

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

**FIFTH-SIXTH AMENDED STATEMENT OF CLAIM**

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

**Definitions**

In this Fifth-Sixth Amended Statement of Claim:

**Africa** means the geographic region comprising Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Canary Islands, Cape Verde, Central African Republic, Ceuta, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Madeira, Malawi, Mali, Mauritania, Mauritius, Mayotte, Melilla, Morocco, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Réunion, Rwanda, Sahrawi Arab Democratic Republic, Saint Helena, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

**airfreight** means goods transported by air transport.

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**air waybill** means a non-negotiable instrument of air transport for goods that serves as a receipt for the customer, indicating that the carrier has accepted the goods listed therein and obligates itself to carry the goods to the destination according to specified conditions.

**Australian activity** means any of:

- (i) unloading of Australian international airfreight in Australia;
- (ii) delivering Australian international airfreight in Australia;
- (iii) accepting delivery of Australian international airfreight in Australia;
- (iv) loading of international Australian airfreight in Australia;
- (iv) receiving bookings in Australia for carriage of Australian international airfreight;
- (v) receiving payment in Australia for carriage of Australian international airfreight; and
- (iii) providing facilities in Australia for:
  - (A) booking carriage of Australian international airfreight; and
  - (B) receiving payment for carriage of Australian international airfreight,

**Australian international airfreight** means goods transported from Australia to another country or from another country to Australia by air transport.

**Australian international airfreight services** means the carriage of goods to or from Australia by air transport or both.

**carrier** means an airline which carries airfreight.

**codeshare agreement** means an agreement between carriers where each party may purchase seats on another and then sell those seats to its own customers, which also allows for co-operative arrangements to transport airfreight.

**customer** has the meaning given to it in paragraph 15, below.

**Europe** means the geographic region comprising Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, FYR Macedonia, Georgia, Germany, Greece, Greenland, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia,

Slovenia, Spain, Sweden, Switzerland, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan, Vatican City and Yugoslavia.

**freight alliance** means a co-operative arrangement between carriers including harmonised airfreight products, synchronised sales and service activities and standardised handling processes, such as the WOW alliance in which the Second, Third, Fourth and Eighth Respondents and others participated at relevant times.

**hub** means a hub identified in any and all of paragraphs 23 to 30 below.

**Indian subcontinent and Middle East** means the geographic region comprising Afghanistan, Bahrain, Bangladesh, Bhutan, Cyprus, Egypt, India, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Maldives, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, Sudan, Syria, Turkey, United Arab Emirates and Yemen.

**integrated alliance** means a co-operative arrangement between carriers which includes a degree of common ownership, coordination of pricing, profit sharing and standardisation of equipment, services and supplies.

**IATA** means the International Air Transport Association.

**interlining** means the system developed by IATA which enables airfreight to be transported by air from the point of origin to the final destination using multiple carriers, flights or routings on a single air waybill bought in a single transaction, using a single currency.

**international airfreight** means goods transported from one country to another by air transport.

**international airfreight services** means the carriage of international airfreight by air transport.

**marketing alliance** means a co-operative arrangement between carriers which includes coordinated itineraries, reasonably uniform standards of service and reciprocal frequent flyer programs and lounge access. Examples include “oneworld” which included the First, Fifth and Ninth Respondents and others and “Star Alliance” which included the Second, Third, Fourth, Sixth and Seventh Respondent and others.

**market** is any of the markets defined in paragraphs 35, 37, 38, 39, 44, 46, 50, 52, 56, 58, 62, 64, 68, 70, 74, 76, 80 and 82 below.

**New Zealand and Oceania** means the geographic region comprising American Samoa, Chatham Islands, Cook Islands, Easter Island, Federated States of Micronesia, Fiji, French Polynesia, Guam, Hawaii, Juan Fernandez Islands, Kiribati, Loyalty Islands, Maluku Islands, Marshall Islands, Nauru, New Caledonia, New Zealand, Norfolk Island, Northern Mariana Islands, Niue, Palau, Papua, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wake Island, Wallis and Futana, Indonesia and West Papua.

**North and South America** means the geographic region comprising Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, Clipperton Island, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Falkland Islands, French Guiana, Grenada, Greenland, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Saint Barthelemy, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, South Georgia, South Sandwich Islands, Suriname, Trinidad and Tobago, United States of America, Uruguay and Venezuela.

**North Asia** means the geographic region comprising Japan, China, Taiwan, North Korea, South Korea and Mongolia.

**region** means each of Australia, Africa, Europe, Indian subcontinent and Middle East, New Zealand and Oceania, North and South America, North Asia and South East Asia.

**South East Asia** means the geographic region comprising Brunei Darussalam, Cambodia, East Timor, Indonesia, Laos, Malaysia, Burma, Philippines, Singapore, Thailand and Vietnam.

1. At all material times:

- (a) The First Applicant (“**De Brett**”) was and is a company registered pursuant to the *Corporations Act 2001* (Cth) (“the **Corporations Act**”) and capable of suing; and carried and carries on a business of, *inter alia*, processing, marketing, selling and exporting seafood.
- (b) The Second Applicant (“**Wisbey**”) was and is a company registered pursuant to the *Corporations Act* and capable of suing; and carried and carries on a business of, *inter*

*alia*, importing medical, dental and surgical instruments and equipment for distribution in Australia, New Zealand and Pacific Island countries.

2. The Applicants bring this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (“the **FCA Act**”).
3. 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.
4. The First Respondent, Qantas Airways Pty Ltd (ACN 009 661 901) (“**Qantas**”), at all material times:
  - (a) was and is a publicly listed company registered pursuant to the Corporations Act and capable of being sued;
  - (b) was and is a trading corporation within the meaning of the *Trade Practices Act 1974* (Cth) (“the **TPA**”);
  - (c) carried and carries on business in Australia and between 36 and 40 other countries, *inter alia*, as a carrier of international airfreight to and from Australia; and
  - (d) carried and carries on the said business in Australia in trade or commerce within the meaning of the TPA.
5. The Second Respondent, Deutsche Lufthansa Aktiengesellschaft (ARBN 495232) (“**Lufthansa**”), at all material times:
  - (a) was and is a company registered pursuant to the laws of Germany;
  - (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) until 31 August 2007, had, Gabriela Ahrens and Miriam Cogar as its local agents for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agents were authorised to accept service of process on their behalf at 143 Macquarie Street,

Sydney in the State of New South Wales and from 1 September 2007 has had Kai Peters and Miriam Cogar, 143 Macquarie Street, Sydney in the State of New South Wales, as its local agents for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act;

- (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business, *inter alia*, as a carrier of international airfreight to and from Australia; and
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.
6. The Third Respondent, Singapore Airlines Ltd (ARBN 1056195) (“**Singapore Airlines**”), at all material times:
- (a) was and is a company registered pursuant to the laws of Singapore;
  - (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) until 29 March 2007, had Fellstar Nominees (NSW) Pty Ltd (ACN 000 707 755) as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agent was authorised to accept service of process on its behalf at Level 33, 680 George Street, Sydney in the State of New South Wales and from 29 March 2007 has had TMF Nominees (Aust) Pty Ltd (ACN 121 059 023), Level 9, 50 Park Street, Sydney in the State of New South Wales, as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act;
  - (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business, *inter alia*, as a carrier of international airfreight to and from Australia; and
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.
7. The Fourth Respondent, Singapore Airlines Cargo Pte Ltd (ARBN 95934857) (“**Singapore Cargo**”), at all material times:
- (a) was and is a company registered pursuant to the laws of Singapore;

- (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) until 12 April 2007, had Fellstar Nominees (NSW) Pty Ltd (ACN 000 707 755) as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agent was authorised to accept service of process on its behalf at Level 33, 680 George Street, Sydney in the State of New South Wales and from 12 April 2007 has had TMF Nominees (Aust) Pty Ltd (ACN 121 059 023), Level 9, 50 Park Street, Sydney in the State of New South Wales, as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act;
  - (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business, *inter alia*, as a carrier of international airfreight to and from Australia;
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.
8. The Fifth Respondent, Cathay Pacific Airways Ltd (ARBN 479514) (“**Cathay**”), at all material times:
- (a) was and is a company registered pursuant to the laws of Hong Kong;
  - (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) has John Swire & Sons Pty Ltd (ACN 000 106 141) as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agent is authorised to accept service of process on its behalf at Level 2, 8 Spring Street, Sydney in the State of New South Wales;
  - (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business *inter alia* as a carrier of international airfreight to and from Australia;
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.
9. The Sixth Respondent, Air New Zealand Ltd (ARBN 312685) (“**Air NZ**”), at all material times:

- (a) was and is a company registered pursuant to the laws of New Zealand;
  - (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) has John Harrison as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agent is authorised to accept service of process on its behalf at Level 11, 135-151 Clarence Street , Sydney in the State of New South Wales;
  - (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business *inter alia* as a carrier of international airfreight to and from Australia;
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.
10. The Seventh Respondent, Air New Zealand (Australia) Pty Ltd (ACN 084 974 569) (“**Air NZ Aust**”), at all material times:
- (a) was and is incorporated pursuant to the laws of NSW;
  - (b) was and is a subsidiary of Air NZ;
  - (c) was and is a trading corporation within the meaning of section 4 of the TPA; and
  - (d) carried and carries on business, *inter alia*, as a supplier of international airfreight services in Australia.
11. The Eighth Respondent, Japan Airlines International Co. Ltd (ARBN 564358) (“**JAL**”), at all material times:
- (a) was and is a company registered pursuant to the laws of Japan;
  - (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) until 17 July 2008, had Kazunori Yamaguchi as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agent was authorised to accept service of process on its behalf at “Darling Park”, Level 14, 201 Sussex Street, Sydney in the State of New South Wales, from 17 July 2008 to 24 march

2010 had Katsumi Fujita, Level 14, 201 Sussex Street, Sydney in the State of New South Wales, as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act and from 24 March 2010 has had Toshihisa Kuriyama, Level 13, 201 Sussex Street, Sydney in the State of New South Wales as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act;

- (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business, *inter alia*, as a carrier of international airfreight to and from Australia;
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.
12. The Ninth Respondent, British Airways PLC (ARBN 2747597) (“**BA**”), at all material times:
- (a) was and is a company registered pursuant to the laws of United Kingdom;
  - (b) was and is a foreign company registered pursuant to Part 5B.2 of the Corporations Act and capable of being sued;
  - (c) has TMF Nominees (Aust) Pty Limited (ACN 121 059 023) as its local agent for the purposes of Divisions 2 and 3 of Part 5.2B of the Corporations Act, which agent is authorised to accept service of process on its behalf at Level 9, 50 Park Street, Sydney in the State of New South Wales;
  - (d) was and is a foreign corporation within the meaning of the TPA;
  - (e) carried and carries on business, *inter alia*, as a carrier of international airfreight to and from Australia;
  - (f) carried and carries on the said business in Australia within the meaning of the TPA.

### **Competition in relation to international airfreight services**

13. At all times during the Period:
- (a) approximately 80 to 90% of all international airfreight, including Australian international airfreight was carried on passenger aircraft; and

- (b) approximately 10 to 20% of all international airfreight, including Australian international airfreight was carried on dedicated cargo aircraft.
- 14. All international air flights into and out of Australia in the Period, including for all of the Respondents, are recorded in electronic data files saved on the electronic compact disc which was served with and formed Schedule 1 to the Amended Statement of Claim (“**the direct flight data**”).
- 15. During the Period, there was demand for international airfreight services by persons (“**customers**”):
  - (a) wishing to transport international airfreight from a point of origin in one country to a destination in another country; and
  - (b) who would become obliged to pay for those international airfreight services if provided.

#### **PARTICULARS**

The Applicants refer to paragraphs 13 and 14 above. Further particulars may be provided after discovery.

- 16. During the Period, carriers supplied international airfreight services in order to meet the demand alleged in the preceding paragraph.

#### **PARTICULARS**

The carriers included but were not limited to the Respondents, the Other Cartel Participants as that term is defined at paragraph 94 below and Aeroflot, Air Hong Kong, Air India, American Airlines, Australian Airlines, China Airlines, China Eastern Airlines, China Northwest Airlines, China Southern Airlines, China Southwest Airlines, China Yunnan Airlines, Continental Airlines, DHL, Dragonair, Egyptair, EVA Air, Evergreen, FedEx, Finnair, Garuda, Ghana Airways, Gulf Air, Indian Airlines, Japan Asia Airways, Ken Cargo, Kuwait Airways, Malaysia Airlines, Mandarin Airlines, Middle East Airlines, Myanmar Airways International, Nepal Airlines, Nippon Cargo, Northwest Airlines, Oman Air, Orient Thai Airlines, Philippine Airlines, Pakistan International Airlines, Qatar Airways, Royal Brunei Airlines, Royal Jordanian Airlines, SilkAir, Sri Lankan Airlines, Transaero Airlines, Turkish Airlines, United Airlines, UPS, Vietnam Airlines, Virgin Atlantic, Yemen Airways or any subsidiaries of those airlines responsible for international airfreight services.

The Applicants refer to paragraphs 13 and 14 above.

Further particulars may be provided after discovery.

17. Speed of delivery of airfreight including international airfreight is a more important consideration for customers than the particular route of carriage.
18. Routing of international airfreight on one air waybill may occur:
  - (a) directly between the origin and destination; or
  - (b) via points intermediate between the origin and destination.
19. International airfreight is routed by the carrier between the origin and destination as is convenient to the carrier at the relevant time, rather than via a fixed route between those points.
20. Carriage of international airfreight may occur:
  - (a) on the one carrier utilising its own aircraft; or
  - (b) by a carrier utilising one or more other carriers' aircraft by means of:
    - (i) interlining;
    - (ii) freight alliances;
    - (iii) codeshare agreements;
    - (iv) marketing alliances; or
    - (v) integrated alliances; ~~and~~ or
  - (c) by a carrier utilising its own and one or more other carriers' aircraft by means of:
    - (i) interlining;
    - (ii) freight alliances;
    - (iii) codeshare agreements;
    - (iv) marketing alliances; or
    - (v) integrated alliances; and

(d) including one or more segments by road or rail transport,

(each possibility above is referred to below as a “**mode of carriage**”).

21. Speed of delivery of international airfreight is a more important consideration for customers than the particular mode of carriage.
22. International airfreight is transported by the carrier between the origin and destination by a mode or combination of modes of carriage that is convenient to the carrier at the relevant time.
23. At all times during the Period, at the airport or group of airports at:
  - (a) Bangkok;
  - (b) Denpasar;
  - (c) Ho Chi Minh City;
  - (d) Hong Kong;
  - (e) Jakarta;
  - (f) Kuala Lumpur;
  - (g) Manila; and
  - (h) Singapore,

(each being a “**South East Asian hub**”) there were:

- (i) at least daily international flights by one or more carriers carrying international airfreight to or from Australia;
- (j) on average at least 38,000 flights per annum carrying international airfreight to destinations, or from points of origin, in South East Asia; and
- (k) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in South East Asia.

**PARTICULARS**

Each of the South East Asian hubs offered a dense and frequent network of connecting flights to destinations in South East Asia, including to each other South East Asian hub.

At each of the South East Asian hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of unit loading devices (“**ULDs**”) from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

24. At all times during the Period, at the airport or group of airports at:

- (a) Beijing;
- (b) Guangzhou;
- (c) Hong Kong;
- (d) Nagoya;
- (e) Osaka;
- (f) Seoul;
- (g) Shanghai;
- (h) Taipei; and
- (i) Tokyo,

(each being a “**North Asian hub**”) there were:

- (j) at least daily international flights by one or more carriers carrying international airfreight to or from Australia;

- (k) on average at least 65,000 flights per annum carrying international airfreight to destinations, or from points of origin, in North Asia; and
- (l) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in North Asia.

### **PARTICULARS**

Each of the North Asian hubs offered a dense and frequent network of connecting flights to destinations in North Asia, including to each other North Asian hub.

At each of the North Asian hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

25. At all times during the Period, at the airport or group of airports at:

- (a) Dubai;
- (b) Frankfurt;
- (c) London;
- (d) Paris;
- (e) Vienna; and
- (f) Rome,

(each being a “**European hub**”) there were:

- (g) at least bi-weekly (and in the case of London, Frankfurt, Vienna and Dubai, daily) international flights by one or more carriers carrying international airfreight to or from Australia;
- (h) on average at least 35,000 flights per annum carrying international airfreight to destinations, or from points of origin, in Europe; and
- (i) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in Europe.

### **PARTICULARS**

Each of the European hubs offered a dense and frequent network of connecting flights to destinations in Europe, including to each other European hub.

At each of the European hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

26. At all times during the Period, at the airport or group of airports at:

- (a) Auckland;
- (b) Christchurch;
- (c) Honolulu;
- (d) Nadi; and
- (e) Wellington,

(each being a “**New Zealand and Oceanian hub**”) there were:

- (f) at least daily international flights by one or more carriers carrying international airfreight to or from Australia;
- (g) on average at least 21,000 flights per annum carrying international airfreight to destinations, or from points of origin, in New Zealand and Oceania; and
- (h) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in New Zealand and Oceania.

### **PARTICULARS**

Each of the New Zealand and Oceanian hubs offered a dense and frequent network of connecting flights to destinations in New Zealand and Oceania, including to each other New Zealand and Oceanian hub.

At each of the New Zealand and Oceanian hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

27. At all times during the Period, at the airport or group of airports at:

- (a) Bahrain;
- (b) Dubai; and
- (c) Mumbai,

(each being an “**Indian subcontinent and Middle Eastern hub**”) there were:

- (d) at least bi-weekly international flights by one or more carriers carrying international airfreight to or from Australia;

- (e) on average at least 36,000 flights per annum carrying international airfreight to destinations, or from points of origin, in the Indian subcontinent and Middle East; and
- (f) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in the Indian subcontinent and Middle East.

### **PARTICULARS**

Each of the Indian subcontinent and Middle Eastern hubs offered a dense and frequent network of connecting flights to destinations in the Indian subcontinent and Middle East, including to each other Indian subcontinent and Middle Eastern hub.

At each of the Indian subcontinent and Middle Eastern hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

28. At all times during the Period, at the airport or group of airports at:

- (a) Buenos Aires;
- (b) Chicago;
- (c) Los Angeles;
- (d) New York;
- (e) San Francisco;
- (f) Santiago; and

(g) Vancouver,

(each being a “**North and South American hub**”) there were:

- (h) at least bi-weekly (and in the case of Chicago, Los Angeles, New York, San Francisco and Vancouver, daily) international flights by one or more carriers carrying international airfreight to or from Australia;
- (i) on average at least 31,000 flights per annum carrying international airfreight to destinations, or from points of origin, in North and South America; and
- (j) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in North and South America.

### **PARTICULARS**

Each of the North and South American hubs offered a dense and frequent network of connecting flights to destinations in North and South America, including to each other North and South American hub.

At each of the North and South American hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

29. At all times during the Period, at the airport or group of airports at:

- (a) Dubai;
- (b) Johannesburg; and
- (c) Port Louis,

(each being an “**African hub**”) there were:

- (d) at least bi-weekly (and in the case of Johannesburg and Dubai, daily) international flights by one or more carriers carrying international airfreight to or from Australia;
- (e) on average at least 10,000 flights per annum carrying international airfreight to destinations, or from points of origin, in Africa; and
- (f) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight between any point of origin or destination in Australia and any point of origin or destination in Africa.

### **PARTICULARS**

Each of the African hubs offered a dense and frequent network of connecting flights to destinations in Africa, including to each other African hub.

At each of the African hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

30. At all times during the Period, at the airport or group of airports at:

- (a) Sydney;
- (b) Brisbane;
- (c) Melbourne; and
- (d) Perth,

(each being an “**Australian hub**”) there were:

- (e) on average, at least bi-weekly (and in the case of Sydney, Melbourne and Perth, daily) international flights by one or more carriers carrying international airfreight between Australia and each of the regions (other than Australia);
- (f) on average at least 45,000 flights per annum carrying international airfreight to destinations, or from points of origin, in Australia; and
- (g) facilities for the transfer of airfreight between aircraft and between aircraft and road or rail transport,

which permitted the convenient carriage of international airfreight throughout Australia.

### **PARTICULARS**

Each of the Australian hubs offered a dense and frequent network of connecting flights to destinations in Australia, including to each other Australian hub.

At each of the Australian hubs, the facilities included crew and machinery for:

- (i) the unloading and uploading of ULDs from aircraft;
- (ii) the storage of ULDs including refrigerated storage or storage suitable for refrigerated ULDs;
- (iii) the packing and unpacking of ULDs or ULD packing and unpacking service providers; and
- (iv) the transfer of airfreight from aircraft to an extensive road or rail transport network.

31. At all times during the Period, there were at least daily international flights by one or more carriers carrying international airfreight to or from at least one hub in each region to at least one hub in each of the other regions.

#### ***The Global Market***

32. By reason of the matters alleged in paragraphs 15 to 31, during the Period, there were various routes of carriage for international airfreight between:
- (a) any hub and any other hub; further or alternatively
  - (b) any point of origin and any destination in the regions,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

33. By reason of the matters alleged in paragraphs 15 to 31, during the Period, there were various modes of carriage for international airfreight between:

- (a) any hub and any other hub; further or alternatively
- (b) any point of origin and any destination in the regions,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

34. By reason of the matters alleged in paragraphs 15 to 33, during the Period, each of the carriers could:

- (a) supply international airfreight services between any hub to any other hub; further or alternatively
- (b) substitute any route of carriage for international airfreight between any hub to any other hub for another route of carriage between those two hubs; further or alternatively
- (c) substitute any mode of carriage for international airfreight between any hub to any other hub for another mode of carriage between those two hubs; further or alternatively
- (d) supply international airfreight services between any point of origin and any destination in the regions; further or alternatively
- (e) substitute any route of carriage for international airfreight between any point of origin and any destination in the regions for another route of carriage between those two places; further or alternatively
- (f) substitute any mode of carriage for international airfreight between any point of origin and any destination in the regions for another mode of carriage between those two places.

35. By reason of the matters alleged in paragraphs 15, 16 and 32 to 34, further, the matters alleged in paragraphs 94 to 121, during the Period, there was a global market for the supply of international airfreight services (the “**Global Market**”).
36. The Global Market was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

The Global Market includes the supply of international airfreight services to and from Australia. The Applicants refer to the matters alleged in paragraphs 13 and 14. All international airfreight services to and from Australia included one or more of the Australian activities.

Further particulars may be provided after discovery.

37. Further or alternatively to the preceding paragraph, during the Period, that part of the Global Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional Global Market**”).
38. Further or alternatively, that part of the Global Market which comprised Australian international airfreight services (the “**Australian Global Market**”) was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

The Australian Global Market comprises the supply of international airfreight services to and from Australia. All Australian international airfreight services included one or more of the Australian activities. The Applicants refer to the matters alleged in paragraphs 13 and 14.

39. Further or alternatively to the preceding paragraph, during the Period, that part of the Australian Global Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of Australian international airfreight services comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional Australian Global Market**”).

40. Paragraphs 41 to 82 below are further or in the alternative to the five preceding paragraphs.

***The South East Asia Market***

41. By reason of the matters alleged in paragraphs 15 to 19, 23 and 30, during the Period, there were various routes of carriage for international airfreight between:

- (a) any Australian hub and any South East Asian hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in South East Asia,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

42. By reason of the matters alleged in paragraphs 15, 16, 20 to 23 and 30, during the Period, there were various modes of carriage for international airfreight between:

- (a) any Australian hub and any South East Asian hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in South East Asia,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

43. By reason of the matters alleged in paragraphs 15 to 23, 30, 41 and 42, during the Period, each of the carriers could:

- (a) supply international airfreight services between any Australian hub and any South East Asian hub; further or alternatively
- (b) substitute any route of carriage for international airfreight between any Australian hub and any South East Asian hub for another route of carriage between those two hubs; further or alternatively
- (c) substitute any mode of carriage for international airfreight between any Australian hub and any South East Asian hub for another mode of carriage between those two hubs; further or alternatively

- (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in South East Asia; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in South East Asia for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in South East Asia for another mode of carriage between those two places.
44. By reason of the matters alleged in paragraphs 15, 16 and 41 to 43, at all times during the Period there was a market for the supply of international airfreight services between Australia and South East Asia (the “**SE Asia Market**”).

### **PARTICULARS**

Various of the respondents or persons on their behalf identified the South East Asia Market as the market for international airfreight services between Australia and South East Asia in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A90565 dated 12 May 1995 (see in particular, sections 4.2 and 9.2);
- (ii) A90649/A90655 dated 22 July 1998 (see in particular, sections 5.2 and 9.2);
- (iii) A30202 dated 10 May 2000 (see in particular, section 6.2);
- (iv) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (v) A30226/20337 dated 8 February 2005 (see in particular, paragraphs 9.17, 9.115 and 9.116).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

45. The SE Asia Market was a market within the meaning of section 4E of the TPA.

**PARTICULARS**

All international airfreight services between Australia and South East Asia described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

46. Further or alternatively to the preceding paragraph, during the Period, that part of the SE Asia Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and South East Asia comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional SE Asia Market**”).

***The North Asia Market***

47. By reason of the matters alleged in paragraphs 15 to 19, 24 and 30, during the Period, there were various routes of carriage for international airfreight between:

- (a) any Australian hub and any North Asian hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in North Asia,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

48. By reason of the matters alleged in paragraphs 15, 16, 20 to 22, 24 and 30, during the Period, there were various modes of carriage for international airfreight between:

- (a) any Australian hub and any North Asian hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in North Asia,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

49. By reason of the matters alleged in paragraphs 15 to 22, 24, 30, 47 and 48, during the Period, each of the carriers could:

- (a) supply international airfreight services between any Australian hub and any North Asian hub; further or alternatively
  - (b) substitute any route of carriage for international airfreight between any Australian hub and any North Asian hub for another route of carriage between those two hubs; further or alternatively
  - (c) substitute any mode of carriage for international airfreight between any Australian hub and any North Asian hub for another mode of carriage between those two hubs; further or alternatively
  - (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in North Asia; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in North Asia for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in North Asia for another mode of carriage between those two places.
50. By reason of the matters alleged in paragraphs 15, 16 and 47 to 49, at all times during the Period there was a market for the supply of international airfreight services between Australia and North Asia (the “**North Asia Market**”).

### **PARTICULARS**

Various of the respondents or persons on their behalf identified the North Asia Market as the market for international airfreight services between Australia and North Asia in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A90649/A90655 dated 22 July 1998 (see in particular, sections 5.2 and 9.2);
- (ii) A30202 dated 10 May 2000 (see in particular, section 6.2);
- (iii) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (iv) A30226/20337 dated 8 February 2005 (see in particular, paragraphs 9.17, 9.115 and 9.116).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

51. The North Asia Market was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

All international airfreight services between Australia and North Asia described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

52. Further or alternatively to the preceding paragraph, during the Period, that part of the North Asia Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and North Asia comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional North Asia Market**”).

### *Europe Market*

53. By reason of the matters alleged in paragraphs 15 to 19, 25 and 30, during the Period, there were various routes of carriage for international airfreight between:

- (a) any Australian hub and any European hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in Europe,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

54. By reason of the matters alleged in paragraphs 15, 16, 20 to 22, 25 and 30, during the Period, there were various modes of carriage for international airfreight between:

- (a) any Australian hub and any European hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in Europe,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

55. By reason of the matters alleged in paragraphs 15 to 22, 25, 30, 53 and 54, during the Period, each of the carriers could:
- (a) supply international airfreight services between any Australian hub and any European hub; further or alternatively
  - (b) substitute any route of carriage for international airfreight between any Australian hub and any European hub for another route of carriage between those two hubs; further or alternatively
  - (c) substitute any mode of carriage for international airfreight between any Australian hub and any European hub for another mode of carriage between those two hubs; further or alternatively
  - (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in Europe; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in Europe for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in Europe for another mode of carriage between those two places.
56. By reason of the matters alleged in paragraphs 15, 16 and 53 to 55, at all times during the Period there was a market for the supply of international airfreight services between Australia and Europe (the “**Europe Market**”).

### **PARTICULARS**

Various of the respondents or persons on their behalf identified the Europe Market as the market for international airfreight services between Australia and Europe in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A90565 dated 12 May 1995 (see in particular, sections 4.2 and 9.2);
- (ii) A90649/A90655 dated 22 July 1998 (see in particular, sections 5.2 and 9.2);

- (iii) A30202 dated 10 May 2000 (see in particular, section 6.2);
- (iv) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (v) A30226/20337 dated 8 February 2005 (see in particular, paragraphs 9.17, 9.115 and 9.116).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

57. The Europe Market was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

All international airfreight services between Australia and Europe described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

58. Further or alternatively to the preceding paragraph, during the Period, that part of the Europe Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and Europe comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional Europe Market**”).

#### *New Zealand and Oceania Market*

59. By reason of the matters alleged in paragraphs 15 to 19, 26 and 30, during the Period, there were various routes of carriage for international airfreight between:
- (a) any Australian hub and any New Zealand and Oceanian hub; further or alternatively
  - (b) any point of origin or destination in Australia and any point of origin or destination in New Zealand and Oceania,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

60. By reason of the matters alleged in paragraphs 15, 16, 20 to 22, 26 and 30, during the Period, there were various modes of carriage for international airfreight between:
- (a) any Australian hub and any New Zealand and Oceanian hub; further or alternatively
  - (b) any point of origin or destination in Australia and any point of origin or destination in New Zealand and Oceania,
- providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

61. By reason of the matters alleged in paragraphs 15 to 22, 26, 30, 59 and 60, during the Period, each of the carriers could:
- (a) supply international airfreight services between any Australian hub and any New Zealand and Oceanian hub; further or alternatively
  - (b) substitute any route of carriage for international airfreight between any Australian hub and any New Zealand and Oceanian hub for another route of carriage between those two hubs; further or alternatively
  - (c) substitute any mode of carriage for international airfreight between any Australian hub and any New Zealand and Oceanian hub for another mode of carriage between those two hubs; further or alternatively
  - (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in New Zealand and Oceania; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in New Zealand and Oceania for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in New Zealand and Oceania for another mode of carriage between those two places.

62. By reason of the matters alleged in paragraphs 15, 16 and 59 to 61, at all times during the Period there was a market for the supply of international airfreight services between Australia and New Zealand and Oceania (the “**New Zealand and Oceania Market**”).

### **PARTICULARS**

Various of the respondents or persons on their behalf identified the New Zealand and Oceania Market as the market for international airfreight services between Australia and New Zealand and Oceania in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A90649/A90655 dated 22 July 1998 (see in particular, sections 5.2 and 9.2);
- (ii) A30202 dated 10 May 2000 (see in particular, section 6.2);
- (iii) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (iv) A30226/20337 dated 8 February 2005 (see in particular, paragraphs 9.17, 9.115 and 9.116).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

63. The New Zealand and Oceania Market was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

All international airfreight services between Australia and New Zealand and Oceania described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

64. Further or alternatively to the preceding paragraph, during the Period, that part of the New Zealand and Oceania Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and New Zealand and Oceania comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional New Zealand and Oceania Market**”).

*Indian subcontinent and Middle East Market*

65. By reason of the matters alleged in paragraphs 15 to 19, 27 and 30, during the Period, there were various routes of carriage for international airfreight between:

- (a) any Australian hub and any India subcontinent and Middle Eastern hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in India subcontinent and Middle East,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

66. By reason of the matters alleged in paragraphs 15, 16, 20 to 22, 27 and 30, during the Period, there were various modes of carriage for international airfreight between:

- (a) any Australian hub and any India subcontinent and Middle Eastern hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in India subcontinent and Middle East,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

67. By reason of the matters alleged in paragraphs 15 to 22, 27, 30, 65 and 66, during the Period, each of the carriers could:

- (a) supply international airfreight services between any Australian hub and any India subcontinent and Middle Eastern hub; further or alternatively
- (b) substitute any route of carriage for international airfreight between any Australian hub and any India subcontinent and Middle Eastern hub for another route of carriage between any those two hubs; further or alternatively
- (c) substitute any mode of carriage for international airfreight between any Australian hub and any India subcontinent and Middle Eastern hub for another mode of carriage between those two hubs; further or alternatively

- (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in India subcontinent and Middle East; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in India subcontinent and Middle East for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in India subcontinent and Middle East for another mode of carriage between those two places.
68. By reason of the matters alleged in paragraphs 15, 16 and 65 to 67, at all times during the Period there was a market for the supply of international airfreight services between Australia and the Indian subcontinent and Middle East (the “**Indian subcontinent and Middle East Market**”).

### **PARTICULARS**

Various of the respondents or persons on their behalf identified the Indian subcontinent and Middle East Market as the market for international airfreight services between Australia and the Indian subcontinent and Middle East in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A90649/A90655 dated 22 July 1998 (see in particular, sections 5.2 and 9.2);
- (ii) A30202 dated 10 May 2000 (see in particular, section 6.2);
- (iii) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (iv) A30226/20337 dated 8 February 2005 (see in particular, paragraphs 9.17, 9.115 and 9.116).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

69. The Indian subcontinent and Middle East Market was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

All international airfreight services between Australia and the Indian subcontinent and Middle East described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

70. Further or alternatively to the preceding paragraph, during the Period, that part of the Indian subcontinent and Middle East Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and Indian subcontinent and Middle East comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional Indian subcontinent and Middle East Market**”).

#### *North and South America Market*

71. By reason of the matters alleged in paragraphs 15 to 19, 28 and 30, during the Period, there were various routes of carriage for international airfreight between:

- (a) any Australian hub and any North and South American hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in North and South America,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

72. By reason of the matters alleged in paragraphs 15, 16, 20 to 28 and 30, during the Period, there were various modes of carriage for international airfreight between:

- (a) any Australian hub and any North and South American hub; further or alternatively
- (b) any point of origin or destination in Australia and any point of origin or destination in North and South America,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

73. By reason of the matters alleged in paragraphs 15 to 22, 28, 30, 71 and 72, during the Period, each of the carriers could:
- (a) supply international airfreight services between any Australian hub and any North and South American hub; further or alternatively
  - (b) substitute any route of carriage for international airfreight between any Australian hub and any North and South American hub for another route of carriage between those two hubs; further or alternatively
  - (c) substitute any mode of carriage for international airfreight between any Australian hub and any North and South American hub for another mode of carriage between those two hubs; further or alternatively
  - (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in North and South America; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in North and South America for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in North and South America for another mode of carriage between those two places.
74. By reason of the matters alleged in paragraphs 15, 16 and 71 to 73, at all times during the Period there was a market for the supply of international airfreight services between Australia and North and South America (the “**North and South America Market**”).

### **PARTICULARS**

Various of the respondents or persons on their behalf identified the North and South America Market as the market for international airfreight services between Australia and North and South America in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A90649/A90655 dated 22 July 1998 (see in particular, sections 5.2 and 9.2);
- (ii) A30202 dated 10 May 2000 (see in particular, section 6.2);

- (iii) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (iv) A30226/20337 dated 8 February 2005 (see in particular, paragraphs 9.17, 9.115 and 9.116).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

75. The North and South America Market was a market within the meaning of section 4E of the TPA.

### **PARTICULARS**

All international airfreight services between Australia and North and South America described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

76. Further or alternatively to the preceding paragraph, during the Period, that part of the North and South America Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and North and South America comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional North and South America Market**”).

#### *Africa Market*

77. By reason of the matters alleged in paragraphs 15 to 19, 29 and 30, during the Period, there were various routes of carriage for international airfreight between:
- (a) any Australian hub and any African hub; further or alternatively
  - (b) any point of origin or destination in Australia and any point of origin or destination in Africa,

providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.

78. By reason of the matters alleged in paragraphs 15, 16, 20 to 22, 29 and 30, during the Period, there were various modes of carriage for international airfreight between:
- (a) any Australian hub and any African hub; further or alternatively
  - (b) any point of origin or destination in Australia and any point of origin or destination in Africa,
- providing effectively equivalent speed of delivery for the purposes of customers for international airfreight services.
79. By reason of the matters alleged in paragraphs 15 to 22, 28 to 30, 77 and 78, during the Period, each of the carriers could:
- (a) supply international airfreight services between any Australian hub and any African hub; further or alternatively
  - (b) substitute any route of carriage for international airfreight between any Australian hub and any African hub for another route of carriage between those two hubs; further or alternatively
  - (c) substitute any mode of carriage for international airfreight between any Australian hub and any African hub for another mode of carriage between those two hubs; further or alternatively
  - (d) supply international airfreight services between any point of origin or destination in Australia and any point of origin or destination in Africa; further or alternatively
  - (e) substitute any route of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in Africa for another route of carriage between those two places; further or alternatively
  - (f) substitute any mode of carriage for international airfreight between any point of origin or destination in Australia and any point of origin or destination in Africa for another mode of carriage between those two places.
80. By reason of the matters alleged in paragraphs 15, 16 and 77 to 79, at all times during the Period there was a market for the supply of international airfreight services between Australia and Africa (the “**Africa Market**”).

### PARTICULARS

Various of the respondents or persons on their behalf identified the Africa Market as the market for international airfreight services between Australia and Africa in applications made to the Australian Competition & Consumer Commission for Australian Competition & Consumer Commission Authorisation Nos:

- (i) A30202 dated 10 May 2000 (see in particular, section 6.2);
- (ii) A30220/A30221/A30222/A90862/A90863 dated 9 September 2003 (see in particular, paragraphs 10.14 to 10.18 and 10.31); and
- (iii) A30226/20337 dated 8 February 2005 (see in particular, page 68).

Copies of each of the Authorisations and applications including submissions are available for inspection from the offices of the solicitors for the Applicants by appointment.

Further particulars may be provided following the completion of discovery.

81. The Africa Market was a market within the meaning of section 4E of the TPA.

### PARTICULARS

All international airfreight services between Australia and Africa described in those paragraphs included one or more of the Australian activities.

Further particulars may be provided after discovery.

82. Further or alternatively to the preceding paragraph, during the Period, that part of the Africa Market in which at least part of the negotiation for purchase of, or entry into a contract for, the supply of international airfreight services between Australia and Africa comprised a communication directed to or originating from Australia, was a market within the meaning of section 4E of the TPA (the “**Transactional Africa Market**”).

### *Competition in the Markets*

83. At all times during the Period, all of the Respondents offered international airfreight services by one or more of the means set out in paragraph 20(a) to (d).
84. At all times during the Period:
- (a) two or more Respondents supplied, offered to supply or were willing and able to treat to supply international airfreight services between Australia and at least those points of origin or destinations set out in Schedule 2;

(b) each of the Respondents by themselves or bodies corporate related to them supplied, offered to supply or were willing and able to treat to supply international airfreight services between Australia and at least each of:

- |                      |                        |                        |
|----------------------|------------------------|------------------------|
| (i) Auckland;        | (ii) Amsterdam;        | (iii) Bangkok;         |
| (iv) Boston;         | (v) Chicago;           | (vi) Copenhagen;       |
| (vii) Dallas;        | (viii) Dusseldorf;     | (ix) Frankfurt;        |
| (x) Hamburg;         | (xi) Ho Chi Minh City; | (xii) Hong Kong;       |
| (xiii) London;       | (xiv) Los Angeles;     | (xv) Munich;           |
| (xvi) New York;      | (xvii) Osaka;          | (xviii) Rome;          |
| (xix) San Francisco; | (xx) Seoul;            | (xxi) Shanghai;        |
| (xxii) Singapore;    | (xxiii) Stockholm;     | (xxiv) Tokyo;          |
| (xxv) Toronto;       | (xxvi) Vancouver;      | (xxvii) Washington DC; |
| (xxviii) Berlin;     |                        |                        |

(c) each of the Respondents by themselves or bodies corporate related to them supplied, offered to supply or were willing and able to treat to supply international airfreight services between Australia and each of the hubs either on their own aircraft or by interlining, airfreight alliances, codeshare agreements, marketing alliances or integrated alliances; and

(d) further or alternatively, each of the Respondents by themselves or bodies corporate related to them supplied, offered to supply or were willing and able to treat to supply international airfreight services between Australia and each of the regions (other than Australia).

85. By reason of the matters alleged in paragraphs 83, further, paragraph 84, at all times during the Period, each of the Respondents by themselves or bodies corporate related to them:

(a) supplied; or

- (b) were likely to have supplied; or
- (c) but for the arrangements or understandings referred to below, would have:
  - (i) supplied; or
  - (ii) been likely to have supplied;

international airfreight services in competition with:

- (d) one or more; further or alternatively
- (e) each,

of the other Respondents or bodies corporate related to each of them in the Global Market.

86. Further or alternatively, by reason of the matters alleged in paragraphs 83, further, paragraph 84, at all times during the Period, each of the Respondents by themselves or bodies corporate related to them:

- (a) supplied; or
- (b) were likely to have supplied; or
- (c) but for the arrangements or understandings referred to below, would have:
  - (i) supplied; or
  - (ii) been likely to have supplied;

Australian international airfreight services in competition with:

- (d) one or more; further or alternatively
- (e) each,

of the other Respondents or bodies corporate related to each of them in the Australian Global Market, further or alternatively, each of the SE Asia Market, North Asia Market, Europe Market, New Zealand and Oceania Market, the Indian subcontinent and Middle East Market, North and South America Market and Africa Market.

87. During the Period, each of the Respondents, by themselves or bodies corporate related to them, supplied international airfreight services between any hub and any other hub, further or alternatively, any place in a region to any other place in a region, further or alternatively, Australia and each of;

- (a) Africa;
- (b) Europe;
- (c) the Indian subcontinent and Middle East;
- (d) New Zealand and Oceania;
- (e) North and South America;
- (f) North Asia; and
- (g) South East Asia,

where at least part of the negotiation for purchase of, or entry into a contract for, the services comprised a communication directed to or originating from Australia.

88. During the Period, each of the Respondents, by themselves or bodies corporate related to them, offered to supply international airfreight services between any hub and any other hub, further or alternatively, any place in a region to any other place in a region, further or alternatively, Australia and each of;

- (a) Africa;
- (b) Europe;
- (c) the Indian subcontinent and Middle East;
- (d) New Zealand and Oceania;
- (e) North and South America;
- (f) North Asia; and
- (g) South East Asia,

where at least part of the offer for purchase of, or entry into a contract for, the services comprised a communication directed to or originating from Australia.

89. During the Period, each of the Respondents, by themselves or bodies corporate related to them, were willing and able to treat to supply international airfreight services between any hub and any other hub, further or alternatively, any place in a region to any other place in a region, further or alternatively, Australia and each of;

- (a) Africa;
- (b) Europe;
- (c) the Indian subcontinent and Middle East;
- (d) New Zealand and Oceania;
- (e) North and South America;
- (f) North Asia; and
- (g) South East Asia,

where at least part of the purchase of, or entry into a contract for, the services would comprise a communication directed to or originating from Australia.

90. By reason of the matters alleged in paragraphs 83, 84, and 87 to 89, at all times during the Period, each of the Respondents by themselves or bodies corporate related to them:

- (a) supplied; or
- (b) were likely to have supplied; or
- (c) but for the arrangements or understandings referred to below, would have:
  - (i) supplied; or
  - (ii) been likely to have supplied;

Australian international airfreight services in competition with:

- (d) one or more; further or alternatively

(e) each,

of the other Respondents or bodies corporate related to each of them in each of the Transactional Australian Global Market, Transactional SE Asia Market, Transactional North Asia Market, Transactional Europe Market, Transactional New Zealand and Oceania Market, the Transactional Indian subcontinent and Transactional Middle East Market, Transactional North and South America Market and Transactional Africa Market.

91. By reason of the matters alleged in paragraphs 83, 84, and 87 to 89, at all times during the Period, each of the Respondents by themselves or bodies corporate related to them:

(a) supplied; or

(b) were likely to have supplied; or

(c) but for the arrangements or understandings referred to below, would have:

(i) supplied; or

(ii) been likely to have supplied;

international airfreight services in competition with:

(d) one or more; further or alternatively

(e) each,

of the other Respondents or bodies corporate related to each of them in the Transactional Global Market.

92. By reason of the matters set out in paragraphs 85 and 91, at all times during the Period, each Respondent by itself or a body or bodies corporate related to it was in competition, within the meaning of section 45(3) of the TPA, with one or more, further or alternatively all, of the other Respondents or bodies corporate related to each of them in each or any of the Markets.

93. The matters set out in paragraphs 13 to 92 have continued since the end of the Period and are continuing.

## **Global Cartel Arrangement**

94. On or about 1 January 2000, the Respondents and other international airfreight carriers (including ABSA Cargo Airline, Air Canada, Air China , Air China Cargo, Air France, Air Mauritius, Alitalia, All Nippon Airways, Asiana Airlines Inc, Cargolux Airline International, DAS Air Ltd, Ethiopian Airlines Corp, El Al Israel Airlines, Emirates, Kenya Airlines Ltd, KLM, Korean Air Lines Co. Ltd, Lan Airlines S.A., Lan Cargo S.A., Martinair, Nippon Cargo Airlines, Polar Air Cargo Inc., Saudi Arabian Airlines, Scandanavian Airlines, South African Airways, Swiss International Airlines and Thai Airways) (“**the Other Cartel Participants**”) made an agreement or arrangement or reached an understanding containing provisions that or to the effect that each of them would:

- (a) participate in meetings, conversations and other communications to fix, control or maintain the prices at which international airfreight services, including Australian international airfreight services, were supplied; and
- (b) by their officers, servants and agents, conceal the agreement, arrangement or understanding from the whole world including the Applicants and Group Members,

(“**the Global Cartel Arrangement**”).

### **PARTICULARS**

The Global Cartel Arrangement was partly oral and partly to be implied.

In so far as it was oral, the Global Cartel Arrangement was made at meetings of representatives of the Respondents and others, including meetings coinciding with airline industry conferences known as IATA Cargo Tariff Coordinating Conferences. The Conference meetings were held at various places including in the Netherlands in and from about 1999.

In so far as they were to be implied, the provisions of the Global Cartel Arrangement:

- 1. in (a) above are to be implied from:
  - A. the conduct of the Respondents alleged in paragraphs 95 to 111, 116 and 117 below;
  - B. the admissions of Qantas in its 12 February 2007 Target Statement filed with the Australian Stock Exchange;
  - C. the admissions of BA in its 18 May 2007 preliminary annual report and in its 2006/2007 Annual Report & Accounts;

- D. the admissions of BA to the US Department of Justice that it had conspired to suppress and eliminate competition by fixing the rates charged for carriage of airfreight to and from the USA, including airfreight carried between Australia and the USA; and
  - E. the admissions of the Lufthansa contained in its Annual Report published September 2006;
2. in (b) above are to be implied from the conduct of the Respondents alleged in paragraphs 95 to 111, 116 and 117 below and from the need to give business efficacy to the Global Cartel Arrangement, as an arrangement which depended on secrecy for its efficacy.

Further particulars will be provided following the completion of discovery.

### **Fuel surcharge**

95. On or about 1 January 2000, the Respondents and the Other Cartel Participants and each of them made an agreement or arrangement, or reached an understanding containing provisions that or to the effect that each of them would:
- (a) impose surcharges attributed to higher fuel costs on all international airfreight services, including Australian international airfreight services, supplied, offered to be supplied or that could be supplied by each of them (“**fuel surcharges**”);
  - (b) monitor and from time to time and agree on variations to the amount or application of fuel surcharges; and
  - (c) conceal the agreement, arrangement or understanding as in place from time to time from the whole world including the Applicants and Group Members,
- (“the **Fuel Surcharge Arrangement**”).

### **PARTICULARS**

The Fuel Surcharge Arrangement was partly oral, partly in writing and partly to be implied.

In so far as it was oral, the Fuel Surcharge Arrangement was made at meetings of representatives of the Respondents and others, including meetings coinciding with IATA Cargo Tariff Coordinating Conferences.

In so far as it was in writing the Fuel Surcharge Arrangement includes:

1. the Lufthansa Fuel Price Index published on the Second Respondent's website during the Period referred to below;
2. the British Airways World Cargo fuel index published on the BA's website during the Period from October 2002 referred to below;
3. the JAL Cargo Fuel Surcharge Index published on the JAL's website during the Period from October 2002 referred to below.

In so far as they were to be implied, the above provisions of the Fuel Surcharge Arrangement are to be implied:

4. from the matters alleged in paragraphs 95 to 111 below;
5. in the case of the provisions in paragraphs (a) and (b), from the conduct referred to in paragraphs 1.B, C, D, E, F and G of the particulars subjoined to paragraph 94; and
6. in the case of the provision in paragraph (c), from the need to give business efficacy to the Fuel Surcharge Arrangement, as an arrangement which depended on secrecy for its efficacy.

Further particulars will be provided following the completion of discovery.

96. Further, in about February 2000, Lufthansa introduced and subsequently charged a fuel surcharge imposed solely by reference to the weight of airfreight to be transported.

### **PARTICULARS**

The quantum of Lufthansa's fuel surcharge as at February 2000 is known by the Respondents. Particulars will be provided after discovery.

97. From about February 2000 Lufthansa calculated a number called "the Lufthansa Fuel Index" (the "**Lufthansa Fuel Index**") based on the average price of aviation fuel in five spot markets:
  - (a) Rotterdam;
  - (b) Mediterranean;
  - (c) Far East Singapore;
  - (d) US Gulf; and
  - (e) US West Coast.

98. From about February 2000, whenever the Lufthansa Fuel Index exceeded or fell below a specific benchmark for two weeks, Lufthansa increased or decreased respectively its fuel surcharge in specified increments (“**the Lufthansa adjustment mechanism**”).
99. During the Period from about February 2000, Lufthansa published to the world and in particular to each of the Respondents:
- (a) the Lufthansa Fuel Index;
  - (b) the method by which the Lufthansa Fuel Index was calculated;
  - (c) the Lufthansa adjustment mechanism; and
  - (d) its current fuel surcharge.

### **PARTICULARS**

The matters referred to in (a) to (d) above were published on Lufthansa’s website during the Period.

100. After February 2000, Lufthansa adjusted its fuel surcharge in accordance with the Lufthansa adjustment mechanism, including as follows:

<b>Effective Date</b>	<b>Fuel Surcharge (Euro per kg)</b>
1 Feb 2000	0.10
1 November 2000	0.17
Dec 2001	0.05
23 Sep 2002	0.10
Feb 2003	0.15
24 Mar 2003	0.20
7 June 2004	0.25
Sep 2004 (announced then suspended)	0.30
25 Oct 2004	0.35
3 Jan 2005	0.30

<b>Effective Date</b>	<b>Fuel Surcharge (Euro per kg)</b>
21 Mar 2005	0.35
4 April 2005	0.40
11 July 2005	0.45
5 Sep 2005	0.50
17 Oct 2005	0.55
24 Oct 2005	0.60
21 Nov 2005	0.55
28 Nov 2005	0.50
5 Dec 2005	0.45
20 Feb 2006	0.50
8 May 2006	0.55
15 May 2006	0.60

101. In February 2000, the Respondents other than Lufthansa introduced and subsequently charged fuel surcharges at agreed levels imposed by reference to the weight of the airfreight to be transported.
102. During the Period, shortly after Lufthansa had announced an adjustment to its fuel surcharge, each Respondent and Other Cartel Participant:
- (a) adjusted its fuel surcharge in corresponding increments; or otherwise
  - (b) increased the price of its international airfreight services by a corresponding amount.
103. Further or alternatively, from on or about January 2002, BA calculated a number called “the British Airways World Cargo Fuel Index” (the “**British Airways World Cargo Fuel Index**”) based on the average price of aviation fuel in four spot markets:
- (a) North West Europe;
  - (b) Singapore;
  - (c) US Gulf; and

(d) Los Angeles.

104. From about March 2002 whenever the British Airways World Cargo Fuel Index exceeded or fell below a specific benchmark for two weeks, BA increased or decreased respectively its fuel surcharge in increments equivalent to approximately 0.05 Euro (“**the BA adjustment mechanism**”).
105. BA calculated the British Airways World Cargo Fuel Index and adjusted its fuel surcharge using the BA adjustment mechanism for the purpose that its fuel surcharge would move and with the effect that its fuel surcharge did move correspondingly with the movements of the fuel surcharges of other Respondents.
106. During the Period from about March 2002, BA published to the world and in particular to each of the Respondents:
- (a) the British Airways World Cargo Fuel Index;
  - (b) the method by which the British Airways World Cargo Fuel Index was calculated;
  - (c) the BA adjustment mechanism; and
  - (d) its current fuel surcharge.

#### **PARTICULARS**

The matters referred to in (a) to (d) above were published on the BA’s website during the Period.

107. Further or alternatively, from in or about October 2002, JAL calculated a number called “the JAL Cargo Fuel Surcharge Index” (the “**JAL Cargo Fuel Surcharge Index**”) based on the average price of aviation fuel in Singapore.
108. From about October 2002, whenever the JAL Cargo Fuel Surcharge Index exceeded or fell below a specific benchmark for 20 days JAL increased or decreased respectively its fuel surcharge in increments equivalent to approximately 0.05 Euro (“**the JAL adjustment mechanism**”).
109. JAL calculated the JAL Cargo Fuel Surcharge Index and adjusted its fuel surcharge in the manner referred to in the previous paragraph for the purpose that its fuel surcharge would

move and with the effect that its fuel surcharge did move correspondingly with the movements of the fuel surcharges of other Respondents.

110. From about October 2002, JAL published to the world and in particular to each of the Respondents:

- (a) the JAL Cargo Fuel Surcharge Index;
- (b) the method by which the JAL Cargo Fuel Surcharge Index was calculated;
- (c) the JAL adjustment mechanism; and
- (d) its current fuel surcharge.

#### **PARTICULARS**

The matters referred to in (a) to (d) above were published on the JAL's website during the period.

111. From on or about 1 January 2000, the Respondents and each of them have:

- (a) supplied or offered to supply Australian international airfreight services to customers in Australia subject to payment by those customers of the fuel surcharges;
- (b) supplied or offered to supply Australian international airfreight services to customers subject to the payment of the fuel surcharges regardless of where those surcharges would be paid or by whom those surcharges would be paid; and
- (c) concealed the existence and terms of the Fuel Surcharge Arrangement from the whole world including the Applicants and Group Members.

#### **PARTICULARS**

The Applicants refer to and repeat each of the allegations made in paragraphs 96 to 110. Further particulars of each supply and offer to supply may be provided after discovery.

The colourable objective use of the Lufthansa Fuel Index, the British Airways World Cargo Fuel Index and the JAL Cargo Fuel Surcharge Index to quantify the fuel surcharges to be imposed by Respondents and Other Cartel Participants operated to conceal the Fuel Surcharge Arrangement.

112. The supplies referred to in paragraphs (a) and (b) included one or more of the Australian activities and the offers to supply referred to in paragraphs (a) and (b) were:
- (a) made in Australia; further or alternatively
  - (b) addressed to persons in Australia; further or alternatively
  - (c) intended by the Respondents to be received by persons in Australia; further or alternatively
  - (d) received in Australia.
113. By reason of the preceding paragraph, the Respondents and each of them engaged in the conduct referred to in paragraph (a) and (b) in Australia within the meaning of the TPA.
114. The concealment referred to in paragraph (c) was conduct, by the Respondents and each of them in Australia within the meaning of the TPA by:
- (a) reason of that concealment comprising an omission to inform persons in Australia of the matters concealed; further or alternatively;
  - (b) publishing in Australia material which did not disclose the matters concealed.

### **PARTICULARS**

The material includes the Lufthansa Fuel Index, the British Airways World Cargo Fuel Index, the JAL Cargo Fuel Surcharge Index and each Respondent's annual (or other periodical) company reports as published in Australia by way of the internet. Further particulars of the material and publication will be provided after discovery.

115. The Respondents and each of them engaged in the conduct alleged in paragraph 95 to 111, to the extent conduct is alleged against each of them, pursuant to the Fuel Surcharge Arrangement.

### **Security Surcharge**

116. In or about late September/early October 2001, the Respondents and the Other Cartel Participants and each of them made an agreement or arrangement or reached an understanding containing provisions that or to the effect that each of them would:

- (a) impose on international airfreight services a surcharge attributed to the costs of additional airline security measures following the events known to the world including the Respondents as the “September 11 attacks” in the United States of America on all international airfreight services, including Australian international airfreight services, supplied, offered to be supplied or that could be supplied by each of them (“**security surcharge**”);
  - (b) monitor and from time to time agree on variations to the amount or application of the security surcharge; and
  - (c) conceal the agreement, arrangement or understanding as in place from time to time from the whole world including the Applicants and Group Members,
- (“the **Security Surcharge Arrangement**”).

### PARTICULARS

The Security Surcharge Arrangement was partly oral and partly to be implied.

In so far as it was oral, the Security Surcharge Arrangement was made in communications between representatives of the Respondents and others in or around late September/early October 2001.

In so far as they were to be implied, the above provisions of the Security Surcharge Arrangement are to be implied from:

1. from the matters alleged in paragraphs 117 and 120 below; and
2. in the case of the provision in paragraph (c) above, to give business efficacy to the Security Surcharge Arrangement, as an arrangement which depended on secrecy for its efficacy.

Further particulars will be provided following the completion of discovery.

117. From about 16 October 2001, the Respondents and each of them:

- (a) supplied or offered to supply Australian international airfreight services to customers in Australia subject to payment by the customers of the security surcharge of \$20 per airway bill and \$0.10 AUD per kg of airfreight to be transported (the “**Standard security surcharge**”) (except in the case of Lufthansa which imposed a security surcharge of 0.15 Euro per kg of airfreight to be transported (the “**Lufthansa security surcharge**”));

- (b) supplied or offered to supply Australian international airfreight services to customers subject to the payment of the Standard security surcharge or its equivalent in another currency (except in the case of Lufthansa which imposed the Lufthansa security surcharge or its equivalent in another currency) regardless of where those surcharges would be paid or by whom those surcharges would be paid; and
  - (c) concealed the existence and terms of the Security Surcharge Arrangement from the whole world including the Applicants and Group Members.
118. The supplies referred to in paragraphs (a) and (b) included one or more of the Australian activities and the offers to supply referred to in paragraphs (a) and (b) were:
- (a) made in Australia; further or alternatively
  - (b) addressed to persons in Australia; further or alternatively
  - (c) intended by the Respondents to be received by persons in Australia; further or alternatively
  - (d) received in Australia.
119. By reason of the preceding paragraph, the Respondents and each of them engaged in the conduct referred to in paragraphs (a) and (b) in Australia within the meaning of the TPA.
120. The concealment referred to in paragraph (c) was conduct, by the Respondents and each of them in Australia within the meaning of the TPA by:
- (a) reason of that concealment comprising an omission to inform persons in Australia of the matters concealed; further or alternatively;
  - (b) publishing in Australia material which did not disclose the matters concealed.

### **PARTICULARS**

The material includes company reports as published in Australia by way of the internet. Further particulars of the material and publication will be provided after discovery.

121. The Respondents and each of them engaged in the conduct alleged in paragraph 117 and 120 pursuant to the Security Surcharge Arrangement.

**Contraventions**

122. Each of:

- (a) the Fuel Surcharge Arrangement;
- (b) the Security Surcharge Arrangement; further or alternatively
- (c) the Global Cartel Arrangement;

contained provisions which:

- (d) 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 airfreight 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; and
- (e) by reason of the matters alleged in the preceding subparagraph, are deemed by section 45A to have 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.

123. By reason of the matters alleged in the preceding paragraph, by making:

- (a) the Fuel Surcharge Arrangement;
- (b) the Security Surcharge Arrangement; further or alternatively
- (c) the Global Cartel Arrangement,

the Respondents and each of them engaged in conduct in contravention of section 45(2)(a)(ii) of the TPA.

124. Further and in the alternative, by reason of the matters alleged in paragraph 122, and by making:

- (a) the Fuel Surcharge Arrangement; further or alternatively
- (b) the Security Surcharge Arrangement;

the Respondents and each of them gave effect to the Global Cartel Arrangement in contravention of section 45(2)(b)(ii) of the TPA.

125. Further and in the alternative, by reason of the matters alleged in paragraph 122, and by the conduct alleged in paragraphs 96 to 111, the Respondents and each of them (to the extent each such paragraph refers to each of them) gave effect to the Fuel Surcharge Arrangement in contravention of section 45(2)(b)(ii) of the TPA.
126. Further and in the alternative, by reason of the matters alleged in the preceding paragraph and paragraphs 112 to 114, the Respondents and each of them gave effect in Australia to the Fuel Surcharge Arrangement in contravention of section 45(2)(b)(ii) of the TPA.
127. Further and in the alternative, by reason of the matters alleged in paragraph 122, and by the conduct alleged in paragraphs 117 and 120 the Respondents and each of them gave effect to the Security Surcharge Arrangement in contravention of section 45(2)(b)(ii) of the TPA.
128. Further and in the alternative, by reason of the matters alleged in the preceding paragraph and paragraphs 118 to 120, the Respondents and each of them gave effect in Australia to the Fuel Surcharge Arrangement in contravention of section 45(2)(b)(ii) of the TPA.
129. Further and in the alternative, by reason of the matters alleged in paragraph 122, by giving effect to:
- (a) the Fuel Surcharge Arrangement as alleged in paragraph 125 above; further or alternatively
  - (b) the Security Surcharge Arrangement as alleged in paragraph 127 above;
- the Respondents and each of them gave effect to the Global Cartel Arrangement in contravention of section 45(2)(b)(ii) of the TPA.
130. Further and in the alternative, by reason of the matters alleged in paragraph 122, by giving effect in Australia to:
- (a) the Fuel Surcharge Arrangement as alleged in paragraph 126 above; further or alternatively
  - (b) the Security Surcharge Arrangement as alleged in paragraph 128 above;
- the Respondents and each of them gave effect in Australia to the Global Cartel Arrangement in contravention of section 45(2)(b)(ii) of the TPA.

**Overcharge**

131. At all material times during the Period the Respondents:

- (a) together carried around 60% of Australian international airfreight and together with the Other Cartel Participants carried around 80% of Australian international airfreight; and

**PARTICULARS**

So far as the Applicants are presently able to say, during the Period the Respondents carried the following proportions of Australian international airfreight (expressed as a percentage of tonnes of freight actually carried):

<b>Respondent</b>	<b>Approx. % tonnes of freight carried</b>
Qantas	24
Lufthansa	1.67
Singapore Airlines & Singapore Cargo	16.02
Cathay	8.30
Air NZ	6.56
JAL	2.84
BA	3

- (b) together, and in combination with the Other Cartel Participants, were able to and did, by their behaviour set out in paragraphs 111 and 117 above, increase the price for Australian international airfreight services in a way which was concealed as set out in paragraphs 111 and 117 above.

132. Further or alternatively to paragraph 131, at all material times during the Period, the Respondents:

- (a) carried the percentages of tonnes of Australian international airfreight actually carried as set out in Schedule 3; and

- (b) together and in combination with Other Cartel Participants, were able to and did, by their behaviour set out above, increase the price of international freight services for routes between Australia and each of the places specified in Schedule 3 in a way which was concealed as set out in paragraphs 111 and 117 above.

133. During the Period, on the occasions when fuel surcharges or corresponding increases in price were applied to international airfreight services, including Australian international airfreight services, by carriers, including the Respondents, partially or wholly in accordance with or as a result of:

- (a) the Lufthansa adjustment mechanism and the Lufthansa Price Index;
- (b) Lufthansa's fuel surcharge;
- (c) the BA Adjustment mechanism and the British Airways World Cargo Fuel Index.
- (d) BA's fuel surcharge;
- (e) the JAL adjustment mechanism and the JAL Cargo Fuel Surcharge Index; or
- (f) JAL's fuel surcharge,

the Fuel Surcharge Arrangement was a cause of the prices for those international airfreight services being higher than the prices otherwise would have been (the "**Fuel Overcharge**").

### **PARTICULARS**

The Fuel Overcharge comprises the fuel surcharges or corresponding increases in price that were applied to international airfreight services, including Australian international airfreight services.

Particulars of the occasions on which carriers applied fuel surcharges or corresponding increases partially or wholly in accordance with or as a result of the adjustment mechanisms or fuel surcharges alleged above will be provided after discovery. For the avoidance of doubt, these may include occasions when carriers (including carriers who were neither the Respondents or Other Cartel Participants) applied surcharges or corresponding increases in price as a result of other carriers applying and charging fuel surcharges or corresponding increases in price to international airfreight services but without specifically recognising or referring to those mechanisms or fuel surcharges.

The Applicants have calculated the following estimates from the revenue figures appearing in Qantas's Joint Penalty Submissions in Proceedings Number NSD1694 of 2008 filed 28 October 2008 and BA's Statement of Agreed Facts and Admissions in Proceedings Number NSD 1695 of 2008 filed 28 October 2008.

The Applicants estimate that on average since 1 January 2000 to date, because of the Fuel Surcharge Arrangement, the prices charged for international air freight services were 8.3% higher than they otherwise would have been.

The estimate of 8.3% is calculated by dividing the total revenue of Qantas from the imposition of fuel surcharges on international air freight services to and from Australia during the period 30 June 2001 and 30 June 2006 by the total revenue of Qantas for international air freight services to and from Australia during the period 30 June 2001 and 30 June 2006.

134. From in or about October 2001, on each occasion during the Period when security surcharges or corresponding increases in price were applied to international airfreight services, including Australian international airfreight services, by carriers, including the Respondents, partially or wholly in accordance with or as a result of:

- (a) the Standard security surcharge; or
- (b) the Lufthansa security surcharge,

the Security Surcharge Arrangement was a cause of the prices for those international airfreight services being higher than the prices otherwise would have been (the “**Security Overcharge**”).

### **PARTICULARS**

The Security Overcharge comprises the security surcharges or corresponding increases in price that were applied to international airfreight services, including Australian international airfreight services.

The Applicants estimate that on average from October 2001 to date, because of the Security Surcharge Arrangement, the prices charged for international air freight services were 5.1% higher than they otherwise would have been.

The estimate of 5.1% is calculated by dividing an estimate of the total revenue of Qantas from the imposition of security surcharges on international air freight services to and from Australia during the period 2002 to 2006 by the total revenue of Qantas for international air freight services to and from Australia during the same period.

135. From January 2000, the Applicants and Group Members paid identified amounts for Australian international airfreight services at prices which were inflated by the Fuel Overcharge.

**PARTICULARS**

The amounts were identified by way of invoices, or equivalent demands for payment, or terms of trade, which identified international airfreight as a separate item for which payment was due.

136. From about October 2001, the Applicants and Group Members paid identified amounts for Australian international airfreight services at prices which were inflated by the Security Overcharge.

**PARTICULARS**

The Applicants refer to and repeat the particulars to the preceding paragraph.

137. By reason of the matters alleged in paragraphs 135 and 136, the Applicants and Group Members have suffered loss and damage, which loss and damage is continuing.

**PARTICULARS**

Since 2000, the Applicants have paid and continue to pay for Australian international airfreight services, pursuant to invoices, or equivalent demands for payment, or terms of trade, which identified such carriage as a separate item for which payment was due, to:

- (a) freight forwarders;
- (b) carriers of international airfreight services via agents; and
- (c) overseas suppliers or manufacturers of the goods air freighted who (on their own behalf) negotiated and contracted with freight forwarders for the carriage of the goods by air to Australia,

according to Schedules 4 and 5.

De Brett paid \$14,436,862.38 for Australian international airfreight services during the Period and continuing.

Wisbey paid \$326,262.42 for Australian international airfreight services during the Period and continuing.

An estimate of the loss and damage arising from the Fuel Surcharge Arrangement is the total amount paid by the First and Second Applicants for Australian international airfreight services from 1 January 2000 to date multiplied by the Fuel Overcharge (estimated at 8.3% of Australian international airfreight service charges), equalling \$1,198,259.58 and \$27,079.78 respectively.

An estimate of the loss and damage arising from the Security Surcharge Arrangement is the total amount paid by the First and Second Applicants for

Australian international airfreight services from 1 October 2001 to date multiplied by the Security Overcharge (estimated at 5.1% of the Australian international airfreight service charges), equalling \$569,423.89 and \$15,069.69 respectively.

Further particulars of the Applicants' payments and the agencies will be provided after discovery (including any third party discovery) or answers to subpoenas.

The loss or damage of the Applicants and each Group Member comprises:

- (d) the Fuel Overcharge and Security Overcharge paid by each of them; and
- (e) loss of use of funds in of the amounts referred to in paragraph (a) above.

138. The Respondents and each of them are jointly and severally liable for all loss and damage suffered by the Applicants and Group Members and caused by:

- (a) the Global Cartel Arrangement;
- (b) the Fuel Surcharge Arrangement; and
- (c) the Security Surcharge Arrangement.

**AND THE APPLICANTS CLAIM** on their behalf and on behalf of the Group Members the relief set out in the ~~Third~~Fourth Amended Application filed herein.

Dated: 18 May 2011

This Sixth Amended Statement of Claim was drawn by M Pesman and settled by K P Hanscombe SC.

*Maurice Blackburn*

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**Maurice Blackburn**  
Solicitors for the Applicants

**SCHEDULE OF PARTIES**

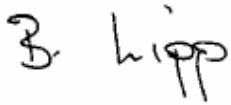
<b>DE BRETT SEAFOOD PTY LIMITED</b> <b>(ACN 093 552 366)</b>	First Applicant
<b>J. WISBEY &amp; ASSOCIATES PTY LIMITED</b> <b>(ACN 001 959 851)</b>	Second Applicant
<b>QANTAS AIRWAYS LIMITED</b> <b>(ACN 009 661 901)</b>	First Respondent
<b>DEUTSCHE LUFTHANSA AKTIENGESELLSCHAFT</b> <b>(ARBN 495232)</b>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

**FORM 15B CERTIFICATION**  
(pursuant to Order 11 Rule 1B of the Rules)

I, **BARRY LIPP**, certify to the Court that the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading;
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: 18 May 2011



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**Barry Lipp**

**Maurice Blackburn**

**Legal Representatives for the Applicants**