

# European Commission back to the drawing board after air freight fright

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The European Commission has the right to appeal the General Court's ruling.

The General Court recently annulled the European Commission's decision to impose fines totalling EUR 790 million on a number of air carriers for their participation in an airfreight cartel. According to the General Court, the contradictions between the grounds and the operative part of the Commission's decision were liable to infringe the air carriers' rights of defence. This is not only a blow to the Commission, which will need to consider whether to appeal the ruling or amend the decision, but also to the claimants seeking damages from the air carriers. We will keep you informed as the case proceeds.

In November 2010, the European Commission [fined](#) a number of air cargo carriers for operating a worldwide cartel which affected cargo services within the European Economic Area. The carriers coordinated their actions on surcharges for fuel and security without discounts over a six-year period. All air carriers except one brought actions before the General Court against the Commission's decision. According to the air carriers, there were discrepancies between the grounds of the decision, which describe a single and continuous infringement in the European Economic Area and Switzerland, and the operative part of the decision, which refers to four separate infringements relating to different periods and routes.

In its ruling, the [General Court](#) reiterated that the principle of effective judicial protection requires that the operative part of a Commission decision must be particularly clear and precise. Furthermore, because national courts are bound by a Commission decision – provided it has not been annulled or invalidated – the meaning of a decision's operative part must be unambiguous. It must enable national courts to understand the scope of the infringement and to identify the persons liable, so that they can draw the necessary inferences with regard to claims for damages by cartel victims.

The General Court agreed with the air carriers on there being a contradiction between the grounds and the operative part of the contested decision. The grounds describe a single and continuous infringement in relation to all of the routes covered by the cartel and which all of the carriers at issue allegedly participated in. The operative part of the decision refers to either four separate single and continuous infringements or just one single and continuous infringement, liability for which is attributed only to the carriers which, as regards the relevant routes, participated directly in the unlawful conduct or were aware of the collusion on those routes and accepted the risk.

The General Court ruled that these inconsistencies could infringe the air carriers' rights of defence and prevent the Court from exercising its power of review. It therefore annulled the decision.