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Court of Justice upholds airfreight cartel fines

On 26 February 2026, the European Court of Justice (CJ) delivered a series of thirteen judgments in the long-running airfreight cartel litigation, largely dismissing the airlines' appeals against earlier judgments of the European General Court (GC). The CJ confirmed key aspects of the European Commission's enforcement approach, including: (i) the Commission's jurisdiction to penalise cartel conduct affecting inbound airfreight services from third countries into the EU or the EEA; and (ii) the characterisation of the conduct as a single and continuous infringement.

The CJ nevertheless partially upheld the appeal brought by SAS Cargo Group, reversing the GC's increase to SAS' fine and ultimately reducing the fine to a level below that originally imposed by the Commission.

Background

On 9 November 2010, the Commission adopted an infringement decision against multiple airlines operating on the airfreight market, finding they had participated in a pricing cartel between December 1999 and February 2006, and imposing fines totalling around €790 million. The Commission concluded that the airlines had infringed Article 101 of the Treaty on the Functioning of the European Union (TFEU), Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport. The cartel related to several elements of pricing for airfreight services, notably the introduction of "fuel" and "security" surcharges and the refusal to pay commission to freight forwarders on those surcharges.

That initial decision was annulled by the GC on the basis that internal contradictions in the Commission's reasoning could undermine the airlines' rights of defence. On 17 March 2017 the Commission adopted a new decision, amending the defective statement of reasons identified by the GC and imposing fines totalling approximately €776 million. The airlines brought actions before the GC seeking annulment or reduction of those fines.

By judgments of 30 March 2022, the GC dismissed a number of those actions, while partially annulling the decision and reducing the fines for certain other airlines (as reported in a previous edition of this newsletter). The airlines appealed to the CJ.

The CJ's judgments

In its judgments of 26 February 2026, the CJ rejected almost all the arguments advanced by the airlines. The decisions are notable for the CJ's reaffirmation of: (i) the legal tests governing the Commission's jurisdiction over conduct implemented outside the EU/EEA; and (ii) the evidential and legal framework for establishing a single and continuous infringement. A more limited, but practically important, point concerned fine calculation and equal treatment in SAS' appeal.

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Commission jurisdiction: inbound freight and the "qualified effects" test

A central strand of the appeals challenged the Commission's jurisdiction to penalise the cartel in respect of inbound airfreight services from third countries into the EU or the EEA. The CJ emphasised that the Commission may exercise jurisdiction over conduct taking place outside the EU or the EEA where either the conduct is implemented within those territories (the "implementation test"), or where it gives rise to foreseeable, immediate and substantial effects there (the "qualified effects" test).

The CJ held that the GC did not err in confirming the Commission's jurisdiction exclusively on the basis of the qualified effects test, emphasising that the two tests are alternative. The CJ further reaffirmed that the Commission must establish that the effects relied on are "*foreseeable, immediate and substantial*", and rejected the airlines' various arguments alleging that the GC committed errors of law in its review of the characterisation of those effects.

In practical terms, the CJ's reasoning underscores that, where the Commission can demonstrate the requisite connection between extra-territorial cartel conduct and competitive conditions in the EU/EEA, jurisdiction may be established without the need to prove "implementation" within the territory.

Single and continuous infringement: participation, awareness and scope of liability

The CJ also rejected the airlines' attempts to overturn the finding that the conduct formed part of a single and continuous infringement. It clarified that, in the context of an infringement spanning several years, an undertaking's participation does not need to be demonstrated by direct evidence for every individual period. Participation may still be established where the overall assessment is supported by objective and coherent evidence.

In the same vein, the CJ confirmed that liability is not confined to routes on which an airline was directly active. An airline may be held responsible where it made its own contribution to the cartel's common objectives and was aware of the conduct pursued by other participants in furtherance of those objectives, even if it did not operate the routes concerned.

Reduction of the fine for SAS: equal treatment and fine calculation

The CJ upheld only one appeal in part: that brought by SAS. The issue concerned the GC's approach to ensuring equal treatment in respect of the fine calculation.

In the contested judgment, the GC had increased SAS' fine from that imposed by the Commission by including turnover generated on internal routes within the same State, with the aim of ensuring equal treatment as between airlines. The CJ found, however, that the GC lacked evidence demonstrating that comparable internal-route turnover had been included in the fines imposed on the other airlines concerned.

In the absence of such evidence, the GC was not entitled to conclude that there had been unequal treatment or to adjust SAS' fine on that basis. The CJ therefore set aside the GC's judgment on this point and reduced the fine imposed on SAS, resulting in a fine lower than that originally imposed by the Commission (as reflected in the CJ's summary table of fines).

Conclusion

The CJ's judgments largely confirm the Commission's enforcement framework in cartel cases with an international dimension. They reaffirm the Commission's ability to rely on the qualified effects test, requiring effects that are "*foreseeable, immediate and substantial*", as an alternative to proving implementation within the EU/EEA. The judgments also reinforce the CJ's established approach to single and continuous infringements, including the possibility of liability extending to conduct affecting routes not directly operated by a particular participant where the necessary contribution and awareness are shown.

At the same time, the CJ's partial intervention in respect of SAS demonstrates that fine calculation remains an area where errors of approach, especially those rooted in evidential shortcomings, can lead to appellate correction. For practitioners, the overall message is twofold: the bar for overturning cartel findings remains high, but careful scrutiny of the evidential basis for fine adjustments can still make a material difference.

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OTHER DEVELOPMENTS

MERGER CONTROL

Philippines raises merger notification thresholds

The Philippine Competition Commission (PCC) has announced an adjustment to the thresholds for transactions subject to compulsory merger notification. With effect from 1 March 2026, the following revised thresholds apply to the Philippines' Size of Party and Size of Transaction criteria:

Criteria	Previous threshold	New threshold
Size of Party	PHP 8.5 billion (approximately GBP 107 million)	PHP 9.1 billion (approximately GBP 115 million)
Size of Transaction	PHP 3.5 billion (approximately GBP 44 million)	PHP 3.8 billion (approximately GBP 48 million)

The PCC typically reviews the thresholds on an annual basis to ensure that the notification regime remains responsive to economic developments and to allow for the efficient allocation of the PCC's enforcement resources. The Size of Party threshold refers to the aggregate value of the assets or revenues of the ultimate parent entity (including its controlled entities) in the Philippines of any party to the transaction. The Size of Transaction threshold refers to the aggregate value of assets or revenues of the target or acquired entity in the Philippines. A proposed merger or acquisition (including joint ventures) is notifiable where both the Size of Party and Size of Transaction thresholds are met. Unlike many other jurisdictions, there is a fixed deadline for filing: the PCC must be notified within 30 calendar days of the execution of the definitive agreement(s).

Transaction parties should remain mindful that the PCC retains the power to review below-threshold transactions on its own initiative (*motu proprio*) where there are reasonable grounds to believe that the transaction may substantially lessen competition. For example, in 2018, the PCC imposed remedies on Grab's acquisition of Uber's southeast Asia business after opening a *motu proprio* merger review.

In addition, the power of *motu proprio* review has been expressly articulated in the context of digital markets. In its Guidelines for the *Motu Proprio* Review of Mergers and Acquisitions in Digital Markets, the PCC sets out a non-exhaustive list of "red-flag" indicators that may trigger such a review and, interestingly, adopts the concept of "gatekeepers". The PCC generally considers "gatekeepers" to be providers of a digital service, access to which is necessary to participate in the market, while also referencing the definition under the EU Digital Markets Act. With respect to "gatekeepers", the PCC notes that: (1) transactions involving one or more gatekeepers with competitive significance in digital markets may have a material impact on competition even if they fall below the notification thresholds; (2) even where a transaction involves only a single gatekeeper, it will not rely solely on entity size, but will also consider factors such as network effects, access to and use of data, and effects on innovation. The PCC also stated that it may review a non-notifiable transaction where the value of consideration or contract price is close to the Size of Transaction threshold, taking into account both monetary consideration and non-monetary benefits (including stock, board seat, or management position).

GENERAL COMPETITION

Doug Gurr confirmed as new Chair of CMA

On 27 February 2026, Doug Gurr was appointed the new Chair of the Competition and Markets Authority (CMA). Gurr, who has served as interim Chair since 21 January 2025, will take up the role for a five-year term, working alongside CMA Chief Executive Sarah Cardell.

The appointment followed a pre-appointment hearing before the House of Commons Business and Trade Committee on 24 February 2026. In its report published on 26 February 2026, the Committee concluded that Gurr has the professional competence required to be Chair, noting his experience chairing public sector bodies and

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extensive knowledge of the CMA. It also concluded that, while Gurr's former role as Country Manager of Amazon UK "*obviously creates questions*", his separation from Amazon for over five years, together with his subsequent public-sector leadership roles (including as Director of the Natural History Museum), was sufficient to address concerns about his independence. However, the Committee raised concerns about the recruitment process, highlighting that only one candidate was deemed appointable from 27 applicants, which it said was "*not the hallmark of a robust recruitment process*".

The Committee also focused on the future direction and independence of the CMA, particularly in the context of the Government's strategic steer emphasising economic growth. While acknowledging the importance of accountability to Ministers and Parliament, the Committee stressed the Government should emphasise the CMA's statutory duty to promote competition and protect consumers will not be diminished by the pursuit of economic growth. In this context, the Committee also raised broader concerns as to whether the CMA would be able to operate independently of Government influence. At the hearing, Gurr sought to address these concerns, stating that institutional independence is "*not binary*" and that, while it is appropriate for the CMA to be accountable to Ministers and Parliament, this accountability would not translate into political interference in any individual CMA decisions. The Committee nevertheless recommended that Ministers clearly underline the need for operational independence in case decisions. In addition, it was recommended the Ministers make clear that they expect rigorous implementation of the CMA's new powers under the Digital Markets, Competition and Consumers Act 2024.

Finally, the Committee expressed concern about the advertised time commitment for the Chair role (up to two days per week), questioning whether this would be sufficient given the demands of the role and the CMA's ongoing transformation programme. It also suggested that Ministers should consider whether Gurr should recuse himself from any future decision on designating Amazon with Strategic Market Status. The Committee indicated it will continue to monitor the CMA's performance closely during Gurr's tenure.

EU and UK sign competition cooperation agreement

On 25 February 2026, the European Commission and the United Kingdom signed the EU-UK Competition Cooperation Agreement, establishing a formal framework for cooperation between the Commission and the National Competition Authorities (NCAs) of EU Member States, and the UK CMA. The agreement supplements the EU-UK Trade and Cooperation Agreement and is the first standalone EU-UK agreement focused exclusively on competition cooperation since Brexit.

The Commission first confirmed the conclusion of technical negotiations in October 2024, followed by proposals to sign and conclude the agreement in May 2025. Subsequently, on 4 November 2025, the Council authorised signature on behalf of the EU. The agreement will enter into force once ratification procedures have been completed on both sides, including adoption by the Council of the EU with the consent of the European Parliament.

As remarked by Executive Vice-President Teresa Ribera, the agreement is expected to formalise cooperation mechanisms that had largely operated on an informal, *ad hoc* basis since the UK's withdrawal from the EU. It is expected to provide for the mutual notification of important steps in antitrust investigations and consistency between approaches. In particular, as set out in the draft, the agreement will set out that important antitrust and merger investigations are brought to each other's attention. It will also, when necessary, allow the coordination of investigations between the jurisdictions involved. On the EU side, this could involve the Commission or EU NCAs, depending on the circumstances. To enable this, it also sets out clear principles of cooperation, aimed at preventing any conflicts between the jurisdictions. As a point to note, the consent of the company providing the information will continue to be required prior to the exchange of any confidential information between the authorities.

The agreement is the first EU competition cooperation agreement that enables EU NCAs to cooperate directly with a third-country competition authority.

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