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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-80157-CR-MARRA/HOPKINS

15 U.S.C. § 1

UNITED STATES OF AMERICA

v.

ULRICH OGIERMANN and
ROBERT VAN DE WEG

Defendants.
_____/

INDICTMENT

The Grand Jury in and for the Southern District of Florida, charges:

COUNT ONE
(Conspiracy to Restrain Trade)

DEFENDANTS AND CO-CONSPIRATORS

1. Cargolux Airlines International S.A. ("Cargolux") is a corporation organized and existing under the laws of the Grand Duchy of Luxembourg with its principal place of business in the city of Luxembourg. Cargolux's United States headquarters is located in Boca Raton, Florida. During the period covered by this Indictment, Cargolux was engaged in the business of providing air transportation services for cargo in the United States and elsewhere.

2. ULRICH OGIERMANN is hereby indicted and made a Defendant on the charge in this Indictment. During the period from October 2001 until January 2003, Defendant Ogiermann was Senior Vice President Sales and Marketing with Cargolux, and during the period from January 2003 until February 2006, he was the President and Chief Executive Officer of Cargolux. In those

positions he was based in Luxembourg. During the period covered by this Indictment, Defendant Ogiermann, on behalf of Cargolux, was engaged in the business of providing air transportation services for cargo in the United States and elsewhere.

3. ROBERT VAN DE WEG is hereby indicted and made a Defendant on the charge in this Indictment. During the period from December 2003 until February 2006, Defendant Van de Weg was Senior Vice President Sales and Marketing with Cargolux, and was based in Luxembourg. During the period covered by this Indictment, Defendant Van de Weg, on behalf of Cargolux, was engaged in the business of providing air transportation services for cargo in the United States and elsewhere.

4. 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.

5. 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

6. During the period covered by this Indictment, Cargolux and Defendants' co-conspirators provided international air transportation services for cargo ("air cargo services") to and from the United States and elsewhere. Defendants' employer, Cargolux, 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, Defendants, on

behalf of Cargolux, charged customers a rate that consisted of both a base rate and various fees, such as surcharges for fuel and post-September 11 security. The rates charged by Defendants' co-conspirators for air cargo services also included both a base rate and various fees. The amount of the base rate charged by Cargolux and Defendants' 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 Cargolux and Defendants' co-conspirators could vary based on the origin and/or destination of the shipment. The base rate and surcharges charged to customers by Cargolux and Defendants' co-conspirators for air cargo services are collectively referred to herein as "cargo rates."

DESCRIPTION OF THE OFFENSE

7. Beginning at least as early as October 2001, and continuing until at least February 2006, the exact dates being unknown to the Grand Jury, Defendant Ogiermann and his co-conspirators entered into and participated in a conspiracy to suppress and eliminate competition on components of cargo rates by fixing and coordinating certain surcharges, including security and fuel surcharges, charged to customers located in the United States and elsewhere for air cargo services including to and from the United States. Defendant Van de Weg joined and participated in the charged conspiracy from at least as early as December 2003, and continuing until at least February 2006, the exact dates being unknown to the Grand Jury. The combination and conspiracy engaged in by Defendants and their 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).

8. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendants and their co-conspirators, the substantial

terms of which were to suppress and eliminate competition on components of cargo rates by fixing and coordinating certain surcharges, including security and fuel surcharges, on air cargo services including to and from the United States.

MANNER AND MEANS OF THE CONSPIRACY

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

(a) participating in meetings, conversations, and communications to discuss certain surcharges to be charged for air cargo services including those to and from the United States;

(b) agreeing during those meetings, conversations, and communications to fix and coordinate certain surcharges to be imposed as components of cargo rates;

(c) agreeing during those meetings, conversations, and communications not to pay commissions on certain surcharges imposed as components of cargo rates;

(d) issuing announcements of increases on certain surcharges in accordance with the coordination and agreements and understandings reached;

(e) refusing to pay commissions on certain surcharges in accordance with the coordination and agreements and understandings reached;

(f) levying certain surcharges on air cargo services to and from the United States in accordance with the agreements and understandings reached;

(g) engaging in meetings, conversations, and communications in the United States and elsewhere for the purpose of implementing and monitoring the surcharge agreements and understandings; and

(h) accepting payment for air cargo services to and from the United States at collusive and noncompetitive rates.

TRADE AND COMMERCE

10. During the period covered by 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 Cargolux and its customers located in various States and foreign countries.

11. During the period covered by this Indictment, Defendants and their 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.

12. During the period covered by this Indictment, the business activities of Defendants and their 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

13. The offense charged in this Indictment was carried out, in part, in the Southern District of Florida within the five years preceding the return of this Indictment.

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

A TRUE BILL

FOREPERSON

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