COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 42/CR/Jul10
018440

In the matter between:

The Competition Commission — Applicant

and

Martinair Cargo, A Division of Martinair Holland N.V. — Respondent

---

Panel : T Madima (Presiding Member)
I Valodia (Tribunal Member)
A Roskam (Tribunal Member)

Heard on : 26 March 2014

Decided on : 26 March 2014

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
T Madima

26 March 2014
Date

Concurring: A Roskam and I Valodia

018440 - ANNEXURE A

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south africa

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:
(a) a concise statement of the grounds on which the Complaint is opposed;
(b) the material facts or points on which the respondent relies;
(c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 though 19.

Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: 23 January 2014

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

MARTINAIR CARGO, A DIVISION OF MARTINAIR HOLLAND N.V

Concerning:

(Complaint name and Commission file number:)

THE COMPETITION COMMISSION OF SOUTH AFRICA :CASE NO:2006Mar2215

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 4(1)(b)(i) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

The Complaint concerns the alleged contravention of section 4(1)(b)(i) of the Competition Act 89 of 1998, by MartinAir Cargo, a division of MartinAir Holland N.V.

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competitiontribunal south africa
2014 -01- 22
2014 -01- 23
RECEIVED BY:
RECEIVED BY:
TIME: 11:26
TIME:

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south africa

Form CT1(1) Page 2

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(a) a concise statement of the grounds on which the Complaint is opposed;
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Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

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competitiontribunal
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TIME:

☑ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Wendy Mkwananzi;Chief Legal Counsel

Authorised Signature:

This form is prescribed by the Minister of Trade and Industry in terms of section 27 (2) of the Competition Act 1998 (Act No. 89 of 1998).

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN JOHANNESBURG

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

In the matter between:

THE COMPETITION COMMISSION — Applicant

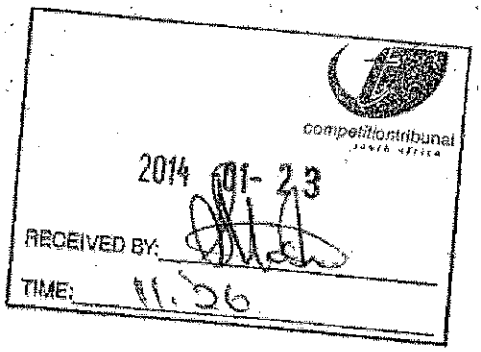
and

MARTINAIR CARGO, A DIVISION OF MARTINAIR HOLLAND N.V. — Respondent

In re:

THE COMPETITION COMMISSION — Applicant

and



BRITISH AIRWAYS PLC	First Respondent
SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED	Second Respondent
AIR FRANCE CARGO – KLM CARGO	Third Respondent
ALITALIA CARGO	Fourth Respondent
CARGOLUX INTERNATIONAL S.A.	Fifth Respondent
SINGAPORE AIRLINES	Sixth Respondent
MARTINAIR CARGO	Seventh Respondent
LUFTHANSA CARGO AG	Eighth Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND MARTINAIR CARGO, A DIVISION OF MARTINAIR HOLLAND N.V. IN TERMS OF SECTION 49D OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)

The Commission and Martinair hereby agree that the 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 Competition Act.

1. **Definitions**

1.1. For the purposes of this agreement the following definitions should apply:

1.1.1. "***Agreement***" means the Agreement set out herein, duly signed by the Commissioner and Martinair.

1.1.2. "***Commission***" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

1.1.3. "***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 Competition Act.

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

1.1.5. "***Complaint***" means the complaint against the Respondents initiated by the Commissioner on 27 March 2006 in terms of section 49B of the Competition Act under case number 2006Mar2215.

1.1.6. "***Days***" means calendar days.

1.1.7. "***Martinair***" means Martinair Holland N.V. a company duly registered and incorporated under the laws of the Netherlands, with its principal place of business at Piet Guilonardweg, 17 1117 EE Schipol, Amsterdam.

1.1.8. "***Parties***" means collectively the Commission and Martinair.

1.1.9. "***Republic***" means the Republic of South Africa.

1.1.10. "***Respondents***" means, collectively, British Airways plc, South African Airways Proprietary Limited, Air France Cargo, KLM Cargo, Alitalia Cargo, Cargolux International S.A., Singapore Airlines, Martinair Cargo and Lufthansa Cargo AG, being the First to Eighth respondents as cited in the Complaint.

1.1.11. "***South African proceedings***" means the competition law proceedings in South Africa, under and in terms of the Competition Act, in relation to the Complaint.

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

2. **The Complaint**

2.1. On 27 March 2006, the Commissioner initiated the Complaint against Martinair and several other firms in respect of an alleged contravention of section 4(1)(b)(i) of the Competition 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. The complaint was referred to the Tribunal for adjudication on 27 July 2010. After the referral of the complaint to the Tribunal, Martinair 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 –

3.1.1. Martinair engaged in discussions and exchanged and confirmed information by way of telephone calls and / or emails with its competitors. These discussions and exchanges occurred between March 2002 and 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 (a component of the price charged by each of them for air cargo services).

3.1.3. The Commission concluded that Martinair in part referred to the discussions and information exchanges with other air cargo carriers in consideration of fuel surcharge rates or at any rate Martinair 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 Competition Act.

4. **Admission of Liability**

4.1. For the purposes of these proceedings, Martinair admits that its representatives, together with other air cargo carriers, fixed the fuel surcharge (a component of the price charged by each of them for air cargo services) levied on certain routes in contravention of section

4(1)(b)(i) of the Competition Act. The conduct occurred during the period March 2002 to February 2008.

5. **Agreement concerning future conduct**

5.1. Martinair has co-operated fully with the Commission in its investigation of the matter and undertakes to make all reasonable efforts to co-operate with the Commission in the prosecution of the other Respondents in the Complaint Referral. This co-operation includes, without limitation, the provision of evidence, documentary and oral, pertaining to the contraventions detailed in the Agreement and the provision of witnesses to testify to this conduct in proceedings before the Tribunal.

5.2. Martinair undertakes to 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 Competition Act.

5.3. It is recorded that Martinair initiated its own competition compliance programme in 2009 and since its merger with KLM Cargo in 2011, participates in the Air France Cargo / KLM Cargo compliance programme. This compliance program was submitted to and approved by the Tribunal in the Air France Cargo-KLM Cargo settlement order under case no. 42/CR/JUL10. As such, Martinair has already initiated a competition law compliance program, with corporate governance, designed to ensure that its employees and directors are informed of and comply with their obligations under competition law and the provisions of the Competition Act and are continually monitored in their compliance with such obligations.

6. **Administrative Penalty**

6.1. In terms of section 58(1)(a)(iii) of the Competition Act read with sections 59(1)(a), 59(2) and (3) of the Competition Act, and in order to settle the matter, Martinair agrees to pay an administrative penalty in the amount of USD$ 533 517.38 at the prevailing exchange rate on the date of payment of the penalty.

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

6.3. Martinair will pay the amount set out in paragraph 6.1 above to the Commission within 30 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
Reference:	2006Mar4349(Martinair)

6.5. The Commission will pay the penalty amount into the National Revenue Fund in compliance with section 59(4) of the Competition 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 Martinair relating to any alleged contraventions by Martinair 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 Martinair

Dated and signed at Schiphol on this the 3 day of Oct, 2013.

Signature

Name: M. de Nooijer R. Haugé

Capacity Managing director CFO

LEGAL DEPT. INF	
DATE	INITIAL
5-10-13	

For the Commission

Dated and signed at PRETORIA on this the 1st day of Nov 2013.

Signature

Name: TEMBINKOSI BONAKELE

Capacity ACTING COMMISSIONER

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN JOHANNESBURG

CT Case No: 42/CR/Jul10
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In the matter between:

THE COMPETITION COMMISSION — Applicant

and

MARTINAIR CARGO, A DIVISION OF MARTINAIR HOLLAND N.V. — Respondent

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In re:

THE COMPETITION COMMISSION — Applicant

and

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For Martinair

Dated and signed at Schiphol on this the 3 day of Oct. 2013.

Signature

Name: M. de Nooijer R. Hougée

Capacity Managing director CFO

LEGAL DEPT. RX
DATE: INITIAL
5 - Nov - 13

For the Commission

Dated and signed at PRETORIA on this the 1st day of Nov 2013.

Signature

Name: TEMBINKOSI BONAKELE

Capacity ACTING COMMISSIONER