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Air Canada v Commission: The Final Word on Extraterritoriality and Limitation Periods in EU Competition Law

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On 26 February 2026, the Court of Justice of the European Union (CJEU), sitting as the Fifth Chamber, delivered its judgment in Air Canada v European Commission[1], dismissing Air Canada 2019s appeal in its entirety. The ruling carries significant implications for the extraterritorial reach of EU competition law, the conditions under which liability may be imputed within a single and continuous infringement, and the procedural standing of limitation period pleas in enforcement proceedings.

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Background and Procedural History

The case arose from a global cartel involving several international air carriers operating in the airfreight services market. Following an immunity application by Deutsche Lufthansa AG in December 2005, the European Commission conducted inspections and ultimately issued a Statement of Objections to 27 carriers, including Air Canada, in December 2007. The Commission ensuing decision in November 2010 found a single and continuous infringement of Article 101 TFEU, Article 53 of the EEA Agreement, and Article 8 of the EC-Switzerland Air Transport Agreement, involving coordinated pricing through fuel surcharges, security surcharges, and a refusal to pay freight forwarder commissions on surcharges.

That initial decision was annulled by the General Court in December 2015 on grounds of a defective statement of reasons. Following a renewed administrative process, the Commission re-adopted its decision on 17 March 2017, reimposing a fine of EUR 21,037,500 on Air Canada for conduct spanning from 21 September 2000 to 14 February 2006. Air Canada challenged the re-adopted decision before the General Court, which, in March 2022, partially upheld the action by excluding the commission-refusal element from Air Canada liability and reducing the fine to EUR 17,952,000. Air Canada appealed to the CJEU on three principal grounds.

First Ground: Extraterritorial Jurisdiction and the Qualified Effects Test

Air Canada contended that the General Court erred in relying exclusively on the qualified effects to establish the Commission jurisdiction over inbound freight routes that is, routes from third countries into the EEA. It argued that the Commission was further obliged to conduct a substantive assessment of actual anticompetitive effects within the internal market, particularly given that the cartel had been classified as a restriction of competition by object.

The CJEU affirmed, consistent with its earlier judgment in Intel v Commission[2], that the implementation test and the qualified effects test are alternative and not cumulative bases for extraterritorial jurisdiction. The Court further held that the General Court had not impermissibly substituted its own reasoning for that of the Commission. Rather, it had read the decision as a whole and drawn legitimate inferences from recitals describing the nature of the conduct, the structure of the airfreight market, and the foreseeable downstream effects on EEA consumers and importers. The Court also rejected Air Canada's claim that the burden of proof had been reversed, confirming that once the Commission adduces prima facie evidence of foreseeable effects, it falls upon the undertaking to adduce contrary evidence.

Third Ground: Liability Within a Single and Continuous Infringement

Perhaps the most procedurally significant aspect of the judgment concerns Air Canada's third ground of appeal, by which it submitted that the General Court ought to have raised of its own motion the plea based on the expiry of the limitation period under Article 25 of Regulation No. 1/2003. Other carriers, namely Japan Airlines, Cathay Pacific, and Latam Airlines, had successfully relied upon this plea before the General Court, resulting in partial annulments of the decision. Air Canada, having omitted to raise it at first instance, argued that the limitation period constituted a matter of public policy requiring the court to consider it ex officio.

The CJEU firmly rejected this argument. Through textual, contextual, and teleological analysis of Regulation No. 1/2003 and its legislative antecedents in Regulation No. 2988/74, the Court held that the limitation period under Article 25 serves primarily to

protect the private interests of undertakings subject to enforcement proceedings, not to advance a broader public interest. It is therefore fundamentally distinct from procedural time limits such as the deadline for bringing annulment proceedings under Article 263 TFEU which protect the finality and legal certainty of administrative decisions and must be raised of the court's own motion. The Court equally rejected Air Canada's equal treatment argument. The disparity in outcome between Air Canada and the other carriers resulted solely from Air Canada's own procedural choice not to raise the plea.

Second Ground: The Limitation Period and Matters of Public Policy

Air Canada further argued that it could not lawfully be held liable for the infringement in respect of intra-EEA routes and EU-Switzerland routes, given that it never operated, and could not legally have operated, such routes. It challenged what it characterised as the General Court's substitution of its own reasoning for that of the Commission, alleging also a violation of its rights of defence and an insufficiency of reasons.

The CJEU dismissed this ground in its entirety. Drawing on settled case-law including Commission v Verhuizingen Coppens and Scania and Others v Commission, the Court reaffirmed that liability for a single and continuous infringement does not require direct participation in every constituent element of the cartel. It suffices that an undertaking contributed to the overarching anticompetitive plan and was aware or could reasonably have foreseen the conduct of co-participants. The Court confirmed that the General Court had correctly identified the Commission actual reasoning in the decision, namely Air Canada contribution to the common anticompetitive objective and its awareness of the wider cartel arrangements.

Riya RajbharPractical Implications

This judgment carries several important lessons for undertakings engaged in international commerce. It confirms that the Commission's jurisdiction extends robustly to conduct adopted outside the EEA where foreseeable effects on EEA consumers can be established, without requiring proof of actual effects in cases involving restrictions by object. It reaffirms that participation in a global cartel may expose an undertaking to liability for routes it never served, provided the conditions for a single and continuous infringement are satisfied. Most critically, it is a salutary reminder that limitation period defences under Regulation No. 1/2003 are not self-executing. They must be raised expressly and timeously by the party concerned, failing which they are irrevocably lost.

Undertakings facing Commission enforcement proceedings, particularly those based outside the European Union, should ensure that all available procedural defences, including those grounded in the expiry of limitation periods, are carefully considered and advanced at the earliest available opportunity.

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