

[Excerpts; unofficial translation]

REPUBLIC CITY DISTRICT COURT

21 July 2015

AEROSONIC PTE LTD

APPLICANT

MINISTRY OF INTERNATIONAL FLIGHT AND
FREIGHT INFRASTRUCTURE

RESPONDENT

ORDER

1. *Application dismissed.*
2. *The Applicant is to pay the Respondent's costs of this application.*

The Honourable Judge Heathrow

1. This application concerns the imposition of US\$10 million in fines by the Respondent for breaches by the Applicant of the International Airport Curfew Act, adopted in 2014 (*IACA*), imposing a strict curfew of 10:00pm on all take-offs and landings at all airports with more than two runways. The Respondent submits that those fines were imposed for aircraft landings at Niibata International Airport later than 10:00pm, in violation of the curfew established under the IACA.
2. The Applicant seeks a preliminary injunction against the implementation of the fines. In the Applicant's submission, the curfew introduced by the IACA encroaches upon the Applicant's ability to operate Niibata International Airport in a "diligent, safe and efficient manner in accordance with generally accepted international standards", as provided for in the Concession Agreement entered into by the Applicant.

3. The Applicant does not deny that the landings in breach of the IACA occurred, nor is it disputing the amounts of the fines as calculated under the IACA. However, it notes that such delayed landings were unavoidable in certain instances, particularly, in case of long-haul international flights, arriving and departing late in the evening.
4. The Respondent submits that the Applicant was well aware of its obligations under the IACA and, prior to the imposition of any fines, had been warned in writing on at least five occasions by the Respondent of its breaches of the IACA. The Respondent further submits that the Concession Agreement requires the Applicant to “comply with present and future Republic laws or regulations of general applicability with respect to public health, safety and protection and restoration of the environment”, and in permitting the violative landings breached this provision of the Concession Agreement.

[...]

25. The Respondent submitted as Exhibit RESP-1 internal monthly data showing instances of landings after 10:00pm for the period October 2014 to May 2015. An excerpt from that report is set out below:

Month	No. of landings after 10:00pm
October 2014	18
November 2014	19
December 2014	21
January 2015	26
February 2015	36
March 2015	42
April 2015	59
May 2015	63

26. The Respondent also submitted as RESP-2 detailed daily records showing the flights that landed at Niibata International Airport after 10:00pm between January 2015 and May 2015. During the hearing, the Respondent placed particular emphasis on data from 16 May 2015, which showed, in the Respondent's submission, particularly flagrant disregard for the IACA curfew. An excerpt from RESP-2 for 16 May 2015 is set out below.

Flight No.	Origin	Scheduled Arrival Time	Actual Arrival Time
AB101	Los Angeles	19:30	22:04
CE432	Sydney	20:00	22:13
EF337	Dubai	20:45	22:38
GU981	Seoul Incheon	21:00	22:45
PO110	Shanghai	21:15	22:56
BB224	Hong Kong	21:20	23:01
IY765	New York	21:35	23:12
TT321	Singapore	21:50	23:27

[...]

55. It is the view of the court that the application is without merit. The evidence demonstrates that the Applicant had a clear understanding of the terms of the IACA and how it applied to its operation of Niibata International Airport. The Applicant also had been given sufficient warnings by the Respondent as to its breaches of the IACA, and invited to remedy the breach, without imposing any fines. Notwithstanding these warnings, the Applicant continued to allow breaches of the IACA to occur, which in fact worsened as time went on.
56. For the reasons outlined above, I dismiss the application and order the Applicant to pay the Respondent's costs of these proceedings.

FOR THE COURT

The Honourable Judge Heathrow

21 July 2015