

Hong Kong Asks EU Not to Fine Asian Carriers in Antitrust Probe  
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By Matthew Newman

Sept. 21 (Bloomberg) -- Hong Kong told the European Union that fines against Asian airlines such as Cathay Pacific Airways Ltd. and Singapore Airlines Ltd. in an air cargo price-fixing probe would conflict with the city government's rules.

Hong Kong's Civil Aviation Department sent European Commission President Jose Barroso two letters detailing that its rules force the airlines to share data on prices and the conduct doesn't constitute an antitrust violation, said Stephen Kwok, assistant director general of the department.

"We sent the letters to explain clearly that the airlines were in compliance with the regulation in Hong Kong," Kwok said in a telephone interview.

The commission issued complaints to 26 airlines in December 2007 following what regulators said were the largest coordinated antitrust raids. Investigations in the U.S., South Korea and Australia have led to more than \$1.6 billion in fines against airlines.

Michael Tscherny, a former commission spokesman who now advises companies on cartel investigations at GPlus Europe in Brussels, said it's unusual for another country to complain about an EU cartel investigation. Such conflicts may become more common as antitrust enforcement becomes more global, he said.

"There will probably be more of these issues, as Japan and Korea are getting active and the more the cooks in the kitchen, the bigger the chance that they wield a knife and get in the way," Tscherny said.

#### 'Agree on Details'

Norman Lo, director general of the Civil Aviation Department in Hong Kong, sent an initial letter in September 2008 expressing concerns about conflict of laws. In the second letter, dated Sept. 3, 2009, he said airlines that fly to Hong Kong are legally required to "agree on the details of the collective application, including the amount of the surcharge for which approval was sought."

The letter also states that the EU regulator doesn't have jurisdiction to overrule a Hong Kong authority's regulation. The letter didn't mention any airlines by name.

Cargo airlines often work together to carry freight, setting aside as much as 10 percent of space for partners. Carriers' price structures include surcharges that change depending on reasons such as oil prices and security measures. Under EU rules, companies can be fined 10 percent of annual sales for antitrust violations.

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