

Joaquín Almunia

Vice President of the European Commission responsible for
Competition Policy

Air Cargo Cartel Press Conference

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Press conference

Brussels, 9 November 2010

Ladies and gentlemen

The Commission today fined 11 eleven air cargo carriers nearly €800 million for operating a world-wide cartel over six years, from late 1999 to early 2006, when the Commission's investigation stopped the illegal behaviour.

The cartel affected the price for air freight services, also known as air cargo. The service is generally bought by freight forwarders acting on behalf of companies, who want to ship goods across borders and between continents.

This cartel harmed companies and, therefore, consumers in the European Economic Area, covering flights within the EU and between the EU and third countries.

Had it not been for the Commission's intervention, the cartel would not have ended in 2006. More than likely, it would have continued through the economic downturn until today with all the harm this would have caused to their customers and final consumers.

The cartel started with the coordination of a fuel surcharge. The cooperation was later extended to cover a security surcharge, introduced after the terrorist attacks of September 2001, as well as the refusal to pay a commission on these surcharges to freight forwarders.

The fact that fuel prices were increasing, or that security costs rose after the 2001 terrorist attacks, is not an acceptable reason to stop competing against each other.

If companies' costs increase it is normal that their prices also increase. But companies cannot collude to fix the price for customers as this ultimately harms not only the latter but also the end consumers.

Today's decision establishes that the airlines concerned held price-fixing meetings, both at bilateral and multilateral level, throughout the six-year period.

The purpose was to ensure that the surcharges were introduced by all the carriers involved and that increases in the surcharge levels were applied in full without exception.

As the cartel relied to a significant extent on a network of bilateral contacts mainly by phone, it proved crucial to receive information from the cartel participants themselves. Without this it would have been difficult to prove the infringement.

As a result, all companies but one benefitted from a reduction of the fine under the Leniency Notice and in the case of Lufthansa, which was the first to inform the Commission about the cartel, full immunity.

You can see the individual leniency reductions in the table contained in the press release.

On top of these leniency reductions, four carriers: Air Canada, LAN Chile, SAS and Qantas, were also granted a 10% reduction in light of their limited participation in the infringement.

On the other hand, the resulting amount for SAS was also increased by 50% for recidivism, as it was already found to operate a cartel with Maersk and fined in 2001.

More generally, to determine the level of fines we took into account a number of aspects specific to the air transport sector. Because the services on third country routes were also sold to customers located outside the EEA and to recognise that the harm caused by the cartel partially fell outside the EEA, the Commission only took into consideration 50% of the turnover achieved on routes between the EEA and third countries.

Regulatory landscape

We have integrated in our fine calculations the fact that the provision of international air transport services is still highly regulated and that in some instances the Bilateral Air Service Agreements concluded between the Member States and third countries encourage anti-competitive behaviour from the airlines. Hence, all carriers were also granted a 15% reduction on account of the regulatory environment in certain countries outside the EU where charges for air freight services are regulated.

Nevertheless none of the carriers was obliged to collude because of this regulatory environment. In other words the companies always had an alternative. Therefore, we considered this a mitigating circumstance only, not as a valid excuse.

ITP claims

I should also stress that a total of five carriers claimed they would be unable to pay and asked for a reduction of the fine likely to be applied to them. But a careful analysis has shown that the conditions for accepting such requests were not met.

As I said on previous occasions, the Commission will always listen to such claims very carefully and we did so in this case too.

But granting ITP reductions will remain the exception rather than the rule.

The alliance excuse

On another aspect, it was argued by several airlines that the coordination on the surcharges was part of their alliance discussions.

Indeed, whenever contacts between carriers were held within the terms of an alliance the Commission ignored them for the purpose of this decision. However, there were also pricing discussions that were clearly illegal.

Let me state clearly that the Commission supports the consolidation of the airline industry, provided that it does not create monopolies or excessive market power. We have approved numerous mergers and alliances in the sector. But the existence of an alliance agreement cannot give a blank check for naked price coordination among the members.

Private enforcement

To finish, I would also like to mention that I have noticed reports about private actions being started against some of the companies involved in this case.

It is basic justice that customers harmed by cartel behaviour should obtain redress for the harm caused to them, as I have said on many occasions. I believe the current situation does not allow companies, often SMEs, and consumers to enforce this right. Certainly this is not possible throughout the EU. This is why the Commission is committed to proposing legislation on the matter.

Once our horizontal analysis of collective redress procedures is concluded, we will and must act to strengthen the positions of SMEs and consumers when it comes to compensation.

Thank you