

Court grants permission to appeal in air cargo damages litigation

01/12/2017 (EU/Competition)

Mrs. Justice Rose today granted permission to appeal her ruling in her judgment of 4 October 2017, in which she struck out part of the Claimants' claims for damages in relation to infringements of EU competition law pre-dating 1 May 2004. The Claimants assert that they were overcharged for freight services by British Airways and other airlines because those airlines were parties to a covert cartel whereby they agreed with each other about the level of certain surcharges applied to charges for the carriage of freight. The claims followed two decisions by the European Commission, in which it found there to be an infringement of EU competition provisions, the overall duration of that infringement being between 9 December 1999 to 14 February 2006.

Mrs. Justice Rose's ruling was based on an interpretation of the transitional provisions applicable to air transport on routes between the EU/EEA airports and third countries. She found that those transitional provisions did not allow national courts, prior to 1 May 2004, to rule on the compatibility of an agreement with ex Article 85(1) EEC in the absence of either implementing measures adopted under ex Article 87 EEC or a prior decision taken under the transitional regime in ex Articles 88 or 89 EEC. She further found that the provisions of Regulation 1/2003, on which the Claimants relied, did not have retrospective effect.

Having heard submissions from the parties, she granted permission to appeal on the basis that there were difficult points of law involved, there was no domestic authority on the issues and that consequently it was not possible to say that there was no real prospect of success.

Fergus Randolph QC, instructed by Edwin Coe LLP, appeared for the La Gaitana Claimants.

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- Fergus Randolph QC