

AMENDED THIS 12th DAY OF: May 2011

IN ACCORDANCE TO THE ORDER OF: J. LETCH

DATED THE 12th DAY OF May, 2011

C. D. B.

LOCAL REGISTRAR, SUPERIOR COURT OF JUSTICE

MODIFIÉ CE _____ 19 _____

Court File No. 50389CP

CONFORMÉMENT À L'ORDONNANCE DE: _____

FAIT LE _____ 19 _____

ONTARIO

SUPERIOR COURT OF JUSTICE

GREFFIER LOCAL COUR SUPÉRIEUR DE JUSTICE

BETWEEN:

AIRIA BRANDS INC., STARTECH.COM LTD.,
AND QCS-QUICK CARGO SERVICE GMBH

Plaintiffs

- and -

AIR CANADA, AC CARGO LIMITED PARTNERSHIP, SOCIETE AIR FRANCE,
KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. dba KLM, ROYAL DUTCH
AIRLINES, ASIANA AIRLINES INC., BRITISH AIRWAYS PLC, CATHAY PACIFIC
AIRWAYS LTD., DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG, JAPAN
AIRLINES INTERNATIONAL CO., LTD., SCANDINAVIAN AIRLINES SYSTEM,
KOREAN AIR LINES CO., LTD., CARGOLUX AIRLINE INTERNATIONAL, LAN
AIRLINES S.A, LAN CARGO S.A., ATLAS AIR WORLDWIDE HOLDINGS INC., POLAR
AIR CARGO INC., SINGAPORE AIRLINES LTD., SINGAPORE AIRLINES CARGO PTE
LTD., SWISS INTERNATIONAL AIR LINES LTD., QANTAS AIRWAYS LIMITED, and
MARTINAIR HOLLAND N.V.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FOURTH FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date May 12, 2007 Issued by "M. Longo"
Local registrar

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AND TO: AC CARGO LIMITED PARTNERSHIP
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AND TO: SOCIETE AIR FRANCE
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**AND TO: KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. dba KLM,
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- AND TO: ASIANA AIRLINES INC.**
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- AND TO: BRITISH AIRWAYS PLC**
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- AND TO: CATHAY PACIFIC AIRWAYS LTD.**
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- AND TO: SCANDINAVIAN AIRLINES SYSTEM**
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- AND TO: KOREAN AIR LINES CO., LTD.**
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- AND TO: MARTINAIR HOLLAND N.V.**
Martinair Bldg.
Schiphol Airport
1118 ZG Amsterdam
The Netherlands

CLAIM

1. The Plaintiffs, Airia Brands Inc., StarTech.com Ltd., and QCS-Quick Cargo Service GMBH claim on behalf of themselves and members of the Class:

- (a) general damages for conspiracy in the amount of \$200,000,000.00;
- (b) general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S.C. 1985, Chap. C-34 in the amount of \$200,000,000.00;
- (c) punitive and exemplary damages in the amount of \$10,000,000.00;
- (d) costs of investigation pursuant to Part VI of the *Competition Act*, R.S.C. 1985, Chap. C-34 s. 36;
- (e) pre-judgment interest at the rate of 10% compounded annually or as otherwise ordered by the Honourable Court;
- (f) costs of this action on a substantial indemnity basis; and
- (g) such further and other relief as this Honourable Court awards.

2. The proposed Class definition is:

All persons (excluding Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, persons currently resident in Australia who paid more than AUD\$20,000 for the carriage of goods to or from Australia by air during the period January 1, 2000 to January 11, 2007, and persons who commence litigation in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues) who purchased Airfreight Shipping Services* during the period January 1, 2000 to September 11, 2006, including those persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including, without

limitation, the defendants, but not including Integrated Air Cargo Shippers**.

*Airfreight Shipping Services are defined as airfreight cargo shipping services for shipments to or from Canada (excluding shipments to and from the United States).

** Integrated Air Cargo Shipper is defined as an air cargo shipper that manages an integrated system of people, airplanes, trucks, and all other resources necessary to move airfreight cargo from a customer's point of origin to the delivery destination, and for greater certainty includes but is not limited to FedEx, UPS, DHL, and TNT.

Nature of the Action

3. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of private airfreight shipping services ("Airfreight Shipping Services"), through a number of mechanisms, including, *inter alia*, levying inflated surcharges, jointly agreeing to eliminate or prevent discounting on prices charged for Airfreight Shipping Services, jointly agreeing to eliminate or prevent paying commissions on surcharges, and agreeing on yields and customer allocations.
4. The market for Airfreight Shipping Services is significant. According to industry sources, the global market for Airfreight Shipping Services is approximately USD \$60 billion annually.

The Plaintiff

5. The plaintiff, Airia Brands Inc. (formerly known as Nutech Brands Inc.), is a manufacturer of indoor air quality equipment located in London, Ontario.
6. During the period from January 1, 2000 to September 11, 2006, Airia purchased airfreight shipping services for the transport of its indoor air quality parts and products from Canada to abroad. Airia purchased these airfreight shipping services via a freight

forwarder on flights with various air cargo carriers, including Air Canada, Cathay Pacific Airways, Korean Air Lines, and British Airways.

7. The plaintiff, StarTech.com Ltd., is an Ontario corporation with its registered head office in London, Ontario. StarTech supplies a complete range of computer and audio visual parts and products.
8. During the period from January 1, 2000 to September 11, 2006, StarTech purchased airfreight shipping services for the transport of its parts and products from Hong Kong and Taiwan to Canada. StarTech also purchased airfreight shipping services for the transport of goods from China, Italy and The Netherlands to Canada. During the same period, StarTech purchased airfreight shipping services for the transport of its parts and products from Canada to various countries, including Australia, China, Great Britain, Hong Kong, Ireland, Italy, The Netherlands, Spain, and Taiwan. StarTech purchased these airfreight shipping services via a freight forwarder on flights with various air cargo carriers, including Air Canada, KLM, British Airways, Cathay Pacific Airways, Japan Airlines, Scandinavian Airlines, Korean Air Lines, and Polar Air Cargo.
9. The plaintiff, QCS-Quick Cargo Service GMBH. ("QCS"), is a German corporation, with its registered head office in Moerfelden-Walldorf, Germany. QCS carries on business as a freight forwarder.
10. During the period from January 1, 2000 to September 11, 2006, QCS purchased airfreight shipping services for shipments from Germany to Canada from at least the following air cargo carriers, Air Canada, Lufthansa, KLM, British Airways, Swiss Air,

and Air France. QCS also purchased airfreight shipping services for shipments from Canada to Germany using an agent located in Canada.

The Defendants

11. Air Canada is a corporation incorporated under the *Canada Business Corporations Act*, with its head office in Montreal, Quebec. At all relevant times, Air Canada provided Airfreight Shipping Services within, to or from Canada.
12. AC Cargo Limited Partnership ("Air Canada Cargo") is a limited partnership with its head office in Montreal, Quebec. Air Canada Cargo is a wholly owned subsidiary of Air Canada, which along with Air Canada provide Airfreight Shipping Services within, to or from Canada. At all relevant times, Air Canada owned, dominated and controlled the businesses of Air Canada Cargo.
13. The business of each of Air Canada and Air Canada Cargo is inextricably interwoven with that of the other and each is the agent of the other for the provision of Airfreight Shipping Services and for the purpose of the conspiracy described hereinafter.
14. Defendant Société Air France ("Air France") is a foreign company with its headquarters in France. Air France provides Airfreight Shipping Services throughout the world, including Canada.
15. Defendant Koninklijke Luchtvaart Maatschappij N.V., dba KLM, Royal Dutch Airlines ("KLM") is a foreign company with its headquarters in France. In May 2004, Air France and KLM merged. KLM provides Airfreight Shipping Services throughout the world, including Canada.

16. The business of each of Air France and KLM (the "AF-KLM Defendants") is inextricably interwoven with that of the other and each is the agent of the other for the provision of Airfreight Shipping Services and for the purposes of the conspiracy described hereinafter.
17. Martinair Holland N.V. ("Martinair") is a foreign airline with its headquarters in Amsterdam, The Netherlands. Martinair provides Airfreight Shipping Services throughout the world, including Canada. In December 2008, KLM acquired full ownership of Martinair. Since at least 1998, KLM held a 50% stake in Martinair.
18. Asiana Airlines Inc. ("Asiana Airlines") is a foreign airline with its headquarters in Seoul, South Korea. Asiana Airlines provides Airfreight Shipping Services throughout the world, including Canada.
19. British Airways PLC ("British Airways") is a foreign airline with its headquarters in Middlesex, England. British Airways provides Airfreight Shipping Services throughout the world, including Canada. British Airways' cargo division is named British Airways World Cargo.
20. Cathay Pacific Airways Ltd. ("Cathay Pacific") is a foreign airline with its headquarters in Lantau, Hong Kong. Cathay Pacific provides Airfreight Shipping Services throughout the world, including Canada.
21. Deutsche Lufthansa AG ("Lufthansa AG") is a foreign airline with its headquarters in Koln, Germany. Lufthansa AG provides Airfreight Shipping Services throughout the world, including Canada.

22. Lufthansa Cargo AG ("Lufthansa Cargo") is a foreign airline with its headquarters in Germany. Lufthansa Cargo provides Airfreight Shipping Services throughout the world, including Canada. Lufthansa Cargo is a subsidiary of Lufthansa AG. At all relevant times, Lufthansa AG owned, dominated and controlled the business of Lufthansa Cargo.
23. Swiss International Airlines Ltd ("Swiss Air"). is a foreign airline with its headquarters in Basel, Switzerland. Swiss Air provides Airfreight Shipping Services throughout the world, including Canada. Swiss Air is a subsidiary of German airline, Lufthansa AG. At all relevant times Lufthansa AG owned, dominated and controlled the business of Swiss Air.
24. The business of each of Swiss International Airlines Ltd., Lufthansa AG and Lufthansa Cargo ("Lufthansa Defendants") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Airfreight Shipping Services and for the purposes of the conspiracy described hereinafter.
25. Japan Airlines International Co., Ltd. ("JAL") is a foreign airline with its headquarters in Tokyo, Japan. JAL provides Airfreight Shipping Services throughout the world, including Canada. JAL's cargo division is named JAL Cargo.
26. Korean Air Lines Co., Ltd. ("Korean Air") is a foreign airline with its headquarters in Seoul, Korea. Korean Air provides Airfreight Shipping Services throughout the world, including Canada.

27. Scandinavian Airlines System ("SAS") is a foreign airline with its headquarters in Stockholm, Sweden. SAS provides Airfreight Shipping Services throughout the world, including Canada.
28. Cargolux Airline International ("Cargolux Airline") is a foreign airline with its headquarters in Luxembourg, Europe. Cargolux Airline provides Airfreight Shipping Services throughout the world, including Canada.
29. LAN Airlines S.A. ("LAN Airlines") is a foreign airline headquarters in Santiago, Chile. LAN Airlines provides Airfreight Shipping Services throughout the world, including Canada. LAN Airlines' Cargo Division is named LAN Cargo S.A.
30. LAN Cargo S.A. ("LAN Cargo") is a foreign airline with its headquarters in Santiago, Chile. LAN Cargo conducts Airfreight Shipping Services throughout the world, including Canada. LAN Cargo is a subsidiary of LAN Airlines. At all relevant times, LAN Airlines owned, dominated and controlled the business of LAN Cargo.
31. The business of each of LAN Airlines and LAN Cargo is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Airfreight Shipping Services and for the purpose of the conspiracy described hereinafter.
32. Atlas Air Worldwide Holdings Inc. ("Atlas Air") is a foreign corporation with its head office in Purchase, New York. Atlas Air provides Airfreight Shipping Services throughout the world including Canada.
33. Polar Air Cargo Inc. ("Polar Air") is a foreign corporation with its head office in Purchase, New York. Polar Air provides Airfreight Shipping Services throughout the

world, including Canada. Polar Air is a subsidiary of Atlas Air. At all relevant times, Atlas Air owned, dominated and controlled the business of Polar Air.

34. The business of each of Atlas Air and Polar Air is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Airfreight Shipping Services and for the purpose of the conspiracy described hereinafter.
35. Singapore Airlines Ltd. ("Singapore Air") is a foreign airline with its headquarters in Singapore. Singapore Air provides Airfreight Shipping Services throughout the world, including Canada. Singapore Air's cargo division is named Singapore Airlines Cargo PTE Ltd.
36. Singapore Airlines Cargo PTE Ltd., ("Singapore Cargo") is a foreign airline with its headquarters in Singapore. Singapore Cargo provides Airfreight Shipping Services throughout the world, including Canada. Singapore Cargo is a subsidiary of Singapore Air. At all relevant times, Singapore Air owned, dominated and controlled the business of Singapore Cargo.
37. The business of each of Singapore Air and Singapore Cargo is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Airfreight Shipping Services and for the purposes of the conspiracy described hereinafter.
- *38. Qantas Airways Limited ("Qantas") is a foreign airline with its headquarters located in Australia. Qantas provides Airfreight Shipping Services throughout the world, including Canada.

39. The acts alleged in this claim that have been done by each Defendant were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.
40. Various persons and/or firms, not named as Defendants herein, including but not limited to Aerolineas Brasileiras S.A (d/b/a Absa Cargo Airline), Air China Cargo Company Ltd. (d/b/a Air China Cargo), Air China Ltd. (d/b/a Air China), Air Mauritius Ltd., Airways Corporation of New Zealand Ltd. (d/b/a Airways New Zealand), Alitalia Linee Aeree Italiane S.p.A. ("Alitalia"), All Nippon Airways Co., Ltd., DAS Air Ltd. (d/b/a Das Air Cargo), El Al Israel Airlines, Emirates Airlines (d/b/a Emirates), Ethiopian Airlines Corp., EVA Air, Kenya Airways Ltd., Malaysia Airlines, Nippon Cargo Airlines Co., Ltd., Saudi Arabian Airlines, Ltd., South African Airways (Proprietary), Ltd., Thai Airways International Public Co., Ltd., and Viação Aérea Rio-Grandense, S.A. ("VARIG") (collectively the "Unnamed Co-Conspirators"), may have participated as co-conspirators in the violation alleged herein and may have performed acts and made statements in furtherance thereof. The Defendants named herein are jointly and severally liable for the acts and liability of all co-conspirators.

Factual Background

41. Airfreight Shipping Services are typically priced by weight, or by volume. Additionally, certain surcharges are charged by airlines offering Airfreight Shipping Services ("Airfreight Carriers") to their customers ("Airfreight Customers"). Surcharges are fees charged to Airfreight Customers purportedly to compensate the Airfreight Carriers for certain external costs, including fuel costs ("Fuel Surcharge"), and security costs ("Security Surcharge"), but with the intended overall effect of increasing Airfreight Shipping Services prices.

42. Airfreight Shipping Services are a fungible, commodity product such that the Airfreight Shipping Services of one Airfreight Carrier is readily substitutable for the Airfreight Shipping Services of another Airfreight Carrier. Price is the primary factor driving customer choice between different Airfreight Carriers.
43. The Airfreight Shipping Services market in Canada, and worldwide is highly concentrated. Between 2000 and 2006, the Defendants handled an overwhelming percentage of the Airfreight Shipping Services business in Canada, and worldwide. Additionally, there exist substantial barriers to entry in this market. Both factors, high concentration and barriers to entry, facilitate the implementation and maintenance of a horizontal price-fixing cartel such as the conspiracy alleged below.

The Conspiracy

44. Beginning on or about January 1, 2000, and continuing until September 11, 2006 ("Relevant Period"), the Defendants and the Unnamed Co-Conspirators engaged in a conspiracy to fix, raise, maintain and/or stabilize prices of Airfreight Shipping Services to and from Canada, and worldwide.
45. During the Relevant Period, the Defendants and the Unnamed Co-Conspirators engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the Plaintiffs, and as a result of those communications and meetings, the Defendants and the Unnamed Co-Conspirators unlawfully fixed, raised, maintained and/or stabilized the prices of Airfreight Shipping Services by *inter alia* acting concertedly to:
 - (a) levy inflated Fuel Surcharges and Security Surcharges (collectively the "Surcharges");

- (b) eliminate or prevent discounting of Airfreight Shipping Services prices;
 - (c) eliminate or prevent the paying of commissions to Freight Forwarders in respect of the Surcharges; and
 - (d) agree on yields and customer allocations.
46. In furtherance of the conspiracy, during the relevant time, the following acts were done by the Defendants, the Unnamed Co-Conspirators, and their senior executives, employees and agents:
- (a) they agreed to, and did, fix and maintain prices and coordinate price increases for the Surcharges;
 - (b) they signalled increases in Surcharge prices by *inter alia* publicly announcing Surcharge increases nearly simultaneously;
 - (c) they moved their Surcharge price adjustments in lock-step;
 - (d) they exchanged information regarding the prices of the Surcharges for the purpose of monitoring and enforcing adherence to the agreed-upon prices;
 - (e) they jointly agreed to and did eliminate or prevent discounting of Airfreight Shipping Service prices;
 - (f) they jointly agreed to and did eliminate or prevent the paying of commissions to Freight Forwarders in respect of the Surcharges;
 - (g) they agreed on yields and customer allocations;

- (h) they used various airline alliances to facilitate the conspiracy; and
- (i) they took active steps to conceal the unlawful conspiracy from their customers, the authorities, and the public.

47. During the Relevant Period, the Defendants and the Unnamed Co-Conspirators increased, as a ratio to external costs and profits, the Surcharges. These increases cannot be explained by actual increases in fuel prices or security measures, but rather were the result of anticompetitive conduct.

48. During the time leading up to the Relevant Period and during the Relevant Period, the Defendants and Unnamed Co-Conspirators attended meetings by email, by telephone and in person at various locations around the world, including in Canada in furtherance of the conspiracy. Some of the specific meetings that occurred in Canada are as follows:

- (a) on June 22, 1999, Air Canada, Canadian Airlines International, Cathay Pacific, Iberia, Korean Air, KLM and Lufthansa AG attended a meeting in Toronto regarding surcharges;
- (b) on November 26, 2002, there was a meeting at Air Canada's offices in Montreal, Quebec regarding surcharges; and
- (c) on April 2, 2003, Air Canada, Air France, Cathay Pacific, British Airways, EVA Air, Fed-Ex, Japan Airlines, Korean Air Lines, and KLM attended a meeting in Canada to discuss various surcharges, including the Fuel Surcharge.

Fuel Surcharge

49. At the time the conspiracy commenced, in at least January 2000, many airlines had similar Fuel Surcharge pricing systems in place. To eliminate competition in setting the Fuel Surcharge portion of Airfreight Shipping Service prices, the Defendants and the Unnamed Co-Conspirators combined and conspired, through secret meetings and communications, to jointly agree on the factors triggering each pricing level, the resulting price change to be implemented upon the occurrence of those factors, and the timing of that price change. These meetings, communications, and agreements ensured that the Defendants and the Unnamed Co-Conspirators would jointly act upon those triggering factors. Through these meetings, communications, and agreements, the Defendants and the Unnamed Co-Conspirators identified and corrected any deviations from the collusively agreed upon Fuel Surcharge methodologies, including the amount and timing of the price changes.
50. Among other things, the Defendants and the Unnamed Co-Conspirators agreed on a worldwide basis with respect to harmonization of the Fuel Surcharge, implementation of the Fuel Surcharge, extensions of the Fuel Surcharge, currency issues, capping the Fuel Surcharge by shipment or weight, and refusing to pay commissions to freight forwarders in respect of the Fuel Surcharge.
51. In 2002, the Defendants and the Unnamed Co-Conspirators jointly agreed to and did initiate a four-step Fuel Surcharge increase program, where increase factors would result in an increase in the Fuel Surcharge to the next step on the program, at \$0.05 increase per step.

52. By the end of 2003 or beginning of 2004, these increase factors triggered the fourth and final step of the Defendants' and the Unnamed Co-Conspirators' four-step program. At that time, the Defendants and the Unnamed Co-Conspirators engaged in communications and meetings to jointly agree on additional steps to implement price increases in concert beyond the original four-step program.
53. As the conspiracy progressed, the Defendants and the Unnamed Co-Conspirators intensified their joint meetings, communications, and agreements regarding price increases. These contacts often were initiated when the Defendants' and the Unnamed Co-Conspirators' methodology suggested an increase in the Fuel Surcharge.
54. When Fuel Surcharges were not being applied consistently, the Defendants and the Unnamed Co-Conspirators undertook corrective action in order to ensure consistent application.

Security Surcharge

55. In addition to increasing prices of Airfreight Shipping Services through Fuel Surcharges, the Defendants and the Unnamed Co-Conspirators agreed to and did jointly increase Airfreight Shipping Services prices through the Security Surcharge.
56. Following the terrorist attacks in the United States in September 2001, the Defendants and the Unnamed Co-Conspirators met, communicated and jointly agreed to impose the Security Surcharge upon their Airfreight Customers, which remained in effect thereafter. Secret meetings and communications included discussions at the highest levels of the respective Defendants and the Unnamed Co-Conspirators and occurred in various venues around the world.

57. The Defendants and the Unnamed Co-Conspirators jointly acted in order to facilitate agreements regarding exceptions, discounts, and caps relating to the Security Surcharge. The Security Surcharge was implemented worldwide.

58. The Security Surcharge imposed by the Defendants and the Unnamed Co-Conspirators bore little or no relationship to external costs. As of December 5, 2005, for example, the prevailing Security Surcharges were set at a uniform \$0.15 regardless of difference in security costs for different regions.

Agreement not to Discount Airfreight Shipping Services

59. Airfreight Carriers historically and typically allow freight forwarders a discount or commission on Airfreight Shipping Services secured by the freight forwarder. Defendants and the Unnamed Co-Conspirators met, communicated and jointly agreed to increase Airfreight Shipping Services prices by concertedly refusing to allow certain discounts or commissions to freight forwarders with respect to the Surcharges on Airfreight Shipping Services.

Agreement to Increase Yields and Allocate Customers

60. From at least January 2000, the Defendants and the Unnamed Co-Conspirators met, discussed and jointly agreed to increase their yield on Airfreight Shipping Services. The yield is a function of the rates being charged to Airfreight Customers for air cargo shipments and the volume of air cargo being shipped.

61. Data available to all Airfreight Carriers show yields for the industry as a whole. Moreover, in furtherance of the conspiracy, Defendants and the Unnamed Co-Conspirators privately exchanged individual yields.

62. Where necessary, the Defendants and the Unnamed Co-Conspirators met, discussed and jointly agreed to allocate their Airfreight Customers in order to minimize a customers' ability to access competitive rates.

63. In furtherance of their conspiracy to increase Airfreight Shipping Services prices, Defendants and the Unnamed Co-Conspirators jointly and secretly agreed to and did refrain from pursuing and/or acquiring each others' Airfreight Customers.

Role of Trade Associations

64. The Defendants' and Unnamed Co-Conspirators' anticompetitive conduct was facilitated by various trade organizations and associations.

65. Airline Cargo Council of Switzerland ("ACCS") is a trade organization comprised of Airfreight Carriers that shipped to and from Switzerland. During the Relevant Period, most, if not all, of the Defendants were members of ACCS.

66. ACCS met at least four times a year. During at least some of these meetings, the member Airfreight Carriers engaged in formal and/or informal discussions about anticompetitive matters, including in relation to the Fuel Surcharge.

67. ACCS facilitated the exchange of competitive information, including the future plans of the member Airfreight Carriers with respect to the Fuel Surcharge. During the Relevant Period, the presidents of ACCS, Andre Berger of Malaysia Airlines and Walter Burri of Singapore Air, would circulate emails to the member Airfreight Carriers with the information about planned increases or decreases of the Fuel Surcharge for their airlines and sometimes for other member airlines. The presidents would seek, and receive, feedback from the other member Airfreight Carriers regarding their intentions to

increase or decrease the Fuel Surcharges, including the amount of the increase or decrease and the implementation date. The member Airfreight Carriers would provide their feedback, including their planned Fuel Surcharge increase or decrease and the implementation date, copying the other member Airfreight Carriers.

68. Using the information received through ACCS, the Defendants and the Unnamed Co-Conspirators were able to monitor each others' conduct, were able to increase their Fuel Surcharges with the comfort of knowing that the other member Airfreight Carriers would follow, and were able to enforce adherence to the agreed-upon Fuel Surcharges.
69. The International Air Transport Association ("IATA") is a global trade organization, with its head office in Montreal, Quebec. IATA represents some 230 airlines, including the world's leading passenger and cargo carriers.
70. Through consultation with its members, IATA developed a resolution which would provide for a common Fuel Surcharge mechanism. However, as the U.S. Department of Transportation did not provide the requisite approval of the resolution, the resolution (and therefore the common Fuel Surcharge methodology) did not come into effect. Although the requisite approval was not granted, the Fuel Surcharge methodology was utilized by many of the Defendants and Unnamed Co-Conspirators. As a result, when the conspiracy commenced in at least January 1, 2000, a common Fuel Surcharge methodology was in place.
71. During the Relevant Period, IATA facilitated the Defendants' and Unnamed Co-Conspirators' conspiracy by providing the Defendants and the Unnamed Co-Conspirators with current information regarding its members' rates, yields and

surcharges. For example, IATA published the TACT (The Air Cargo Tariff) Manual, a manual containing comprehensive information regarding air cargo rules, regulations, rates and charges for more than 100 airlines. IATA also provided, for a fee, a report of the market highlights for the Airfreight Carrier's market. This included information about yields, market share, monthly air cargo volumes, the top agents and carriers, etc.

72. Using the information received from IATA, the Defendants and the Unnamed Co-Conspirators were able to monitor each others' conduct and enforce adherence to the agreed-upon rates, yields and Surcharges.

73. The meetings held by IATA also served to facilitate the conspiracy, in that the meetings provided the Defendants and Unnamed Co-Conspirators with opportunity to participate in official and/or unofficial discussions regarding anticompetitive matters, including about the Surcharges.

Intention and Liability of the Defendants

74. The Defendants were motivated to conspire and their predominant purpose and intention was:

- (a) to harm the Plaintiffs and members of the public by requiring them to pay artificially high prices for Airfreight Shipping Services; and
- (b) to unlawfully increase their profits on the provision of Airfreight Shipping Services.

75. The acts particularized in paragraphs 44 to 73 were unlawful acts directed towards purchasers of Airfreight Shipping Services, including the Plaintiffs, which unlawful acts the Defendants knew in the circumstances would likely cause injury to those purchasers and Plaintiffs and the Defendants are liable for the tort of civil conspiracy.
76. The acts particularized in paragraphs 44 to 73 were also in breach of Part VI of the *Competition Act* and render the Defendants liable to pay damages pursuant to s. 36 of the *Competition Act*.

Damages

77. The Plaintiffs and members of the Class suffered the following damages:
- (a) the price of Airfreight Shipping Services has been fixed, raised, maintained and stabilized at artificially high and non-competitive levels; and
 - (b) competition in the provision of Airfreight Shipping Services has been restrained.
78. During the period covered by this claim, the Plaintiffs purchased Airfreight Shipping Services. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiffs paid more for Airfreight Shipping Services than they would have paid in the absence of the illegal conspiracy and, as a result, they have been injured in their businesses and property and have suffered damages in an amount presently undetermined.
79. The Plaintiffs assert that their damages and those of the members of the Class are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the defendants and the prices which would have been obtained in the absence of the unlawful agreements.

80. The Plaintiffs asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the Plaintiffs' rights and the rights of the other members of the Class, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.
81. The Plaintiffs' damages have been suffered in the Province of Ontario.
82. The Plaintiffs plead and rely on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), s.36.
83. The Plaintiffs plead and rely on section 17 (g), (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario in that the claim is:
 - (a) in respect of a tort committed in Ontario (rule 17.02(g));
 - (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
 - (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
 - (d) against a person carrying on business in Ontario (rule 17.02(p)).
84. The Plaintiffs plead and rely on the *Class Proceedings Act, 1992*.

85. The Plaintiffs state that they are representative of persons who purchased Airfreight Shipping Services during the Relevant Period, either directly or through a Freight Forwarder.
86. The Plaintiffs propose that this action be tried at London, Ontario.

DATE: "May 12, 2006"

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AIRIA BRANDS INC. et al.
Plaintiffs

and AIR CANADA et al.
Defendants

Court File No: 50389CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**FOURTH FRESH AS AMENDED
STATEMENT OF CLAIM**

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