

18 May 2020

Competition and Consumer  
Commerce Commission  
P O Box 2351  
Wellington 6140

By email: [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

**Complaint under the Fair Trading Act:  
Air New Zealand and consumers' rights to refunds**

Consumer NZ has received complaints about Air New Zealand's refusal to refund passengers under US Department of Transportation (DoT) rules. We believe the information Air New Zealand is providing to consumers misleads them about their rights to refunds and breaches the Fair Trading Act.

**1. US DoT rules**

The US DoT issued an Enforcement Notice<sup>1</sup> on 3 April 2020 reiterating that any US or foreign airline operating aircraft to, from or within the US must promptly refund passengers on flights cancelled or significantly delayed due to Covid-19.

However, complaints to our office show Air New Zealand has been advising passengers these rules do not apply to flights where the passenger is transiting through the US (for example, where a passenger is flying to the UK via a US airport).

In correspondence with one customer, Air New Zealand stated:

*The US Department of Transportation regulations you refer to does require all flights that are **to, from or within** the United States be refunded, should a credit not be suitable. As you're not entering the United States and remain airside while in transit, this legislation does not apply in this instance.*

Air New Zealand's claim conflicts with advice provided to us on 7 May 2020 by the DoT's Office of the General Counsel. This advice states the rules apply:

*to all flights to and from the US of a foreign carrier if the carrier operates scheduled passenger service or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats, except as otherwise provided in this part. It does not exclude a*

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<sup>1</sup> [https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020\\_0.pdf](https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020_0.pdf)

*direct flight between two foreign points that has a stop in the United States to pick up new passengers or allow some to disembark.*

*Section 259.5(b)(5) states that a covered carrier must adopt and adhere to a customer service plan, applicable to its scheduled flights, stating that the airline would provide prompt refunds when ticket refunds are due.*

*Accordingly, the refund obligation applies to passengers on scheduled flights to and from the United States, including passengers transiting through the United States on these covered flights.*

When we subsequently raised the matter with Air New Zealand, it replied that it was "seeking clarification" of its obligations. Despite this and clear advice from the DoT, the airline is continuing to advise passengers booked on flights via the US that they are not entitled to refunds.

We are also concerned Air New Zealand's correspondence with passengers:

- (a) has claimed the rules only apply to US citizens or those who booked through a US website;
- (b) is only offering refunds under the DoT rules on request, rather than as a general rule; and
- (c) is only offering partial refunds to some passengers booked on flights to and from the US.

## **2. Breach of Fair Trading Act**

In our view, Air New Zealand's statements mislead passengers about their rights to refunds and breach the Fair Trading Act.

Consumer NZ has raised with matter with Air New Zealand in order to clarify the legal position and advocate on behalf of our members attempting to obtain refunds. Unfortunately, our efforts have not been successful and Air New Zealand continues to make statements we consider to be misleading.

Air New Zealand is fully aware of the DoT's legal position and we believe it is using a lack of consumer awareness to mislead passengers into accepting credits for flights when they are entitled to refunds. We are concerned Air New Zealand is protecting its commercial position at the expense of New Zealand consumers.

In a practical sense, Consumers outside the US have little prospect of enforcing their rights through the DoT.

We believe Air New Zealand's conduct is serious enough to warrant immediate action by the Commission. We therefore ask the Commission to investigate the matters raised in our complaint and take appropriate enforcement action to require Air New Zealand to cease misleading its customers.

Given the uncertainty in the aviation industry and sums of money at stake for consumers, we encourage the Commission to consider applying for an urgent injunction to halt this conduct.

We ask the Commission to investigate the matter as soon as possible to avoid more passengers being misled about their rights and missing out on refunds to which they're legally entitled.

We look forward to your response.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Jon Duffy', with a stylized, cursive script.

Jon Duffy  
Chief executive