

Newsletter – Transport Law – December 14

Aéroports de Paris Baggage Handling Fees

Background

There are 9 different Terminals in Paris Charles de Gaulle Airport (CDG). Some of them (1, 2C, 2E and 2F) are equipped with an automatic conveyor system for handling baggage, and some (2A, 2B, 2D, 2G and 3) are not. As of April 2011, Aéroports de Paris (ADP) changed its system for charging baggage handling services so as to have every Airlines participate to the financing of the automatic conveyors, regardless of which Terminal they are located in.

Whereas such financing was previously shared only by companies located in terminals actually equipped with the automatic conveyors, it is since then shared by all Airlines through the baggage handling fees, as ADP made the decision to homogenize its charging conditions for every Airlines.

As a result, Airlines based in Terminals 2A, 2B, 2D, 2G and 3, have had their fees varied by a factor of two or even more, when the service provided by ADP remains strictly the same than before. Other Airlines' fees have decreased accordingly, with the obvious consequences that this entails for competition.

Does this affect my business? What can my company expect?

Besides the fact that only airline companies operating from Terminals 2A, 2B, 2D, 2G and 3, have interest in getting back to previous charging conditions, please note that the new tariff system is only applicable to so-called "origin/destination" traffic. The tariff of transfer baggage handling was not affected by ADP 2011 decision.

The new scales resulting from such decision are as follows:

Tariff (in € per passenger)	2010-2011 (previous system)	2011-2012	2012-2013	2013-2014	2014-2015
Domestic (i.e. France) and EU flights	€0,455	€1,051	€1,087	€1,120	€1,153
International flights	€1,369	€3,159	€3,266	€3,364	€3,464

For each Airline concerned, the annual impact of the new system may be evaluated by applying these tariffs to the number of passengers carried in CDG from 1st April to 31st March, and then comparing it to what would have been charged if 2010-2011 tariffs had been applied instead.

The difference between both results may be claimed before French Courts, assuming that if the new tariff system is finally recognized to be illegal, ADP will come back to the previous one.

Of course, should a company have been located sometimes in a Terminal not equipped with an automatic conveyor and sometimes not, a pro rata temporis principle shall apply.

What has been done so far?

According to French Civil Aviation Code, airport fees shall reflect the airport operator's underlying costs. ADP may set off between two airport fees, or even between two terminals, but provided that such set-off does not entail a clear disproportion.

Based on these principles, some Airlines have challenged ADP annual tariff decisions since 2011. In accordance with French dual system of jurisdiction, the case was brought:

- Before Paris Administrative Courts, as far as the validity of the new system is concerned; and
- Before Paris Commercial Court in order to get reimbursement from ADP.

Please note that as the tariffs are set annually by ADP, there are several litigations currently pending before Paris Administrative Courts (one legal action for each annual decision). Before Paris Commercial Court, there is to our knowledge one single ongoing legal action, in which new Airlines may intervene voluntarily in order to get reimbursement.

Where do we stand today?

Paris Administrative Courts have in the first place acknowledged that the tariff increase set up in 2011-2012 was illegal as it was accompanied with no apparent justification by ADP as to its underlying costs. Early 2014, the French Administrative Supreme Court confirmed their judgments, but specified that the proceedings outcome could have been different if ADP had provided such justification.

As a matter of fact, ADP eventually did provide cost elements before Paris Administrative Court, seeking to evidence that the fees globally charged in CDG do not cover its underlying costs... and had its 2013-2014 tariffs validated on this basis. An appeal is currently ongoing.

Building on this success, ADP adopted a new decision in July 2014, retroactively restoring its cancelled 2011-2012 tariffs. That decision has (again) been challenged before Paris Administrative court in October 2014. So has been ADP decision for 2014-2015, and so are likely to be its future decisions for 2015-2016, etc., until a definitive position is taken by French Administrative Courts in the light of ADP cost element justification.

Next steps

Today, the outcome of the legal actions brought before the Commercial Court in order to get reimbursement is closely dependent on the airline companies' ability to challenge cost elements that ADP has recently produced in court. **One critical point to be made is that regardless of the global amount of the fees charged by ADP in CDG, the charging conditions that were set as of 2011 entail a disproportionate set-off between the equipped and non-equipped terminals.** This most likely implies to go through a legal expertise procedure. The more Airlines support this initiative, the more chance they will have to obtain reimbursement at the end of the day.

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