

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 42/CR/Jul10
015545

In the matter between:

The Competition Commission

Applicant

and

British Airways PLC

Respondent

Panel : A Wessels (Presiding Member), M Mokuena (Tribunal Member) and T Madima (Tribunal Member)

Heard on : 17 October 2012

Decided on : 22 October 2012

Order

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



Presiding Member
A Wessels

Concurring: M Mokuena and T Madima

A

2012-07-27
M. L. M.
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IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD AT PRETORIA

CT Case No: 42/CR/Jul10
CC Case No. 2006Mar4349

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

BRITISH AIRWAYS PLC

Respondent

In re:

THE COMPETITION COMMISSION

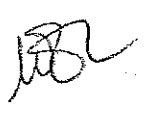
Applicant

and

BRITISH AIRWAYS PLC
SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED
AIR FRANCE CARGO - KLM CARGO
ALITALIA CARGO
CARGOLUX INTERNATIONAL S.A.
SINGAPORE AIRLINES
MARTINAIR CARGO
LUFTHANSA CARGO AG

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent

AGREEMENT BETWEEN THE COMPETITION COMMISSION AND BRITISH AIRWAYS PLC
ON THE TERMS OF AN APPROPRIATE ORDER IN TERMS OF SECTION 49D OF THE
COMPETITION ACT NO. 89 OF 1998, AS AMENDED

The *Commission* and *BA Plc* hereby agree that application be made to the *Tribunal* to have *this Agreement* confirmed as a consent order as provided for in terms of section 58(1)(b) as read with section 49D 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 *BA Plc*.

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.

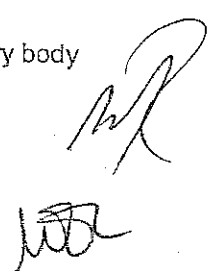
1.1.4 "**BAWC**" means British Airways World Cargo, a division of *BA Plc* with its own separate management structure and which provides, amongst others, air freight transportation and cargo services into and from *the Republic*.

1.1.5 "**CLP**" means the Commission's Corporate Leniency Policy.

1.1.6 "**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 1st Floor, Mulayo Building (Block C), the Dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.1.7 "**Commissioner**" means the Competition Commissioner of South Africa, the Chief Executive Officer of the *Commission* appointed by the Minister of Trade and Industry in terms of section 22 of the *Act*.

1.1.8 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body



established in terms of section 26 of the Act.

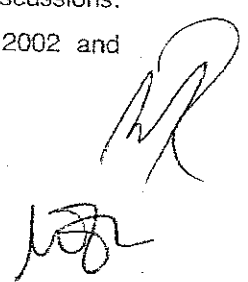
- 1.1.9 "**Complaint**" means the complaint initiated by the *Commissioner* under case number 2006Mar2215 in relation to a possible contravention of section 4(1)(b)(i) of the Act.
- 1.1.10 "**the Republic**" means the Republic of South Africa.
- 1.1.11 "**relevant employees**" means BA Plc's senior sales and marketing staff, managers and directors who deal with, or come into regular contact with customers and competitors.

2. **Background**

- 2.1 On 27 March 2006 the *Commissioner* initiated the *Complaint* against BA Plc and several other firms 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 air freight and/or cargo services, including services into and from the Republic.
- 2.2 During the investigation BA Plc cooperated with the *Commission* and provided information and documents in respect of the alleged conduct. During the investigation and after the referral of the complaint, BA Plc and the *Commission* entered into settlement negotiations which have culminated in *this Agreement*.

3. **Commission's findings**

- 3.1 Upon completion of its investigation into the *Complaint*, the *Commission* found that BAWC had engaged in the following conduct:
- 3.1.1 BAWC engaged in discussions and exchanged and confirmed information by way of telephone calls or e-mails with its competitors, such as Lufthansa Cargo AG ("Lufthansa"), which acted as coordinator in these discussions. These discussions and exchanges occurred between March 2002 and

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February 2006.

3.1.2 The discussions and information exchanges occurred between various air cargo carriers, who are also members of the International Air Transport Association ("IATA"), and related to fuel surcharges.

3.1.3 The *Commission* concluded that *BAWC* in part referred to the discussions and information exchanges with other air cargo carriers in the consideration of fuel surcharge rates or at any rate *BAWC* did not act independently in setting its fuel surcharge rates.

3.1.4 The above conduct constituted a contravention of section 4(1)(b)(i) of the Act.

4. Admission of Liability

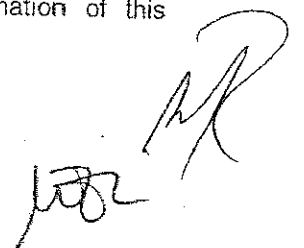
For the purposes of the proceedings that are the subject of the Commission's complaint referral only, *BA Plc* admits that it engaged in the conduct as set out in paragraph 3 above in contravention of section 4(1)(b)(i) of the Act.

5. Agreement concerning future conduct

5.1 *BA Plc* has cooperated fully with the *Commission* in its investigation of the matter and has voluntarily provided information that significantly assisted the *Commission* in concluding its investigation.

5.2 *BA Plc* agrees that it will in future refrain from engaging in the conduct that is the subject of the *Complaint* 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 90 days of the confirmation of this

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agreement as an order of the Tribunal.

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, and in order to settle the matter *BA Plc* agrees to pay an administrative penalty in the amount of GBP 871 116.50 at the prevailing exchange rate on the date of payment of the penalty.

6.2 The above amount does not exceed 10% of *BAWC's* annual turnover in, into or from the *Republic* during the financial year 2009/2010.

6.3 *BA Plc* will pay the amount set out in paragraph 6.1 above to the *Commission* within 30 calendar days from the date of confirmation of this *Agreement* by the *Tribunal*.

6.4 The said amount will be paid into the *Commission's* bank account. The *Commission's* banking details are as follows:

Bank:	ABSA Bank
Name of Account:	The Competition Commission Fees Account
Branch Name:	Pretoria
Branch Code:	323345
Account Number:	4050778576

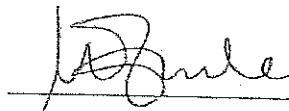
6.5 The *Commission* will pay the penalty amount into the National Revenue Fund in compliance with section 59(4) of the Act.

7. **Full and final settlement**

This *Settlement Agreement*, upon confirmation as a consent order by the *Tribunal*, is entered into in full and final settlement and concludes all proceedings between the *Commission* and *BA Plc* relating to any alleged contraventions by *BA Plc* of the *Competition Act* that are the subject of the *Commission's* investigation under case number 2006Mar2215 and its referral to the *Tribunal* under case number 42/CR/Jul10.

FOR BA Plc:

Dated and signed at London on this the 10 day of July 2012.



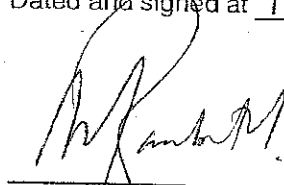
Signature

Name: Maria Da Cunha

Capacity: Director People, Legal & C&A

FOR THE COMMISSION:

Dated and signed at Pretoria on this the 16 day of July 2012.



Shan Ramburath

Commissioner

Competition Commission of South Africa

