Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

26 February 2026*

(Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Defence alleging State constraint – Decision of the General Court of the European Union not to rule on certain pleas – Proof of participation in a single and continuous infringement – Evidence relating to recitals in the decision at issue supporting a part of the operative part thereof which was annulled by the General Court)

In Case C-382/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 June 2022,

Cathay Pacific Airways Ltd, established in Hong Kong (China), represented by E. Estellon and M. Rees, avocats, and J. Flynn KC,

appellant,

the other party to the proceedings being:

European Commission, represented by A. Dawes and C. Urraca Caviedes, acting as Agents, and by J. Holmes, Barrister-at-Law,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, E. Regan and D. Gratsias, Judges,

Advocate General: A. Rantos,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 22 April 2024,

* Language of the case: English.

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

Judgment

1 By its appeal, Cathay Pacific Airways Ltd ('Cathay Pacific') seeks to have set aside the judgment of the General Court of the European Union of 30 March 2022, *Cathay Pacific Airways* v *Commission* (T-343/17, EU:T:2022:184; 'the judgment under appeal'), by which the General Court in part dismissed its action seeking, principally, annulment of Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 [TFEU], Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 – Airfreight) ('the decision at issue'), in so far as it concerns Cathay Pacific, and annulment of the fine imposed on the latter by that decision; and, in the alternative, a reduction of the amount of that fine.

Legal context

The EC-Switzerland Air Transport Agreement

2 The Agreement between the European Community and the Swiss Confederation on Air Transport, signed in Luxembourg on 21 June 1999 and approved on behalf of the European Community by Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1) ('the EC-Switzerland Air Transport Agreement'), entered into force on 1 June 2002. Articles 8 and 9 of that agreement correspond, *mutatis mutandis*, to Articles 101 and 102 TFEU, respectively.

3 Under Article 11 of that agreement:

'1. The provisions of Articles 8 and 9 shall be applied … by the Community institutions in accordance with Community legislation as set out in the Annex to this Agreement, taking into account the need for close cooperation between the Community institutions and the Swiss authorities.

2. The Swiss authorities shall rule, in accordance with the provisions of Articles 8 and 9, on the admissibility of all agreements, decisions and concerted practices … concerning routes between Switzerland and third countries.'

4 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) was made applicable to that agreement, with effect from 5 December 2007, by Decision No 1/2007 of the joint Community/Switzerland Air Transport Committee set up under the Agreement between the European Community and the Swiss Confederation on Air Transport of 5 December 2007 replacing the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport (OJ 2008 L 34, p. 19)). On that date, that regulation replaced Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the

application of the rules on competition to undertakings in the air transport sector (OJ 1987 L 374, p. 1), which had been contained in the annex to the EC-Switzerland Air Transport Agreement since the latter entered into force.

The FEU Treaty

5 Article 101(1) TFEU provides:

'The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

…'

The EEA Agreement

6 Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; 'the EEA Agreement'), corresponds, *mutatis mutandis*, to Article 101 TFEU.

7 Regulation No 1/2003, as amended by Council Regulation (EC) No 411/2004 of 26 February 2004 (OJ 2004 L 68, p. 1), was incorporated into the EEA Agreement by (i) Decision of the EEA Joint Committee No 130/2004 of 24 September 2004 amending Annex XIV (Competition), Protocol 21 (On the implementation of competition rules applicable to undertakings) and Protocol 23 (Concerning the cooperation between the surveillance authorities) to the EEA Agreement (OJ 2005 L 64, p. 57), which entered into force on 19 May 2005, and (ii) Decision of the EEA Joint Committee No 40/2005 of 11 March 2005 amending Annex XIII (Transport) and Protocol 21 (on the implementation of competition rules applicable to undertakings) to the EEA Agreement (OJ 2005 L 198, p. 38), which entered into force on the same day.

Regulation No 1/2003

8 Article 25 of Regulation No 1/2003, entitled 'Limitation periods for the imposition of penalties', states:

'1. The powers conferred on the [European] Commission by Articles 23 and 24 shall be subject to the following limitation periods:

(a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

(b) five years in the case of all other infringements.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

3. Any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:

(a) written requests for information by the Commission or by the competition authority of a Member State;

(b) written authorisations to conduct inspections issued to its officials by the Commission or by the competition authority of a Member State;

(c) the initiation of proceedings by the Commission or by the competition authority of a Member State;

(d) notification of the statement of objections of the Commission or of the competition authority of a Member State.

4. The interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.

5. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 6.

6. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice.'

Background to the dispute and the decision at issue

9 The background to the dispute and the decision at issue, as set out in paragraphs 1 to 60 of the judgment under appeal, may, for the purposes of the present proceedings, be summarised as follows.

10 Cathay Pacific is an air transport company. The applicant provides airfreight services through one of its divisions, named Cathay Pacific Cargo.

11 In the freight sector, airlines provide for the carriage of cargo by air ('the carriers'). As a general rule, carriers supply freight services to freight forwarders, who arrange the transport of that cargo on behalf of shippers. In return, those freight forwarders pay those carriers a price consisting, on the one hand, of rates calculated on a per kilogram basis and, on the other hand, of various surcharges.

The administrative procedure

12 On 7 December 2005, the Commission received an application for immunity under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3), lodged by Deutsche Lufthansa AG and two of its subsidiaries, Lufthansa Cargo AG and Swiss International Air Lines AG. The application alleged that extensive anticompetitive contacts were being maintained between a number of carriers with regard to elements of the price of services provided in the market for airfreight, namely the introduction of so-called 'fuel' and 'security' surcharges and the refusal on the part of those carriers to pay the freight forwarders a commission on the surcharges ('the refusal to pay commission').

13 On 14 and 15 February 2006, the Commission carried out unannounced inspections at the premises of a number of carriers.

14 Following those inspections, a number of carriers, including Cathay Pacific, submitted an application for immunity under the notice on immunity from fines and reduction of fines in cartel cases, referred to in paragraph 12 of the present judgment.

15 On 19 December 2007, the Commission addressed a statement of objections to 27 carriers, including Cathay Pacific, all of which subsequently submitted written observations. An oral hearing was held from 30 June to 4 July 2008.

The initial decision

16 On 9 November 2010, the Commission adopted Decision C(2010) 7694 final relating to a proceeding under Article 101 [TFEU], Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case COMP/39258 – Airfreight) ('the initial decision'). That decision was addressed to 21 carriers, which included Cathay Pacific.

17 The decision stated, in its grounds, that the incriminated carriers had coordinated their behaviour as regards the pricing of freight services, by reaching an agreement on the fuel surcharge, the security surcharge and the refusal to pay commission, and had, in doing so, participated in 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, covering the territory of the European Economic Area (EEA) and Switzerland.

The judgments of 16 December 2015

18 By judgment of 16 December 2015, *Cathay Pacific Airways* v *Commission* (T-38/11, EU:T:2015:985), the General Court annulled the initial decision in so far as it concerned Cathay Pacific. By 12 other judgments of the same day, the General Court also annulled that decision, in whole or in part, in so far as it concerned 12 other carriers or groups of carriers.

19 The General Court found that that decision was vitiated by a defective statement of reasons.

The decision at issue

20 On 20 May 2016, the Commission sent a letter to the carriers referred to in the initial decision and which had brought an action against the latter before the General Court to inform them of its intention again to adopt a decision in which it would find that they had participated in 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 on all of the routes referred to in that initial decision. Those carriers were given a period of one month in which to submit their observations. All availed themselves of that opportunity.

21 On 17 March 2017, the Commission adopted the decision at issue, which was addressed to 19 carriers, including Cathay Pacific.

22 The decision states that the incriminated carriers coordinated their behaviour as regards the pricing of freight services worldwide, by reaching an agreement on the fuel surcharge, the security surcharge and the refusal to pay commission ('the cartel at issue'), and had, in doing so, participated in 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.

23 In Section 4 of that decision, headed 'Description of the events', the Commission stated, inter alia, that the investigations had uncovered a worldwide cartel based on a network of bilateral and multilateral contacts over a long period of time among competitors regarding the conduct which they had decided on, intended to adopt, or contemplated adopting with regard to various elements of the charges for freight services referred to in the preceding paragraph. It stated that the common objective of that network of contacts was to coordinate competitors' pricing behaviour or to reduce uncertainty with regard to their pricing policies. It then described the contacts concerning the fuel surcharge, the security surcharge and the refusal to pay commission, respectively, and assessed the factual evidence concerning (i) the cartel at issue as a whole and (ii) each of the addressees of that decision.

24 In Section 5 of the decision at issue, headed 'The application of the relevant competition rules', the Commission applied Article 101 TFEU to the facts of the case, while stating that the references to that article were also to be read as references to Article 53 of the EEA Agreement and to Article 8 of the EC-Switzerland Air Transport Agreement, since those provisions apply *mutatis mutandis*, unless otherwise provided.

25 In that connection, as regards its jurisdiction, the Commission examined the limits of its territorial and temporal jurisdiction to find and penalise an infringement of the competition rules in the case at hand.

26 First, in recitals 822 to 832 of the decision at issue, which make up Subsection 5.2 of that decision, headed 'Jurisdiction of the Commission', the Commission observed, in essence, that it would not apply, first of all, Article 101 TFEU to agreements and practices prior to 1 May 2004 concerning routes between airports within the European Union and airports outside the EEA ('EU-third country routes'); next, Article 53 of the EEA Agreement to agreements and practices prior to 19 May 2005 concerning EU-third country routes and routes between airports in countries that are Contracting Parties of the EEA Agreement but are not EU Member States and airports in third countries ('non-EU EEA-third country routes'); and, lastly, Article 8 of the EC-Switzerland Air Transport Agreement to agreements and practices prior to 1 June 2002 concerning routes between airports within the European Union and Swiss airports

('EU-Switzerland routes'). It stated, in recital 832 of that decision, that the latter decision did 'not purport to find an infringement of Article 8 of the [EC-Switzerland Air Transport Agreement] concerning freight services on routes between Switzerland and third countries'.

27 Second, in recitals 1036 to 1046 of the decision at issue, which make up Subsection 5.3.8 of that decision under the heading 'The applicability of Article 101 [TFEU] and Article 53 of the EEA Agreement to inbound routes', the Commission set out the grounds on which it rejected the arguments, put forward by various incriminated carriers, that it had exceeded the limits of its territorial jurisdiction under the rules of public international law by finding and penalising an infringement of those two provisions on routes from third countries to the EEA ('inbound routes' and, as regards freight services offered on those routes, 'inbound freight services').

28 In particular, in recital 1045 of the decision at issue, the Commission stated that anticompetitive practices with regard to inbound freight services were 'liable to have immediate, substantial and foreseeable effects within the EU [and the] EEA, as the increased costs of air transport to the EEA, and consequently higher prices of imported goods, are by their very nature liable to have effects on consumers in the EEA'. It added that, in the case at hand, those practices were liable to have such effects on the provision of airfreight services by other carriers within the EEA, between the different hubs in the EEA used by carriers from third countries and the airports of destination of those shipments in the EEA, to which the third-country carrier did not fly.

29 Furthermore, in recital 1046 of that decision, the Commission noted that the cartel at issue was 'implemented globally', that the cartel arrangements concerning inbound routes formed an integral part of the single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement, and that the uniform application of the surcharges on a worldwide scale was a key element of that cartel.

30 Subsection 5.3 of the decision at issue, relating to the application in the case at hand of Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the EC-Switzerland Air Freight Agreement, comprises recitals 833 to 1052 of that decision. First, in recital 846 of that decision, the Commission found that the incriminated carriers had coordinated their conduct or influenced price setting, 'ultimately amounting to price fixing with regard to' the fuel surcharge, the security surcharge and the payment of commission on surcharges to freight forwarders. In recital 861 of that decision, the Commission found that the 'overall scheme to coordinate the pricing behaviour for [freight] services' revealed by its investigation demonstrated the existence of a 'complex infringement consisting of various actions which [could] be either classified as an agreement or concerted practice, within which the competitors knowingly substituted practical cooperation between them for the risks of competition'.

31 Second, in recital 869 of the decision at issue, the Commission considered that 'the conduct in question constitute[d] a single and continuous infringement of Article 101 [TFEU]', stating, in recitals 870 to 902 of the decision, that the arrangements in question pursued a single anticompetitive aim of distorting competition in the freight sector within the EEA, concerned the provision of freight services and the pricing thereof, concerned the same undertakings, were of a single and continuous nature, and related to three elements, namely the fuel surcharge, the security surcharge and the refusal to pay commission. In that context, the Commission stated, in recital 881 of that decision, that Cathay Pacific was involved in those three elements.

32 Third, in recital 903 of the decision at issue, the Commission found that the anticompetitive conduct in question had the object of restricting competition at least in the European Union, the EEA and Switzerland. In recital 917 of that decision, the Commission added, in essence, that there was, therefore, no need to take into account the actual effects of that conduct.

33 Fourth, in recitals 972 to 1021 of the decision at issue, the Commission examined the regulatory systems in place in seven third countries, which several of the incriminated carriers maintained had required them to collude on surcharges, thereby impeding the application of the relevant competition rules. The Commission considered that those carriers had failed to prove that they had acted under duress from those third countries.

34 Fifth, in recitals 1024 to 1035 of the decision at issue, the Commission found that the single and continuous infringement was likely to have an appreciable effect on trade between Member States, between Contracting Parties of the EEA Agreement and between contracting parties to the EC-Switzerland Air Transport Agreement.

35 Section 7 of the decision at issue, headed 'Duration of the infringement', contains recitals 1146 to 1169 of that decision. As is apparent from recital 1146 of that decision, the Commission found that the cartel at issue had started on 7 December 1999 and lasted until 14 February 2006. In recital 1146, it stated that that cartel had infringed:

– Article 101 TFEU, from 7 December 1999 to 14 February 2006, as regards air transport between airports within the European Union;

– Article 101 TFEU, from 1 May 2004 to 14 February 2006, as regards air transport on EU-third country routes;

– Article 53 of the EEA Agreement, from 7 December 1999 to 14 February 2006, as regards air transport between airports within the EEA ('intra-EEA routes');

– Article 53 of the EEA Agreement, from 19 May 2005 to 14 February 2006, as regards air transport on non-EU EEA-third country routes;

– Article 8 of the EC-Switzerland Air Transport Agreement, from 1 June 2002 to 14 February 2006, as regards air transport on EU-Switzerland routes.

36 In recital 1169 of that decision, the Commission found that the duration of the infringement to be taken into account in so far as concerned Cathay Pacific ran from 4 January 2000 until 14 February 2006.

37 In Section 8 of the decision at issue, the Commission examined the remedies to be taken and the fines to be imposed, by reference to the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2). It applied, inter alia, on the basis of point 37 thereof, a reduction of 50% to the basic amounts of the fines, since part of the services relating to inbound routes and routes departing from the EEA to third countries, with the exception of EU-Switzerland routes, was performed outside the territory covered by the EEA Agreement, and part of the harm was therefore likely to occur outside that territory. Furthermore, pursuant to point 29 of those guidelines, the Commission granted the incriminated carriers an additional reduction of 15% in the basic amount of the fines on the ground that certain regulatory regimes had encouraged the cartel at issue.

38 Articles 1, 3 and 4 of the operative part of the decision at issue are worded as follows:

'Article 1

By coordinating their pricing behaviour in the provision of airfreight services on a global basis with respect to the fuel surcharge, the security surcharge and the payment of commission payable on surcharges, the following undertakings have committed the following single and continuous infringement of Article 101 [TFEU], Article 53 of [the EEA Agreement] and Article 8 of [the EC-Switzerland Air Transport Agreement] as regards the following routes and for the following periods.

(1) The following undertakings have infringed Article 101 [TFEU] and Article 53 of [the] EEA Agreement as regards routes between airports within the EEA, for the following periods:

…
(g) [Cathay Pacific] from 4 January 2000 until 14 February 2006;

…

(2) The following undertakings infringed Article 101 [TFEU] as regards [EU-third country routes], for the following periods:

…
(g) [Cathay Pacific] from 1 May 2004 until 14 February 2006;

…

(3) The following undertakings infringed Article 53 of the EEA Agreement as regards [non-EU EEA-third country routes], for the following periods:

…
(g) [Cathay Pacific] from 19 May 2005 until 14 February 2006;

…

(4) The following undertakings infringed Article 8 of the [EC-Switzerland Air Transport Agreement] as regards [EU-Switzerland routes], for the following periods:

…
(g) [Cathay Pacific] from 1 June 2002 until 14 February 2006;

…

Article 3

For the single and continuous infringement referred to in Article 1 …, the following fines are imposed:

…

(g) [Cathay Pacific]: EUR 57 120 000;

…

Article 4

The undertakings listed in Article 1 shall immediately bring to an end the single and continuous infringement referred to in that Article in so far as they have not already done so.

They shall also refrain from repeating any act or conduct having the same or similar object or effect.'

The procedure before the General Court and the judgment under appeal

39 By application lodged at the Registry of the General Court on 31 May 2017, Cathay Pacific brought an action seeking annulment of Article 1(1) to (4) of the decision at issue, in so far as it concerns Cathay Pacific, and annulment of Article 3 of that decision, in so far as it imposed a fine of EUR 57 120 000 or, in the alternative, a reduction of that fine.

40 In support of this action, Cathay Pacific raised seven claims in annulment. The first alleged an error of law, an error of fact, an error of assessment and breach of the applicant's rights of defence in that the applicant was held liable for the single and continuous infringement in relation to intra-EEA routes and EU-Switzerland routes. The second alleged infringement of Article 25 of Regulation No 1/2003 and breach of the principles of legal certainty, 'justice' and the sound administration of justice. The third plea alleged errors in attributing that infringement to Cathay Pacific. The fourth alleged an inadequate statement of reasons to support the finding that Cathay Pacific had participated in that infringement in so far as concerns intra-EEA and EU-Switzerland routes. The fifth alleged numerous errors, breach of the principle of equal treatment and a failure to state reasons concerning the applicant's activities in third countries in the light of specific regulatory regimes applicable in those countries. The sixth plea alleged a lack of jurisdiction on the part of the Commission to find and penalise an infringement of Article 101 TFEU and Article 53 of the EEA Agreement on inbound routes. The seventh alleged errors in the calculation of the fine.

41 By the judgment under appeal, the General Court, having upheld the second plea, annulled Article 1(1)(g) and (4)(g) of the decision at issue, inasmuch as the Commission found therein that Cathay Pacific had infringed Article 101 TFEU and Article 53 of the EEA Agreement, in so far as concerns intra-EEA routes, and Article 8 of the EU-Switzerland Air Transport Agreement in so far as concerns EU-Switzerland routes.

42 In that connection, the General Court found, in paragraphs 239 and 243 of the judgment under appeal, that the action brought by Cathay Pacific against the initial decision was not capable of resulting in the suspension of the limitation period provided for in Article 25(6) of Regulation No 1/2003, as regards the unlawful conduct linked to intra-EEA routes and EU-Switzerland routes, since that decision did not, in the view of the General Court, cover that unlawful conduct. Thus, in paragraph 245 of the judgment under appeal, it concluded that, by penalising Cathay Pacific in the decision at issue for the single and continuous infringement in respect of intra-EEA routes and EU-Switzerland routes, the Commission had infringed the rules on limitation laid down in Article 25 of Regulation No 1/2003.

43 Since it had upheld that second plea, the General Court held, in paragraphs 249 and 254 of the judgment under appeal, that an examination of the first and fourth pleas had become devoid of purpose.

44 In the exercise of its unlimited jurisdiction, the General Court, in paragraph 671 of the judgment under appeal, set the amount of the fine imposed on Cathay Pacific at EUR 47 040 000.

Forms of order sought by the parties to the appeal

45 By its appeal, Cathay Pacific claims that the Court should:

– set aside point 3 of the operative part of the judgment under appeal;

– uphold the remaining forms of order sought at first instance;

– consequently, annul each of the remaining findings of infringement set out in Article 1(1) to (4) of the decision at issue, in so far as they concern Cathay Pacific, and annul the remainder of the fine imposed on it by Article 3 of the decision at issue;

– in the alternative, in the exercise of its unlimited jurisdiction, annul or reduce the remainder of the fine imposed on Cathay Pacific, on the basis of objective mistakes in the grounds and the reasoning of the judgment under appeal, as described in the six grounds of appeal;

– in any event, order the Commission to pay the costs incurred in the context of the appeal and in the proceedings before the General Court.

46 The Commission contends that the Court should:

– dismiss the appeal and order Cathay Pacific to pay the costs;

– in the alternative, if the appeal is upheld, refer the case back to the General Court and reserve the costs.

The appeal

47 Cathay Pacific raises six grounds in support of its appeal. The first alleges that the General Court incorrectly established EU jurisdiction over conduct relating to inbound flights. The second claims that the General Court wrongly characterised and failed correctly to apply the so-called ‘state compulsion defence’ and that it failed to have due regard to the principles of international comity and non-interference in the affairs of a sovereign third state. The third ground alleges that the General Court failed to adjudicate on all of the arguments raised before it. The fourth, which will be examined after the fifth plea, alleges that the General Court failed to establish adequate reasoning for its conclusion that Cathay Pacific had participated in a single and continuous infringement, and that the General Court infringed the principle of equal treatment. The fifth ground of appeal alleges errors of law in the approach to evidence that does not relate directly to the infringements attributed to Cathay Pacific and failure to use cogent reasoning in relation to all of the evidence in finding that the latter participated in the single and continuous infringement. The sixth alleges that the General Court erred in law in considering that Cathay Pacific’s refusal to pay commission infringed Article 101 TFEU and/or formed part of a single and continuous infringement.

The first ground of appeal alleging lack of jurisdiction on the part of the Commission to apply Article 101 TFEU and Article 53 of the EEA Agreement to inbound freight services

48 The first ground of appeal raised by Cathay Pacific comprises four limbs.

49 By way of the first limb, Cathay Pacific submits that the General Court erred in law in mischaracterising the three cumulative elements of the test based on the qualified effects of anticompetitive practices in the European Union ('the qualified effects test'). By the second limb, Cathay Pacific claims that the General Court erred in law in considering that the examination of the qualified effects test is not required as regards foreign conduct if it is part of a single and continuous infringement, the other elements of which have had effects in the EEA. By the third limb, Cathay Pacific submits that the General Court erred in law in considering that the qualified effects test is not relevant in the case of a restriction of competition by object. By the fourth limb, it claims that the General Court erred in law by substituting its own reasoning for the Commission's inadequate statement of reasons.

50 The third limb will be examined first.

The third limb: errors of law in the analysis of the qualified effects

– *Arguments of the parties*

51 Cathay Pacific submits that, in paragraphs 122 and 123 of the judgment under appeal, the General Court wrongly suggests that, because the single and continuous infringement found by the Commission consists in a restriction of competition by object under Article 101 TFEU, the qualified effects of that infringement within the EEA do not need to be established. In that connection, the line of reasoning followed by the General Court in paragraph 118 of the judgment under appeal amounts, in Cathay Pacific's submission, to finding that the Commission's jurisdiction to penalise conduct relating to EEA inbound routes could be presumed on account of the fact that (i) the notion and word 'effect' appears in Article 101 TFEU and (ii) no effect needs to be demonstrated in case of an infringement 'by object'. However, such a position is incorrect, in Cathay Pacific's view. First of all, the qualified effects test derives from the requirement that conduct must have a territorial connection with the internal market within which the Commission has jurisdiction. Next, the qualified effects test applicable in the context of an infringement of Article 102 TFEU cannot be the same as that which applies to an infringement of Article 101 TFEU. Lastly, the foreign conduct relating to EEA inbound freight services cannot be characterised as a restriction by object of EU competition rules as it concerns the supply of freight services on a non-EEA market.

52 The Commission contends that this third limb is unfounded.

– *Findings of the Court*

53 It should be noted that, in paragraph 118 of the judgment under appeal, the General Court stated that where conduct has been found by the Commission, as in the case at hand, to reveal a degree of harmfulness to competition in the internal market or within the EEA such that it could be classified as a restriction of competition 'by object' within the meaning of Article 101 TFEU and

Article 53 of the EEA Agreement, the application of the qualified effects test cannot require the demonstration of the actual effects which classification of conduct as a restriction of competition 'by effect' within the meaning of those provisions presupposes.

54 Similarly, it stated, in paragraph 122 of that judgment, that interpreting the qualified effects test, as Cathay Pacific appeared to advocate, as requiring proof of the actual effects of the conduct at issue even where there is a restriction of competition 'by object', would amount to making the Commission's jurisdiction to find and penalise an infringement of Article 101 TFEU and Article 53 of the EEA Agreement subject to a condition which has no basis in the wording of those provisions.

55 The General Court inferred, in paragraph 123 of that judgment, that Cathay Pacific could neither (i) validly claim that the Commission had erred in finding that the qualified effects test was satisfied, even though it stated, in recitals 917, 1190 and 1277 of the decision at issue, that it was not required to make an assessment of the anticompetitive effects of the conduct at issue in the light of the anticompetitive object of that conduct, nor (ii) deduce from those recitals that the Commission had not carried out any analysis of the effects produced by that conduct in the internal market or within the EEA for the purposes of applying that test.

56 However, as is already stated in the grounds set out in the second place in paragraph 123, it cannot be inferred from those paragraphs disputed by Cathay Pacific that, in order to establish that the qualified effects test was satisfied in the present case, the General Court considered that it was sufficient that the cartel at issue could be classified as a restriction of competition by object.

57 It is in fact clear from an overall reading of paragraphs 114 to 133 of the judgment under appeal that the General Court merely concerned itself with rejecting the line of argument, summarised in paragraphs 103 and 104 of the judgment under appeal, which Cathay Pacific had submitted to it. Thus, in those paragraphs, the General Court set out the grounds on which Cathay Pacific was wrong to maintain that the fact that, in the grounds of the decision at issue relating, in recital 917 thereof, to the classification of the restriction of competition at issue and, in recitals 1190 and 1277 thereof, to the calculation of the fine, the Commission had indicated that the need to demonstrate actual anticompetitive effects was not required, given that the anticompetitive object of the conduct alleged had been established, meant that the Commission had, on account of that anticompetitive object, failed to assess whether that conduct had produced the qualified effects required to establish its jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to inbound freight services.

58 On the one hand, by essentially replying that the qualified effects test, which serves as the basis of the Commission's extraterritorial jurisdiction, is separate from the question whether the cartel at issue can be classified as a restriction of competition, within the meaning of Article 101 TFEU and Article 53 of the EEA Agreement, the General Court did not err in law. As the Advocate General also observes in point 42 of his Opinion, the qualified effects test, which can serve as the basis under public international law for the extraterritorial application, by the Commission, of EU and EEA competition rules under public international law, is not the same as the substantive test relating to the restriction of competition, by object or by effect, within the internal market of the European Union or the EEA, to which the Commission's jurisdiction to find and penalise, under EU law, an infringement of those competition rules is subject.

59 On the other hand, the General Court's analysis seeking to determine whether the Commission had correctly considered that the qualified effects test had been satisfied in the case at hand is set out in paragraphs 111 to 180 of the judgment under appeal concerning the coordination in relation to inbound freight services taken in isolation, and in paragraphs 181 to 190 of that judgment concerning the single and continuous infringement taken as a whole.

60 In those circumstances, Cathay Pacific misreads the judgment under appeal when it submits that the General Court held that it was possible, for the purpose of establishing, on the basis of the qualified effects test, the Commission's jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to conduct adopted outside the territory of the EEA, to avoid demonstrating such effects where that conduct can be classified as a restriction of competition by object.

61 Accordingly, the line of argument set out in paragraph 51 of the present judgment must be rejected as unfounded.

The first limb: mischaracterisation of the cumulative elements of the qualified effects test

– *Arguments of the parties*

62 Cathay Pacific submits that the General Court mischaracterised each of the three elements of the qualified effects test, namely the foreseeability of such effects, their substantiality and their immediacy.

63 In the first place, in so far as concerns the alleged foreseeability of the effects of the unlawful conduct in the EEA, Cathay Pacific submits that, contrary to what is stated in paragraphs 134 to 150 of the judgment under appeal, its conduct in relation to inbound services in the EEA did not have such an effect within the EEA. In that connection, Cathay Pacific states that the line of reasoning followed by the General Court in paragraphs 142 to 147 of that judgment in order to reach that conclusion is 'high level and facile', since an assessment of the likelihood of passing on typically requires a complex factual and economic analysis. In that regard, such an economic analysis was in fact produced in the course of the proceedings at first instance, but the General Court refused to take it into consideration.

64 In the second place, as regards the alleged substantiality of those effects in the EEA, Cathay Pacific maintains that, in paragraphs 151 to 161 of the judgment under appeal, the General Court misinterpreted the concept of 'substantiality' of the effects of the unlawful conduct in the EEA. It submits that, in paragraph 160 of that judgment, the General Court acknowledged that the airlines concerned together represented 34% of the supply of inbound freight services in the EEA, of which Cathay Pacific accounted for a small proportion only. Such a proportion is, in the latter's submission, far from substantial. It adds that, in paragraph 153 of that judgment, the only effect within the EEA to which the General Court refers is the alleged impact on the price of goods imported into the EEA. It failed, however, to provide any indication of the proportion of those goods for which the inbound services provided by Cathay Pacific actually accounted. Furthermore, paragraphs 154 to 158 of the judgment under appeal are, in Cathay Pacific's submission, entirely irrelevant as to the impact of the foreign conduct on the price of goods imported into the EEA. Lastly, Cathay Pacific objects to the reasoning set out in paragraph 159 of the judgment under appeal, inasmuch as that reasoning merely refers to recital 1031 of the initial decision, whereas that recital makes reference to a decision concerning transatlantic maritime

freight. That reference therefore does not concern the air freight in question and, moreover, serves only to establish that the price of transport services represented an 'element', and not a 'substantial element', of the end price of the goods imported.

65 In the third place, in so far as concerns the alleged immediacy of those effects in the EEA, Cathay Pacific submits that, contrary to what is stated in paragraphs 162 to 170 of the judgment under appeal, its conduct in relation to inbound services in the EEA had neither an immediate nor a direct effect within the EEA. In paragraphs 145, 146, 147 and 164 of that judgment, the General Court accepted that any effect of the conduct at issue within the EEA or in the internal market can only be indirect, because EEA inbound services were sold to non-EEA customers and, in order to have any effect within the EEA, this would have required those non-EEA purchasers to pass the additional costs on to customers situated within the EEA. However, such an indirect effect is not, in principle, immediate. In that connection, the approach taken by the General Court amounts, in Cathay Pacific's submission, to holding that the Commission may apply Article 101 TFEU to a cartel anywhere in the world if such a cartel has brought about an increase in the prices, first, of goods which, in the absence of any conduct on the part of the members of the cartel, would ultimately have been sold within the EEA or, second, of any service indirectly associated with such goods.

66 The Commission contends that this first limb must be rejected.

– *Findings of the Court*

67 It should be recalled that, in accordance with the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only.

68 Thus, when the General Court has found or assessed the facts, the Court of Justice has jurisdiction, under Article 256 TFEU, solely to review the legal characterisation of those facts by the General Court and the legal conclusions which were drawn from them (see, to that effect, judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 21, and of 11 January 2024, *Planistat Europe and Charlot* v *Commission*, C-363/22 P, EU:C:2024:20, paragraph 50 and the case-law cited).

69 By contrast, the General Court alone has jurisdiction to establish and assess the relevant facts and to evaluate the evidence. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced to it. The assessment of those facts and that evidence does not therefore constitute, save in the case of their distortion, a question of law subject, as such, to review by the Court of Justice in the context of an appeal (judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 22, and of 18 March 2021, *Pometon* v *Commission*, C-440/19 P, EU:C:2021:214, paragraph 50 and the case-law cited).

70 In that connection, where an appellant alleges distortion of the evidence by the General Court, that person must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in that person's view, led to such distortion. In addition, according to settled case-law, that distortion must be obvious from the documents in

the Court's file, without any need to carry out a new assessment of the facts and the evidence (judgment of 10 November 2022, *Commission* v *Valencia Club de Fútbol*, C-211/20 P, EU:C:2022:862, paragraph 55 and the case-law cited). Thus, it is not sufficient to show that a document could be interpreted differently from the interpretation adopted by the General Court (judgment of 5 March 2024, *Kočner* v *Europol*, C-755/21 P, EU:C:2024:202, paragraph 96 and the case-law cited).

71 It should also be recalled that, in accordance with the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice, an appeal is to indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or ground concerned is inadmissible. Thus, elements of an appeal that contain no argument specifically identifying the error of law allegedly vitiating the judgment in respect of which the appeal is brought do not fulfil that requirement and must be rejected as inadmissible (judgment of 4 October 2024, *Ferriere Nord* v *Commission*, C-31/23 P, EU:C:2024:851, paragraphs 51 and 52 and the case-law cited).

72 In the present case, as regards, in the first place, the foreseeability of the effects of the unlawful conduct, Cathay Pacific essentially criticises the General Court for following a facile line of reasoning and for not having taken into consideration the economic analysis that Cathay Pacific had submitted to it.

73 However, on the one hand, Cathay Pacific confines itself, in essence, to recalling the content of paragraphs 142 and 147 of the judgment under appeal, which correspond, respectively, to the introductory and concluding paragraphs of the General Court's reasoning, by which it gave an answer to the question whether it was foreseeable for the incriminated carriers that the freight forwarders would pass the additional costs on to the shippers. Aside from the general statement that the line of reasoning followed by the General Court is 'high level and facile', Cathay Pacific has failed to put forward any legal argument intended to establish that the General Court erred in law in that regard.

74 On the other hand, as to the economic analysis submitted at first instance, the General Court clearly set out, in paragraph 140 of the judgment under appeal, the reasons why it had not taken that analysis into consideration, stating that Cathay Pacific had failed to identify the specific passages of that 48-page report on which it intended to rely, or even to maintain that that report was capable of demonstrating that the relevant economic and legal context was such as to render the increase in the level of the surcharges unforeseeable as a result of the conduct at issue, which Cathay Pacific does not dispute. Although it criticises the General Court for distorting that evidence, Cathay Pacific in fact seeks, thereby, to call into question the assessment of that evidence, as carried out by the General Court in paragraph 140, without showing how that assessment is manifestly incorrect, which, in accordance with the case-law recalled in paragraphs 69 and 70 of the present judgment, is inadmissible at the appeal stage.

75 In the second place, as regards the substantiality of those effects, it should be observed that Cathay Pacific confines itself to submitting that, in paragraphs 151 to 161 of the judgment under appeal, the General Court wrongly interpreted the concept of 'substantiality', by claiming that several aspects of the latter's reasoning are irrelevant, in particular the finding that the airlines concerned together represented 34% of the supply of inbound freight services in the EEA, the mention of an alleged impact on the price of goods imported into the EEA without any

indication of the proportion of those goods for which Cathay Pacific's own inbound services accounted, as well as the reference made in paragraph 159 of that judgment to a decision concerning transatlantic maritime freight.

76 It is therefore clear that, by way of that line of argument, Cathay Pacific, under the guise of a claim of distortion, is in fact asking the Court of Justice to carry out a fresh assessment of the facts, previously conducted by the General Court in the aforementioned paragraphs, which falls outside the scope of the jurisdiction of the Court of Justice on appeal, in accordance with the case-law cited in paragraph 69 of the present judgment.

77 In the third place, as regards the immediacy of those effects, Cathay Pacific claims, in essence, that the General Court failed to establish such immediacy, but instead inferred it from an indirect effect of the unlawful conduct within the EEA or the internal market.

78 However, it is therefore clear that, under the guise of criticism of the General Court for distorting the requirement of immediacy, the arguments put forward by Cathay Pacific concerning the alleged lack of immediacy of the effects of the unlawful conduct in the EEA again seek in fact to obtain a fresh assessment of the facts by relying on an alleged indirect effect of that conduct in the EEA. Furthermore, contrary to what Cathay Pacific maintains, the General Court made no finding whatsoever of such an indirect effect in paragraphs 145 to 147 and 164 of the judgment under appeal; those paragraphs only demonstrate that it was foreseeable, for the incriminated carriers, that the effect of the unlawful conduct in question, in so far as it concerned inbound services, would be an increase in the price of goods imported into the EEA. Those arguments must, as a consequence, be rejected as ineffective, in accordance with the case-law cited in paragraph 69 of the present judgment.

79 Accordingly, the first limb of the first ground of appeal must be rejected as inadmissible.

The fourth limb: unlawful substitution of grounds

– *Arguments of the parties*

80 Cathay Pacific submits that, in the judgment under appeal, the General Court substituted its own reasoning for the Commission's insufficient statement of reasons as regards the qualified effect tests. The statement of reasons set out, in that connection, in the decision at issue is confined solely to recital 1045 of that decision. However, 80 paragraphs of the judgment under appeal relate to the examination, by the General Court, of the qualified effects test.

81 More specifically, the General Court substituted its own reasoning for that of the Commission regarding the following aspects. First, the General Court examined in detail each of the three parts of the qualified effects test, while the Commission confined itself to naming them without thoroughly verifying that each of those parts had been individually satisfied. Second, the decision at issue makes no mention in that regard of (i) the presumption of a passing on of the surcharges by freight forwarders to shippers, which the General Court advances in paragraphs 125 to 127 and 137 to 140 of the judgment under appeal; (ii) the concept of 'causal link' introduced by the General Court in paragraph 162 et seq. of that judgment; and (iii) the statement contained in paragraph 131 of that judgment. Third, the decision at issue does not, in Cathay Pacific's

submission, contain any examination of the effects of the single and continuous infringement as a whole, which were noted and analysed by the General Court in paragraphs 106 and 163 to 178 of the judgment under appeal.

82 The Commission contends that this fourth limb is unfounded.

– *Findings of the Court*

83 It should be recalled that it is, admittedly, clear that the scope of judicial review provided for in Article 263 TFEU extends to all the elements of Commission decisions relating to proceedings under Articles 101 and 102 TFEU, which are subject to in-depth review by the General Court, in law and in fact, in the light of the pleas raised by the applicant at first instance and taking into account all the elements submitted by the latter. However, in the context of that review, the Courts of the European Union may in no circumstances substitute their own reasoning for that of the author of the contested act (judgment of 4 July 2024, *Westfälische Drahtindustrie and Pampus Industriebeteiligungen* v *Commission*, C-70/23 P, EU:C:2024:580, paragraph 38 and the case-law cited).

84 The General Court therefore cannot fill, by means of its own reasoning, a gap in the reasoning in that act in such a way that its examination does not relate to any assessment carried out in that act (judgment of 18 July 2013, *UEFA* v *Commission*, C-201/11 P, EU:C:2013:519, paragraph 65 and the case-law cited).

85 However, where the General Court merely responds to the line of argument raised before it and explains the reasoning of the act at issue, it cannot be considered that the General Court is substituting its own reasoning for that of the author of that act (see, to that effect, judgments of 12 June 2014, *Deltafina* v *Commission*, C-578/11 P, EU:C:2014:1742, paragraph 56, and of 23 November 2023, *Ryanair* v *Commission*, C-209/21 P, EU:C:2023:905, paragraph 49).

86 In the present case, as is clear from paragraphs 108 and 124 of the judgment under appeal, the first sentence of recital 1045 of the decision at issue contained, albeit succinctly, the factors that enabled the General Court to ascertain whether the Commission had established its territorial jurisdiction in the light of the qualified effects. It is in fact those elements which, read in the light of the other relevant recitals of that decision, referred to in paragraphs 129, 136 to 139, 143, 146, 154 to 156, 159 and 160 of that judgment, allowed the General Court to ascertain whether the Commission had indeed established the existence of those effects. It is, moreover, apparent from paragraphs 114 to 180 of that judgment that, in those paragraphs, the General Court limited itself to answering the line of argument submitted to it by Cathay Pacific and to explaining the statement of reasons contained in the decision at issue, more specifically by drawing certain indications from the elements set out therein. Accordingly, having regard to the case-law recalled in the preceding paragraph of the present judgment, the alleged substitution of grounds has not been demonstrated.

87 The line of argument set out in paragraphs 80 and 81 of the present judgment must, consequently, be rejected as unfounded.

The second limb, relating to the need for an assessment of the qualified effects test in so far as concerns foreign conduct

– *Arguments of the parties*

88 Cathay Pacific submits that the General Court's reasoning, set out in paragraphs 181 to 190 of the judgment under appeal and, in particular, paragraph 188 of that judgment, is incorrect. In that connection, it is apparent, in Cathay Pacific's submission, from the judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632), that the concept of 'single and continuous infringement' cannot be used in order to extend artificially the jurisdiction laid down in Article 101 TFEU. In particular, conduct adopted abroad cannot be regarded as unlawful pursuant to that article without it being specifically demonstrated that that conduct affects the EEA and the internal market. If an agreement or concerted practice does not have the object or effect of restricting competition in the EEA and the internal market, that agreement or practice cannot be a part of an alleged single and continuous infringement.

89 Cathay Pacific adds that the single and continuous infringement alleged in the decision at issue is different to that examined by the Court of Justice in the case that gave rise to that judgment. In the present case, sales of freight services are made locally, that is, at airports from where shipments originate and so relevant markets are local in nature. Conduct relating to EEA inbound routes markets would have no effects on EEA outbound routes markets, as competition in each market is different.

90 The Commission contends that this second limb is unfounded.

– *Findings of the Court*

91 It should be observed that, by way of its sixth plea before the General Court, Cathay Pacific confined itself to disputing the Commission's jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to the conduct at issue in so far as it related to inbound freight services. In that connection, the General Court found, in paragraph 180 of the judgment under appeal, that the Commission was entitled to find that the qualified effects test was satisfied as regards coordination in relation to inbound freight services taken in isolation, with the result that the Commission's jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to the conduct at issue – in so far as that jurisdiction was disputed – was established. It follows that it was for the sake of completeness that, in paragraphs 181 to 190 of the judgment under appeal, the General Court examined whether the Commission, in order to establish its jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to the conduct at issue, was also entitled to find, in recital 1046 of the decision at issue, that the qualified effects test was satisfied having regard to the effects of the single and continuous infringement taken as a whole.

92 Furthermore, as is apparent from all the foregoing analysis of the first, third and fourth limbs of the first ground of appeal, the General Court did not commit the alleged errors of law in finding to that effect in paragraph 180 of the judgment under appeal.

93 In those circumstances, it must be held that the present limb is aimed at grounds included in the judgment under appeal purely for the sake of completeness. It is settled case-law that complaints directed against grounds included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and are therefore ineffective (judgments

of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 537, and of 4 October 2024, *thyssenkrupp* v *Commission*, C-581/22 P, EU:C:2024:821, paragraph 263 and the case-law cited).

94 In the light of all the foregoing considerations, the first ground of appeal must be rejected in its entirety.

The second ground of appeal, concerning the defence alleging State constraint

95 By its second ground of appeal, Cathay Pacific submits that the General Court erred in law in applying criteria to assess whether there was a State constraint justifying the non-application of Article 101 TFEU and in its interpretation of the applicable foreign law and the requirements imposed by local regulatory authorities, specifically those of the Hong Kong Special Administrative Region of the People's Republic of China ('Hong Kong'), Japan, the Republic of India and the Republic of Singapore. It should have concluded that the relevant criteria were satisfied. Cathay Pacific adds that, in so far as the content of foreign law is a factual matter to be determined according to the evidence before the reviewing tribunal, the General Court unacceptably distorted the evidence of such third country law and administrative practices. Cathay Pacific has broken the specific errors allegedly made in that connection into six limbs, which it is appropriate to examine in turn.

The first limb: misinterpretation of the meaning of the air service agreements in Hong Kong

– *Arguments of the parties*

96 Cathay Pacific submits that the General Court misinterpreted the provisions of the air service agreements ('ASAs') concluded by Hong Kong. It submits in that connection that, in paragraphs 424 and 425 of the judgment under appeal, the General Court – like the Commission – correctly recognised that the provisions of the ASAs approved and authorised consultations between carriers. Nevertheless, it wrongly took the view that those consultations were not required. However, the wording of the ASAs states that before any individual application of a designated airline can be made, there should first be an attempt to agree matters though consultation; that step cannot, therefore, simply be bypassed.

97 The Commission contends that this limb is unfounded.

– *Findings of the Court*

98 It should be observed that it is apparent from the findings made by the General Court in paragraphs 424 and 425 of the judgment under appeal that, while Cathay Pacific argued that the ASAs concluded by Hong Kong contemplated or authorised tariff coordination and that the carriers' conduct had been officially approved or authorised, those arguments did not call into question the findings made in the decision at issue that the ASAs were confined to authorising consultations on prices but did not impose any obligation in that regard.

99 In the present case, it is clear that, by the first limb of its second ground of appeal, Cathay Pacific seeks to obtain a fresh assessment of the content of those agreements, with the result that that limb must be rejected as inadmissible, in accordance with the case-law recalled in paragraph 69 of the present judgment, in so far as, under the guise of criticism of the General Court for distorting those agreements, it seeks to obtain a fresh assessment of the facts without showing how the interpretation thereof by the General Court is manifestly incorrect, which the case-law recalled in paragraph 70 of the present judgment requires.

100 The first limb of the second ground of appeal must therefore be rejected as inadmissible.

The second limb: the General Court incorrectly disregarded the evidence produced before it or distorted that evidence

– *Arguments of the parties*

101 Cathay Pacific submits that the General Court incorrectly chose to disregard the evidence produced before it by an expert on the laws of Hong Kong, or that it distorted that evidence. Cathay Pacific states that the detail of Hong Kong law and administrative practices was set out for the General Court in an opinion prepared by that expert and that the content thereof was attested to by the Hong Kong Civil Aviation Department ('the CAD'). The General Court's finding that Cathay Pacific, or any other provider of airfreight services departing from Hong Kong, had a realistic alternative for a collective application for approval of a fuel surcharge was, in Cathay Pacific's submission, a distortion of the evidence before the General Court, since no such alternative existed. It adds that the General Court erred thus despite recognising, in paragraph 436 of the judgment under appeal, that in recital 988(a) of the decision at issue, the Commission had misread a letter from the CAD which, contrary to the Commission's reading given in that recital, did not make it clear that an individual application for a fixed-rate fuel surcharge would have been possible.

102 The Commission contends that this second limb is unfounded.

– *Findings of the Court*

103 It should be observed, that, admittedly, in paragraph 436 of the judgment under appeal, the General Court stated that, contrary to the Commission's finding in recital 988(a) of the decision at issue, it was not clear from the letter from the CAD of 1 June 2005, to which that recital referred, that it was possible to submit individual applications relating to the security surcharge. However, in paragraph 439 of the judgment under appeal, the General Court also stated that that letter was only one of the elements examined in recital 988 of the decision at issue, and that the mere fact that that letter does not prove that the CAD had allowed individual applications relating to the fuel surcharge to be examined was not sufficient to contradict all the reasons given by the Commission in recitals 987 to 989 of that decision.

104 In those circumstances, it must be held that, under the guise of a claim of distortion, Cathay Pacific is essentially asking that the Court of Justice, by way of the present limb, carry out a fresh assessment of the facts already examined by the General Court in those paragraphs, without showing how that assessment is manifestly incorrect, which, in accordance with the case-law recalled in paragraphs 69 and 70 of the present judgment, the Court of Justice hearing an appeal does not have jurisdiction to review.

105 This second limb must therefore be rejected as inadmissible.

The third limb: breach of the principles of public international law

– *Arguments of the parties*

106 Cathay Pacific submits that the General Court, having found, in paragraph 432 of the judgment under appeal, that the collective approval system applicable to Hong Kong was mandatory for the approval of an index-based fuel surcharge, was not entitled to find, in paragraph 451 of that judgment, under the applicable EU law test, that there was no compulsion on the ground that Cathay Pacific '[had] not shown that the Hong Kong regulatory framework … made it impossible to submit an individual application to the CAD for a fixed amount [fuel surcharge]'. In doing so, it breached 'the principles of public international law'.

107 First, the General Court erred in law, in Cathay Pacific's submission, by holding that it was apparent from a statement made by the CAD concerning individual applications that there was a realistic alternative means for obtaining approval for a fuel surcharge, and inferring from that circumstance that Cathay Pacific could not rely on the defence alleging State constraint. It is argued that, furthermore, the General Court applied its own test incorrectly and unreasonably, in so far as it found, in paragraph 451, that Cathay Pacific had not shown that the Hong Kong regulatory framework required it to discuss its tariffs with other carriers and made it impossible to submit an individual application to the CAD for a fixed amount fuel surcharge. The General Court was therefore also wrong to hold that Cathay Pacific had failed to establish that the Commission had erred in finding, in the decision at issue, that the Hong Kong legislation did not preclude the application of Article 101(1) TFEU. In that connection, the possibility of an individual application to the CAD was considered for the first time in September 2006, that is to say, after the Commission's initial raids. Furthermore and in any event, the possibility presented was merely theoretical, and hedged with conditions.

108 Second, Cathay Pacific submits that the General Court erred in law in not recognising that it was for the EU legislature, on the one hand, and the public authorities of third counties, on the other, 'to provide for and implement a system with different goals and different methodologies', which it ought to have taken into account in its interpretation of the criterion of 'legal compulsion' imposed on the undertaking concerned. In that context, the General Court wrongly limited the application of the principle of State constraint to situations in which it can be proved by that undertaking that was impossible to identify any alternative to compliance with the foreign law in question. In doing so, it misinterpreted the applicable legal test, in particular in the light of the principles of international comity and non-interference.

109 The Commission contends that this third limb is unfounded.

– *Findings of the Court*

110 In the first place, it should be noted that Cathay Pacific objects, in essence, to paragraph 451 of the judgment under appeal, in which the General Court, having examined the arguments and assessed the factual evidence presented to it, found that Cathay Pacific '[had] not shown that the Hong Kong regulatory framework required it to discuss its tariffs with other carriers and made it impossible to submit an individual application to the CAD for a fixed amount [fuel surcharge]. It [had] not therefore establish[ed] that the Commission [had] erred in finding, in the [decision at

issue], that the Hong Kong legislation did not preclude the application of Article 101(1) TFEU'. Thus, by that complaint, KLM is in fact asking that the Court carry out a fresh assessment of the facts already assessed by the General Court, which falls outside the scope of the Court's jurisdiction on appeal, in accordance with the case-law cited in paragraph 69 of the present judgment, since no distortion of those facts has been raised.

111 Furthermore, in so far as, by that complaint, Cathay Pacific criticises the General Court for placing an impossible burden of proof on it, it should be recalled that, according to settled case-law, it is for the Commission to adduce evidence capable of demonstrating to the requisite legal standard the existence of the circumstances constituting an infringement of competition law. By contrast, it is for the undertaking raising a defence against the finding of such an infringement to demonstrate that that defence must be upheld. However, even though, according to those principles, the burden of proof is borne either by the Commission or by the undertaking concerned, the factual evidence on which a party relies may be of such a kind as to require the other party to provide an explanation or justification, failing which it is permissible to conclude that the rules on the burden of proof have been met (see, to that effect, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 120 and the case-law cited).

112 The General Court held, in paragraphs 423 to 450 of the judgment under appeal, that the elements put forward by Cathay Pacific did not contradict the Commission's findings. In fact, in paragraphs 424 to 425 of that judgment, the General Court stated that the ASAs admittedly authorised the consultations on prices, but did not impose any obligation to coordinate. Next, in paragraphs 426 to 431 of that judgment, it observed that the administrative practice of the CAD showed that, while the latter favoured collective applications, it could nonetheless accept individual applications, in particular for a fixed amount fuel surcharge. Lastly, in paragraphs 432 to 450 of the judgment under appeal, the General Court held that the documents produced, including the legal opinions and the letters from the DAC, were not sufficient to establish the existence of a legal obligation or irresistible pressure requiring tariff coordination.

113 In that context, the General Court could, without reversing the burden of proof, hold that, in the absence of probative evidence submitted by Cathay Pacific, the Commission had not only established that that undertaking had participated in tariff coordination but, as is clear, in particular, from paragraph 425 of the judgment under appeal and as found in recitals 984, 985 and 991 of the decision at issue, that the relevant ASAs did not did not require consultations on prices between carriers. Consequently, it was for Cathay Pacific to adduce evidence that its conduct in Hong King was justified by such an obligation stemming from local legislation. In the absence of such evidence, the General Court was entitled to reject the line of argument alleging that it was impossible to make individual applications to the CAD and, thereafter, hold, in paragraph 451 of the judgment under appeal, that Hong Kong legislation did not preclude the application of Article 101(1) TFEU.

114 In the second place, it should be noted that Cathay Pacific objects, in essence, to the findings made by the General Court set out in paragraphs 458 to 472 of the judgment under appeal, and more specifically the fact that, in Cathay Pacific's view, the General Court took an unwarrantedly narrow view of the defence alleging State constraint, limiting its application to situations in which it can be proved by the undertaking concerned that was impossible to identify any alternative to compliance with the foreign law in question, without, however, identifying an error of law with any degree of precision.

115 It should be observed that, in paragraphs 461 to 472 of the judgment under appeal, the General Court essentially rejected Cathay Pacific's arguments on the basis of assessments of fact. It thus held, in paragraph 462 of that judgment, that the premiss of Cathay Pacific's line of argument was incorrect, since it was not apparent from the letter from the CAD that all the applications relating to the fuel surcharge had to be submitted collectively and that, in any event, Cathay Pacific had failed to establish that the CAD required tariff coordination between carriers. The General Court again pointed out, in paragraphs 466 to 471 of the judgment under appeal, that there was nothing to demonstrate that the Commission had recognised or endorsed the existence of a regulatory obligation to coordinate tariffs in Hong Kong. In those circumstances, the objection raised by Cathay Pacific amounts, in reality, to asking that the Court of Justice carry out a fresh assessment of the facts, which is inadmissible in accordance with the case-law cited in paragraph 69 of the present judgment.

116 Moreover, the General Court stated, in paragraphs 463 to 466 of the judgment under appeal, that Cathay Pacific had failed to explain in what way the principles of international law on which it relied could entail the annulment in whole or in part of the decision at issue, and that no principle of public international law obliged the Commission to contact the authorities of a third country such as the Hong Kong authorities. The General Court stated, lastly, that it was for the Commission to establish its claims. According to the General Court, the Commission had acknowledged the existence of, and examined, the Hong Kong regulatory framework. It is clear that none of the arguments put forward by Cathay Pacific can call those findings into question.

117 It follows that this third limb must be rejected as inadmissible in part and unfounded in part.

The fourth limb: unlawful substitution of grounds and an insufficient statement of reasons

– *Arguments of the parties*

118 Cathay Pacific submits that the General Court substituted its own statement of reasons for that of the Commission in order to reject Cathay Pacific's arguments concerning its defence alleging State constraint. Furthermore, that statement of reasons is irrational and insufficient, in Cathay Pacific's submission. Thus the General Court's assessment in paragraphs 474 to 487 of the judgment under appeal is vitiated by several errors of law. In that connection, the General Court acknowledged, in paragraph 482 of the judgment under appeal, that the ASAs concluded by Japan formally require tariff coordination between carriers. In Cathay Pacific's submission, the General Court did state, however, that the scope of that obligation is limited to the carriers designated on specific routes; the force of that argument is wholly obscure as regards Cathay Pacific. Furthermore, the General Court stated, in paragraph 483 of the judgment under appeal, that the clause strictly limiting tariff discussions to carriers designated on specific routes could not in any event justify general discussions between multiple carriers. However, Cathay Pacific states that it has not suggested that the legal requirements in Japan afforded a kind of 'cover' for general discussions between carriers regarding pricing on other routes. The point rather is that it was not open to the Commission to use as evidence of a single and continuous infringement discussions between airlines that were required pursuant to the legislation of those third countries. That is what the Commission did, in Cathay Pacific's submission, without censure from the General Court.

119 The Commission contends that this fourth limb is unfounded.

– *Findings of the Court*

120 As a preliminary point, it should be observed that Cathay Pacific has failed to indicate specifically the part of the grounds of the judgment in which the General Court substituted the grounds of the decision at issue.

121 It should also be observed that, as is clear from paragraph 477 of the judgment under appeal, recitals 995 to 1012 of the decision at issue concern (i) the ASAs concluded by Japan and (ii) the Japanese regulatory regime and that, according to those recitals, the Commission considered that no requirement to discuss tariffs had been imposed on carriers by the regulatory regime in Japan. It is on the basis of those elements that the General Court was able to find that Cathay Pacific had failed to demonstrate that the Commission's assessments were vitiated by illegality.

122 First, in paragraphs 482 and 483 of the judgment under appeal, the General Court held that it was apparent from the tariff clause relied upon, which was also reproduced in Cathay Pacific's application before the General Court, that the scope of that obligation was limited to the carriers designated on specific routes, as the Commission had stated in recital 1007 of the decision at issue, and that that clause could not in any event justify general discussions between multiple carriers of the type constituting the single and continuous infringement.

123 Second, in paragraph 485 of the judgment under appeal, the General Court found that the fact alleged by Cathay Pacific that non-Japanese carriers were required to align their applications for approval with those of the Japanese carriers, did not establish the existence of a legal obligation or irresistible State pressure requiring general tariff coordination. Additionally, in paragraph 486 of that judgment, the General Court noted that Cathay Pacific had failed to adduce any evidence in support of its claims relating to the procedure for approving tariffs, which Cathay pacific has not disputed before the Court of Justice.

124 Furthermore, in so far as Cathay Pacific's arguments should be understood as claiming that the General Court applied an incorrect legal test in its assessment of the defence alleging State constraint, suffice it to recall that Articles 101 and 102 TFEU apply only to anti-competitive conduct engaged in by undertakings on their own initiative. If anti-competitive conduct is required of undertakings by national legislation or if the latter creates a legal framework which itself eliminates any possibility of competitive activity on their part, those articles do not apply. In such a situation, the restriction of competition is not attributable, as those provisions implicitly require, to the autonomous conduct of the undertakings. Those articles may apply, however, if it is found that the national legislation leaves open the possibility of competition which may be prevented, restricted or distorted by the autonomous conduct of the undertakings (see, to that effect, judgments of 11 November 1997, *Commission and France* v *Ladbroke Racing*, C-359/95 P and C-379/95 P, EU:C:1997:531, paragraphs 33 and 34, and of 14 October 2010, *Deutsche Telekom* v *Commission*, C-280/08 P, EU:C:2010:603, paragraphs 80 and 81).

125 Moreover, the possibility of excluding particular anticompetitive conduct from the scope of Articles 101 and 102 TFEU, on the ground that it has been required of the undertakings in question by existing national legislation or that the legislation has eliminated any possibility of competitive conduct on their part, has been only partially accepted by the Court of Justice (judgment of 14 October 2010, *Deutsche Telekom* v *Commission*, C-280/08 P, EU:C:2010:603, paragraph 81 and the case-law cited).

126 Thus, the Court has held that if a national law merely encourages or makes it easier for undertakings to engage in autonomous anti-competitive conduct, those undertakings remain subject to Articles 101 and 102 TFEU (judgment of 14 October 2010, *Deutsche Telekom* v *Commission*, C-280/08 P, EU:C:2010:603, paragraph 82 and the case-law cited).

127 Consequently, the fourth limb of the second ground of appeal must be rejected as unfounded.

The fifth limb: distortion of Cathay Pacific's arguments in relation to State constraint in India and Singapore, and misinterpretation of the evidence

– *Arguments of the parties*

128 Cathay Pacific submits that, in paragraph 498 of the judgment under appeal, the General Court rejected its arguments relating to State constraint in India and Singapore on the ground, in essence, that it had failed to substantiate its claims regarding Hong Kong and Japan, to which it referred in that line of argument. It refers specifically to paragraph 494 of the judgment under appeal, in which, in its submission, the General Court rejected its arguments consisting in extending the reasoning regarding the latter countries to other territories subject to particular legislation. It follows that, if the Court were to uphold Cathay Pacific's arguments in so far as concerns the regulatory regimes applicable in Hong Kong and Japan, it would also have to find that the General Court erred in so far as concerns the regimes applicable in India and Singapore, since the relevant ASAs explicitly provided for agreement between carriers in relation to the relevant tariffs; Cathay Pacific refers to paragraph 490 of the judgment under appeal.

129 The Commission contends that this fifth limb is unfounded.

– *Findings of the Court*

130 It is sufficient to observe that, in the present limb, Cathay Pacific raises neither any error of law nor any distortion of the facts on the part of the General Court in paragraphs 490 to 498 of the judgment under appeal. Indeed, by way of its line of argument, it confines itself either to criticising in general terms the fact that the General Court validated the Commission's assessment set out in the decision at issue, or to reiterating its argument that the discussions concerning India and Singapore could not form part of the single and continuous infringement. It thus fails to indicate any specific error of law that may have been made by the General Court in the examination that it carried out in paragraphs 494 to 497 of the judgment under appeal. Accordingly, this limb is inadmissible, in accordance with the case-law recalled in paragraph 69 of the present judgment.

131 Even if it were to be considered that, by its line of argument, Cathay Pacific essentially criticises the General Court for having, in paragraph 494 of the judgment under appeal, rejected its complaints in relation to the regulatory regimes in India and Singapore by relying exclusively on its assessment concerning the regulatory regime in Japan and Hong Kong, it is clear that that line of argument is predicated on a misreading of the judgment under appeal. As is clear from paragraphs 495 and 496 of that judgment, the General Court examined the complaints specifically concerning the regulatory regimes in India and Singapore.

The sixth limb: infringement of the principle of equal treatment

– *Arguments of the parties*

132 Cathay Pacific submits that the General Court erred in law by holding, in paragraph 502 of the judgment under appeal, that its argument seeking to establish that the treatment given to another carrier, as a result of the existence of a State constraint in Dubai (United Arab Emirates), was unlawful and that Cathay Pacific sought to rely on that unlawful treatment for its own benefit. Cathay Pacific claims that that was not its line of argument, which instead consisted in submitting that, since the Commission had accepted that the defence alleging State constraint could be relied upon by another carrier on account, in particular, of a letter from the competent Dubai authority, it ought, by the same logic, have recognised that that reasoning also applied to Cathay Pacific in Hong Kong, in particular as the CAD had also made plain, in its letters, that it imposed a collective approval system.

133 The Commission contends that this sixth limb is unfounded.

– *Findings of the Court*

134 It should be observed that, by the present limb, Cathay Pacific claims, in essence, that the General Court misinterpreted the line of argument raised before it, and, in that context, it objects only to paragraph 502 of the judgment under appeal, in which the General Court noted that, even if the Commission had committed an unlawful act by not holding other carriers liable, such an unlawful act, which had not been raised before the General Court in the action before it, could not in any way lead it to find discrimination and, consequently, an unlawful act in relation to the applicant, since the principle of equal treatment must be reconciled with the principle of legality, according to which no one may rely, for his or her own benefit, on an unlawful act committed in favour of another.

135 However, in paragraph 505 of the judgment under appeal, the General Court stated that the applicant's argument was based on the incorrect premiss that 'the statements and practice' of the competent administrative authority in Dubai were similar to those of the Hong Kong CAD, so that, in the territories concerned, the carriers were in a similar situation, namely that they were required to discuss surcharges before requesting their approval. It is therefore clear from that assessment that the General Court did not misinterpret the line of argument raised before it.

136 Furthermore, in paragraph 508 of the judgment under appeal, the General Court recalled, by reference to paragraphs 416 to 451 of that judgment, that Cathay Pacific had failed to establish that the carriers were subject to a requirement of tariff coordination in Hong Kong. It is clear from the examination of the first three limbs of the present ground of appeal that Cathay Pacific has been unable to call those findings into question.

137 It follows that the present limb must be rejected as unfounded.

138 It follows from all the foregoing considerations that the second ground of appeal must be dismissed as inadmissible in part and unfounded in part.

The third ground of appeal, relating to the General Court's failure to adjudicate on all the arguments raised before it, having annulled in part the decision at issue on grounds of limitation

Arguments of the parties

139 Cathay Pacific submits that the General Court erred in law in finding, having upheld the second plea in law relied on before it, that it was no longer necessary to examine the first and fourth pleas raised at first instance.

140 Contrary to the General Court's ruling, the annulment of Article 1(1)(g) and (4)(g) of the decision at issue, the result of upholding the second plea, is only an annulment in part of that decision, with the result that that annulment did not deprive the first plea in law raised at first instance of its purpose. On the contrary, that first plea was determinative for Cathay Pacific's action as a whole, since that action sought the full annulment of the decision at issue, in so far as the Commission had found that Cathay Pacific had participated in the single and continuous infringement. Similarly, the fourth plea at first instance, which alleged that the Commission had stated insufficient reasons for its finding that Cathay Pacific had participated in that infringement, called into question the legality of that decision as a whole, which the General Court also misinterpreted.

141 The Commission contends that the third ground of appeal is unfounded.

Findings of the Court

142 As a preliminary point, it should be recalled that the General Court upheld the second plea and, thereafter, annulled Article 1(1)(g) and (4)(g) of the decision at issue, inasmuch as the Commission found therein that Cathay Pacific had infringed (i) Article 101 TFEU and Article 53 of the EEA Agreement, in so far as concerns intra-EEA routes, and (ii) Article 8 of the EU-Switzerland Air Transport Agreement in so far as concerns EU-Switzerland routes.

143 Thus the General Court found, in paragraph 243 of the judgment under appeal, that the action brought by Cathay Pacific against the initial decision was not capable of resulting in the suspension of the limitation period provided for in Article 25(6) of Regulation No 1/2003, as regards the unlawful conduct linked to intra-EEA routes and EU-Switzerland routes, since that decision did not cover that unlawful conduct. In paragraph 245 of the judgment under appeal, it concluded that, by penalising Cathay Pacific in the decision at issue for the single and continuous infringement in respect of intra-EEA routes and EU-Switzerland routes, the Commission had infringed the rules on limitation laid down in Article 25 of that regulation.

144 Having thus upheld that second plea in law raised at first instance, the General Court held, in paragraphs 249 and 254 of the judgment under appeal, that an examination of the first and fourth pleas '[had] become devoid of purpose'.

145 It is clear from the judgment under appeal and the application before the General Court that, by its first and fourth pleas before the latter court, Cathay Pacific confined itself to raising errors of fact and law and the insufficient statement of reasons for the decision at issue in so far as concerns 'intra-EEA routes and EU-Switzerland routes' only.

146 In fact, its first plea in law before the General Court alleged that 'the Commission [had] erred in law and/or in fact and/or failed to meet the applicable standard of proof by including [Cathay Pacific] in Article 1(1) and 1(4) of the operative part of the [decision at issue] and finding that [Cathay Pacific] participated in the alleged [single and continuous infringement]'. In that connection, it is clear from the application at first instance that that first plea related only to intra-EEA routes and EU-Switzerland routes. Thus Cathay Pacific was clearly referring, not only in the title of its first plea but also the substance thereof, solely to the provisions of the decision at issue which were annulled by the General Court on grounds of limitation.

147 Furthermore, admittedly, in paragraph 44 of its application before the General Court, Cathay Pacific had indeed stated that the first plea raised before it was 'determinative' also for its 'entire appeal, in particular given the Commission's finding that it would be artificial to split up the [single and continuous infringement] into separate infringement findings' and that 'if [it] has been wrongly included in two of the elements of infringement, then it cannot be treated as having participated in the [single and continuous infringement] at all, and the [decision at issue] must be annulled in so far as it concerns [Cathay Pacific]'.

148 However, it should be observed moreover that Cathay Pacific, in the third plea in law raised before the General Court, specifically disputed its participation in the single and continuous infringement as identified in the decision at issue, in so far as concerns the three separate components thereof in material terms, namely the fuel surcharge, the security surcharge and the refusal to pay commission. The third plea was examined in paragraphs 255 to 377 of the judgment under appeal. Accordingly, it cannot be considered that, by finding that it was no longer necessary to rule on the first and fourth pleas raised before it, on the ground that the second plea was well founded, the General Court failed to rule on Cathay Pacific's arguments relating to its participation in the single and continuous infringement.

149 As to its fourth plea before the General Court, this alleged that 'the Commission failed to give adequate reasons to support its finding that [Cathay Pacific] participated in a [single and continuous infringement]'. It is therefore true that the heading of that plea did not, in itself, indicate that that plea concerned only 'intra-EEA routes and EU-Switzerland routes'. However, it is apparent from the arguments put forward in support of that plea, in particular in paragraphs 88 to 90 of the application before the General Court, that Cathay Pacific was also, by way of that plea, referring to those routes only. Similarly, it is apparent from paragraph 91 of that application that Cathay Pacific was objecting to its inclusion on the list of participants set out in Article 1(1) and (4) of the operative part of the decision at issue.

150 Given that, by upholding the second plea raised at first instance, the General Court annulled Article 1(1) and (4) of the operative part of the decision at issue in so far as those provisions concerned Cathay Pacific, and that those provisions specifically concerned intra-EEA routes and EU-Switzerland routes, the General Court did not err in law in finding that it was no longer necessary to examine the other two pleas.

151 It follows from the foregoing that the third ground of appeal must be rejected as unfounded.

The fifth ground of appeal, alleging errors of law in the approach to evidence that does not relate directly to the infringements attributed to Cathay Pacific and failure to use cogent

reasoning in relation to all of the evidence in finding that the latter participated in the single and continuous infringement

Arguments of the parties

152 Cathay Pacific, referring to paragraphs 312 to 345 of the judgment under appeal, submits that the General Court, having annulled Article 1(1)(g) and (4)(g) of the decision at issue and, consequently, substantially reduced the scope and period of Cathay Pacific's participation in the single and continuous infringement, erred in not providing any cogent explanation of its approach to its evaluation of evidence emanating from outside the period of infringement or the territorial jurisdiction of the Commission, and in particular how such evidence might 'corroborate the interpretation' of certain other evidence.

153 Thus, in the first place, Cathay Pacific argues that the General Court's reasoning is quite unclear as to its thinking in relation to evidence concerning events prior to the beginning of the infringement attributed to Cathay Pacific or its relevance to a finding that the latter participated in the single and continuous infringement. Since it annulled Article 1(1)(g) and (4)(g) of the decision at issue, the General Court was, in Cathay Pacific's submission, obliged to reconsider the relevance of evidence relating to the period prior to that of the infringement attributed to Cathay Pacific, as a result of that annulment. However, it is not clear that the General Court did reconsider. The evidence relating to the period prior to the infringement as now found appears to be treated as direct evidence of the infringement and, in particular as evidence of participation in the single and continuous infringement.

154 In the second place, Cathay Pacific disputes the evidence corroborating the findings of infringement made against it in so far as concerns the periods and geographic areas falling within the scope of the Commission's jurisdiction to find an infringement.

155 First, Cathay Pacific claims that it is difficult to know whether, in paragraph 333 of the judgment under appeal, the General Court uses the term 'corroborate' as meaning that the evidence concerning contacts in Switzerland serves to corroborate an interpretation of certain other evidence or, rather, as meaning that that evidence directly confirms that the events actually happened.

156 Second, it is, in Cathay Pacific's submission, impossible to understand the reasons why the evidence set out in the recitals relating to contacts that occurred in Switzerland corroborate the evidence set out in other recitals.

157 Third, more generally, the General Court's analysis is deficient as to the role of evidence outside the period of infringement or the geographic jurisdiction of the Commission. The General Court was, according to Cathay Pacific, required to specify the items of evidence that constituted direct evidence of the infringement, on the one hand, and the items that corroborated that evidence, on the other. However, it did not provide such clarification and, further, it appeared to treat the corroborative evidence as direct evidence of the infringement.

158 Fourth, Cathay Pacific observes that, in paragraph 33 of the judgment under appeal, the reference made by the General Court to 90 contacts which the Commission summarised in recitals 757 to 759 of the decision at issue in order to establish Cathay Pacific's participation in the worldwide cartel included 12 recitals relating to Switzerland, which suggests that all those recitals

corroborate themselves. The General Court failed to provide any reasoning for that kind of corroboration, in Cathay Pacific's submission, thereby preventing any understanding of how conduct which occurred locally corroborates the existence of conduct adopted elsewhere.

159 In the third place, Cathay Pacific claims that the evidence relating to conduct falling within the scope of the Commission's jurisdiction, which evidence was set out in 52 recitals of the decision at issue, is insufficient to allow it to be found that Cathay Pacific participated in the single and continuous infringement, or that it knew or ought to have known about the overall plan that characterised the single and continuous infringement as a whole.

160 The Commission contends that the fifth ground of appeal is unfounded.

Findings of the Court

161 It should be noted that, by way of this ground of appeal, which concerns paragraphs 312 to 345 of the judgment under appeal, Cathay Pacific submits, in essence, that the General Court erred in law by taking into account, in order to assess its participation in the single and continuous infringement, evidence relating either to conduct adopted prior to the period of the infringement, or conduct in respect of which, from a geographical perspective, the Commission does not have jurisdiction. In that connection, Cathay Pacific claims that the General Court failed to specify whether those items of evidence were to be regarded as 'corroborating' its involvement in the infringement or as direct evidence thereof.

162 It follows from the case-law recalled in paragraphs 68 and 69 of the present judgment that, in so far as, by way of the present ground of appeal, Cathay Pacific challenges those paragraphs of the judgment under appeal in which the General Court assessed the facts and evidence, that ground of appeal is inadmissible, since Cathay Pacific has not claimed that the General Court distorted those facts or that evidence.

163 Furthermore, inasmuch as, by that ground of appeal, Cathay Pacific claims that the General Court erred in law, having annulled Article 1(1)(g) and (4)(g) of the decision at issue and, consequently, reducing the scope and duration of Cathay Pacific's participation in the single and continuous infringement, by nonetheless referring to the recitals of the decision at issue which supported those provisions, and therefore to items of evidence which concerned conduct adopted outside the period of the infringement or which did not fall within the geographical scope of the part of the infringement in respect of which Cathay Pacific was now held liable, it should be recalled that, in order to establish that there has been an infringement of Article 101(1) TFEU, the Commission must produce firm, precise and consistent evidence.

164 However, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by that institution, viewed as a whole, meets that requirement (see judgment of 1 July 2010, *Knauf Gips* v *Commission*, C-407/08 P, EU:C:2010:389, paragraph 47 and the case-law cited).

165 Thus the General Court is not required to annul a decision of the Commission simply because the latter refers, in its decision, to facts that do not constitute direct evidence of the participation of the undertaking concerned in the alleged infringement. It is sufficient that it ascertain, as it did in the case in point, that all of the items of evidence examined were such as to support the finding that the undertaking in question participated in the single and continuous infringement. In that

regard, evidence relating to contacts prior to the period of the infringement or relating to conduct in respect of which the Commission does not have jurisdiction can corroborate the interpretation of other evidence relating to that period, in order to provide context for that conduct or demonstrate the recurrence of certain kinds of conduct or practices.

166 In the present case, as the Advocate General observes in points 138 and 139 of his Opinion, as regards, first, contacts prior to the period of the infringement, the General Court found, in paragraphs 315 to 322 of the judgment under appeal, that several of those contacts concerned routes falling within the scope of the Commission's jurisdiction. In paragraphs 323 to 327 of that judgment, the General Court ruled that, even though the other contested contacts all concerned routes in respect of which, during the periods in question, the Commission did not have jurisdiction, the latter could nevertheless take them into account in order to construct an overall picture of the situation and thus support the interpretation to be made of items of evidence at its disposal.

167 In paragraphs 325 to 327 of the judgment under appeal, the General Court held, in essence, that those contacts, despite concerning such routes, formed part of a worldwide cartel based on a network of bilateral and multilateral contacts, thereby corroborating the existence and functioning thereof. In paragraph 328 of that judgment, the General Court pointed out that Cathay Pacific had '[failed] to argue that those contacts did not corroborate the interpretation of other items of evidence' and that it had not alleged that '[these] were outside the Commission's jurisdiction'. Moreover, in paragraph 328, it explained that the 40 or so contacts contested by Cathay Pacific were among the almost 90 contacts at issue which the Commission had examined in the decision at issue.

168 Second, as regards the contacts outside the Commission's geographic jurisdiction, the General Court ruled, first, in paragraph 332 of the judgment under appeal, that, since those contacts concerned routes from Switzerland without distinction, the Commission cannot be criticised for considering that they also concerned EU-Switzerland routes and, second, in paragraphs 333 and 334 of that judgment, that those contacts also tended to corroborate the almost 90 contacts used by the Commission to establish Cathay Pacific's participation in the single and continuous infringement.

169 In those circumstances, it must be held that the General Court did not err in law in taking into account, in order to assess Cathay Pacific's participation in the infringement, of items of evidence relating to conduct adopted outside the period of the infringement or not falling within the Commission's geographical jurisdiction, since those items could validly corroborate other items of evidence.

170 The fifth ground of appeal must, consequently, be rejected as inadmissible in part and unfounded in part.

The fourth ground of appeal, concerning the failure to establish adequate reasoning for the finding that Cathay Pacific participated in the single and continuous infringement

Arguments of the parties

171 Cathay Pacific submits that the General Court erred in accepting and, in places, improperly bolstering with its own observations, the reasoning and evidence deployed by the Commission in the decision at issue in order to underpin its conclusion that Cathay Pacific had participated in the single and continuous infringement identified in that decision.

172 In that connection, Cathay Pacific claims, first, that the General Court accepted that the decision at issue could be based on the same evidence of the single and continuous infringement as that used in the grounds of the initial decision despite the fact that, in the latter decision, the Commission had not found that Cathay Pacific had participated in any infringement in so far as concerns the intra-EEA and EU-Switzerland routes. Given that the decision at issue contained no new evidence, it was, in Cathay Pacific's submission, impermissible to uphold the decision at issue on the basis of an 'analysis of the evidence' that it did not contain.

173 Second, Cathay Pacific refers to paragraph 326 of the judgment under appeal, in which, it is claimed, the General Court erred in summarising one of its arguments, as it attributed to Cathay Pacific statements which, as is apparent from their context, were made by the Commission. That error attests to a fundamental error of understanding on the part of the General Court, which vitiated its analysis as a whole.

174 Third, Cathay Pacific, referring to paragraphs 310 and 374 of the judgment under appeal, submits that the General Court failed to demonstrate that Cathay Pacific was or ought to have been aware of the general scope and essential characteristics of the cartel, and that a meticulous examination was required since the General Court had accepted that no contact was made directly between Cathay Pacific's head office and the head offices of other carriers. Awareness of the overall plan cannot be demonstrated by contacts made at local level. Consequently, the General Court quite simply failed to appraise the evidence and give an adequate response to Cathay Pacific's arguments on those matters.

175 Fourth, Cathay Pacific disputes the finding, made by the General Court in paragraph 306 of the judgment under appeal, that the Commission did not identify 'a core group of carriers' – of which Cathay Pacific was part – and was in no way required to do so.

176 Fifth, Cathay Pacific objects to the items of evidence referred to in paragraphs 308 to 310 of the judgment under appeal, by claiming that the General Court failed to explain the reasons why the contacts described in those paragraphs can possibly demonstrate Cathay Pacific's participation in any common objective or overall plan, capable of establishing its participation in the single and continuous infringement. The General Court did not specify any information passed between the head offices of the undertakings concerned as a result of any of the specified contacts. The fact that local contacts may be referred to in internal communications with an airline's own headquarters cannot demonstrate an understanding or indeed communication between the headquarters of different carriers unless it is shown that those local contacts were intended specifically to bring about that result.

177 Sixth, referring to paragraphs 369, 372, 374 and 375 of the judgment under appeal, Cathay Pacific submits that the General Court's findings, as set out in paragraph 375, that (i) it was aware of the principles of the cartel, and (ii) the coordination and monitoring at issue was intended to cover all routes worldwide, are not borne out by any of the evidence relied upon or supported by adequate reasoning. The General Court ought to have required that the Commission demonstrate that Cathay Pacific was or ought to have been sufficiently aware either of the contacts that established the general scope and characteristics of the cartel in question, or of the outcome of those contacts. Cathay Pacific also claims that the General Court made reference, in paragraph 369 of the judgment under appeal, to 'imputed knowledge', whereas neither the General Court nor the Commission put forward cogent reasoning to make such an imputation. Without such a demonstration, Cathay Pacific takes the view that the finding that it had participated in the single and continuous infringement should not have been upheld.

178 Seventh, by referring to paragraph 326 of the judgment under appeal, Cathay Pacific objects, in essence, to the line of reasoning followed by the General Court, according to which the Commission could, in view of the purpose of the surcharges, which were intended to apply worldwide to all routes, include the intra-EEA and EU-Switzerland routes in the infringement, by claiming that that approach is incapable of demonstrating Cathay Pacific's actual or imputed knowledge of the single and continuous infringement. In support of its position, Cathay Pacific analyses several recitals of the decision at issue on which the General Court relied, in particular in paragraphs 339, 314 to 322 and 332 of the judgment under appeal, and objects both to those recitals and the findings set out in those paragraphs of the judgment under appeal.

179 Thus, as regards paragraph 332 of the judgment under appeal, Cathay Pacific submits that the General Court made a substitution of grounds. Indeed, in paragraph 332, the General Court considered evidence principally in relation to the Air Cargo Council Switzerland ('ACCS'). It notes, in Cathay Pacific's submission, that EU carriers were members of the ACCS and actively participated in the contacts at issue, with regard to both the fuel surcharge and the refusal to pay commission. The General Court concludes that 'in so far as those contacts related to routes from Switzerland without distinction, the Commission cannot be criticised for considering that they also concerned EU-Switzerland routes, albeit to a lesser extent'. That statement is not supported, in Cathay Pacific's view. It submits that there was no evidence in the decision at issue relating to those routes, and that the General Court is not entitled to uphold a defective decision by supplementing the reasoning it contains with its own assessment. In any event, the General Court's line of argument is circular, in Cathay Pacific's submission, in that if the EU carriers had wished to agree on a fuel surcharge for EU-Switzerland routes, they would have had no reason to 'trouble the other carriers'.

180 The Commission contends that the fourth plea is unfounded.

Findings of the Court

181 As regards the first complaint, by way of which Cathay Pacific claims that the General Court erred in law in accepting that the Commission could rely on the same evidence as that relied upon in the initial decision in order to reach the conclusion that Cathay Pacific had participated in the single and continuous infringement in so far as concerns the intra-EEA and EU-Switzerland routes, whereas, in the operative part of that initial decision, it had found that Cathay Pacific had not participated in single infringements on those routes, it is sufficient to recall that the initial decision was annulled on the ground, in particular, that that decision was vitiated by contradictions between the grounds and operative part thereof. In particular, whereas the

grounds of that decision described a single and continuous infringement relating to all routes covered by the cartel, in which all the incriminated carriers had participated, the operative part of that decision identified either four separate single and continuous infringements, or just one single and continuous infringement, liability for which was attributed to the carriers which, as regards the routes mentioned in Articles 1 to 4 of the initial decision, participated directly in the unlawful conduct referred to in each of those articles or were aware of the collusion on those routes and accepted the risk.

182 In those circumstances, given that the Commission had, in compliance with the judgment annulling the initial decision, to remedy that contradiction, Cathay Pacific cannot validly rely on the operative part of the initial decision in order to object to the Commission re-examining and, thereafter, inferring from the same evidence as that relied upon in the initial decision a conclusion opposite to that set out in the operative part of the initial decision.

183 Moreover, even if it were to be considered that, by its complaint, Cathay Pacific also intends to dispute the absence of any evidence in the initial decision as to its awareness of unlawful conduct on the intra-EEA and EU-Switzerland routes, it is sufficient to observe that, by that complaint, Cathay Pacific has failed to point to any error of law on the part of the General Court, but confines itself to criticising the initial decision generally. In that connection, it is sufficient to recall that arguments in an appeal which criticise the decision the annulment of which was applied for before the General Court, rather than the judgment delivered by the General Court following that application for annulment, are inadmissible (see judgment of 29 June 2023, *TUIfly* v *Commission*, C-763/21 P, EU:C:2023:528, paragraph 53 and the case-law cited).

184 As regards the complaint directed against paragraph 326 of the judgment under appeal, it should be noted that the version of that judgment in the language of the case does indeed contain an obvious error, in that it refers to 'the applicant' whereas, having regard to the context of which that paragraph forms part, it was in fact to 'the Commission' that the General Court was referring in that paragraph.

185 However, it cannot be held that that error vitiated the entirety of the General Court's analysis with illegality. It is in fact clear from the context of which paragraph 326 forms part that it is a mere clerical error and that, in paragraph 326, the General Court did not misinterpret Cathay Pacific's line of argument. Indeed, in paragraphs 325 and 326 of the judgment under appeal, the General Court set out the Commission's position as set out in the decision at issue, and it is in paragraph 327 of that judgment that it referred to Cathay Pacific's position and responded to the latter's arguments. Furthermore, it is clear from paragraph 291 of the judgment under appeal, which is not disputed by Cathay Pacific and which summarises the latter's line of argument, that the General Court did not misinterpret that line. Consequently, that complaint must be rejected as unfounded.

186 As regards the complaint directed against paragraphs 310 and 374 of the judgment under appeal, it should be observed that, in paragraph 310 of the judgment under appeal, the General Court essentially stated that, even though certain exchanges between Cathay Pacific and other carriers had taken place though local employees, information had been exchanged between the head offices of the undertakings concerned, with the result that, although indirect, those contacts had to be regarded as falling within the scope of the organisation at several levels of the cartel at issue.

187 Inasmuch as Cathay Pacific suggests that awareness of the overall plan cannot be demonstrated by contacts made at local level, it should be noted that, in accordance with the case-law cited in paragraph 164 of the present judgment, it is sufficient that the body of evidence upon which the Commission relies, viewed as a whole, satisfies the evidentiary requirement to establish the existence of a single and continuous infringement and the participation of an undertaking in that infringement, whatever the level of such contacts, the existence of which is supported by evidence. That argument advanced by Cathay Pacific must therefore be rejected as unfounded.

188 As regards paragraph 374 of the judgment under appeal, in which the General Court held that the Commission had described the general scope and essential characteristics of the cartel along with the collusion on the fuel surcharge, by stating that the same principles applied, *mutatis mutandis*, to the other elements of the single and continuous infringement, it is sufficient to note that the General Court did not confine itself to that general finding.

189 In paragraph 375 of the judgment under appeal, the General Court referred to numerous contacts described in the decision at issue, and considered that these demonstrated that Cathay Pacific could not have been unaware of the existence of a network of contacts in which an exchange of information and coordination took place concerning both the fuel and security surcharges and the refusal to pay commission. The General Court also observed in that paragraph that, in the light of those contacts, Cathay Pacific could not have been unaware of the shared expectation that discipline would be maintained on the market in relation to surcharges or of the existence of a multi-level structure. Furthermore, referring to paragraphs 354 to 356 of that judgment, and in view of the geographic scope of the announcements and discussions relating to the fuel surcharge, of the large number of countries in which the applicant took part in collusive contacts and the numerous initiatives taken by the applicant to encourage, in parallel, the staff of its subsidiaries to coordinate with their competitors at local level, the General Court held, in paragraph 375 of the judgment under appeal, that Cathay Pacific could also reasonably have known and assumed the risk that the coordination and monitoring at issue was intended to cover all routes worldwide.

190 Thus it must be held that, since those paragraphs of the judgment under appeal contain only assessments of the facts and evidence, the complaint seeking to challenge those assessments is inadmissible, since Cathay Pacific does not rely on any distortion thereof.

191 As regards the complaint directed against paragraph 306 of the judgment under appeal, Cathay Pacific claims that the General Court's finding in that paragraph is legally and factually incorrect in so far as the Commission had identified a core group of incriminated carriers in Subsection 4.3.3 of the decision at issue and the identification of such a core group was of particular relevance to awareness of the common objective pursued by the cartel, which constituted a condition for an undertaking to be regarded as having participated therein.

192 In that connection, it should be observed that, in paragraph 306 of the judgment under appeal, and in paragraph 280 of that judgment, to which paragraph 306 refers, the General Court clarified that the fact that the degree of the participation in that infringement may have varied between the incriminated carriers must be taken into consideration only when the gravity of the infringement is assessed and if and when it comes to determining the fine.

193 In that paragraph 306, the General Court stated that Cathay Pacific's claim was based on a false premiss, since the Commission had not identified such a 'core group' in the decision at issue and was in no way required to do so.

194 Accordingly, the General Court did not err in law in reaching that conclusion.

195 Consequently, the argument that the General Court wrongly held that the Commission had not identified a core group of carriers must be rejected as ineffective, since it is based on the incorrect premiss that the Commission was required to identify such a core group.

196 Thus, in paragraph 281, the General Court noted, in essence, that, at most, the Commission had referred, in the decision at issue, to the statements made by Lufthansa that the core group of contacts had involved principally bilateral mobile phone calls between the directors of pricing policy of the various carriers, but it did not at any moment endorse those statements, nor did it rely on the existence or scope of such a group that was separate from the other contacts at issue. Cathay Pacific also does not dispute that finding.

197 Furthermore, in so far as Cathay Pacific seeks to call into question that assessment by the General Court of the facts and evidence, its line of argument must be rejected as inadmissible, in accordance with the case-law recalled in paragraph 69 of the present judgment.

198 As regards the complaint directed against paragraphs 308 to 310 of the judgment under appeal, it should be noted, first, that inasmuch as, by that complaint, Cathay Pacific objects to the evidence to which those paragraphs of the judgment under appeal refer, that complaint is also inadmissible pursuant to the case-law recalled in paragraph 69 of the present judgment in so far as, in that complaint, Cathay Pacific does not claim that, in paragraphs 308 to 310, the General Court distorted the decision at issue, but confines itself to disputing the factual assessments therein and thus seeks to obtain a fresh assessment of the facts by the Court.

199 Second, inasmuch as, by that complaint, Cathay Pacific submits that the General Court failed to state sufficient reasons for the judgment under appeal by not giving an adequate explanation of the relevance of the contacts referred to in paragraphs 308 to 310 thereof in order to demonstrate Cathay Pacific's participation in a common objective or overall plan, it should be recalled that the General Court's obligation to state reasons under Article 36 of the Statute of the Court of Justice of the European Union, read in conjunction with the first paragraph of Article 53 thereof, requires that court to disclose clearly and unequivocally its reasoning in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and the Court of Justice to exercise its power of review (judgments of 11 April 2013, *Mindo* v *Commission*, C-652/11 P, EU:C:2013:229, paragraph 29, and of 26 September 2024, *Covestro Deutschland and Germany* v *Commission*, C-790/21 P and C-791/21 P, EU:C:2024:792, paragraph 113 and the case-law cited).

200 However, that obligation does not require that the General Court provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (judgments of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 372, and of 26 September 2024, *Covestro Deutschland and Germany* v *Commission*, C-790/21 P and C-791/21 P, EU:C:2024:792, paragraph 114 and the case-law cited).

201 It is clear from paragraphs 308 to 310 of the judgment under appeal that the General Court did indeed respond to Cathay Pacific's claim, set out in paragraph 307 of that judgment, that its head office had not been in contact with that of the other carriers. The General Court in fact observed, in paragraph 308, that as regards the security surcharge, Lufthansa had sent out a standard letter in October 2001 justifying the use of that surcharge to the general managers of the cargo divisions of several carriers, including Cathay Pacific, and, even though that dispatch was unsolicited and received no response, it nevertheless demonstrated communication from one head office to another, whilst noting that a passive mode of participation in an infringement is capable of rendering the undertaking liable for taking part in it. In paragraph 309 of that judgment, the General Court noted, furthermore, that Cathay Pacific did not dispute that it had received, through emails sent by Lufthansa, several announcements of increases in the fuel surcharge sent to various carriers, which also formed part of communication between head offices and could not be disregarded on the ground that they were mere public statements. Lastly, in paragraph 310 of that judgment, the General Court noted that, according to several recitals of the decision at issue, Cathay Pacific's local staff, encouraged to that effect by its head office, maintained contacts with the head offices of other carriers or sought to obtain, via its local counterparts, information on the position expressed by those head offices, and that, reciprocally, Cathay Pacific's head office had been contacted by the local representatives of other carriers, who then reported Cathay Pacific's position to their own head office. The General Court held that, although indirect, those exchanges were ultimately exchanges between head offices and fell within the scope of the organisation at several levels of the cartel.

202 It must therefore be held that the General Court stated sufficient reasons for the relevance of the contacts referred to in paragraphs 308 to 310 of the judgment under appeal in order to demonstrate Cathay Pacific's participation in a common objective or overall plan.

203 In so far as concerns the complaint relating to paragraphs 369, 372, 374 and 375 of the judgment under appeal, it should be observed that the General Court admittedly used, in paragraph 369 of that judgment, the term 'imputed', referring to paragraph 350 of that judgment in respect of the meaning of that term. However, it should be noted that, in paragraphs 370 and 371 of that judgment, the General Court correctly recalled that it was for the Commission to prove that the undertaking concerned had such knowledge.

204 Although Cathay Pacific submits, in its written pleadings on appeal, that the General Court could not presume that it was aware of the unlawfulness of the conduct of the other participants, it nevertheless states that the Commission was entitled simply to demonstrate that it 'ought to' have been sufficiently aware of either the contacts that established the general scope and characteristics of the cartel at issue or the outcome of those contacts. Given that, in paragraph 375 of the judgment under appeal, the General Court had indeed inferred from the examination of the many bilateral and multilateral contacts in which Cathay Pacific had participated in various Member States and third countries that it 'could not have been unaware of' the existence of a network of contacts in which an exchange of information and coordination took place, which amounts to stating that it ought to have been sufficiently aware of the outcome of those contacts, the Court of Justice takes the view that it is unable to understand the exact scope of the objection that Cathay Pacific is attempting to raise with regard to paragraph 369 of that judgment. According to the case-law, an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review, in particular because essential elements on which the ground of appeal is based are not indicated sufficiently coherently and intelligibly in the text of the appeal does not meet the requirements stemming from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and

Article 168(1)(d) and Article 169 of the Rules of Procedure (see, to that effect, judgment of 13 November 2025, *AFG* v *Commission*, C-13/24 P, EU:C:2025:884, paragraphs 51 and 52 and the case-law cited). Consequently, such an objection must be found to be inadmissible.

205 It is true that Cathay Pacific also disputes paragraph 375 of the judgment under appeal more explicitly on the ground that the statement contained in the first sentence of that paragraph, namely that it was aware of all of the principles of the cartel, is not corroborated by any item of evidence or supported by adequate reasoning. However, in the following sentences of that paragraph, the General Court stated reasons to the requisite legal standard for such a statement by referring to the contacts mentioned in a certain number of recitals. As has been recalled in paragraph 69 of the present judgment, the General Court alone has jurisdiction to evaluate the evidence.

206 Furthermore, in that context, aside from the objection referred to in paragraph 203 of the present judgment, Cathay Pacific claims that the Commission was required to demonstrate that it was or ought to have been sufficiently aware of either the contacts referred to in the decision at issue and in paragraph 374 of the judgment under appeal, which established the general scope and essential characteristics of the cartel, or the outcome of those contacts, which the General Court presented in paragraph 375 of the judgment under appeal.

207 However, Cathay Pacific has failed to raise any specific objection as to any error on the part of the General Court in paragraphs 374 and 375 of the judgment under appeal, which have been summarised in paragraphs 188 and 189 of the present judgment. That complaint is therefore inadmissible, pursuant to the case-law cited in paragraph 71 of the present judgment.

208 As regards the complaints directed against paragraphs 314 to 322, 326, 332 and 339 of the judgment under appeal, it should be noted that, by those complaints, Cathay Pacific confines itself, essentially, to submitting that the General Court failed correctly to assess the facts to which it referred in those paragraphs, or that it wrongly endorsed the Commission's position as set out in the recitals of the decision at issue, which are insufficiently conclusive in Cathay Pacific's submission. It thus disputes, in fact, the assessment of the facts and evidence carried out by the General Court in those paragraphs of the judgment under appeal. Consequently, those complaints are, to that extent, inadmissible, in accordance with the case-law recalled in paragraph 69 of the present judgment.

209 As to the remainder, namely Cathay Pacific's argument regarding paragraph 332 of the judgment under appeal and the alleged substitution of grounds effected by the General Court in that paragraph, it is sufficient to observe that no such substitution has been established in the light of the case-law recalled in paragraph 85 of the present judgment since, in that paragraph 332, the General Court simply responded to the line of argument put forward by Cathay Pacific, by relying on elements contained in the decision at issue. The General Court in fact observed, in that paragraph, that it was common ground between the parties that several EU carriers, including Société Air France, Koninklijke Luchtvaart Maatschappij NV, British Airways plc, Deutsche Lufthansa, Swiss International Air Lines and Martinair Holland NV, which had traffic rights on EU-Switzerland routes, were members of the ACCS. It also stated that it was apparent from various recitals of the decision at issue that those carriers had actively participated in several of the contacts at issue, with regard both to the fuel surcharge and the refusal to pay commission on surcharges. It is in those circumstances that the General Court considered that in so far as those contacts related to routes from Switzerland without distinction, the Commission could not be criticised for considering that they also concerned EU-Switzerland routes, albeit to a lesser

extent. Thus Cathay Pacific's line of argument must be rejected, since the General Court's assessment was based on the information available to it in the case file, which it could validly use in order to respond to the arguments put before it.

210 It follows from all the foregoing that the fourth ground of appeal must be rejected as being inadmissible in part and unfounded in part.

The sixth ground of appeal, alleging that the General Court erred in law in considering that Cathay Pacific's refusal to pay commission infringed Article 101 TFEU and/or formed part of a single and continuous infringement

Arguments of the parties

211 Cathay Pacific, referring to paragraphs 276 to 278 of the judgment under appeal, disputes the General Court's finding that the refusal to pay commission did not pursue a legitimate objective but formed part of an overall anticompetitive plan.

212 In that connection, Cathay Pacific claims that the arguments set out in paragraphs 277 and 278 of the judgment under appeal did not call into question the fact that the refusal to pay commission pursued a legitimate objective. Having regard to the legitimate objective, the General Court failed, in Cathay Pacific's submission, to demonstrate that the refusal to pay commission constituted a restriction of competition by object in the context of Article 101 TFEU. Furthermore, the Commission did not demonstrate whether that refusal caused any anticompetitive effects for the purposes of that article. Consequently, no infringement of that article in relation to that conduct was established by the Commission, and the General Court erred in law by rejecting Cathay Pacific's line of argument in that regard.

Findings of the Court

213 In paragraphs 276 to 278 of the judgment under appeal, the General Court stated that, as regards the alleged legitimate objective pursued by the refusal to pay common, Cathay Pacific's line of argument was based on a factually incorrect premiss. In that connection, it observed, in paragraph 277 of that judgment, that it was admittedly apparent from the decision at issue that the question of the payment of commission was the subject of differing legal interpretations between the carriers and the freight forwarders, but that the incriminated carriers did not limit themselves to defining a common position to defend before the competent courts or to promote to the authorities. On the contrary, according to the General Court, they colluded by agreeing, at a multilateral level, to refuse to negotiate the payment of commission with freight forwarders and to grant them only rebates on surcharges; the Commission produced several internal emails illustrating that collusion. In paragraph 278 of that judgment, the General Court added that it was also apparent from the decision at issue that several carriers exchanged information, at a bilateral level, in order to assure each other that they would continue to adhere to the refusal to pay commission which they had previously agreed, as was illustrated, inter alia, by a telephone conversation between Deutsche Lufthansa and Société Air France.

214 Given that Cathay Pacific bases that line of argument on the premiss that those findings made by the General Court did not call into question the fact that the refusal to pay commission pursued a legitimate objective, and that the Court of Justice does not have jurisdiction to assess the relevance

of evidence relied upon by the General Court, that line of argument must be rejected as inadmissible pursuant to the case-law recalled in paragraph 69 of the present judgment, without it being necessary to examine whether, on account of that legitimate objective, the General Court wrongly failed to demonstrate that the refusal to pay commission constituted a restriction by object in the context of Article 101 TFEU.

215 As to the argument that the Commission failed to demonstrate whether that refusal had an anticompetitive effect within the meaning of Article 101 TFEU, that must be rejected as inadmissible on the same grounds as those set out in paragraph 178 of the present judgment.

216 It follows from the foregoing that the sixth ground of appeal must be rejected as inadmissible.

217 As none of the grounds raised by Cathay Pacific in support of its appeal has been upheld, the appeal must be dismissed in its entirety.

Costs

218 In accordance with Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

219 Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

220 Since the Commission has applied for costs to be awarded against Cathay Pacific and the latter has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds, the Court (Fifth Chamber) hereby:

1. Dismisses the appeal;

2. Orders Cathay Pacific Airways Ltd to pay the costs.

Jarukaitis Regan Gratsias

Delivered in open court in Luxembourg on 26 February 2026.

A. Calot Escobar
Registrar

I. Jarukaitis
Acting President of the Chamber