

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

JAN LILLIEBORG

Defendant.

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Hon. 09-cr-616 (KSH)

Crim. No. :

Violations:

15 U.S.C. § 1

18 U.S.C. § 1512(k)

18 U.S.C. § 1512(b)(2)(B)

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting in Newark, charges:

COUNT ONE

(Conspiracy to Restrain Trade)

DEFENDANT AND CO-CONSPIRATORS

1. SAS Cargo Group A/S ("SAS Cargo") is a corporation organized and existing under the laws of Denmark with its principal place of business in Copenhagen, Denmark. SAS Cargo's United States headquarters are located in Newark, New Jersey. During the period covered by Count One of this Indictment, SAS Cargo was engaged in the business of providing air transportation services for cargo in the United States and elsewhere.

2. Jan Lillieborg is hereby indicted and made a Defendant on the charges in this Indictment. During the period from January 2002 until February 2006, Defendant Lillieborg was Vice President of Global Sales of SAS Cargo, and was based in Stockholm, Sweden. During the period covered by Count One of this Indictment, Defendant Lillieborg, on behalf of SAS Cargo, was engaged in the business of providing air transportation services for cargo in the United States

and elsewhere.

3. Various corporations and individuals, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

4. Whenever in this Indictment reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

BACKGROUND OF THE OFFENSE

5. During the period covered by Count One of this Indictment, SAS Cargo and Defendant's co-conspirators provided international air transportation services for cargo ("air cargo services") to and from the United States. The Defendant's employer, SAS Cargo, transported a variety of cargo, such as heavy equipment, perishable commodities, and consumer goods, on scheduled flights internationally, including to and from the United States. For air cargo services, the Defendant, on behalf of SAS Cargo, charged its customers a rate that consisted of both a base rate and various fees, such as surcharges for fuel, post-September 11 security, and import service. The rates charged by Defendant's co-conspirators for air cargo services also included both a base rate and various fees. The amount of the base rate charged by SAS Cargo and Defendant's co-conspirators could vary based on the type and weight of the shipment, the origin and/or destination of the shipment, and the nature of the goods or products being shipped. Similarly, the amount of certain surcharges levied by SAS Cargo and Defendant's co-conspirators could vary based on the origin and/or destination of the shipment.

The base rate and surcharges charged to customers by SAS Cargo and Defendant's co-conspirators for air cargo services are collectively referred to herein as "cargo rates."

DESCRIPTION OF THE OFFENSE

6. Beginning at least as early as February 2002, and continuing until as least February 14, 2006, the exact dates being unknown to the Grand Jury, the Defendant and his co-conspirators entered into and participated in a conspiracy to suppress and eliminate competition by allocating customers and by coordinating increases in certain surcharges charged to customers located in the United States and elsewhere for international air shipments to and from the United States. Defendant Lillieborg joined and participated in that conspiracy from at least February 2002 until at least February 2006. The combination and conspiracy engaged in by Defendant and his co-conspirators was an unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

7. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendant and his co-conspirators, the substantial terms of which were to suppress and eliminate competition by allocating customers and by coordinating surcharges on air cargo shipments to and from the United States.

MANNER AND MEANS OF THE CONSPIRACY

8. For purposes of forming and carrying out the charged combination and conspiracy, the Defendant and his co-conspirators did those things that they conspired to do, including, among other things:

- (a) participating in meetings, conversations, and communications in the United States and elsewhere to allocate customers and to discuss

prospective increases in certain surcharges to be charged for shipments to and from the United States, including meetings in Cologne, Germany, in February 2002; and New York, New York in April 2003 and September 2004.

- (b) agreeing during those meetings, conversations, and communications to refrain from competing for one another's customers by not approaching certain customers or by not undercutting one another's cargo rates;
- (c) coordinating with one another on certain surcharges to be imposed as components of the cargo rates;
- (d) issuing announcements of increases in certain surcharges in accordance with the agreements reached;
- (e) levying certain surcharges to and from the United States in accordance with the agreements reached;
- (f) engaging in meetings, conversations, and communications in the United States and elsewhere for the purpose of monitoring and enforcing adherence to the customer allocation and surcharge agreements; and
- (g) accepting payment for shipments to and from the United States at collusive and noncompetitive rates.

TRADE AND COMMERCE

9. During the period covered by Count One of this Indictment, proposals, contracts, invoices for payment, payments, and other documents essential to the provision of air cargo services were transmitted in interstate and foreign trade and commerce between and among the

offices of SAS Cargo and its customers located in various States and foreign countries.

10. During the period covered by Count One of this Indictment, the Defendant and his co-conspirators transported substantial quantities of cargo, in a continuous and uninterrupted flow of interstate and foreign commerce, between various foreign countries and the United States, including through various U.S. airports to final destinations in various States.

11. During the period covered by Count One of this Indictment, the business activities of the Defendant and his co-conspirators in connection with the air cargo services that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

JURISDICTION AND VENUE

12. The offenses charged in this Indictment were carried out, in part, in the District of New Jersey within the five years preceding the return of this Indictment.

In violation of Title 15, United States Code, Section 1.

COUNT TWO **(Conspiracy to Obstruct Justice)**

The Grand Jury further charges:

13. Each and every allegation contained in Paragraphs 1, 2 and 12 of this Indictment is here realleged with the same full force and effect as though said Paragraphs were set forth in full detail.

14. From in or about January 2006 to the present, a federal grand jury sitting in the District of Columbia has been investigating, among other things, possible federal antitrust offenses involving the air cargo industry. In or about February 2006, the federal grand jury

issued a subpoena duces tecum to SAS Cargo.

15. From in or about February 2006 and continuing thereafter until in or about March 2006, the exact dates being unknown to the Grand Jury, Defendant

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knowingly and wilfully conspired and agreed with unnamed co-conspirators, both known and unknown to the Grand Jury, to knowingly and wilfully commit an offense against the United States, that is to corruptly persuade and attempt to corruptly persuade other persons known to the Grand Jury with intent to cause or induce those other persons to alter, destroy, mutilate or conceal records and documents with the intent to impair their availability for use in an official proceeding; that is, a federal grand jury sitting in the District of Columbia, conducting a price-fixing investigation of the air cargo industry, contrary to Title 18, United States Code, Section 1512(b)(2)(B).

MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that:

16. Defendant Lillieborg and his co-conspirators interfered with and obstructed the investigation being conducted by the United States Department of Justice, Antitrust Division, through the federal grand jury sitting in the District of Columbia, in that Defendant Lillieborg and his co-conspirators removed, concealed or destroyed from business files documents that contained evidence of an anticompetitive agreement or reflected contacts between or among their competitors.

17. Defendant Lillieborg and his co-conspirators persuaded, directed and instructed other persons to remove, conceal or destroy documents that contained evidence of an

anticompetitive agreement or reflected contacts between or among their competitors.

OVERT ACTS

18. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed:

- (a) In or around February 2006, in response to the federal investigation of the air cargo industry, Defendant Lillieborg instructed and directed employees who were involved in the anticompetitive air cargo agreement described in Count One of this Indictment to remove and conceal or destroy from their files certain documents and records that contained evidence of SAS Cargo's anticompetitive agreements with its competitors or contacts between or among SAS Cargo and its competitors, including documents and records located in the District of New Jersey.
- (b) In or around February 2006, a co-conspirator (CC-1) instructed an SAS Cargo employee to remove and conceal documents relating to anticompetitive agreements with competitors and contacts among SAS Cargo and its competitors from the office of CC-1 located in the District of New Jersey. The employee complied with CC-1's instruction.
- (c) In or around March 2006, Defendant Lillieborg instructed CC-1 not to inform counsel for SAS Cargo about removing and concealing documents from his office.

All in violation of Title 18, United States Code, Section 1512(k).

COUNT THREE
(Obstruction of Justice)

The Grand Jury further charges:

19. Each and every allegation contained in Paragraphs 1, 2, 12, 14, and 18(a) through 18(c) of this Indictment is here realleged with the same full force and effect as though said Paragraphs were set forth in full detail.

20. In or about February and March 2006, the exact dates being unknown to the Grand Jury, Defendant

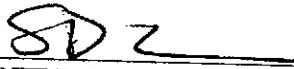
JAN LILLIEBORG

knowingly, corruptly persuaded other persons, whose identities are known to the Grand Jury, with intent to cause or induce those persons to alter, destroy, mutilate or conceal records and documents located in the District of New Jersey, with intent to impair their availability for use in an official proceeding, that is, a federal Grand Jury sitting in Washington, D.C., investigating, among other things, possible federal criminal antitrust violations occurring in the air cargo industry and committed by Defendant Lillieborg and others.

In violation of Title 18, United States Code, Section 1512(b)(2)(B).

Dated:

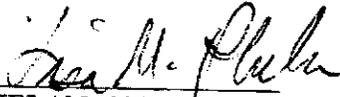
A TRUE BILL



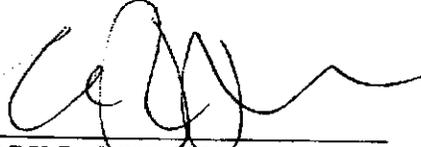
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