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**Undertakings to the Commerce Commission under  
s 46A of the Fair Trading Act 1986**

**Jetstar Airways Pty Limited**

# Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986

## 1 Persons giving undertakings

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- 1.1 These enforceable undertakings are given to the Commerce Commission (**Commission**) for the purposes of section 46A of the Fair Trading Act 1986 (**FTA**) by Jetstar Airways Pty Limited (**Jetstar**).

## 2 Background

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- 2.1 Jetstar describes itself as operating a “low cost carrier business model offering domestic and international airline services predominantly focused on price sensitive customers”. In 2009 it began selling tickets for domestic flights in New Zealand on its website [www.jetstar.com](http://www.jetstar.com) and it commenced operating those flights in June 2009. In 2010/2011 Jetstar also started selling New Zealand domestic flights on a mobile website and on mobile applications. Together these sales channels are called the **online booking platforms**.
- 2.2 Jetstar promotes a single low “headline” price for its airfares. But during the booking process on each of its online booking platforms Jetstar also preselects up to three optional services. The effect of the preselection is that the cost of each service is added to the headline price of the airfare unless the service is deselected by the customer before they pay for the tickets.
- 2.3 The preselected optional services are:
- (a) a checked baggage allowance of 20kg (**baggage allowance**); and
  - (b) a “standard” seat selection (which allows customers to choose their seat from available seats excluding exit row seats and the front 3 rows in the aircraft (**seat selection**)); and
  - (c) travel insurance (**travel insurance**).
- 2.4 Jetstar started preselecting a baggage allowance on its online booking platforms in May 2011.
- 2.5 Jetstar started preselecting seat selection on its online booking platforms from around December 2011.
- 2.6 Jetstar started preselecting travel insurance on its website in February 2009.
- 2.7 The Commission has investigated Jetstar’s preselection of optional services using its online booking platforms for New Zealand domestic flights from February 2009 until 30 April 2016 (**the investigation**.)

## 3 Purpose of the undertakings

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- 3.1 These undertakings are given by Jetstar in order to satisfy the Commission that there is no need to seek injunctive relief from the High Court in respect of the investigation.

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## **4 Undertakings**

4.1 Jetstar undertakes to the Commission that:

4.1.1 Subject to clause 4.1.2 below, it will not preselect any optional services (including but not limited to seat selection, baggage allowance or travel insurance) in respect of New Zealand domestic fares on its online booking platforms, including:

(a) any website or mobile site operated by, or on behalf of, Jetstar and which Jetstar presents as the default to consumers where the consumer's IP address / geolocation is in New Zealand; and

(b) Jetstar mobile applications downloaded from New Zealand application stores.

4.1.2 It will, as soon as possible and in any event no later than 30 April 2016, make changes to its online booking platforms to stop preselecting baggage allowance, seat selection and travel insurance in respect of New Zealand domestic fares.

4.2 For the avoidance of doubt, nothing in 4.1 prevents Jetstar from preselecting an optional service if consumers are not charged for that optional service.

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## **5 Effect of the undertakings**

5.1 The undertakings are:

- (a) Court enforceable undertakings in terms of section 46A of the FTA; and
- (b) made without admission of liability by Jetstar as to the conduct set out at paragraph 2.

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## **6 Commencement of undertakings**

6.1 The undertakings come into effect when:

- (a) the undertakings are executed by Jetstar; and
- (b) the Commission confirms its acceptance of the undertakings.

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## **7 Duration of the undertakings**

7.1 These undertaking(s) will continue to have effect until the earlier of:

- (a) 1 April 2021; or
- (b) the date upon which the Commission agrees to discharge Jetstar from the Undertakings.

## **8 Compliance with the undertakings**

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- 8.1 If Jetstar becomes aware of a breach of these undertakings, whether advertent or inadvertent, they will notify the Commission with seven days of becoming aware, giving full particulars of the breach.
- 8.2 If requested to do so by the Commission, Jetstar will engage at their own cost KPMG (or another reputable third party approved by the Commission) (**Reviewer**) to conduct a review of its compliance with the undertakings as directed by the Commission (**Compliance Audit**), and to report its findings to the Commission.
- 8.3 Jetstar will comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.

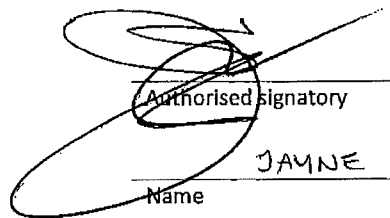
## **9 Miscellaneous**

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- 9.1 No amendment to the undertakings will be effective unless it is in writing, executed by Jetstar and signed as accepted by the Commission.
- 9.2 These undertakings are properly executed if Jetstar and the Commission sign the same copy, or separate identical copies of the execution page. Where separate copies are signed by Jetstar and the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 9.3 Jetstar acknowledges that:
- (a) The Commission may make the undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
  - (b) The Commission may, from time to time, make public reference to the undertakings including in news media statements and in the Commission's publications.
  - (c) Nothing in the undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law.

**Execution**

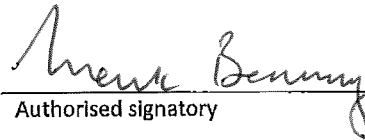
Signed by and on behalf of  
Jetstar Airways Pty Limited

  
\_\_\_\_\_  
Authorised signatory  
\_\_\_\_\_  
JAYNE HRDLICKA  
\_\_\_\_\_  
Name

In the presence of:  
Witness Name: MEGAN BARNES  
Witness Address: 56 BRADSHAW ST, ESSENDON, 3040  
Witness Occupation: PA  
Date: 16/3/2016

**Acceptance**

Accepted by the Commerce Commission by

  
\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
MARK NEWMAN BERRY  
Name

In the presence of:  
Witness Name: Corleen Jean Walker  
Witness Address: 109 Wellington Street, Freeman's Bay, Auckland  
Witness Occupation: office Support  
Date: 16/3/16

