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Antitrust: Commission fines 11 air cargo carriers €799 million in price fixing cartel

The European Commission has fined 11 air cargo carriers a total of €799.445.000 for operating a worldwide cartel which affected cargo services within the European Economic area (EEA). Several known airlines are among the 11 undertakings fined, namely Air Canada, Air France-KLM, British Airways, Cathay Pacific, Cargolux, Japan Airlines, LAN Chile, Martinair, SAS, Singapore Airlines and Qantas. The carriers coordinated their action on surcharges for fuel and security without discounts over a six year period. Lufthansa (and its subsidiary Swiss) received full immunity from fines under the Commission's leniency programme, as it was the first to provide information about the cartel.

"It is deplorable that so many major airlines coordinated their pricing to the detriment of European businesses and European consumers" said Vice President for Competition Joaquín Almunia adding: "with today's decision the Commission is sending a clear message that it will not tolerate cartel behaviour".

Today the Commission fined 11 air cargo carriers a total of €799.445.000. The cartel members coordinated various elements of price for a period of over six years, from December 1999 to 14 February 2006. The cartel arrangements consisted of numerous contacts between airlines, at both bilateral and multilateral level, covering flights from, to and within the EEA. Airlines providing airfreight services primarily offer the transport of cargo to freight forwarders, who arrange the carriage of these goods including associated services and formalities on behalf of shippers.

The infringement

The contacts on prices between the airlines concerned initially started with a view to discuss fuel surcharges. The carriers contacted each other so as to ensure that worldwide airfreight carriers imposed a flat rate surcharge per kilo for all shipments. The cartel members extended their cooperation by introducing a security surcharge and refusing to pay a commission on surcharges to their clients (freight forwarders).

The aim of these contacts was to ensure that these surcharges were introduced by all the carriers involved and that increases (or decreases) of the surcharge levels were applied in full without exception. By refusing to pay a commission, the airlines ensured that surcharges did not become subject to competition through the granting of discounts to customers. Such practices are in breach of the EU competition rules.

On the other hand, Commission allegations of collusion on two other surcharges and regarding freight rates in the Statement of Objections have been dropped from the case for insufficient evidence. The Commission also dropped charges against another 11 carriers and one consultancy firm which had previously received the Statement of Objections for the same reason.

The fines

In setting the level of the fines, the Commission took into account the sales of the companies involved in the market concerned, the very serious nature of the infringement, the EEA-wide scope of the cartel and its duration.

All carriers were granted a 50% reduction on sales between the EEA and third countries in order to take into account the fact that on these routes part of the harm of the cartel fell outside the EEA. The Commission increased the fine for SAS by 50% for its previous involvement in a cartel in the airline sector (SAS/Maersk cartel, see [IP/01/1009](#)). All carriers received a reduction of 15% on account of the general regulatory environment in the sector which can be seen as encouraging price coordination. Four carriers were also granted a 10% reduction for limited participation in the infringement. As the fines on two companies would have exceeded the legal maximum of 10% of their 2009 turnover, the amount (before possible leniency considerations) was reduced to this level.

Lufthansa (and its subsidiary Swiss) received full immunity under the Commission Leniency Programme, as it brought the cartel to the Commission's attention and provided valuable information. The fines of the following carriers were also reduced for their cooperation with the Commission under its Leniency Programme: Martinair (50%), Japan Airlines (25%), Air France-KLM (20%), Cathay Pacific (20%), LAN Chile (20%), Qantas (20%), Air Canada (15%), Cargolux (15%), SAS (15%) and British Airways (10%).

Five carriers applied for a reduction claiming inability to pay the fine. However, none of the applications met the conditions for a reduction

The individual fines are as follows:

		Fine (€)*	Includes reduction (%) under the Leniency Notice
1.	Air Canada	21 037 500	15%
2.	Air France	182 920 000	20%
	KLM	127 160 000	20%
3.	Martinair	29 500 000	50%
4.	British Airways	104 040 000	10%
5.	Cargolux	79 900 000	15%
6.	Cathay Pacific Airways	57 120 000	20%
7.	Japan Airlines	35 700 000	25%
8.	LAN Chile	8 220 000	20%
9.	Qantas	8 880 000	20%
10.	SAS	70 167 500	15%
11.	Singapore Airlines	74 800 000	
12.	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.

Action for damages

Any person or firm 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 is binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without these being reduced on account of the Commission fine.

The Commission considers that meritorious claims for damages should be aimed at compensating, in a fair way, the victims of an infringement for the harm done. A White Paper on antitrust damages actions has been published (see [IP/08/515](#) and [MEMO/08/216](#)). More information, including a citizens' summary of the White Paper, is available at:

<http://ec.europa.eu/comm/competition/antitrust/actionsdamages/documents.html>

For more information on the Commission's action against cartels, see [MEMO/10/290](#)