

5 March 2015

Air New Zealand Limited
Private Bag 92007
AUCKLAND 1142

Attention: Mr John Blair – General Counsel and Company Secretary

Dear Mr Blair

Fair Trading Act 1986: Warning

1. The Commerce Commission has been investigating Air New Zealand Limited (Air NZ) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.
2. In summary, the Commission considers that Air NZ's practice of offering travel insurance on an opt-out basis is likely to have breached sections 11 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 NZ (section 11); 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 you have advised the Commission by letter dated 25 February 2015, that Air NZ intends moving to selling travel insurance on an opt-in basis. Further, although this entails a number of changes to the booking software to be developed, tested and implemented by the Air NZ IT team, this can be achieved in April 2015.

The investigation

4. During our investigation, the Commission considered Air NZ's practice of offering travel insurance on an opt-out basis when booking online or via Air NZ's mobile app.
5. After a customer has entered an airfare search enquiry and is quoted the price for an airfare (the headline price), Air NZ pre-selects the travel insurance option and adds the charge for travel insurance to the headline price. Unless customers take the additional step of de-selecting the pre-selected travel option on subsequent pages they will acquire a bundle of services, namely an airfare and travel insurance. Air NZ does not disclose this additional travel insurance charge on the front page of its booking process, nor does it disclose on the same page that it is effectively offering a bundle of services at a greater price than the headline price.
6. The Commission's concern has been that, as a result of the opt-out nature of the travel insurance, there is a significant risk that some customers would have inadvertently purchased it.

AUCKLAND

L19, 135 Albert Street
P.O. Box 105-222
AUCKLAND 1143
NEW ZEALAND 09 422.1

WELLINGTON

L6, 44 The Terrace
P.O. Box 2351
WELLINGTON 6140, NEW ZEALAND
Tel: (04) 924 3600 Fax: (04) 924 3700
Main Office

CHRISTCHURCH

L1, Unit 17 Barry Hogan Place
55 Princess Street, Riccarton
P.O. Box 9237, Tower Junction
CHRISTCHURCH 8149, NEW ZEALAND

7. Air NZ disagreed that its method of selling travel insurance was liable to mislead customers as to the nature or characteristics of the service it provides. Air NZ considered that the insurance component was clearly disclosed and customers had several opportunities to remove the insurance component within the booking process.
8. Air NZ also advised that customers who had inadvertently purchased travel insurance could have their purchase refunded within 14 days, if they raised the matter with the company.
9. Air NZ stated that it had a legitimate reason for pre-selecting travel insurance. Air NZ believed that its customers expected to be able to buy travel insurance and valued the convenience of pre-selection. Air NZ also advised the Commission that it regularly encounters situations where passengers who are uninsured, particularly on international journeys, suffered major financial adversity as a result, often under the misapprehension that the airline would compensate them.

The Commission's view

10. In this case, the Commission's view is that Air NZ's conduct was likely to have breached sections 11 and/or 13(g) of the Fair Trading Act.
11. 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.
12. We consider that Air NZ is likely to have breached section 11 as it does not make it sufficiently clear to its customers that the service they will purchase includes travel insurance unless they take the positive step of de-selecting it. In our view, Air NZ's disclosure of the requirement to opt-out of the insurance is insufficient to bring it to the attention of all reasonable customers. At least some customers are not aware that they will have also purchased insurance.
13. Section 13(g) prohibits false or misleading representations about the price of services.
14. We consider it likely that Air NZ has breached section 13(g) as the headline price shown on the first page of the booking process does not include the cost of the pre-selected travel insurance. We think this has the potential to be misleading because customers will pay the insurance inclusive price, unless they take the additional step of de-selecting the travel insurance option. Air NZ's disclosure is insufficient to bring this to the attention of all reasonable consumers.
15. In view of Air NZ's decision to change to an opt-in basis for the sale of its travel insurance, the Commission considers it appropriate to finalise its investigation by issuing this warning letter. While we will not be taking any further action against Air NZ at this time, we will take this warning into account if this conduct continues or if you engage in similar conduct in the future.

16. 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

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

Yours sincerely



Ritchie Hutton
Head of Investigations