

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY

No. VID 12 of 2007

BETWEEN:

DE BRETT SEAFOOD PTY LIMITED (ACN 093 552 366)  
& Anor  
Applicants

- and -

QANTAS AIRWAYS LIMITED (ACN 009 661 901)  
& Ors according to the Schedule  
Respondents

~~THIRD-FOURTH~~ AMENDED APPLICATION UNDER PART IVA  
OF THE *FEDERAL COURT OF AUSTRALIA ACT 1976*

(Order 73 rule 3; Form 129)

(Amended pursuant to leave granted by the Honourable Justice Tracey-Bromberg on ~~30 November~~  
2010 20 May 2011)

1. This application is brought by the Applicants as representative parties.
2. The group members to whom this proceeding relates (“the **Group Members**”) are all those persons ~~currently~~ resident in Australia as at 11 January 2007 who during the period 1 January 2000 to 11 January 2007 (“the **Period**”) paid identified amounts totalling more than twenty thousand Australian dollars (AUD \$20,000.00) for the carriage of goods to or from Australia including in each instance a component by air and who are not related parties of the Respondents or any of them within the meaning of the *Corporations Act 2001* (Cth).
3. The Applicants claim that they and Group Members have suffered loss and damage by reason of the conduct of the Respondents alleged in the ~~Fifth-Sixth~~ Amended Statement of Claim, and will suffer further loss and damage if that conduct is repeated, and claim relief as follows:
  - (a) Declarations pursuant to section 163A of the *Trade Practices Act 1974* (Cth) (“the **TPA**”), alternatively section 21 of the *Federal Court of Australia Act 1976* (Cth) (“the

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**Filed on behalf of:**

**Prepared by:**

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**FCA Act**”), that the Respondents have contravened section 45(2)(a) of the TPA by making arrangements or understandings referred to in:

(i) Paragraph 95; further or alternatively

(ii) Paragraph 116;

of the ~~Fifth-Sixth~~ Amended Statement of Claim.

(b) Declarations pursuant to section 163A of the TPA, alternatively section 21 of the FCA Act, that the Respondents have contravened section 45(2)(b) of the TPA by giving effect to arrangements or understandings referred to in:

(i) Paragraph 95; further or alternatively

(ii) Paragraph 116;

of the ~~Fifth-Sixth~~ Amended Statement of Claim.

(c) Pursuant to section 82 of the TPA, damages.

(d) Pursuant to section 80 of the TPA, an order restraining the Respondents whether by their officers, servants, agents or otherwise from giving effect to the Fuel Surcharge Arrangement; or the Security Surcharge Arrangement or any agreement, arrangement or understanding to the effect of the Fuel Surcharge Arrangement; or the Security Surcharge Arrangement.

(e) Pursuant to section 87 of the TPA, such further or other orders against the Respondents as the Court considers appropriate to compensate the Applicant and Group Members in whole or in part for the loss or damage which they suffered or are likely to suffer by the conduct of the Respondents, or to prevent or reduce such loss or damage.

(f) Interest.

(g) Costs.

Such further or other relief and orders as the Court considers appropriate.

4. The questions of law or fact common to the claims of the Group Members are:

(a) Whether the Respondents made the arrangements referred to in paragraph 95 and 116 of the ~~Fifth-Sixth~~ Amended Statement of Claim or any of them;

- (b) Whether the arrangements referred to in paragraph 95 and 116 of the ~~Fifth~~-Sixth Amended Statement of Claim or any of them contained provisions that:
- (i) Had the purpose or effect, or were likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining, of the price of international air freight services supplied by the Respondents or bodies corporate related to them in competition with each other, within the meaning of section 45A of the TPA;
  - (ii) By reason of the matters in (i) and section 45A of the TPA, had the purpose or effect, or been likely to have the effect, of substantially lessening competition within the meaning of section 45(2) of the TPA.
- (c) Whether, by making the arrangements referred to in paragraph 95 and 116 of the ~~Fifth~~ Sixth Amended Statement of Claim or any of them, the Respondents contravened section 45(2)(a) of the TPA;
- (d) Whether, and if so how, the Respondents gave effect to the arrangements referred to in paragraph 95 and 116 of the ~~Fifth~~ Sixth Amended Statement of Claim or any of them;
- (e) Whether, by giving effect to the arrangements referred to in paragraph 95 and 116 of the ~~Fifth~~ Sixth Amended Statement of Claim or any of them, the Respondents contravened section 45(2)(b) of the TPA;
- (f) Whether any and if so which contraventions of the TPA by the Respondents had an effect that prices for international air freight services, including Australian international air freight services:
- (i) Supplied by them or bodies corporate related to them; or
  - (ii) Supplied by other suppliers of international air freight services;
- were higher than the prices otherwise would have been;
- (g) If the contraventions of the TPA by the Respondents had an effect that prices for international air freight services, including Australian international air freight services, were higher than the prices otherwise would have been, the extent of the increase in the prices;
- (h) The correct measure of any damages which the Respondents may be liable under the TPA to pay to the Applicant and any Group Member;

- (i) Whether any, and if so what relief other than monetary relief should be granted in favour of the Applicants and Group Members.

5. The Applicants do not claim interlocutory relief.

Dated: 18 May 2011

*Maurice Blackburn*

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**Maurice Blackburn**  
Solicitors for the Applicants

**NOTICE TO RESPONDENTS**

**TO:**

**The First Respondent**

Qantas Airways Limited (ACN 009 661 901)  
Building A, 203 Coward Street  
Mascot  
New South Wales 2020

**The Second Respondent**

Deutsche Lufthansa Aktiengesellschaft ARBN 495232  
*By its local agents in accordance with Corporations Act s.601CX*  
Kai Peters  
143 Macquarie Street  
Sydney  
New South Wales 2000

Miriam Cogar  
143 Macquarie Street  
Sydney  
New South Wales 2000

**The Third Respondent**

Singapore Airlines Ltd ARBN 1056195  
*By its local agent in accordance with Corporations Act s.601CX*  
TMF Nominees (Aust) Pty Ltd (ACN 121 059 023)  
Level 9, 50 Park Street  
Sydney  
New South Wales 2000

**The Fourth Respondent**

Singapore Airlines Cargo Pte Ltd ARBN 95934857  
*By its local agent in accordance with Corporations Act s.601CX*  
TMF Nominees (Aust) Pty Ltd (ACN 121 059 023)  
Level 9, 50 Park Street  
Sydney  
New South Wales 2000

**The Fifth Respondent**

Cathay Pacific Airways Ltd ARBN 479514  
*By its local agents in accordance with Corporations Act s.601CX*  
John Swire & Sons Pty Ltd (ACN 000 106 141)  
Level 2, 8 Spring Street  
Sydney  
New South Wales 2000

**The Sixth Respondent**

Air New Zealand Ltd ARBN 312685  
*By its local agent in accordance with Corporations Act s.601CX*

John Harrison  
Level 11, 135-151 Clarence Street  
Sydney  
New South Wales 2000

**The Seventh Respondent**

Air New Zealand (Australia) Pty Ltd (ACN 084 974 569)  
Level 4, 10 Barrack Street  
Sydney  
New South Wales 2000

**The Eighth Respondent**

Japan Airlines International Co Limited ARBN 564358  
*By its local agent in accordance with Corporations Act s.601CX*  
Toshihisa Kuriyama  
Level 13, 201 Sussex Street  
Sydney  
New South Wales 2000

**The Ninth Respondent**

British Airways PLC ARBN 2747597  
*By its local agent in accordance with Corporations Act s.601CX*  
TMF Nominees (Aust) Pty Limited (ACN 121 059 023)  
Level 9, 50 Park Street  
Sydney  
New South Wales 2000

Dated:

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**District Registrar**

The Applicants' address for service is care of its solicitors, Maurice Blackburn Pty Ltd, Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria 3000.

The First Applicant's address is 21 Parkyn Parade, Mooloolaba in the State of Queensland 4557.

The Second Applicant's address is Suite 17, 265-271 Pennant Hills Road, Thornleigh in the State of NSW 2120.

**SCHEDULE OF PARTIES**

<b>DE BRETT SEAFOOD PTY LIMITED</b> (ACN 093 552 366)	First Applicant
<b>J. WISBEY &amp; ASSOCIATES PTY LIMITED</b> (ACN 001 959 851)	Second Applicant
<b>QANTAS AIRWAYS LIMITED</b> (ACN 009 661 901)	First Respondent
<b>DEUTSCHE LUFTHANSA AKTIENGESELLSCHAFT</b> (ARBN 495232)	Second Respondent
<b>SINGAPORE AIRLINES LTD</b> (ARBN 1056195)	Third Respondent
<b>SINGAPORE AIRLINES CARGO PTE LTD</b> (ARBN 95934857)	Fourth Respondent
<b>CATHAY PACIFIC AIRWAYS LIMITED</b> (ARBN 479514)	Fifth Respondent
<b>AIR NEW ZEALAND LTD</b> (ARBN 312685)	Sixth Respondent
<b>AIR NEW ZEALAND (AUSTRALIA) PTY LTD</b> (ACN 084 974 569)	Seventh Respondent
<b>JAPAN AIRLINES INTERNATIONAL CO LIMITED</b> (ARBN 564358)	Eighth Respondent
<b>BRITISH AIRWAYS PLC</b> (ARBN 2747597)	Ninth Respondent