

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- annul, in whole or in part, the 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);
- in the alternative, if deemed necessary, remand the case to the General Court for reconsideration in accordance with the Court's judgment;
- order the Commission to bear its own costs and pay the appellant's costs, both for these proceedings and the proceedings before the General Court; and
- take any other measures that the Court considers appropriate.

Pleas in law and main arguments

In support of its appeal, the applicants rely on one plea in law consisting of four limbs.

First limb, alleging that the judgment under appeal errs in law in failing to show that the conduct restricts '*competition within the internal market*' pursuant to Article 101(1) TFEU.

Second limb, alleging that the judgment under appeal errs in law in finding that the Commission was entitled to take into account the effects of a single and continuous infringement as a whole.

Third limb, alleging that the General Court wrongly substituted its own assessment of qualified effects for that of the Commission.

Fourth limb, alleging that the judgment under appeal errs in law by holding that the relevant facts give rise to immediate, substantial and foreseeable effects under the qualified effects test.

**Appeal brought on 9 June 2022 by Japan Airlines Co. Ltd against the judgment of the General Court
(Fourth Chamber, Extended Composition) delivered on 30 March 2022 in Case T-340/17, Japan
Airlines v Commission**

(Case C-381/22 P)

(2022/C 303/33)

Language of the case: English

Parties

Appellant: Japan Airlines Co. Ltd (represented by: J.-F. Bellis, avocat, K. Van Hove, advocaat, and R Burton, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal insofar as it holds that Article 101 TFEU and Article 53 EEA apply to inbound airfreight services on EEA-third country routes;

- annul the 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) (the Decision) in its entirety or, in the alternative, annul the Decision insofar as it finds that Article 101 TFEU and Article 53 EEA Agreement apply to inbound airfreight services on EEA-third country routes and reduce the fine imposed on the appellant to EUR 26 775 000 or to such other amount as the Court sees fit;
- order the Commission to bear all of the costs of these proceedings, including those before the General Court.

Pleas in law and main arguments

In its appeal, the appellant relies on the following pleas.

The General Court erred in law by refusing to address the appellant's plea that the Decision infringed Article 101 TFEU and Article 53 EEA Agreement by prohibiting conduct with respect to inbound airfreight services that do not restrict competition within the EEA and wrongly relying instead on the public international law concept of qualified effects to establish the Commission's jurisdiction under EU law; and

In the alternative, the General Court erred in law in its application of the qualified effects test in finding that the Commission had jurisdiction to apply Article 101 TFEU and Article 53 EEA Agreement in relation to inbound airfreight services on EEA-third country routes.

Appeal brought on 9 June 2022 by Cathay Pacific Airways Ltd against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 30 March 2022 in Case T-343/17, Cathay Pacific Airways v Commission

(Case C-382/22 P)

(2022/C 303/34)

Language of the case: English

Parties

Appellant: Cathay Pacific Airways Ltd (represented by: J. Flynn, Solicitor, M. Rees and E. Estellon, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- set aside paragraph 3 of the operative part of the judgment under appeal;
- grant the remaining forms of order sought in the judgment under appeal;
- annul each of the remaining 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) (the Decision) insofar as they concern the appellant; and
- set aside the remainder of the fine imposed on the appellant by Article 3 of the Decision; or