning for doing so.

7. Seventh plea in law, alleging that the Commission erred in law and in fact when calculating the applicants' fine, and failed to provide adequate reasoning.

— The applicants put forward a failure to differentiate between the coordination of a final price and coordination in relation to limited elements of a price.

— The applicants further claim a failure to have regard for the limited combined market share of the addressees and regulatory requirements in the industry.

— The applicants further allege that the Commission treated their conduct the same as the far more serious conduct of other addressees, including the 'core group'.

— The applicants finally claim a failure to take account of their more limited participation in the infringement relative to other addressees that also received a fine reduction on account of mitigating circumstances.