



Antitrust: Commission re-adopts decision and fines air cargo carriers €776 million for price-fixing cartel

Brussels, 17 March 2017

The European Commission has re-adopted a cartel decision against 11 air cargo carriers and imposed a fine totalling € 776 465 000 for operating a price-fixing cartel. The Commission's original decision was annulled by the General Court on procedural grounds.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: "*Millions of businesses depend on air cargo services, which carry more than 20% of all EU imports and nearly 30% of EU exports. Working together in a cartel rather than competing to offer better services to customers does not fly with the Commission. Today's decision ensures that companies that were part of the air cargo cartel are sanctioned for their behaviour.*"

In [November 2010](#), the Commission imposed fines of nearly €800 million on 11 air cargo carriers who participated in a price-fixing cartel, from December 1999 to February 2006, in the airfreight services market covering flights from, to and within the European Economic Area. The cartel arrangements consisted of numerous contacts between airlines, at both bilateral and multilateral level to fix the level of fuel and security surcharges.

The companies fined in 2010 were **Air Canada, Air France-KLM, British Airways, Cargolux, Cathay Pacific Airways, Japan Airlines, LAN Chile, Martinair, Qantas, SAS and Singapore Airlines**. A 12th cartel member, **Lufthansa**, and its subsidiary, **Swiss International Air Lines**, received full immunity from fines.

All but one of the companies (Qantas) subject to the 2010 decision challenged the decision before the EU's General Court. In December 2015, the General Court annulled the Commission's decision against the 11 cartel participants that appealed, concluding that there had been a procedural error. However, it did not rule on the existence of the cartel.

The Commission maintains that these air cargo carriers participated in a price-fixing cartel and is adopting a new decision and re-establishing the fines. This new decision addresses the procedural error identified by the General Court while remaining identical in terms of the anticompetitive behaviours targeted by the Commission. The decision confirms that the Commission will not let cartels go unpunished. Cartels are illegal and cause consumers and business to suffer.

The fines

The fines were set on the basis of the Commission's [2006 Guidelines on fines](#) (see also [MEMO](#)). They were fixed at exactly the same level as in the 2010 Decision for all the companies, except for Martinair. In the 2010 decision, Martinair's fine had been capped at 10% of the company's total turnover in 2009. EU rules allow a maximum fine of 10% of the total turnover in the year preceding the adoption of the decision. Martinair's turnover is significantly lower in 2016 than in 2009. As a result, Martinair's fine has been lowered to reflect this.

In the 2010 decision, Lufthansa, and its subsidiary Swiss International Air Lines, received full immunity under the Commission's [2006 Leniency Notice](#), as it brought the cartel to the Commission's attention and provided valuable information. Furthermore, the fines for the majority of carriers were also reduced for their cooperation with the Commission under the Leniency Notice.

The individual fines are as follows:

		Fine (€)*	Reduction under the Leniency Notice
	Air Canada	21 037 500	15%
	Air France	182 920 000	20%
	KLM	127 160 000	20%
	Martinair	15 400 000	50%
	British Airways	104 040 000	10%
	Cargolux	79 900 000	15%
	Cathay Pacific Airways	57 120 000	20%
	Japan Airlines	35 700 000	25%
	LAN Chile	8 220 000	20%
	SAS	70 167 500	15%
	Singapore Airlines	74 800 000	
	Lufthansa	0	100%
	Swiss International Air Lines	0	100%

(*) Legal entities within the undertaking may be held jointly and severally liable for the whole or part of the fine imposed.

Procedural background

The investigation started as a result of an immunity application by Lufthansa filed in December 2005. In February 2006, the Commission carried out unannounced inspections at the premises of a number of providers of airfreight services. In November 2010, the Commission adopted a decision against 12 air cargo carriers imposing fines totalling €799 445 000.

All carriers except Qantas appealed to the EU's General Court against the Commission's 2010 decision. Since Qantas did not appeal, the 2010 Decision became final for it.

In December 2015, the Court annulled the Commission's 2010 decision after finding a discrepancy between the reasoning and operative part of the decision. The reasoning part of the decision described the infringement as a single and continuous infringement covering all addressees. However, some articles of the operative part suggested that there were four separate infringements with only some addressees participating in all four.

The Commission's March 2017 Decision addresses the Court's conclusions by bringing the operative part in line with the reasoning part.

Action for damages

Any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the cartel participants concerned, damages may be awarded without being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which Member States had to implement in their legal systems by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).