

2 September 2016

Air Asia X Service Pty Limited



By email



Attention:



Dear



Fair Trading Act 1986: Opt-out pricing practices: Warning letter

1. The Commerce Commission has been investigating AirAsia under the Fair Trading Act 1986. We have now completed our investigation and are writing to you to alert you to our concerns.
2. In summary, the Commission considers that AirAsia's practice of offering a checked baggage allowance on an opt-out basis (the **opt-out** issue) when selling New Zealand airfares on its website, mobile phone iOS and Android applications (**online booking platforms**) is likely to have breached sections 11, 13(b) and 13(g) of the Fair Trading Act (the **Act**) by:
 - 2.1 misleading customers as to the nature of the services offered by Air Asia; and
 - 2.2 misleading customers as to the price of its services.
3. The Commission's view is that AirAsia is also likely to have breached s11 and 13(g) of the FTA by:
 - 3.1 failing to sufficiently disclose the existence of its payment processing fee ;
and
 - 3.2 displaying prices on its online booking platforms that did not include the fee in circumstances where it was unavoidable for New Zealand customers.
4. We note that AirAsia changed its practice with effect from 8 July 2016 and that it now sells checked baggage allowance on an opt-in basis. It now discloses the existence of the payment processing fee early in its booking flow and has introduced POLi as a payment option. New Zealand customers can now pay by POLi and avoid the fee.

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The investigation

Opt-out issue

5. During our investigation, the Commission considered AirAsia's practice of offering checked baggage on an opt-out basis for customers purchasing airfares on its online booking platforms in New Zealand.
6. When a customer selected an airfare, within AirAsia's online booking platform, a price was returned for that airfare (**the headline price**). Later in the booking flow AirAsia pre-selected a checked baggage allowance and added the cost of that allowance to the headline price. Unless the customer took the additional step of de-selecting the checked baggage allowance, they purchased a bundle (an airfare plus baggage) at a greater price than the headline price quoted.
7. AirAsia did not disclose the charges for the checked baggage allowance on the front page of its booking flow, nor did it disclose that it was effectively offering a bundle of services at a greater price than the headline price.
8. The Commission's concern was that the headline price did not include the cost of the checked baggage allowance and that customers were likely to be misled about what they were buying. Customers were also likely to be misled because the headline price did not include the cost of checked baggage. We were also concerned that some consumers may have inadvertently purchased checked baggage without realising they had done so. The process relied totally upon the customer being sufficiently attentive to fully understand that the airfare included pre-selected services.
9. AirAsia agreed to resolve our concerns by amending its booking platforms from 8 July 2016 to remove the preselection of a checked baggage allowance.

Disclosure issue

10. The Commission also considered AirAsia's practice of charging the payment processing fee in addition to the headline price for payments made by credit card. AirAsia did not charge the fee where customers paid by "Ezpay" or via "BIG prepaid Mastercard," which were the only other payment options available. However, New Zealand consumers were not eligible to apply for these cards and accordingly they could not avoid the fee. The existence of the payment processing fee was not disclosed in AirAsia's booking flow until the payment page.
11. The Commission was concerned that consumers were likely to be misled by the headline price because it did not include a fee that was, in effect, compulsory for New Zealand consumers. The Commission was also concerned that customers purchasing by way of credit card would be likely to be misled about the price of the airfare because the payment processing fee was only disclosed at the end of the booking process.

12. AirAsia agreed to resolve our concerns by disclosing on the Select Flights page that a processing fee of NZD \$8.00 per flight may apply. It also now allows New Zealand customers to pay by way of the POLi payment system so that they can avoid the fee.

The Commission's view

13. In this case, the Commission's view is that AirAsia's conduct was likely to have breached sections 11, 13(b) and (g) of the Fair Trading Act.
14. Section 11 prohibits traders from engaging in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services. Section 13(b) prohibits false or misleading representations that services are of a particular kind. Section 13(g) prohibits false or misleading representations about the price of services.
15. We consider that prior to 8 July 2016 AirAsia was likely to have breached sections 11 and 13(b) and (g).
- 15.1 AirAsia was likely to have misled consumers about the price they would pay: AirAsia gave the impression that consumers were purchasing a specific product (on its select flight page) at a specified price when in fact the customer:
- 15.1.1 purchased a bundle encompassing the fare and pre-selected optional services at a higher price, unless they took the additional steps of deselecting the optional services.
- 15.1.2 was required to pay the payment processing fee in addition to the headline price.
- 15.2 AirAsia was likely to have misled consumers about what they were buying: consumers thought they had purchased a flight (or a flight and services that they have selected) when they had purchased the flight plus an optional service that AirAsia had preselected.
16. In view of AirAsia's decision to stop preselecting the optional services, to disclose the payment processing fee and to introduce POLi, the Commission considers it appropriate to finalise its investigation by issuing this warning letter. While we will not be taking any further action against AirAsia at this time, we will take this warning into account if this conduct resumes at any time or if AirAsia engages in similar conduct in the future.
17. This warning letter is public information and will be published on the Commission's website. We may also make public comment about our investigation and conclusions, including issuing a media release or making comment to media.

The Commission's role

18. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading

Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

19. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
20. You will be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.
21. Thank you for your assistance with this investigation. Please contact me if you have any questions about this letter.

Yours sincerely



Stuart Wallace
Consumer Manager
Competition Branch