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) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects)

In Case C-386/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 13 June 2022,

Martinair Holland NV, established in Haarlemmermeer (Netherlands), represented by F. Brouwer and R. Wesseling, advocaten,

appellant,

the other party to the proceedings being:

European Commission, represented by A. Dawes and C. Zois, acting as Agents, and by B. Doherty, 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 19 April 2024,

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

* Language of the case: English.

gives the following

Judgment

1 By its appeal, Martinair Holland NV ('Martinair') seeks to have set aside the judgment of the General Court of the European Union of 30 March 2022, *Martinair Holland* v *Commission* (T-323/17, EU:T:2022:174; 'the judgment under appeal'), by which the General Court 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 Martinair and, in the alternative, annulment in part of that decision.

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.'

The FEU Treaty

4 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

5 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.

Background to the dispute and the decision at issue

6 The background to the dispute and the decision at issue, as set out in paragraphs 1 to 47 of the judgment under appeal, may, for the purposes of the present proceedings, be summarised as follows.

7 Martinair is an air transport company which carries on activities in the market for airfreight services.

8 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

9 On 7 December 2005, the European 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 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 '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').

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

11 Following those inspections, a number of carriers, including Martinair, submitted an application for immunity under the notice on immunity from fines and reduction of fines in cartel cases, referred to in paragraph 9 of the present judgment.

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

The initial decision

13 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 Martinair.

14 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

15 By judgment of 16 December 2015, *Martinair Holland* v *Commission* (T-67/11, EU:T:2015:984), the General Court annulled the initial decision in so far as it concerned Martinair. 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.

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

The decision at issue

17 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.

18 On 17 March 2017, the Commission adopted the decision at issue, which was addressed to 19 carriers, including Martinair.

19 That 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.

20 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.

21 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.

22 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.

23 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, together with EU-third country routes, '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'.

24 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 of the 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').

25 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.

26 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.

27 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'.

28 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 Martinair was involved in those three elements.

29 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.

30 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.

31 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.

32 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;

– 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.

33 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 Martinair ran from 22 January 2001 until 14 February 2006.

34 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).

35 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:

…

(n) [Martinair] from 22 January 2001 until 14 February 2006;

…

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

…

(n) [Martinair] 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:

…

(n) [Martinair] 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:

…

(n) [Martinair], 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:

…

(m) [Martinair]: EUR 15 400 000;

…

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

36 By application lodged at the Registry of the General Court on 29 May 2017, Martinair brought an action principally seeking annulment of the decision at issue in its entirety in so far as the latter decision concerned it; in the alternative, annulment of Article 1(2)(n) and (3)(n) of that decision, in so far as the Commission found Martinair liable for an infringement on inbound routes, and annulment of Article 1(1)(n), (2)(n), (3)(n) and (4)(n) of that decision, in so far as the Commission found that the single and continuous infringement included the refusal to pay commission.

37 In support of that action, Martinair relied on three pleas in law.

38 Amongst those pleas, the second alleged a 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. Furthermore, the General Court raised a plea of its own motion alleging lack of jurisdiction on

the part of the Commission in the light of the EC-Switzerland Air Transport Agreement to find and penalise an infringement of Article 53 of the EEA Agreement on routes between airports in the EEA Contracting Parties not being Member States and airports in Switzerland.

39 By decision of 1 July 2019, that case was joined with Case T-325/17, *KLM* v *Commission*, for the purposes of the oral part of the procedure.

40 By way of the judgment under appeal, the General Court rejected all of those pleas, including the plea it had raised of its own motion. However, in the context of the latter plea, it found that the Commission had acknowledged that it was possible that it had, in the determination of the fines, 'inadvertently' included in the value of sales the turnover which some of the incriminated carriers generated on the latter routes during the period concerned, whilst finding that this had concerned only the revenues to be taken into account for the purposes of calculating the basic amount of the fine.

Forms of order sought by the parties to the appeal

41 By its appeal, Martinair submits that the Court should:

– set aside the judgment under appeal in so far as it holds that the Commission has jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to inbound freight services on EEA-third country routes;

– annul the decision at issue in its entirety, or, in the alternative, partly annul that decision in so far as it finds that Martinair infringed Article 101 TFEU and Article 53 of the EEA Agreement with regard to inbound freight services on EEA-third country routes; and

– in any event, order the Commission to pay the costs, including those incurred by Martinair before the General Court.

42 The Commission contends that the Court should:

– dismiss the appeal and order Martinair to pay the costs;

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

The appeal

43 In support of its appeal, Martinair raises a single ground of appeal, by which it submits that the General Court erred in law and infringed its obligation to state reasons by concluding that inbound freight services fall within the scope of Article 101 TFEU and Article 53 of the EEA Agreement.

44 That ground of appeal comprises four parts. By the first part, Martinair submits that the General Court infringed its obligation to state reasons, erred in law and infringed the provisions cited above by finding that inbound freight services produced effects in the EEA that were relevant to establishing the Commission's jurisdiction. By the second part, Martinair submits that the General Court committed the same infringements and the same error of law by ruling that the

practices relating to inbound freight services produced probable effects in the EEA. By the third part, Martinair claims that the General Court erred in law by substituting its own grounds for those of the Commission, and by unlawfully reversing the burden of proof in order to find that the practices relating to inbound freight services produced qualified effects in the EEA. By the fourth part, Martinair submits that the General Court erred in law and infringed the same provisions by finding that a single and continuous infringement can extend the Commission's jurisdiction to conduct outside the EEA.

The first part of the single ground of appeal, concerning the existence of relevant effects in the EEA to establish the Commission's jurisdiction vis-à-vis inbound freight services

Arguments of the parties

45 Martinair submits that, in order to establish the existence of a sufficiently close nexus with the EEA despite the finding made in paragraph 139 of the judgment under appeal, according to which almost all of the sales of inbound freight services took place outside the EEA, the General Court, in paragraph 141 of that judgment, hypothesised that the surcharges concerned could not only have an impact on the overall price charged to freight forwarders, but also, on a secondary level, influence the prices that the freight forwarders charge their customers for their services, provided that the freight forwarders pass any additional costs resulting from the cartel at issue on to the price of their service packages. From that, the General Court further speculated, in paragraph 142 of that judgment, that an increase in these prices may also impact the prices that the shippers buying services from freight forwarders charge for the shipped goods to end customers in the EEA.

46 However, in Martinair's submission, such effects were neither established nor even sufficiently relevant to give rise to qualified effects, within the meaning of the judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632). Those effects are dependent on the presumed, independent decision of both the freight forwarders and the shippers to pass surcharges on to their respective customers, without instigation on the part of Martinair to adopt any kind of behaviour in the EEA. By contrast, in the case that gave rise to the latter judgment, the impact on competition was the intentional result of the conduct of Intel Corporation Inc. alone. Furthermore, the present case does not concern a worldwide market but several local markets, and competition for the inbound freight services did not take place in the EEA.

47 Martinair argues, moreover, that the effects in the form of higher prices of goods imported in the EEA are, if at all plausible, non-immediate and therefore insufficiently linked to any conduct adopted outside the EEA for a sufficient nexus to be established with the EEA. If the General Court's approach were to be followed, any behaviour adopted outside the EEA in a worldwide value chain could have an effect within the EEA. Such an extensive interpretation of the test based on the qualified effects of anticompetitive practices in the European Union ('the qualified effects test') renders that test meaningless in the context of globalised economies and distribution networks.

48 Accordingly, the General Court erred in law, Martinair submits, in holding that the indirect, and in any case likely unsubstantial, effects would be sufficient to establish the requisite qualified effects within the internal market. It also infringed its obligation to state reasons, in Martinair's

submission, by relying on a chain of assumed, speculative and therefore unverifiable effects, instead of establishing, to the requisite degree, a meaningful and immediate nexus of the practices at issue with the EEA.

49 Contrary to what the Commission argues, the present part of the single ground of appeal is admissible, in Martinair's view, since it seeks to dispute not the facts themselves, but rather the legal classification of the effects alleged, which classification led the General Court to find that there were indeed qualified effects.

50 The Commission contends that this part of the single ground of appeal should be rejected, since it is inadmissible inasmuch as it relates to findings of fact made by the General Court, and unfounded as to the remainder.

Findings of the Court

51 In the first place, it should be recalled that the qualified effects test, like the test based on the place in which anticompetitive practices are implemented, pursues the objective of preventing conduct which, while not adopted within the European Union – or, as the case may be, within the EEA – has anticompetitive effects 'liable' to have an impact on the EU or EEA markets. The qualified effects test thus allows the application of EU or EEA competition law to be justified under public international law when it is foreseeable that the conduct in question will have an immediate and substantial effect in the European Union or in the EEA. In that regard, it is sufficient to take account of the probable effects of conduct on competition in order for the requirement of foreseeability to be satisfied. Furthermore, it is sufficient that the conduct in question is 'liable' to have an immediate effect in the European Union or in the EEA in order for the requirement of immediacy to be satisfied (see, to that effect, judgment of 6 September 2017, *Intel* v *Commission*, C-413/14 P, EU:C:2017:632, paragraphs 45, 49, 51 and 52).

52 Thus, as Martinair maintains, in order to establish that the qualified effects test has been satisfied, the Commission must establish that the practices concerned have foreseeable, immediate and substantial effects in the European Union or, as in the present case, in the EEA, which criteria the General Court recalled, moreover, in paragraphs 122 and 143 of the judgment under appeal. However, contrary to what Martinair claims by way of its line of argument set out in the present part of its single ground of appeal, the General Court did not, in paragraphs 141 and 142 of the judgment under appeal, depart from that test by considering that only indirect, non-immediate and speculative, and in any case likely unsubstantial, effects were sufficient to characterise the existence of qualified effects, for the purposes of the case-law recalled in the preceding paragraph of the present judgment.

53 As is clear from an overall reading of paragraphs 117, 118, 121 and 134 to 143 of the judgment under appeal, paragraphs 141 and 142 are part of the General Court's examination relating to the assessment of the relevance of the first ground on which the Commission relied in recital 1045 of the decision at issue as the basis of its finding that the qualified effects test had been satisfied in the case at hand. That ground consisted in 'the increased costs of air transport to the EEA, and consequently higher prices of imported goods, [were] by their very nature liable to have effects on consumers in the EEA' ('the effect on the prices of imported goods'), a ground to which the General Court referred as 'the effect at issue', and which Martinair argued was not amongst the effects produced by the conduct in question which the Commission was entitled to take into account for the purposes of applying the qualified effects test.

54 Since paragraphs 141 and 142 of the judgment under appeal do not relate to the question whether the effect on the prices of imported goods had the required foreseeability, substantiality and immediacy, it cannot be held that, in those paragraphs, the General Court considered that indirect, non-immediate and speculative, and in any case likely unsubstantial, effects were sufficient to characterise the existence of qualified effects within the EEA. Being thus based on a misreading of the judgment under appeal, the first part of the line of argument put forward in support of the present part of the single ground of appeal must be rejected as unfounded.

55 In the second place, in so far as Martinair's intention is to call into question the General Court's assessment, as set out in paragraphs 141 and 142 of the judgment under appeal, that the conduct at issue had an effect on the prices of imported goods, 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 is to be limited to points of law.

56 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 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).

57 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).

58 In the present case, Martinair submits, in essence, that the effect on the prices of imported goods depended solely on the presumed, independent decision of both the freight forwarders and the shippers to pass the surcharges arising as a result of the cartel at issue on to their respective customers, and that competition for inbound freight services took place on local markets outside the EEA, which prevents the possibility, in the present case, of finding that there were effects on which the Commission could rely for the purposes of applying the qualified effects test.

59 In doing so, Martinair challenges the findings made by the General Court in paragraphs 139 to 142 of the judgment under appeal. However, in those paragraphs, the General Court confined itself to setting out and assessing the facts, as these were apparent from recitals 14, 17 and 70 of the decision at issue and from the parties' replies to the measures of organisation of procedure that the General Court had adopted, for the sole purpose of ascertaining whether the effect on the prices of imported goods – on which the Commission had relied as a ground allowing it to apply the qualified effects test – had been established, without effecting any kind of legal classification of those facts. In fact, as is clear, inter alia, from paragraph 143 of the judgment under appeal, it is only thereafter that the General Court determined whether that effect could fall under the concept of 'qualified effects', for the purposes of the case-law cited in paragraph 51 of the present judgment.

60 It is therefore clear that, by way of that line of argument, Martinair is in fact asking that the Court of Justice carry out a fresh assessment of the facts set out and assessed by the General Court in paragraphs 139 to 142 of the judgment under appeal, which falls outside the scope of the jurisdiction on appeal of the Court of Justice, in accordance with the case-law cited in paragraph 57 of the present judgment, since no distortion of those facts has been raised. That line of argument must consequently be rejected as inadmissible.

61 Moreover, in so far as, by that line of argument, as set out in paragraphs 46 to 48 of the present judgment, Martinair's intention is also to call into question the substantiality and immediacy of those effects, for the purposes of the case-law cited in paragraph 51 of the present judgment, it should be observed that the question whether the effect on the prices of imported goods was, in particular, substantial and immediate, as required by that case-law, was examined by the General Court in paragraphs 164 to 174 and paragraphs 175 to 183 of the judgment under appeal, respectively.

62 As regards the substantiality of the effect on the prices of imported goods, Martinair limits itself, however, to claiming that the General Court erred in law by considering that 'in any case likely unsubstantial' effects were sufficient to establish the existence of qualified effects.

63 However, 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).

64 It is clear that such a general statement does not meet those requirements. Accordingly, in so far as it concerns the assessment, by the General Court, of the substantiality of the effect on the prices of imported goods, the line of argument advanced by Martinair must be rejected as inadmissible.

65 As regards whether the effect on the prices of imported goods was immediate, the General Court first of all set out, in paragraphs 175 to 178 of the judgment under appeal, the legal criteria in the light of which it would assess whether such immediacy was established in the case at hand. In that connection, the General Court stated, inter alia, that the intervention of freight forwarders was not, in itself, such as to break the causal chain between the conduct in question and that effect and thus to deprive it of its immediacy, since it objectively resulted from the cartel at issue, in accordance with the normal functioning of the market, and, accordingly, did not break that causal chain but continued it.

66 Next, in paragraphs 179 to 182 of the judgment under appeal, the General Court rejected the arguments that Martinair had submitted in order to dispute the immediacy of the effect on the prices of imported goods.

67 Thus, in paragraph 179 of that judgment, the General Court rejected Martinair's line of argument that there were concrete indications that at least some of the prices charged by freight forwarders to shippers in the relevant period were themselves the result of the anticompetitive practices in

respect of which the Commission penalised the freight forwarders. The General Court observed, in that connection, that Martinair had neither established nor even alleged that, in the context of those practices, the freight forwarders had unlawfully coordinated in order to pass on to the shippers the additional cost that they had had to pay, nor had Martinair demonstrated that those practices were such as to prevent the freight forwarders from passing that additional cost on to the shippers.

68 In paragraph 180 of the judgment under appeal, the General Court found that Martinair had, first, failed to substantiate its argument that the level of additional costs which freight forwarders charged shippers exceeded that of the surcharges which they paid to the incriminated carriers and, second, had failed to explain why freight forwarders could not have passed on both the additional costs resulting from the single and continuous infringement to shippers and invoiced the latter for surcharges of a total amount greater than that of the surcharges which they themselves had had to pay to the incriminated carriers.

69 The General Court inferred, in paragraph 181 of that judgment, that it could not be considered that the foreseeable passing on of the additional cost to shippers located in the EEA was the result of the anticompetitive practices in respect of which the Commission had penalised the freight forwarders and was, consequently, wrongful or extraneous to the normal functioning of the market.

70 In paragraph 182 of that judgment, the General Court also rejected Martinair's argument as to the 'buying power' that the freight forwarders allegedly exercised, on the ground that Martinair had failed to adduce evidence of this or even to explain how it was such as to break the causal chain between the conduct at issue and the occurrence of the effect on the prices of imported goods.

71 Finally, in paragraph 183 of the judgment under appeal, the General Court concluded on the basis of those factors that the effect on the prices of imported goods had the required immediacy.

72 Thus, first, the General Court did not err in law, in paragraphs 175 to 178 of the judgment under appeal, when it found that the intervention of third parties, such as the freight forwarders, does not, by nature, deprive the effects of the conduct at issue of their immediacy, since that intervention objectively results from the cartel at issue, in accordance with the normal functioning of the market.

73 That assessment is not called into question by the case-law arising from the judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632), to which Martinair refers.

74 It is, in fact, not apparent from that judgment that only the impact on competition that is the intentional result of the conduct of the undertaking alone against which action is taken in respect of an infringement of Article 101 TFEU or Article 102 TFEU, is such as to satisfy the requirement of immediacy in order to find that anticompetitive conduct satisfies the qualified effects test.

75 Furthermore, it is not apparent from that judgment that the Court of Justice set down therein a definition of the immediacy of effects that applies to a worldwide market only, which would preclude a scenario in which several local markets are at issue, which Martinair claims is that in the present case.

76 Second, in so far as Martinair submits that, in the circumstances of the present case, the passing on of the surcharges was the result of an independent decision of the freight forwarders and the shippers, it is in fact asking the Court to carry out a fresh assessment of the facts set out and assessed by the General Court in paragraphs 179 to 182 of the judgment under appeal, without claiming distortion of those facts. In the light of the case-law recalled in paragraph 57 of the present judgment, that line of argument must be rejected as inadmissible.

77 It follows from the foregoing that the line of argument advanced by Martinair, as set out in paragraphs 46 to 48 of the present judgment, in so far as it is inadmissible on the grounds set out in paragraphs 58 to 60, 62 to 64 and 76 of the present judgment, must be rejected as unfounded.

78 In the third place, 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).

79 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).

80 It should also be recalled that the obligation to state reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 67, and of 4 October 2024, *UPL Europe and Indofil Industries (Netherlands)* v *Commission*, C-262/23 P, EU:C:2024:862, paragraph 134 and the case-law cited).

81 However, by claiming that the General Court infringed its obligation to state reasons by relying on a chain of assumed, speculative and therefore unverifiable effects, instead of establishing, to the requisite degree, a meaningful and immediate nexus with the EEA, Martinair is in fact challenging the merits of the statement of reasons set out in paragraphs 139 to 143 of the judgment under appeal. Such a claim therefore cannot form the basis of a complaint alleging infringement, on the part of the General Court, of its obligation to state reasons.

82 It follows from the foregoing that the first part of the single ground of appeal must be rejected as inadmissible in part and unfounded in part.

The second part of the single ground of appeal, concerning the probable effects of the practices relating to inbound freight services

Arguments of the parties

83 Martinair submits, with regard to the effects to be taken into consideration in establishing the qualified effects test, that the requirements of foreseeability, substantiality and immediacy of the effects of conduct on competition should also include that of the probability of such effects. That requirement of probability is, in Martinair's submission, stricter than the mere fact that the conduct in question is 'liable' to have effects in the EEA. It requires not only that it be possible but also that it be more likely than not that effects materialise in the EEA in order for the Commission to be able to assert jurisdiction.

84 In that connection, Martinair argues in the first place that the General Court infringed its obligation to state reasons, erred in law and disregarded Article 101 TFEU by finding, in paragraphs 128 to 132 of the judgment under appeal, that the classification of the infringement as an infringement 'by object' rendered any assessment of the probability that effects would occur within the EEA redundant. The General Court therefore wrongly rejected Martinair's arguments in that regard in paragraph 133 of that judgment.

85 In Martinair's submission, it cannot be inferred from the fact that the object of a type of conduct is generally to restrict competition that that conduct automatically produces a restriction of competition within the internal market. Admittedly, it is not a question of demonstrating the existence of actual effects in the EEA. However, in order to establish the Commission's jurisdiction as regards the conduct adopted outside the EEA, the qualified effects test requires that the Commission establish the probability that that conduct has effects in the EEA which, Martinair argues, the Commission failed to analyse in the decision at issue and which the General Court did not examine either. It found that the conduct at issue had the object of restricting competition in the internal market before taking into account the fact that that conduct was adopted and implemented outside the EEA. Since Martinair controls neither the prices applied by the freight forwarders to the shippers nor those invoiced to consumers in the EEA, its 'inbound conduct' could not have had the object of restricting competition within the EEA.

86 Martinair argues that if the General Court's contention that the classification of a restriction of competition as a restriction 'by object' implies that there are probable effects in the internal market were correct, Article 101 TFEU would apply to any cartel conduct, wherever it takes place, is implemented or has effects. Such an interpretation of Article 101 TFEU cannot be correct and, moreover, is in breach of the general principles of international law.

87 Martinair submits, in the second place, that the General Court erred in refraining from assessing the probability of the assumptions underlying the Commission's finding on indirect effects in the EEA, which effects were presumed in the decision at issue.

88 In paragraph 141 of the judgment under appeal, the General Court found, in Martinair's submission, that, provided that the freight forwarders pass any additional costs resulting from the cartel at issue on to the price of their service packages, these effects are liable to manifest themselves within the EEA. However, the Commission neither examined the effects suggested by the General Court nor took into account the implicit analytical and factual circumstances of those assumptions, which it did not even dispute. First, the Commission did not examine whether the

prices for air transport services on the markets outside of the EEA increased as a result of the conduct at issue. Second, even if there were an effect on competition, the Commission neither established nor even examined whether the effect was an increase in total costs incurred by freight forwarders and, if so, what the magnitude of such effects and/or price increases was. Third, even if freight forwarders had incurred higher costs, the Commission did not consider, let alone investigate, whether the freight forwarders had passed on such higher charges to their customers, that is, shippers located outside the EEA. Fourth, even if freight forwarders had passed on those – hypothetical and probably insignificant – costs, the Commission did not examine whether shippers increased their prices as a result. In the context of civil actions for damages pending before the national courts, shippers and freight forwarders, located outside and inside the EEA, maintain, moreover, that they have not passed on 'overcharges' to the extent that such overcharges would be the result of the conduct at issue.

89 Martinair further submits that the absence of any investigation into the probability and extent of additional costs being incurred by consumers in the EEA makes the character of the effects on which the Commission asserts its jurisdiction by definition hypothetical and speculative. The extent to which (i) the inbound freight conduct produced an increase in the total prices of freight services charged to freight forwarders, (ii) if, and to what extent, these increases translated into higher prices charged to shippers, and (iii) if, and to what extent, these increases were charged to consumers buying imported goods in the EEA, has not been demonstrated. It is not obvious and, without a diligent assessment, cannot be assumed that an increase in prices upstream directly translates into a (similar) increase downstream.

90 It is argued that the effects relied upon by the Commission, and uncritically accepted by the General Court, are precisely merely hypothetical or, in any event, of minor significance and for that reason insufficiently probable to give rise to qualified effects. The General Court's conclusion is based on an assumption of passing-on by freight forwarders, with a presumption of further passing-on by shippers, without an accompanying assessment of the probability of either of those assumptions, despite a significant amount of evidence questioning their likelihood. By finding that the required probable effects of conduct within the EEA can be established on the basis of speculative criteria and assessments, the General Court, in Martinair's submission, infringed its obligation to state reasons and, in any event, erred in law and infringed Article 101 TFEU.

91 The Commission contends that this part of the single ground of appeal is inadmissible in part and unfounded in part.

Findings of the Court

92 In the first place, it must be pointed out that it is clear from the case-law recalled in paragraph 51 of the present judgment that the condition relating to the 'probability' of qualified effects, to which Martinair refers, is not distinguishable from that relating to the foreseeability of those effects, since, in accordance with that case-law, it suffices to take account of the probable effects of conduct on competition in order to satisfy the condition relating to the requirement of foreseeability. Accordingly, Martinair wrongly maintains that the requirement of probability is a criterion that is to be added to those of foreseeability, substantiality and immediacy. As a consequence, Martinair cannot meaningfully criticise the General Court, as it does in paragraph 83 of the present judgment, for having failed to ascertain the probability of the effect on the prices of imported goods when, in paragraphs 144 to 163 of the judgment under appeal, the General Court examined the foreseeability of that effect.

93 In the second place, it should be noted that, in paragraph 128 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.

94 Similarly, it stated, in paragraph 132 of that judgment, that interpreting the qualified effects test, as Martinair 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.

95 The General Court inferred, in paragraph 133 of that judgment, that Martinair could neither (i) validly claim that the Commission 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 thereof, nor (ii) deduce from those recitals that the Commission did not carry 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.

96 However, as already stated in the grounds set out in the second place in paragraph 133, it cannot be inferred from those paragraphs disputed by Martinair that the General Court found that the classification of the infringement at issue as an infringement 'by object' rendered redundant any assessment of the probability of the occurrence, within the EEA, of effects serving to establish the Commission's jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to conduct outside the EEA.

97 It is in fact clear from an overall reading of paragraphs 124 to 142 of the judgment under appeal that, in the disputed paragraphs, the General Court merely concerned itself with rejecting the line of argument, summarised in paragraphs 107 and 108 of that judgment, which Martinair had submitted. Thus, in those paragraphs, the General Court set out the reasons why Martinair was wrong to maintain that the statement made by the Commission, in recital 917 of the decision at issue, that it had made no assessment of the anticompetitive effects of the anticompetitive practices in question meant that the Commission had, on account of the nature of those practices, failed to assess whether those practices had had an effect on competition within the European Union or the EEA which served to establish the Commission's jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement to inbound freight services having regard to the qualified effects test.

98 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, 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.

99 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 144 to 184 of the judgment under appeal concerning the coordination in relation to inbound freight services taken in isolation, and in paragraphs 185 to 196 of that judgment concerning the single and continuous infringement taken as a whole.

100 In those circumstances, Martinair misreads the judgment under appeal when it submits that the General Court infringed its obligation to state reasons, erred in law and disregarded Article 101 TFEU by finding that the classification of the infringement at issue as an infringement 'by object' rendered redundant any assessment of the probability that effects would occur within the EEA in order to establish the Commission's jurisdiction with regard to inbound freight services. The line of argument set out in paragraphs 84 to 86 of the present judgment must, accordingly, be rejected as unfounded.

101 In the third place, as regards the line of argument set out in paragraphs 87 to 90 of the present judgment, it should, first of all, be noted that, in so far as, by way of that line of argument, Martinair submits that the decision at issue is vitiated by deficiencies, that line of argument is directed not against the judgment under appeal, but rather the decision at issue. It must, as a consequence, to that extent, be rejected as inadmissible (see, by analogy, judgment of 29 June 2023, *TUIfly* v *Commission*, C-763/21 P, EU:C:2023:528, paragraph 53 and the case-law cited).

102 Next, it should be observed that, contrary to what the line of argument put forward by Martinair suggests, the analysis conducted by the General Court regarding the assumptions forming the basis of the Commission's finding as to the qualified effects of the cartel at issue within the EEA is not confined solely to the finding made in paragraph 141 of the judgment under appeal, but is set out in paragraphs 124 to 142 thereof. These relate specifically to the question whether the additional cost which shippers might have had to pay and the higher prices of goods imported into the EEA which may have resulted therefrom are among the effects produced by the conduct at issue on which the Commission was entitled to rely for the purposes of applying the qualified effects test. Moreover, in paragraphs 144 to 184 of that judgment, the General Court examined, in the light of the arguments advanced by Martinair, whether that effect had the required foreseeability, substantiality and immediacy.

103 Nevertheless, as regards paragraph 141 of the judgment under appeal specifically, it should be recalled that, in that paragraph, the General Court inferred from the findings that it had made in the preceding paragraphs of that judgment that, provided that the freight forwarders pass any additional costs resulting from the cartel at issue on to the price of their service packages, it is in particular on competition that occurs between freight forwarders in order to attract those shippers as customers that the single and continuous infringement, in so far as it concerns inbound routes, is liable to have an impact and, consequently, it is in the internal market or within the EEA that the effect on the price of imported goods is liable to materialise.

104 However, by claiming, in essence, that paragraph 141 is incorrect, and by advancing, in that connection, the arguments set out in paragraphs 88 to 90 of the present judgment, Martinair's intention is, in fact, again to call into question the General Court's finding that the Commission

(i) was entitled to rely on the effect on the prices of imported goods for the purposes of applying the qualified effects test, and (ii) had established to the requisite standard that that effect presented the characteristics required to be regarded as substantial and immediate, in particular. Accordingly, that line of argument is no different to that advanced in support of the first part of the single ground of appeal. It follows from the examination thereof that Martinair has failed to establish that the General Court erred in law by finding that the Commission was entitled to rely on that effect for those purposes.

105 Finally, even if, by claiming that the General Court failed to assess the probability of the effect on the prices of imported goods, Martinair submits, in fact, that the General Court failed to assess the foreseeability thereof, suffice it to note that the question whether that effect had the required foreseeability for the purposes of applying the qualified effects test, within the meaning of the case-law cited in paragraph 51 of the present judgment, was examined by the General Court in paragraphs 144 to 163 of the judgment under appeal, which are not mentioned in this part of the ground of appeal.

106 It follows from the foregoing that the second part of the single ground of appeal must be rejected as inadmissible in part and unfounded in part.

The third part of the single ground of appeal, relating to a substitution of grounds and an unlawful reversal of the burden of proof

Arguments of the parties

107 Martinair observes that the overall assessment of the qualified effects test is the subject solely of recital 1045 of the decision at issue. However, it is across paragraphs 101 to 197 of the judgment under appeal that the General Court confirmed that that test had been satisfied, by developing a line of reasoning in those paragraphs that was based on evidence and arguments not submitted by the Commission, be it in the decision at issue or in the context of the proceedings before the General Court. However, the General Court is not permitted, in Martinair's submission, to fill the gaps in the statement of reasons for the act under its review or to substitute its own reasoning for that of the author of that act.

108 Martinair submits, in that connection, first, that in paragraphs 144 to 163 of the judgment under appeal, the General Court assessed whether it was foreseeable that the upstream alleged fixing of prices for inbound services would lead to a passing on to the downstream market of shipped goods by relying on a finding that was not made by the Commission either in the decision at issue or in the proceedings before the General Court. In particular, the fact that it is stated, in that decision, that the costs for freight services are input costs does not amount to stating that the costs for freight services are 'variable costs impacting marginal costs'. Accordingly, in paragraph 156 of the judgment under appeal, the General Court substituted its own grounds for those of the Commission, in Martinair's submission.

109 Moreover, according to Martinair, the General Court rejected the argument that the waterbed effect rendered the passing on of surcharges unforeseeable, whereas the Commission had expressly refused to examine that effect. However, the General Court ignored that failure and attributed the burden of proof in relation to that effect to Martinair, whereas it was incumbent on the Commission to establish its territorial jurisdiction on the basis of foreseeable effects. It is

therefore for the Commission to prove that the costs of inbound freight services are likely to be passed on to consumers in the EEA. The fact that Martinair chose to produce an economic study has no bearing on that duty.

110 Second, in paragraphs 164 to 174 of the judgment under appeal, the General Court found that the alleged fixing of prices for inbound freight services produced substantial effects in the EEA, and that that finding is justified by the characteristics of the infringement, such as the duration, nature and scope thereof. However, in Martinair's submission, none of those characteristics was presented by the Commission to justify that the impact of inbound freight services on competition in the EEA was substantial.

111 Furthermore, the finding made by the General Court, in paragraph 172 of the judgment under appeal, that the price of freight services – and therefore the surcharges concerned – was itself a significant cost element of the goods transported that has an impact on their sale, has not been established. The characteristics mentioned in the preceding paragraph of the present judgment, and referred to in the decision at issue, do not concern the effects in the EEA caused by the price of inbound freight services, but rather the single and continuous infringement, which has a direct impact in the EEA through the transport of goods abroad. In Martinair's submission, that decision neither includes any findings on the substantiality of the effect of inbound freight services within the EEA, nor cites any evidence relevant to the alleged effect of that conduct as to allow the General Court to maintain what it states in paragraph 172 of the judgment under appeal. The proportion of surcharges in the total price of freight services is not relevant in that regard, and none of the information in the case file establishes a connection between the surcharges and the price of the goods imported. In order to make the finding set out in paragraph 172, the General Court in fact substituted its own reasoning for the Commission's non-existent reasoning.

112 Third, in paragraphs 175 to 183 of the judgment under appeal, the General Court concluded that the alleged fixing of prices for inbound freight services leads to immediate effects in the EEA despite the involvement of independent actors in various stages of the value chain who are themselves required to pass on those prices. However, as has already been claimed in the context of the first part of the single ground of appeal, the Commission has, in Martinair's submission, failed to establish a causal chain in the decision at issue, instead finding there to be indirect effects on the basis of speculative and unverifiable assumptions. In the absence of evidence of the alleged immediacy of the effects, and even of any mention of such immediacy in the decision at issue, the conclusion reached by the General Court is unfounded.

113 The Commission contends that this part of the single ground of appeal is wholly unfounded.

Findings of the Court

114 It is, admittedly, clear from the case-law 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).

115 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).

116 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).

117 In the present case, it should be recalled that, as has already been noted in paragraph 53 of the present judgment, the first ground on which the Commission relied in recital 1045 of the decision at issue as the basis of its finding that the qualified effects test was satisfied in the case at hand was the effect on the prices of imported goods.

118 In that connection, as regards, in the first place, the complaints made against paragraphs 144 to 163 of the judgment under appeal, in which the General Court assessed the condition relating to the foreseeability of that effect, it should be observed, first of all, that in those paragraphs, the General Court referred to recitals 14, 17, 70, 846, 874, 879, 899, 909, 1031, 1045, 1199 and 1208 of the decision at issue, while addressing the line of argument put forward by Martinair in support of its claim that that condition had not been satisfied in the case in point. It is therefore on the basis of an overall reading of the recitals of the decision at issue and of its assessment of the line of argument put forward by Martinair that, in paragraph 163 of the judgment under appeal, the General Court reached the conclusion that the Commission had established the required foreseeability of that effect to the requisite standard.

119 Next, as regards paragraph 156 of the judgment under appeal, to which Martinair specifically refers, the General Court admittedly stated in that paragraph that the price of freight services constitutes an input for freight forwarders, and that it is a variable cost the increase in which, in principle, has the effect of increasing the marginal cost in relation to which the freight forwarders determine their own prices. However, the General Court expressly based that finding on recitals 14 and 70 of the decision at issue, by clearly explaining, in using the phrase 'it is apparent', that that finding was not an identical reproduction of the wording of those recitals, but was the product of its own reading of those passages from the decision at issue. Martinair does not claim that, by that reading, the General Court distorted that decision. The General Court thus confined itself, in that paragraph, to explaining the statement of reasons for the decision at issue, by drawing certain conclusions from the factors contained therein.

120 Finally, it should be observed that, as Martinair maintains, it is for the Commission to establish that the qualified effects test is satisfied and, accordingly, to demonstrate that the practices concerned have foreseeable, immediate and substantial effects in the European Union or, as in the present case, in the EEA. The General Court did not, however, disregard that rule regarding the burden of proof when it rejected Martinair's argument that the waterbed effect would render the passing on of the surcharges unforeseeable, even though the Commission had, according to Martinair, declined to examine that effect.

121 In that connection, after having set out, in paragraphs 144 and 145 of the judgment under appeal, the scope of the requirement of foreseeability, the General Court held, in paragraph 149 of that judgment, that unless it were considered that an increase in the fuel surcharge and the security

surcharge would, as a result of a sufficiently probable waterbed effect, be offset by a corresponding reduction in rates and other surcharges, such an increase was, in principle, liable to lead to an increase in the total price of inbound freight services. Admittedly, the General Court added that Martinair had failed to demonstrate that a waterbed effect was so probable as to render the effect on the prices of imported goods unforeseeable. However, that finding is preceded, in paragraphs 146 to 148 and in the first sentence of paragraph 149 of that judgment, by an examination at the conclusion of which the General Court inferred, on the basis of the factors set out in recitals 846, 909, 1199 and 1208 of the decision at issue, summarised in paragraphs 146 and 147 of that judgment, that it was foreseeable for the incriminated carriers that the horizontal fixing of the fuel surcharge and the security surcharge, together with the refusal to pay commission, would lead to an increase in the total price of inbound freight services.

122 Thus it was only once it had found that, in the decision at issue, the Commission had established the foreseeability of such an increase to the requisite standard that the General Court examined whether Martinair, which relied on the unlawfulness of the decision at issue in that regard, had adduced evidence to rebut that finding. Since Martinair had, to that end, relied on an economic report and claimed that there existed a waterbed effect, the General Court noted, in paragraph 151 of the judgment under appeal, that that economic report concluded, on the basis of assumptions as to the operation of the freight sector, that it was theoretically 'likely' that such an effect would materialise in the case at hand but, in paragraph 152 of that judgment, that that report did not contain, beyond vague and general assertions, any specific data capable of substantiating that conclusion.

123 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 prove 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).

124 That case-law, which is based on the general rules on the taking of evidence, can be transposed to the situation in which the Commission must assert its territorial jurisdiction over conduct originating outside the territory of the European Union or of the EEA.

125 It follows that, given that the General Court had found beforehand that the Commission had established the foreseeability of the price increase in question to the requisite standard, it cannot be held that, by ruling as described in paragraph 122 of the present judgment, the General Court unlawfully reversed the burden of proof.

126 Moreover, in so far as it is Martinair's intention to call into question the assessment, made by the General Court, of the economic report on which Martinair relied, as set out in paragraphs 150 to 152 of the judgment under appeal, it is sufficient to observe that such a line of argument is inadmissible, in accordance with the case-law recalled in paragraph 57 of the present judgment, since Martinair does not claim that the General Court distorted the content of that report.

127 It follows from the foregoing that the line of argument set out in paragraphs 108 and 109 of the present judgment must be rejected as inadmissible in part and unfounded in part.

128 As regards, in the second place, the complaints directed against paragraphs 164 to 174 of the judgment under appeal, which contain the General Court's assessment of whether the effect on the price of imported goods was substantial, it should be noted, first, that in paragraph 167 of that judgment, the General Court found, by referring to recitals 1146, 1215 and 1217 of the decision at issue, that the duration of the single and continuous infringement amounted to 21 months in so far as it concerned EU-third country routes, and 8 months in so far as it concerned non-EU EEA-third country routes. It also held that this was also the duration of the participation of all the incriminated carriers, with the exception of Lufthansa Cargo and Swiss International Air Lines.

129 In paragraph 168 of that judgment, the General Court added that it was apparent from recital 889 of the decision at issue, which was quoted in that paragraph, that the fuel surcharge and the security surcharge were measures of general application that were not route specific and were intended to be applied on all routes, on a worldwide basis, including routes to the EEA. In paragraph 169 of that judgment, the General Court went on to add that it was apparent from recital 1030 of the decision at issue that the object of the single and continuous infringement was to restrict competition between the incriminated carriers, inter alia on EEA-third country routes and that, in recital 1208 of that decision, the Commission had concluded that the fixing of various elements of the price constituted one of the most harmful restrictions of competition and had therefore found that the single and continuous infringement merited the application of a gravity factor 'at the higher end of the scale' provided for in the Guidelines referred to in paragraph 34 of the present judgment.

130 It is therefore not established that, in order to find that the effect on the prices of imported goods was substantial, the General Court relied on characteristics of the cartel at issue that were not contained in the decision at issue. The fact that the factors noted in paragraphs 164 to 174 of the judgment under appeal were not expressly relied upon by the Commission in the part of that decision devoted to establishing its territorial jurisdiction cannot reverse that finding, having regard to the case-law recalled in paragraph 115 of the present judgment. That in fact requires only that the General Court's assessment concern the assessments contained in the act under its review. Furthermore, as is clear from paragraphs 117 and 134 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 extraterritorial jurisdiction in the light of the qualified effects test. It is those factors which, read in conjunction with the other recitals of that decision, referred to inter alia in paragraphs 167 to 169 of the judgment under appeal, enabled the General Court to ascertain that the Commission had indeed established the existence and, in particular, the foreseeability of those effects.

131 Second, in so far as Martinair specifically challenges the finding made in paragraph 172 of the judgment under appeal, it is sufficient to observe that that paragraph – which is based, moreover, on recital 1031 of the decision at issue – is the concluding paragraph of the examination carried out by the General Court in paragraphs 170 and 171 of that judgment and that that examination was undertaken for the sake of completeness, as the General Court states in paragraph 170. Since paragraphs 164 to 169 of that judgment suffice as a basis for the conclusion at which the General Court arrived in paragraph 174 thereof, that the Commission had established to the requisite standard that the effect on the prices of imported goods was substantial, that line of argument

must be rejected as ineffective. It is in fact 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).

132 The line of argument set out in paragraphs 110 and 111 of the present judgment must, accordingly, be rejected as unfounded in part and ineffective in part.

133 As regards, in the third place, the complaint directed against paragraphs 175 to 183 of the judgment under appeal, in which the General Court assessed whether the Commission had established the immediacy of the effect on the prices of imported goods to the requisite standard, it is sufficient to observe that that complaint is based, in essence, on the premiss that Martinair has demonstrated, by way of the first part of the single ground of appeal, that the Commission had based its finding of qualified effects on speculative and unverifiable assumptions. However, it is clear from paragraphs 51 to 82 of the present judgment that that premiss is unfounded. That complaint is, in turn, also without foundation.

134 It follows from all of the foregoing that the third part of the single ground of appeal must be rejected as inadmissible in part, ineffective in part, and unfounded in part.

The fourth part of the single ground of appeal, concerning the single and continuous infringement as the basis of the Commission's territorial jurisdiction

Arguments of the parties

135 Martinair submits that the General Court erred in law by finding, in paragraphs 186 and 188 of the judgment under appeal, that the Commission's jurisdiction to apply Article 101 TFEU to inbound freight services can be established on the basis of the effects of the single and continuous infringement as a whole, including the effects of a distinct element of that infringement that was implemented directly on EEA markets.

136 The concept of 'single and continuous infringement' is, in Martinair's submission, a procedural tool aimed at alleviating the evidentiary burden of competition authorities, allowing them to gather evidence for one infringement that extends over a period of time and combines sets of different conduct forming one overall plan. That concept cannot, however, extend the scope of application of the FEU Treaty without extending the Commission's jurisdiction over all conduct that fits within the overall plan, regardless of the location of that conduct or the location of its effects. It must first of all be established that certain conduct falls within the geographical scope of Article 101 TFEU. It is only thereafter that it may be established that such conduct forms part of a single and continuous infringement.

137 Martinair argues that the reference to paragraph 57 of the judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632), made by the General Court in paragraph 193 of the judgment under appeal, cannot serve to substantiate the relevance of the single and continuous

infringement as a whole in order to establish that the qualified effects test has been satisfied, since neither the conduct nor the market at issue in the case that gave rise to that judgment are comparable to those at issue in the case at hand.

138 The Commission contends that this part of the single ground of appeal is unfounded.

Findings of the Court

139 As is clear in particular from paragraph 81 of the judgment under appeal, Martinair confined itself, before the General Court, 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.

140 In that connection, the General Court found, in paragraph 184 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 185 to 196 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.

141 Moreover, as is clear from the examination of the first three parts of the single ground of appeal, the General Court neither erred in law nor substituted its own grounds for those of the Commission in finding to that effect in paragraph 184 of the judgment under appeal.

142 In those circumstances, it must be held that this fourth part of the single ground of appeal is aimed at grounds of the judgment under appeal included purely for the sake of completeness. It must, as a consequence, be rejected as ineffective, in accordance with the case-law cited in paragraph 131 of the present judgment.

143 As none of the parts of the single ground raised by Martinair in support of its appeal has been upheld, that ground of appeal must be rejected and the appeal dismissed in its entirety.

Costs

144 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.

145 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.

146 Since the Commission has applied for costs to be awarded against Martinair, and the latter has been unsuccessful in its single ground of appeal, the appellant 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 Martinair Holland NV 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