



St. Gallen, 20 December 2022

Press Release

on nine judgments B-710/2014, B-747/2014, B-761/2014, B-765/2014, B-780/2014, B-784/2014, B-785/2014, B-786/2014 and B-787/2014 of 16 November 2022

Price collusion in airfreight transport partially confirmed

The Federal Administrative Court confirms that in the airfreight sector price collusion had partially taken place, but reduces the fines imposed by the Competition Commission. It also lifts a ban prohibiting airlines from exchanging relevant information.

In December 2013, the Swiss Competition Commission (COMCO) issued an unusually voluminous, 412 page-long ruling establishing the existence of price collusion in the airfreight transport sector (on routes between Switzerland and five countries outside the EU). COMCO imposed sanctions on eleven airlines.¹ The sanctions amounted to about CHF 11 million. Nine airlines filed appeals with the Federal Administrative Court (FAC).

No jurisdiction in three cases

The Federal Administrative Court (FAC) fully grants three appeals. The companies concerned had first transported their cargo by land to a country within the European Community, and from there onwards by air to a third country. The applicable agreement between Switzerland and the European Community on Air Transport (see SR 0.748.127.192.68) provides that only "routes between Switzerland and third countries" remain under the competence of the Swiss authorities. The Court holds that the agreement only covers flight routes and that, therefore, COMCO did not have jurisdiction over the above-mentioned freight transports.

Unlawful exchange of information in five cases

The FAC essentially confirms that competition was infringed in five cases. The Court considers it established that several airlines in the freight transport sector exchanged information on fuel surcharges and the refusal to pay commission on surcharges over a longer period in a manner detrimental to competition. This was done within a simple partnership where information was systematically collected and disseminated among the partners. The FAC thus confirms COMCO's finding

¹ Following judicial directives, COMCO further anonymised its sanctions decision of 2 December 2013 before publishing it on 10 January 2022. To ensure an equal application of the law, the FAC extends the anonymisation to all parties to the proceedings.

that competition law had been infringed by participation in an agreement or at least through a concerted practice. However, since the Court judges the conduct of the companies involved less severely than the lower instance, it reduces the corresponding sanctions.

Ban lifted

In its ruling, COMCO prohibited the airlines from exchanging information about airfreight prices, pricing elements, price mechanisms and any other relevant data outside their own corporate group unless explicitly permitted by international treaties or in the context of an exempted alliance. In the light of a recent judgment of the Federal Supreme Court (2C_782/2021 of 14 September 2022), the FAC deems this ban to be disproportionate in absence of any practical risk of recurrence. For this reason, the FAC views this ban as unconstitutional and lifts it.

Furthermore, the FAC also partially grants the appeal of a self-denunciating airline, to the extent as it declares the remedy admissible. Although not having been sanctioned, the airline is also affected by the ban.

These judgments may be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 365 employees (305.6 FTE) and its 72 judges (64.5 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 6,500 judgments every year.