Lufthansa Suit Tossed Without Leave to Replead

2010-04-08

WilmerHale represented Deutsche Lufthansa AG (“Lufthansa”) in the antitrust complaint that Lufthansa and other Defendant air carriers conspired to fix prices and surcharges on passenger flights between the United States and various transatlantic destinations, including Germany. On April 5, 2010, Judge Kiyo Matsumoto of the Eastern District of New York issued a memorandum and order dismissing a Sherman Act Section 1 price-fixing claim against Lufthansa.

Plaintiffs alleged that the airlines agreed to implement an International Air Transport Association ("IATA") resolution regarding the imposition of surcharges on passenger tickets without having received DOT approval of that resolution. To support their claim, Plaintiffs relied on allegations of parallel conduct among the airlines, as well as DOJ investigations in related air transportation markets.

The WilmerHale team and Lufthansa filed a 12(b)(6) motion to dismiss the lawsuit for failure to state a claim, arguing that Plaintiffs failed to provide enough factual support to make their conspiracy claims “plausible” under the Supreme Court’s *Twombly* decision. In granting the motion, Judge Matsumoto held that Plaintiffs’ conclusory allegations of agreement at immunized IATA meetings lacked sufficient factual support to survive a motion to dismiss. She also concluded that Plaintiffs’ bald allegations regarding Defendants’ opportunities to conspire and parallel conduct failed to give rise to a plausible inference of illegal agreement. Finally, the court rejected Plaintiffs’ allegations regarding cartel behavior related to different products and different geographic markets. In a total victory for Lufthansa, the court dismissed the case without leave to replead.

The WilmerHale team was led by partners David Ogden and Eric Mahr; Christopher Babbitt, Rachel Stutz and Caroline Nguyen assisted with the briefing; David Heffernan and Ed Cox provided aviation counsel.