



TRADE PRACTICES ACT 1974

Undertaking given to the Australian Competition and Consumer Commission for the purposes of  
section 87B

By Virgin Blue Airlines Pty Ltd

ACN 090 670 965

**Background**

1. There has been a practice in the Australian aviation industry when advertising airfares of publishing the airfare exclusive of additional taxes, levies and charges that are payable by a consumer as a necessary pre-condition of being issued with a ticket.
2. The Australian Competition and Consumer Commission (**the Commission**) has expressed the view that publishing a price of an airfare that does not adequately disclose the total price payable by a consumer as a necessary pre-condition to receiving the represented services (**the total fare**) may contravene sections 52, 53(e) and 53C of the *Trade Practices Act 1974* (**the Act**).
3. The Commission has expressed the concern that the advertising of airfares other than on a total fare basis:
  - does not adequately disclose the fact that further taxes, levies and charges are payable in addition to the advertised fare; and
  - may mislead consumers as to the total fare.
4. Virgin Blue Airlines Pty Ltd (ACN 090 670 965) (**Virgin Blue**) operates a low fare airline within Australia.
5. To ensure that consumers were not misled as to the total fare payable, Virgin Blue supported the introduction of advertising of airfares inclusive of all taxes, levies and charges (**All Inclusive Airfare Advertising**), including by providing an undertaking under section 87B of the Act dated 12 June 2002 to adopt All Inclusive Airfare Advertising (**the All Inclusive Airfare Advertising undertaking**).
6. The Commission acknowledges Virgin Blue's support for the introduction of All Inclusive Airfare Advertising.

7. The Commission has, following certain Federal Court decisions, acknowledged that, instead of persons advertising airfares on an All Inclusive Airfare Advertising basis, they should advertise airfares on a **Total Fare Basis**. For the purposes of this Undertaking, Total Fare Basis means, in relation to any advertising that includes or refers to an airfare, that the price of the airfare:
- (a) includes all amounts payable by a consumer in respect of the fare as a necessary pre-condition to the supply of the advertised services to the consumer (**the single total fare**); or
  - (b) refers in dollar terms to all component amounts (whether individually specified or aggregated) that make up the single total fare (**the composite total fare**).
8. To ensure that Virgin Blue remains competitive with other airlines operating on a Total Fare Basis, Virgin Blue gives this undertaking (**the Total Fare Basis undertaking**), pursuant to s 87B of the Trade Practices Act in substitution for its All Inclusive Airfare Advertising undertaking.

#### **Undertakings**

9. To assist in establishing new industry-wide standards for the advertising of airfares, Virgin Blue undertakes to the Commission that:
- (a) Virgin Blue will only advertise or represent the price of fares for domestic air travel on a Total Fare Basis; and
  - (b) Virgin Blue will only advertise or represent the price of fares for international air travel on a Total Fare Basis.
10. In respect of Virgin Blue specifying the price of an airfare on a Total Fare Basis:
- (a) in any advertisement that includes or refers to a composite total fare, all component amounts shall be:
    - (i) individually specified or aggregated in such a manner; and
    - (ii) given such prominence as is necessary;to allow the consumer to readily ascertain the single total fare, including without having to perform a complex calculation.

- (b) where passengers may incur different charges, levies and taxes in respect of travel between two points depending on whether the passenger travels directly between those points or travels via particular intermediary points or on particular aircraft, Virgin Blue may advertise:
  - (i) a single total fare on a “from” basis, and include in the fare the amount of charges, levies and taxes that passengers will incur in travelling between those points via the routing that incurs the least amount of charges, levies and taxes; and
  - (ii) a composite total fare on a “from” basis, and include in the component amount(s) that constitute(s) the charges, levies and taxes, the amount of charges, levies and taxes that passengers will incur in travelling between those points via the routing that incurs the least amount of charges, levies and taxes.

11. This Total Fare Basis undertaking:

- (a) comes into effect when:
  - (i) when the undertaking is executed by Virgin Blue; and
  - (ii) the Commission accepts the undertaking so executed by Virgin Blue; and
- (b) will expire 24 months from the date on which it is accepted by the Commission.

12. On the acceptance of this Total Fare Basis undertaking by the Commission:

- (a) the All Inclusive Airfare Advertising undertaking is, with the consent of the Commission, withdrawn; and
- (b) Virgin Blue is released from its obligations under the All Inclusive Airfare Advertising undertaking.

**Acknowledgments**


13. Virgin Blue acknowledges that the Commission:

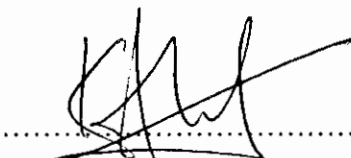
- (a) will make this undertaking available for public inspection;
- (b) may from time to time publicly refer to this Undertaking.

14. Virgin Blue further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct the subject of the Commission's concerns.

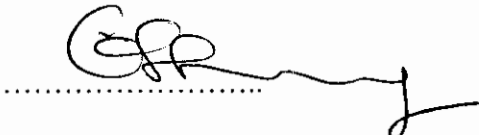
**Acceptance**

EXECUTED BY VIRGIN  
BLUE AIRLINES PTY LIMITED  
ACN 090 670 965 on this day of  
16 December 2004 in witness of these  
undertakings by or in the presence of

  
.....  
Brett Godfrey  
Director

  
.....  
Keith Neate  
Director

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO  
SECTION 87B OF THE TRADE PRACTICES ACT 1974.**

  
.....  
(Graeme Samuel)

Chairman

This 22<sup>nd</sup> Day of December 2004