



## **AIR CARGO CARTEL DAMAGES RECOVERY ACTION FREQUENTLY ASKED QUESTIONS**

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**Please note that this document does not constitute the giving of legal advice in relation to the air cargo damages recovery action or the Assignment of Rights Agreement offered by CFI. It should be read in conjunction with the Assignment of Rights Agreement, a copy of which is available from CFI. You may want obtain your own legal and financial advice before entering into the Assignment of Rights Agreement.**

### **1. Who is Claims Funding International plc (CFI)?**

CFI is a public limited company incorporated in Ireland to fund and supervise large scale litigation for the victims of corporate misconduct. To find out more go to [www.claims-funding.eu](http://www.claims-funding.eu)

CFI's aim is to provide access to justice for businesses affected by corporate misconduct by assuming all the costs and risks of litigation in return for a commission **only if damages are successfully recovered**. CFI supports businesses affected by anti-competitive behaviour that wish to bring legal proceedings to seek redress for their losses through the courts. This ensures more effective enforcement of competition laws, the refund of illegally obtained profits and the promotion of higher standards of corporate governance for the benefit of all.

### **2. What is CFI offering?**

CFI is offering to take an assignment of your rights as a victim of the air cargo cartel and pursue claims against airlines who have been found by the European Commission (see Press release attached) to have participated in a cartel that fixed prices in relation to international air freight between December 1999 and the 14th February 2006. The airlines are Air Canada, Air France, British Airways, Cargolux, Cathay Pacific Airways, Japan Airlines, KLM Airlines, LAN Chile, Lufthansa, Martinair, Qantas, SAS, Singapore Airlines and Swiss International Air Lines.

The cartel fixed the prices of fuel and security surcharges applied to international air freight services. The claim will be to recover the loss caused to businesses that purchased air freight services from cartel members during this period.

### **3. The proposed model**

Under the Assignment of Rights Agreement, CFI's special purpose company Equilib will take an assignment of the rights you may have as a victim of the cartel to seek compensation. The assignment will give Equilib ownership and possession of the rights, to seek compensation. In exchange for the assignment, Equilib will pay you a price equivalent to 72.5% of any compensation recovered pursuant to the rights.

Equilib will use its best-efforts to resolve and enforce the rights for maximum value, in the shortest time possible, with the least risk, in the jurisdictions determined to be appropriate by Equilib. Equilib will pay lawyers' fees, court costs, expert witness costs and all other costs and expenses associated with bringing proceedings. Equilib will also pay any order for costs which may be made in favour of the defendants should the legal action be unsuccessful.

**If the claim is unsuccessful you will not be required to pay anything.**

### **4. Where will the proposed proceedings take place?**

CFI commenced its litigation in the Netherlands on the 30th September 2010. We believe the Netherlands offers the best prospects for success. In the Netherlands Court the European Commission decision is binding proof that the behaviour took place and was illegal.

Under Dutch law, a member of a cartel is **jointly and severally liable for all losses caused by the entire cartel. This means that it is irrelevant which carrier your business used.** The action alleges a breach of Article 101 of the EC Treaty which prohibits price fixing.

### **5. What are the prospects for success?**

Following the EC decision we only need to prove the amount of the loss caused by the cartel. Six airlines have settled with their US victims (Air France, Lufthansa, KLM, SAS, JAL and American). Accordingly we believe the prospects for recovering a refund are excellent. We are confident that at some stage the airlines will want to negotiate a resolution to the European claims. We are committed to participating in alternative resolution procedures such as mediation, negotiation, arbitration and expert determination in an effort to resolve the claims outside of court and minimize legal and other expenses.

**6. What is the relevant period within which I must have purchased international air freight services to participate in the proposed action?**

To be eligible to claim, you will need to have purchased international air freight services during the period from December 1999 to 14 February 2006 (“Cartel Period”). The relevant criteria is all flights **to, from or within Europe**.

**7. How much is my claim worth?**

The size of your claim will depend upon your business’ spend on international air freight services in the Cartel Period. We recommend that if your business paid air freight charges exceeding a total of €1m during the Cartel Period, your individual claim is commercially viable for you to pursue. We estimate the overcharge was up to 10% so we will claim that percentage of your gross spend on international air freight.

However, the amount of damages or settlement you might ultimately recover will depend on several factors, including, for example the financial state of the airlines, defence arguments about the extent of the loss and the method adopted by the Court for assessing loss.

**8. What will I have to pay?**

CFI will pay all costs of pursuing the claims that have been assigned to it under the Assignment of Rights Agreement. All costs, expenses and fees are included in CFI’s share of the compensation recovered. CFI will receive 27.5% of the recoveries and will recoup its expenses from that amount.

As stated above, if the proceedings or the negotiations are ultimately unsuccessful, you will not have to pay anything. If the claim is successfully resolved, CFI (via Equilib) will receive the damages or settlement monies and pay you 72.5% of the compensation as the price of the assignment.

**9. What will I be required to do? How do I prove my air freight spend?**

You will be asked to provide information about your claim in respect of your company’s spend on international air freight services during the Cartel Period **to the extent that you are reasonably able to do so**. Your freight forwarder should be asked to provide this information to you. The best documents for proving air freight spend are;

1. Freight/shipping invoices
2. Spreadsheets provided by your freight forwarder
3. House and Master Air Ways Bills
4. Documents submitted to Revenue claiming air freight costs as a tax deduction

## **10. How long will any legal proceedings take?**

Our assessment is that because of the European Commission decision the action will eventually settle. However we anticipate that the proceedings will at least initially be strongly contested.

We expect the proceedings to take somewhere between two and three years or more from their commencement to resolve.

## **11. Will my details be kept confidential?**

We will only use and/or disclose your air freight information strictly for the purpose of the legal proceedings or alternative resolution process and as required by the court or by law. For the assignment to be valid, we will need to disclose to the airlines the fact of the assignment. In the Netherlands, Court documents and evidence in the proceedings **cannot be accessed by the media.**

## **12. Will the airlines punish my business for claiming?**

In all the litigation in various jurisdictions around the world relating to this cartel we are not aware of a single instance of retribution. The fact is the airlines are in enough trouble without compounding that by revenge conduct. They also need as many clients as they can get in these difficult economic times.

## **13. What do I have to do to join the claim?**

In order to participate in the action funded by CFI you must sign the Assignment of Rights Agreement and return it to CFI prior to any proceedings being commenced. Please contact [akostick@claimsfunding.eu](mailto:akostick@claimsfunding.eu) for an assignment document.



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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](#)