



**COMPETITION TRIBUNAL**  
**REPUBLIC OF SOUTH AFRICA**

**Case No: 019257**

In the matter between:

The Competition Commission

**Applicant**

and

British Airways Plc

**Respondent**

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Panel : N Manoim (Presiding Member)  
Y Carrim (Tribunal Member)  
M Mokuena (Tribunal Member)

Heard on : 13 August 2014

Decided on : 13 August 2014

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**Order**

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The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and British Airways Plc, annexed hereto marked "A".

  
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**Presiding Member**  
**N Manoim**

13 August 2014  
**Date**

**Concurring: Y Carrim and M Mokuena**

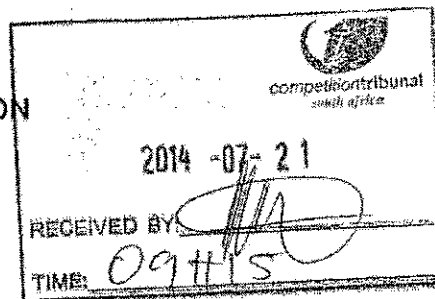
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
HELD AT PRETORIA

CT Case No: 41/CR/Apr12

CC Case No: 2008/Jan3488

In the matter between:

THE COMPETITION COMMISSION



Applicant

and

BRITISH AIRWAYS Plc

Respondent

In re:

THE COMPETITION COMMISSION

Applicant

and

BRITISH AIRWAYS PLC

First Respondent

VIRGIN ATLANTIC AIRWAYS LIMITED

Second Respondent

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SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
BRITISH AIRWAYS PLC IN RESPECT OF AN ALLEGED CONTRAVENTION OF  
SECTION 4(1)(b)(i) OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED.

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The Commission and BA Plc in the above matter hereby agree that application be made to the Competition Tribunal to have this Agreement confirmed as an order as provided for in terms of section 27(1)(d) as read with section 58(1)(a)(iii) of the Act.

## **1. Definitions**

1.1 For the purposes of this agreement the following definitions shall apply:

1.1.1 "Act" means the Competition Act No. 89 of 1998, as amended.

1.1.2 "this Agreement" means the agreement set out herein, duly signed by the Commissioner and the Respondent.

1.1.3 "BA Plc" means British Airways Plc, a company incorporated in accordance with the laws of England and Wales with its registered office at Waterside, Harmondsworth, England.

1.1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act with its principal place of business at 1<sup>st</sup> Floor, Mulayo Building (Block C), the Dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.1.5 "Applicant" means the Competition Commission of South Africa

1.1.6 "Commissioner" means the Competition Commissioner, the Chief Executive Officer of the Commission appointed in terms of section 22 of the Act.

1.1.7 "Competition Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

- 1.1.8 "Complaint" means the complaint initiated by the Commissioner under case number 2008/Jan3488 and subsequently referred to the Competition Tribunal under case number 41/CR/Apr12.
- 1.1.9 "Respondents" means collectively British Airways Plc and Virgin Atlantic.
- 1.1.10 "the Republic" means the Republic of South Africa
- 1.1.11 "Virgin Atlantic" means Virgin Atlantic Airways Limited, a company incorporated in accordance with the laws of England and Wales with its headquarters at Crawley Business Quarter, RH10 9NU, West Sussex, England.

## **2. The Complaint and Complaint Investigation**

- 2.1 On 24 January 2008 the Commissioner initiated the Complaint against BA Plc and Virgin Atlantic in respect of an alleged contravention of section 4(1)(b)(i) of the Act, relating to a component of prices (namely fuel surcharges) in the international market for passenger airline services, including services into and from the Republic.
- 2.2 Upon completion of its investigation into the *Complaint*, the *Commission* found that BA Plc had engaged in the following *Prohibited Practices*:
- 2.2.1 During the period of August 2004 to January 2006, BA Plc and Virgin Atlantic participated in an agreement and/or concerted practice by which they coordinated their pricing in relation to their respective fuel surcharge rates charged to passengers travelling on the United Kingdom to South Africa routes and *vice versa* through the exchange

of pricing and other commercially sensitive information in contravention of section 4(1)(b)(i) of the Act.

**3. Complaint Referral and Settlement Negotiations**

On 12 April 2012 the Commission referred the Complaint to the Tribunal for adjudication in terms of section 50(1) of the Act, read with Rule 14(1)(a) of the Rules for the Conduct of Proceedings in the Competition Tribunal. BA Plc subsequently entered into settlement negotiations with the Commission. The settlement negotiations culminated in this Agreement.

**4. Admission**

BA Plc admits that during the period of August 2004 to January 2006, BA Plc and Virgin Atlantic participated in an agreement and/or concerted practice by which they coordinated their pricing in relation to their respective fuel surcharge rates charged to passengers travelling on the United Kingdom to South Africa routes and vice versa through the exchange of pricing and other commercially sensitive information in contravention of section 4(1)(b)(i) of the Act.

**5. Agreement Concerning Future Conduct**

- 5.1 BA Plc has fully cooperated with the Commission in its investigation of the matter and has provided information that assisted the Commission in concluding its investigation.
- 5.2 BA Plc agrees that it will in future refrain from engaging in the conduct which is the subject of the Complaint Referral and which may constitute a contravention of section 4(1)(b)(i) of the Act.
- 5.3 BA Plc has already initiated a compliance program designed to ensure that the relevant employees and directors are informed of and comply with their obligations under competition law and the provisions of the Act. A copy of this

programme shall be submitted to the Commission within 10 days of the signature of this agreement.

## **6. Administrative Penalty**

- 6.1 In terms of section 58(1)(a)(iii) of the Act read with section 59(1)(a), 59(2) and (3) of the Act, BA Plc agrees to pay an administrative penalty in the amount of R21 765 297.00 (twenty-one million, seven hundred and sixty-five thousand, two hundred and ninety-seven rands ).
- 6.2 The above amount does not exceed 10% of BA Plc's annual turnover into or from the Republic in its 2011 financial year.
- 6.3 The penalty amount is to be paid into the bank account of the Commission within 30 calendar days from the date of confirmation of this Agreement by the Tribunal. The Commission's banking details are as follows:

<b>Bank:</b>	<b>ABSA Bank</b>
<b>Name of Account:</b>	<b>The Competition Commission Fees</b>
<b>Branch Name:</b>	<b>Pretoria</b>
<b>Branch Code:</b>	<b>323345</b>
<b>Account Number:</b>	<b>4050778576</b>
<b>Payment reference</b>	<b>2008Jan3488British Airways:</b>

- 6.4 The Commission will pay over the penalty amount to the National Revenue Fund referred to in Section 59(4) of the Act.

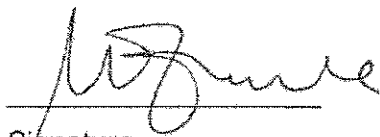
## **7. Full and Final Settlement**

This Agreement, upon confirmation thereof as an order by the Competition Tribunal, concludes all proceedings between the Commission and BA Plc, in relation to any alleged contraventions of the Act that are the subject of the

Commission's investigation under case number 2008Jan3488 and its referral to the Tribunal under case number 41/CRApr12.

**FOR BA Plc:**

Dated and signed at London on this the 20 day of June 2014.



Signature

Name: MARIA DA CUNHA

Job description: DIRECTOR OF LEGAL AND PEOPLE

**FOR THE COMMISSION:**

Dated and signed at PRETORIA on this the 14<sup>th</sup> day of JULY 2014.



Tembinkosi Bonakele  
Commissioner  
Competition Commission of South Africa