

**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

No. S245 of 2016

BETWEEN:



Air New Zealand Ltd (ARBN 000 312 685)
Appellant

and

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Australian Competition and Consumer Commission
Respondent

APPELLANT'S CHRONOLOGY

Part I

The appellant certifies that this chronology is in a form suitable for publication on the internet.

Part II

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A. Principal events in the litigation

Date	Event	Reference
17 May 2010	Proceedings NSD 534 of 2010 commenced in the Federal Court by the Australian Competition and Consumer Commission (ACCC) against Air New Zealand Ltd	TJ[1274]
31 Oct 2014	Judgment and orders of Perram J dismissing the ACCC's application	AB
16 Dec 2014	ACCC filed notice of appeal to the Full Court	-
21 Mar 2016	Judgment of the Full Court	AB
31 Mar 2016	Orders of the Full Court allowing the ACCC's appeal	AB
21 Oct 2016	Order granting special leave to Air New Zealand	AB
21 Oct 2016	Air New Zealand filed and served a notice of appeal to the High Court	AB

Date of document: 18 November 2016
Filed on behalf of: **Air New Zealand Ltd, the Appellant**
Prepared by: **Corrs Chambers Westgarth**
Level 9, 8 Chifley
8-12 Chifley Square
Sydney NSW 2000 AUSTRALIA

Tel: (02) 9210 6500
Fax: (02) 9210 6611
Email: michelle.carr@corrs.com.au
Ref: MMC 9119052

B. 2002 Hong Kong Lufthansa Methodology

Date	Event	Reference
Early 2000	Various international airlines around the world started imposing fuel surcharges in an attempt to recover, in part, the increased fuel costs to which airlines had become subject.	TJ[500]
14 Jan 2000	The Hong Kong Board of Airlines Representatives' Cargo Sub-Committee (HK BAR CSC) first applies to the Hong Kong Civil Aviation Department (HK CAD) for approval of a fuel surcharge on routes from Hong Kong. The fuel surcharge sought was in accordance with Resolution 116ss of the International Air Transport Association (IATA).	TJ[522]- [523]
14 Feb 2000	HK CAD approves the HK BAR CSC's application of 14 Jan 2000 for approval of a fuel surcharge for a period of year.	TJ[525]; FC[291(1)]
14 Feb 2000	Air New Zealand announces the introduction of a fuel surcharge on routes from Hong Kong in accordance with the HK CAD approval of 14 February 2000.	TJ[525]
12 Oct 2000	The HK BAR CSC applies for a second round fuel surcharge at higher amounts due to increases in fuel costs.	TJ[527]- [528]
27 Oct 2000	The HK CAD approves the HK BAR CSC application of 12 Oct for a second round fuel surcharge.	TJ[532]
11 Dec 2001	Air New Zealand removes the Hong Kong fuel surcharge after the fuel price drops.	TJ[533]
23-24 Jan 2002	Lufthansa unilaterally announces and implements a new methodology for imposing fuel surcharges worldwide (the Lufthansa Methodology), and notes that its application in Hong Kong is subject to HK CAD approval.	TJ[504], [535]- [536]; FC[291(2)]
16 May 2002	Meeting of the HK BAR CSC at which airlines determine to make a common application to the HK CAD for approval of fuel surcharges in accordance with the Lufthansa Methodology	TJ[539]- [544]; FC[291(5)]

Date	Event	Reference
23 May 2002	The HK BAR CSC Chairman, and representatives of Lufthansa and British Airways, meet with members of the HK CAD to discuss the proposed new methodology.	TJ[543], [545]
5 June 2002	The HK BAR CSC formally applies to the HK CAD on behalf of member airlines (including Air New Zealand) for approval of fuel surcharges in accordance with the Lufthansa Methodology.	TJ[545]; FC[291(7)]
19 July 2002	The HK CAD approved the application in BAR CSC's 5 June 2002 letter for a one year period with effect from 19 July 2002.	TJ[546]-[547]; FC[291(7)]
23 July 2002	Meeting of the HK BAR CSC at which the member airlines present determined that the implementation date of the new methodology would be 1 August 2002.	TJ[550]-[555], [563]-[571], [577]-[591]; FC[291(9)]
23 July 2002	The Chairman of the HK BAR CSC wrote to the Director of Hong Kong Association of Freight Forwarders Agents Limited and the Executive Director of the Hong Kong Shippers Council advising that a new fuel surcharge mechanism had been approved by HK CAD and providing a copy of the new scheme.	TJ[554]-[555]
24 July 2002	Air New Zealand notifies agents that it would impose fuel surcharges in accordance with the new methodology from 1 August 2002.	TJ[557]; FC[302]-[303]
1 Aug 2002	Air New Zealand commences imposing surcharges in accordance with the approval granted by the HK CAD on 19 July 2002.	TJ[557]; FC[302]
20 June 2003	The HK BAR CSC applies to the HK CAD for an extension of the approval of the fuel surcharge mechanism.	TJ[666]
11 July 2003	The HK CAD partially approved the HK BAR CSC application of 20 June 2003 and granted a six month extension.	TJ[666]
18 Dec 2003	The HK BAR CSC applies to the HK CAD for an extension of the approval of the fuel surcharge mechanism.	TJ[669]

Date	Event	Reference
17 Jan 2004	The HK CAD approved the application of the HK BAR CSC of 18 December 2003 and granted a six month extension.	TJ[669]
20 May 2004	The HK BAR CSC applies to the HK CAD to add two new levels to the index.	TJ[670]
30 June 2004	The HK CAD approved the application of the HK BAR CSC of 20 May 2004.	TJ[670]
16 June 2004	The HK BAR CSC applies to the HK CAD for an extension of the approval of the fuel surcharge mechanism for one year.	TJ[670]
2 July 2004	The HK CAD approved the application of the HK BAR CSC of 16 June 2004 and granted a one year extension.	TJ[670]
7 Oct 2004	The HK BAR CSC applies to the HK CAD to add two new levels to the index.	TJ[671]
21 Oct 2004	The HK CAD approved the application of the HK BAR CSC of 7 October 2004 for the addition of two new levels to the index.	TJ[671]
7 April 2005	The HK BAR CSC applies to the HK CAD to add two new levels to the index.	TJ[672]
19 April 2005	The HK CAD approved the application of the HK BAR CSC of 7 April 2005 for additional levels to the index.	TJ[672]
12 May 2005	The HK BAR CSC applies to the HK CAD for an extension of the approval of the fuel surcharge mechanism for one year.	TJ[672]
1 June 2005	The HK CAD approved the application of the HK BAR CSC of 12 May 2005 and granted a one year extension.	TJ[672]
29 August 2005	The HK BAR CSC applies to the HK CAD to add two new levels to the index.	TJ[673]
8 Sept 2005	The HK CAD approved the application of the HK BAR CSC of 29 August 2005 for additional levels to the index.	TJ[673]
17 Oct 2005	The HK BAR CSC applies to the HK CAD to add two new levels to the index.	TJ[674]
1 Nov 2005	The HK CAD approved an application of the HK BAR CSC of 17 October 2005 for additional levels to the index.	TJ[674]

Date	Event	Reference
5 June 2006	The HK BAR CSC applies to the HK CAD for an extension of the approval of the fuel surcharge mechanism for one year.	TJ[675]
21 June 2006	The HK CAD approved the application of the HK BAR CSC of 5 June 2006 and granted a one year extension.	TJ[675]

C. October 2001 Hong Kong Insurance Surcharge Understanding

Date	Event	Reference
11 Sept 2001	World Trade Centre attacks in the United States.	TJ[2(b)], [1113]; FC[401]
26 Sept 2001	Meeting of the HK BAR CSC concerning possible introduction of an insurance surcharge.	TJ[1113]; FC[383(1) -(2)], [401]
3 Oct 2001	Meeting of the HK BAR CSC concerning possible introduction of an insurance surcharge. A majority of the airlines present at the HK BAR CSC meeting on 3 October 2001 (including Air New Zealand) agreed to make a common application to the HK CAD for approval of an insurance surcharge of HKD0.50/kg on routes out of Hong Kong.	TJ[694]- [696]; FC[379(1)]
3 Oct 2001	The HK BAR CSC files formal application to the HK CAD on behalf of some member airlines (including Air New Zealand) seeking approval of an insurance surcharge of HKD0.50/kg for all cargo shipments from Hong Kong effective 11 October 2001.	TJ[695]; FC[379(2)]
4 Oct 2001	The HK BAR CSC sends the HK CAD a letter recording the identity of the airlines which were applying for HK CAD approval of the HK0.50/kg insurance charge.	TJ[695]
19 Oct 2001	HK CAD advises the HK BAR CSC that the charge had been approved for the three-month period from 22 October 2001 until 21 January 2002.	TJ[695]; FC[379(3)]
25 Oct 2001	Air New Zealand commences imposing an insurance surcharge in accordance with the HK CAD approval of 19 October 2001.	TJ[695]; FC[379(4)]

D. December 2002 Hong Kong Insurance Surcharge Understanding

Date	Event	Reference
2 Dec 2002	Air New Zealand (Mr Ngai) completes form circulated by the Chairman of the HK BAR CSC on 26 November 2002 and indicates that Air New Zealand would join in the HK BAR CSC's application to revise the Cargo Insurance Surcharge.	TJ[700]; FC[387], [393]

Date	Event	Reference
2 Dec 2002	Meeting of the HK BAR CSC to discuss application to the HK CAD for approval of a reduced insurance surcharge. Air New Zealand does not attend.	TJ[699]; FC[386]
16 Dec 2002	The HK BAR CSC formally applies to the HK CAD for a reduction in the insurance surcharge from HKD0.50/kg to HKD0.25/kg.	TJ[699]; FC[385], [394]
27 Dec 2002	The HK CAD approves the application of the HK BAR CSC on 16 December 2002	TJ[699]; FC[385]

E. Singapore ISS Understanding

Date	Event	Reference
11 Sept 2001	World Trade Centre attacks in the United States	TJ[2(b)], [1113]
10 Oct 2001	Air New Zealand implements an insurance and security surcharge (ISS) on routes from Singapore of SGD0.18/kg calculated on chargeable weight.	TJ[1115]- [1116]; FC[401]
Dec 2002	The Singapore Civil Aviation Authority (CAAS) and the Singapore Aircargo Agents Association (SAAA) made a request at an Air Cargo Facilitation Committee Meeting that airlines consider reducing the ISS, which led the secretary of the Singapore BAR CSC to issue a survey to member airlines in December 2002 asking whether member airlines intended to reduce their ISS. Air New Zealand did not respond to this request.	TJ[1118]- [1120]; FC[402]- [403]
23 Jan 2003	Meeting of the Singapore BAR CSC at which the request by CAAS and SAAA to reduce the ISS is discussed.	TJ[1120]; FC[403]

Date: 18 November 2016



Bret Walker

T: (02) 8257 2527

F: (02) 9221 7974

maggie.dalton@stjames.net.au



Nicholas Owens

T: (02) 8257 2578

F: (02) 9221 8387

nowens@stjames.net.au



Robert Yezerski

T: (02) 9376 0660

F: (02) 9376 0699

robert.yezerski@banco.net.au