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[REDACTED]

From: Lisa Anne Ayres
Sent: Thursday, 31 August 2023 8:54 AM
To: [REDACTED]@treasury.gov.au; [REDACTED] - Treasury ([REDACTED]@treasury.gov.au); [REDACTED]@TREASURY.GOV.AU; Treasurer's DLO (TsrDLOs@treasury.gov.au); EXTERNAL - Belinda Robertson; [REDACTED]@TREASURY.GOV.AU; [REDACTED]@TREASURY.GOV.AU; Nick.Terrell@TREASURY.GOV.AU; [REDACTED]@TREASURY.GOV.AU; LeighDLO@Treasury.gov.au
Cc: acccannouncementstreasurydistribution@treasury.gov.au; EXTERNAL -David Pearl; brenton.philp@treasury.gov.au; Kelly, James; !
Subject: EO_Parliamentary&GovernmentLiaison&Advocacy [SEC=OFFICIAL]Embargoed copy of ACCC media release: Qantas flight cancellations [SEC=OFFICIAL]
Attachments: MR Qantas 310823.pdf

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Good morning all,

The ACCC will just after 9am today publish a media release regarding the launching of court action alleging Qantas sold seats on cancelled flights. The release is also being notified to the ASX.

Attached is a copy of the ACCC's media statement. Please maintain the embargo until after our statement is published.

Gina will be hosting a press conference at 11am today in Melbourne on this topic.

Lisa Anne

Key Points

The ACCC today launched action in the Federal Court of Australia alleging Qantas Airways engaged in false, misleading or deceptive conduct, including by advertising and accepting payment for tickets on more than 8,000 flights that it had already cancelled but not removed from sale.

The ACCC alleges that during a three-month period between May and July 2022 Qantas kept selling tickets for cancelled flights for an average more than two weeks, and in some cases up to six weeks, before it notified consumers the flights would not proceed.

The ACCC is alleging Qantas breached Australian Consumer Law by:

Making false and misleading statements to consumers by continuing to offer for sale certain nominated flights (identified by their flight number and date), and misrepresenting that these flights were scheduled to go ahead as indicated or it would use reasonable endeavours to operate the flight, when the particular flight had already been cancelled;

Making false and misleading representations to consumers who had already bought tickets for the particular flights by failing to notify them of the cancellation on the 'Manage Booking' page, misrepresenting that the details of their flight remained unchanged and it would use

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reasonable endeavours to operate the flight, when the particular flight had already been cancelled;

Wrongly accepting payments from consumers buying tickets for flights that had already been cancelled by Qantas.

Background

The ACCC has investigated various aspects of Qantas' conduct over the past three years. It has been engaging with Qantas directly on aspects of its customer service in an effort to get quick and equitable outcomes for consumers.

Qantas is Australia's largest domestic airline operator. It is a publicly listed company which operates domestic and international passenger flights under its main brands QantasLink and through its subsidiary Jetstar. It offers flights for sale through direct channels, such as its website and app, and indirect channels, such as travel agents and third-party online booking websites.

For corporations the maximum penalties for each breach of the Australian Consumer Law before 9 November 2022 is the greater of:

\$10 million,

three times the total benefits that have been obtained and are reasonably attributable, or

if the total value of the benefits cannot be determined, 10 per cent of the corporation's annual turnover.

The maximum civil penalties for cartel conduct by corporations were substantially increased with effect from 9 November 2022, by legislation passed by Parliament in October.

Regards

Lisa Anne

Lisa Anne Ayres (she/her)
General Manager | Executive Office
Australian Competition & Consumer Commission

Level 17 | 2 Lonsdale Street, MELBOURNE VIC 3000
GPO Box 3131, Canberra ACT 2601

██████████ | E: ██████████@accc.gov.au | W: www.accc.gov.au

Executive Assistant: ██████████ | E: ██████████@accc.gov.au | T: ██████████



The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

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MEDIA RELEASE



31 August 2023

ACCC takes court action alleging Qantas advertised flights it had already cancelled

The ACCC today launched action in the Federal Court of Australia alleging Qantas Airways (QAN) engaged in false, misleading or deceptive conduct, by advertising tickets for more than 8,000 flights that it had already cancelled but not removed from sale.

The ACCC alleges that for more than 8,000 flights scheduled to depart between May and July 2022, Qantas kept selling tickets on its website for an average of more than two weeks, and in some cases for up to 47 days, after the cancellation of the flights.

It is also alleged that, for more than 10,000 flights scheduled to depart in May to July 2022, Qantas did not notify existing ticketholders that their flights had been cancelled for an average of about 18 days, and in some cases for up to 48 days. The ACCC alleges that Qantas did not update its "Manage Booking" web page for ticketholders to reflect the cancellation.

This conduct affected a substantial proportion of flights cancelled by Qantas between May to July 2022. The ACCC alleges that for about 70 per cent of cancelled flights, Qantas either continued to sell tickets for the flight on its website for two days or more, or delayed informing existing ticketholders that their flight was cancelled for two days or more, or both.

"The ACCC has conducted a detailed investigation into Qantas' flight cancellation practices. As a result, we have commenced these proceedings alleging that Qantas continued selling tickets for thousands of cancelled flights, likely affecting the travel plans of tens of thousands of people," ACCC Chair Gina Cass-Gottlieb said.

"We allege that Qantas' conduct in continuing to sell tickets to cancelled flights, and not updating ticketholders about cancelled flights, left customers with less time to make alternative arrangements and may have led to them paying higher prices to fly at a particular time not knowing that flight had already been cancelled."

"There are vast distances between Australia's major cities. Reliable air travel is essential for many consumers in Australia who are seeking to visit loved ones, take holidays, grow their businesses or connect with colleagues. Cancelled flights can result in significant financial, logistical and emotional impacts for consumers," Ms Cass-Gottlieb said.

The ACCC's investigation included engagement with impacted consumers and the serving of compulsory information notices on Qantas. The investigation, which included detailed data analysis by ACCC specialist data analysts, identified that Qantas cancelled almost 1 in 4 flights in the period from May to July 2022, with about 15,000 out of 66,000 domestic and international flights from airports in all states and mainland territories in Qantas' published schedule being cancelled. These proceedings relate to more than 10,000 of those cancelled flights.

As an example of the conduct, ticketholders scheduled to fly on Qantas flight QF93 from Melbourne to Los Angeles on 6 May 2022 were first notified of the cancellation on 4 May, two days before the scheduled departure and four days after Qantas had cancelled the flight.

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One consumer was provided with a replacement flight a day before their original departure date, which was communicated only by the Qantas app. As a result, the consumer had to change connecting flights and had a 15-hour layover in Los Angeles, which had a significant impact on the consumer and left them \$600 out of pocket.

In another example, Qantas sold 21 tickets for QF73 from Sydney to San Francisco scheduled to depart on 28 July 2023 after it had cancelled the flight, with the last ticket being sold 40 days after cancellation.

Airlines may cancel flights in the short term due to a range of unforeseeable reasons including bad weather, aircraft defects and delays from previous flights. Flight cancellation can also happen due to a range of factors that are within the control of an airline.

“We allege that Qantas made many of these cancellations for reasons that were within its control, such as network optimisation including in response to shifts in consumer demand, route withdrawals or retention of take-off and landing slots at certain airports,” Ms Cass-Gottlieb said.

“However, this case does not involve any alleged breach in relation to the actual cancellation of flights, but rather relates to Qantas’ conduct after it had cancelled the flights.”

The ACCC is seeking orders including penalties, injunctions, declarations, and costs.

Some examples of flights allegedly affected

- Qantas flight QF93 was scheduled to depart from **Melbourne to Los Angeles** on 6 May 2022. On 28 April 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 2 May 2022, and did not inform existing ticketholders of the cancellation until 4 May 2022 (two days before the flight).
- Qantas flight QF81 was scheduled to depart from **Sydney to Singapore** on 4 June 2022. On 8 February 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 27 March 2022, and did not inform existing ticketholders of the cancellation until 28 March 2022.
- Qantas flight QF63 was scheduled to depart from **Sydney to Johannesburg** on 31 July 2022. On 8 February 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 27 March 2022, and did not inform existing ticketholders of the cancellation until 28 March 2022.
- Qantas flight QF486 was scheduled to depart from **Melbourne to Sydney** on 1 May 2022. On 18 February 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 15 March 2022, and did not inform existing ticketholders of the cancellation until 16 March 2022.
- Qantas flight QF1785 was scheduled to depart from **Gold Coast to Sydney** on 1 May 2022. On 17 February 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 15 March 2022, and did not inform existing ticketholders of the cancellation until 16 March 2022.
- Qantas flight QF696 was scheduled to depart from **Adelaide to Melbourne** on 23 July 2022. On 18 June 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 26 June 2022, and did not inform existing ticketholders of the cancellation until 27 June 2022.
- Qantas flight QF1764 was scheduled to depart from **Canberra to Gold Coast** on 27 June 2022. On 16 June 2022, Qantas made the decision to cancel the flight. Despite

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this, Qantas did not remove the flight from sale until 19 June 2022, and did not inform existing ticketholders of the cancellation until 20 June 2022.

- Qantas flight QF513 was scheduled to depart from **Brisbane** to **Sydney** on 8 June 2022. On 27 May 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 30 May 2022, and did not inform existing ticketholders of the cancellation until 31 May 2022.
- Qantas flight QF45 was scheduled to depart from **Melbourne** to **Denpasar** on 1 May 2022. On 8 February 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 24 February 2022, and did not inform existing ticketholders of the cancellation until 23 March 2022.
- Qantas flight QF649 was scheduled to depart from **Sydney** to **Perth** on 30 July 2022. On 18 February 2022, Qantas made the decision to cancel the flight. Despite this, Qantas did not remove the flight from sale until 7 March 2022, and did not inform existing ticketholders of the cancellation until 8 March 2022.

Background

Qantas is Australia's largest domestic airline operator. It is a publicly listed company which operates domestic and international passenger flights under its mainline brand, Qantas, and through its subsidiary Jetstar. It offers flights for sale through direct channels, such as its website and app, and indirect channels, such as travel agents and third-party online booking websites.

ACCC's other work in the airline industry

During the pandemic and in the industry's recovery period, from June 2020 to June 2023, the ACCC monitored prices, costs and profits of Australia's major domestic airlines under a direction from the Federal Government.

The ACCC has investigated various aspects of Qantas' conduct over the past three years. It has been engaging with Qantas directly on aspects of its customer service in an effort to get quick and equitable outcomes for consumers, however the ACCC considers that Qantas needs to do more.

The ACCC continues to receive more complaints about Qantas than about any other business. Last year alone the ACCC received more than 1,300 complaints about Qantas cancellations, accounting for half of all complaints about Qantas reported to the ACCC.

The ACCC notes Qantas' public statements that most consumers holding COVID flight credits are eligible for, and still able to seek, refunds. The ACCC strongly encourages consumers holding these flight credits to seek refunds directly from Qantas.

Qantas has suggested that these COVID credits will expire at the end of December 2023, and that customers with expired COVID credits where Qantas cancelled the original flight may not be able to seek a refund. The ACCC has written to Qantas strongly objecting to this proposed position and will continue to monitor the situation to ensure Qantas continues to make available refunds to consumers.

The ACCC also notes there is a current class action which has been launched in relation to flight credits, and affected consumers may be able to seek remedies against Qantas as part of this class action.

Maximum penalties

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For corporations, the maximum penalties for each breach of the Australian Consumer Law before 9 November 2022 is the greater of:

- \$10 million,
- three times the total benefits that have been obtained and are reasonably attributable, or
- if the total value of the benefits cannot be determined, 10 per cent of the corporation's annual turnover.

Concise statement

The document contains the ACCC's initiating court documents in relation to this matter. We will not be uploading further documents in the event these initial documents are subsequently amended.

Media enquiries: 1300 138 917

Email: media@acc.gov.au

acc.gov.au/media