

4 April 2016

Jetstar Airways Pty Limited  
C/- Qantas Airways Limited  
10 Bourke Road  
Mascot  
New South Wales 2020  
Australia

Attention: Jayne Hrdlicka

Dear Ms Hrdlicka

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

1. The Commerce Commission has been investigating Jetstar Airways Pty Limited (**Jetstar**) under the Fair Trading Act 1986. We have now completed our investigation and are writing to alert you to our concerns.
2. In summary, the Commission considers that Jetstar's practice of offering a checked baggage allowance, seat selection and travel insurance (**optional services**) on an opt-out basis when selling New Zealand airfares on its website, mobile site and mobile applications (**online booking platforms**) is likely to have breached sections 9, 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 Jetstar; and
  - 2.2 misleading customers as to the price of its services.
3. Although the practice is continuing at the present time, we note that on 16 March 2016 Jetstar provided court enforceable undertakings to the effect that it would by 30 April 2016 cease this practice for domestic flights sold in New Zealand.
4. Jetstar has also agreed to make the same changes for international fares sold in New Zealand. It has confirmed that it will make these changes in a letter dated 1 April 2016 which is **attached** to this warning letter.
5. As a result of providing those commitments, the Commission is prepared to resolve the investigation by issuing this warning letter.

### **The investigation**

6. During our investigation, the Commission considered Jetstar's practice of offering the optional services on an opt-out basis for customers purchasing domestic fares on its online booking platforms in New Zealand. We looked into the conduct from the

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date that Jetstar started preselecting each of the optional services<sup>1</sup> to the date of the undertakings.

7. After a customer has entered an airfare search enquiry in an online booking platform, the platform returns a price (**the headline price**) for a “starter fare.” Jetstar progressively pre-selects the optional services during its online booking flow and adds the charge for those services to the headline price. Unless customers take the additional step of deselecting the optional services they will acquire a bundle of services, namely an airfare and the optional services.
8. Jetstar does not disclose the charges for the optional services on the front page of its booking flow, nor does it disclose that it is effectively offering a bundle of services at a greater price than the headline price. In fact, Jetstar makes a number of statements at the beginning of the booking flow that positively suggest that a checked baggage allowance and seat selection are not included in the headline price.
9. The Commission’s concern has been that the headline price does not include the cost of optional services and that customers are likely to be misled about what they are buying. These concerns are equally applicable to Jetstar’s preselection on online booking platforms of optional services for international fares booked in New Zealand.
10. Jetstar disagreed that its method of selling optional services was liable to breach the Act. Jetstar considered that the optional services were clearly disclosed and customers had the opportunity to remove the optional services within the booking process. Nonetheless, as mentioned above, Jetstar has agreed to resolve our concerns by abandoning the practices of concern.

### **The Commission’s view**

11. In this case, the Commission’s view is that Jetstar’s conduct was likely to have breached sections 9, 11, 13(b) and (g) of the Fair Trading Act.
12. Section 9 prohibits traders from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive. 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.
13. We consider that Jetstar is likely to have breached sections 9, 11 and 13(b) and (g) because:
  - 13.1 Jetstar has misled consumers about the price they will pay: Jetstar gives the impression that consumers are purchasing a specific product (particularly a “Starter Fare”) at a specified price when in fact the customer will purchase a

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<sup>1</sup> Jetstar started preselecting travel insurance on its website in February 2009, a checked baggage allowance in May 2011 and seat selection in around December 2011.

bundle encompassing the fare and pre-selected optional services at a higher price, unless they take the additional steps of deselecting the optional services.

- 13.2 Jetstar has misled consumers about what they are buying: consumers think they have purchased a flight (or a flight and services that they have selected) when they have purchased the flight plus one or more optional services that Jetstar has preselected.
14. In view of Jetstar's decision to stop preselecting the optional services, the Commission considers it appropriate to finalise its investigation by issuing this warning letter. While we will not be taking any further action against Jetstar at this time, we will take this warning into account if this conduct resumes at any time (including after the expiry of the enforceable undertakings) or if Jetstar engages in similar conduct in the future.
15. 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**

16. 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.
17. 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.
18. 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.
19. Thank you for your assistance with this investigation. Please contact me if you have any questions about this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ben Hamlin', with a long horizontal flourish extending to the right.

Ben Hamlin  
Principal Counsel  
Consumer - Competition

General Counsel  
Andrew Finch



1 April 2016

Mr Ben Hamlin / Ms Dot Benson  
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Dear Ben and Dot

**Pre-selection – Jetstar**

We refer to previous correspondence.

While the Commission's investigation focussed on pre-selection in the context of domestic New Zealand bookings, without any admission of liability, Jetstar will also by 30 April 2016 voluntarily remove pre-selection of baggage, seating and travel insurance for fares for international travel from New Zealand on its website or mobile sites presented to consumers with an IP address/geolocation in New Zealand.

Jetstar accepts that the Commission's view is that pre-selection is an unacceptable practice.

Please contact me or Anna Pritchard on +61 2 9691 5515 if you would like to discuss or have any further questions.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Andrew Finch".

Andrew Finch  
General Counsel