THE DIGEST

NEWS AND RECENT DEVELOPMENTS IN LAW AND PRACTICE IN THE TRAVEL INDUSTRY

Civil Aviation Authority

The UK Civil Aviation Authority (CAA) has issued advice to passengers and called on airlines to comply with the law on compensation for disrupted flights, following the Supreme Court's decision to refuse both Jet2 and Thomson permission to appeal rulings made by the Court of Appeal in June.

Andrew Haines, Chief Executive of the CAA, said:

"We acknowledge airlines' concerns about the proportionality of the flight delay regulations and recognise that airfares may increase as a result. However, the court's decisions in these cases bring legal clarity to this issue and we now expect airlines to abide by them when considering claims."

This is also important information for anyone who has made a claim for flight delay compensation but is waiting for a decision pending the outcome from the Supreme Court. Following the decisions in these two cases, airlines should not continue to put claims on hold. Where airlines have already put claims on hold, the CAA expects airlines to revisit them and pay compensation for any eligible claims.

The CAA is not an ombudsman and does not have the power to force airlines to pay individual passengers' claims. If passengers do experience a long delay or cancellation and wish to claim for compensation, they should contact their airline directly.

(Source: CAA, 31 October 2014)

Department for Business Innovation and Skills

BIS has published the Government's Response to the Call for Evidence on the European Commission's Proposal for a New Directive on Package Travel and Assisted Travel Arrangements. This is their summary of responses received:

"We received responses representing a wide range of interests, providing views and observations directly related to the questions and also offering wider perspectives. Most acknowledged the need for change to the regime and supported the Commission's general response to the significant developments in the market since the formulation of the current Directive 24 years ago. However, respondents also generally supported our view that the Proposal should be improved by further clarification in a number of respects and that the approach adopted by the Commission might have serious consequences in terms of costs and practicability.

Those representing the package travel industry support the extension of the definition to include 'dynamic packaging models' and agreed with our assumption that, as drafted, the Proposal would bring within the full coverage of the Proposal all those currently selling packages as defined and most of the those currently considered to be 'flight-plus' organisers (and therefore subject to the flight-plus ATOL in the UK). This, they observed, would level the competitive playing field whereby, currently, dynamic packagers were not held responsible for the delivery of the services comprising the 'package'. Others felt that the definition would be too wide

and that some agency based models would struggle to cover the liability provisions (making the organiser the chief source for recompense for consumers when things go wrong or are not delivered).

There was general support for the objective of seeking to overcome possible routes to circumvention, especially with respect to the 'agent for the consumer' model. In respect of the Proposal to include ATAs, some in the trade argued that they too should be considered to be packages. Conversely, others observed that, as drafted, the concept was indistinct and amounted to little more than facilitating purchases of individual travel components by consumers.

There was general support among the trade for B2B sales being, for the most part, excluded and that in this respect the Proposal should be extended to exclude more than just the larger corporate business travel providers. Respondents thought that the concept of the overarching 'framework contract' for business to business arrangements should be extended to include all overarching B2B arrangements, but that those who booked their business travel through consumer facing outlets should continue to be covered. This would provide SMEs and smaller businesses that choose not to enter into specific B2B arrangements the means to benefit from the protection of the regime. There was some divided opinion on the need to cover not for profit or amateur arrangements, for example by special interest groups or charities. These are, for the most part, not covered currently because of the exemption for those who organise trips only occasionally.

Areas identified for clarification centred particularly on the scope and definitions of the business models to be covered, especially the need to achieve more certainty as to the differences between the various elements of the definition of a 'package', and the definition of the ATA model where it is proposed only the insolvency protection provisions should apply.

Other areas for clarification identified by respondents concerned the consequences of unavoidable and extraordinary circumstances and the extent of organiser responsibilities where difficulties occur which are not due to the fault of the organiser or service providers. There was a general desire to better establish the relationship between the Proposal and the obligations on transport providers under passenger rights regulations so as to avoid double-banking of protections.

Those representing and promoting domestic tourism strongly supported our position, established in the course of the Red Tape Challenge, that the application of the current regime to domestic packages consisting of, for example, a hotel booking and some other non-transport tourist service, was unnecessary and had a stifling effect on innovation. Some argued that packages should only be covered if they include a transport element but acknowledged that such a wide adjustment would be difficult for other Member States to accept. They supported our arguing for the option of allowing Member States the option not to apply the Directive to packages which do not include a transport element and which are provided entirely domestically.

In respect of the approach proposed by the Commission to the provision of insolvency protection, most respondents, including those especially concerned with the UK's ATOL system, shared our concerns. Moving from protecting sales in the UK substantially to UK consumers to protecting all of the sales by businesses 'established in' the UK, irrespective of where the sales are made or targeted, gives cause for significant concern that the additional risks posed by this approach would lead to increased costs and practical difficulties. These would include repatriation to other countries and the ability to properly assess the risk represented by businesses that might be trading substantially outside of the UK. The full report can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/351062/bis-14-1016-government-response-to-call-for-evidence-on-the-EC-proposal-for-new-directive-on-package-travel-and-assisted-travel-arrangements.pdf

(Source: BIS, September 2014)

Department for Transport

The DfT has released a Consultation on exemptions from European Community regulations on Rail Passengers' Rights and Obligations.

"1. Introduction

1.1 In 2007 the European Parliament and the Council agreed Regulation (EC) No 1371/2007 on rail passengers' rights and obligations ('the PRO'). The PRO was designed to align and strengthen passengers' rights and obligations across the EU by building on the existing regime that applies to international rail journeys (CIV)

1.2 The PRO establishes minimum standards in the following areas:

- Information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and implementation of a computerised information and reservation system for rail transport;
- Liability of railway undertakings and their insurance obligations for passengers and their luggage;
- Obligations of railway undertakings to passengers in the event of delay, missed connections and cancellations;
- Protection of and assistance to disabled persons and persons with reduced mobility("DPRMs") travelling by rail;
- Definition and monitoring of service quality standards, the management of risks to the personal security of passengers and the handling of complaints; and
- General rules on enforcement.

1.3 The PRO consists of "core" Articles which have applied to the UK's domestic and international rail transport services since December 2009. The PRO does not apply to railway undertakings and transport services that are not licensed under Directive 2012/34/EU establishing a single European railway area (recast) however.

The exceptions from the EU licensing regime include local and regional standalone infrastructure and urban or suburban rail passenger services

This means the PRO does not apply to, for example, metros including London Underground and Glasgow subway, trams and tramways including the Greater Manchester Metrolink and heritage and tourist infrastructure and vehicles. "RVAR" services are also out of scope.

Member States have the power under the PRO to exempt domestic rail passenger services from the "non-core" articles for up to 5 years. This power can be renewed twice for a maximum period of 5 years on each occasion, culminating in a total period of 15 years.

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In December 2009, the Government exercised this power to exempt Great Britain's domestic railways from all of the non-core Articles for a period of five years. The Statutory Instrument (SI) that provides this exemption remains in place until 4 December 2014. At this point the exemption will expire, and all the Articles of the PRO will automatically come into effect, unless exemptions are renewed through a further SI.

The Government is taking the step of introducing an SI by December 2014 to renew the current exemptions in full for a further five years to December 2019, while consulting in parallel on options for removing some or all of these exemptions in 2015.

The Government is taking this step to provide sufficient time for thorough consideration of the options available for removing exemptions, while retaining maximum flexibility to respond to issues raised by the organisations and individuals consulted. Depending on the outcome of this consultation, the Government would then introduce a further SI in 2015 to remove the relevant exemptions with immediate effect.

The full consultation document can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/363551/141014_Passengers_Rights_and_Obligation_Consultation.pdf

(Source: Department for Transport, 14 October 2014)

Court of Justice of the European Union

Vueling Airlines SA v Instituto Galego de Consumo de la Xunta de Galicia, Judgment in Case C-487/12

It was held that a Spanish law requiring airlines to carry checked-in baggage without a surcharge, infringes EU law. The price in respect of carriage of checked-in baggage is not an unavoidable and foreseeable item in the fare for air travel, but may be an optional price supplement.

Spanish legislation prohibits air carriers from making checking in passengers' baggage subject to an optional price supplement. In August 2010, the airline Vueling Airlines ('Vueling') added €40 to the base price of plane tickets for a return journey between La Coruña (Spain) and Amsterdam (the Netherlands) purchased by Ms Arias Villegas (€241.48) when she checked in two pieces of baggage online. Ms Villegas therefore lodged a complaint against Vueling, claiming that the contract of carriage by air concluded with that airline contained an unfair term. The Instituto Galego de Consumo de la Xunta de Galicia (Galician Consumer's Institution, established by the Autonomous Community of Galicia) subsequently imposed an administrative penalty of €3,000 on Vueling.

The Juzgado de lo Contencioso-Administrativo no 1 de Ourense (Court for Contentious Administrative Proceedings No 1, Ourense, Spain), which is seised of the case, asked the Court of Justice whether the Spanish legislation is compatible with the principle of pricing freedom laid down in EU law. In short, the question was whether EU law is liable to call into question the economic model adopted by certain airlines since the liberalisation of the sector and, in particular, by the 'low cost' airlines.

In the judgment, the Court of Justice replied that EU law precludes legislation, such as the Spanish law, that requires air carriers to carry, in all circumstances, not only the passenger but also baggage checked in by him for the price of the plane ticket, without any price supplement.

The Court held that the price to be paid for the carriage of baggage checked-in by air passengers is not an unavoidable and foreseeable item of the price of the air service, but may be, within the meaning of EU law, an optional price supplement in respect of a complementary service.

The Court noted in this regard that, with the increasingly popular use of air transport, airlines' business models have evolved considerably. Many airlines now follow a business model of offering air services at the lowest price. Within the framework of that business model, the cost relating to carrying baggage is, as a component of the price of the service, a significant element. Consequently, the airlines concerned may wish to charge a price supplement for that service. The Court also indicated that it cannot be excluded that some air passengers prefer to travel without checking in baggage on the basis that doing so reduces the cost of their plane ticket. Having regard to those considerations, the service of carriage of checked-in baggage cannot be considered to be compulsory or necessary for the carriage of passengers.

By contrast, the Court considered that baggage that is not checked in, namely hand baggage must be considered, in principle, as a necessary item for the carriage of passengers. Consequently, the carriage of hand baggage cannot be made subject to a price supplement, provided that it meets reasonable requirements in terms of its weight and dimensions and complies with applicable security requirements. In that regard, the Court observed that there are differences between the service of carrying checked baggage and that of carrying hand baggage. The processing and storing of checked baggage is likely to lead to additional costs for the airline, which is not the case for carrying hand baggage. Furthermore, the extent of the liability of the carrier for damage to baggage is greater when baggage is

checked than when it is not.

The Court noted that the Spanish law clearly does not allow air carriers separately to charge a supplement for the carriage of checked-in baggage and, therefore, freely to set a price for the carriage of passengers. In that respect, the Court indicated that EU law does not preclude Member States from regulating aspects of the contract of carriage by air, in order, in particular, to protect consumers against unfair practices. It noted, however, that such national legislation cannot be contrary to the pricing provisions established by EU law.

The Court pointed out that the Spanish law prohibits the setting of a price differently according to whether it is possible or not to check-in baggage on the basis of the plane ticket. In so doing, that law (i) contravenes the right of air carriers freely to set fares payable for the carriage of air passengers and the condition under which those fares apply, and (ii) is likely to call into question the objective of enabling the effective comparison of fares, as is laid down by EU law; air carriers affected by such a national law are not permitted to apply separate charges for the service of carrying checked-in baggage, while airlines subject to the legislation of another Member State may do so. Furthermore, it is for the national authorities to check, if necessary, whether Vueling complied with the information and transparency obligations to which it was subject as regards price supplements (namely, that they must be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an 'opt-in' basis).

(Source: CJEU, 18 September 2014)

CJEU

Germanwings GmbH v Ronny Henning Judgment in Case C-452/13

The CJEU held that the actual arrival time of a flight is the time at which at least one of the doors of the aircraft is opened It is only at that time that the length of the delay for the purposes of any compensation may be determined.

The delay to a Germanwings flight from Salzburg to Cologne/Bonn provided the Court of Justice with an opportunity to specify the point in time which corresponds to the actual arrival time of an aircraft. Although the aircraft in question took off with a delay of three hours and 10 minutes, the aircraft touched down on the tarmac of the runway at Cologne/Bonn airport with a delay of two hours and 58 minutes. When the aircraft reached its parking position, the delay was three hours and three minutes. The doors were opened shortly afterwards. One of the passengers maintained that the final destination was reached with a delay of more than three hours in relation to the scheduled arrival time and that he could therefore claim compensation of €250, in line with a previous judgment of the Court (Joined Cases C-402/07 and C-432/07 Sturgeon and Others).

In Germanwings' view, the actual arrival time is the time at which the plane touched down on the tarmac at Cologne/Bonn airport, with the result that the delay in relation to the scheduled arrival time is only two hours and 58 minutes and no compensation was payable. The Austrian court before which the case between the passenger and Germanwings was brought therefore asked the Court of Justice which time corresponds to the actual arrival time of the aircraft.

In its judgment, the Court took the view that the concept of 'actual arrival time' may not be defined on a contractual basis, but must be interpreted in an independent and uniform manner. In that regard, the Court pointed out that, during a flight, passengers remain confined in an enclosed space, under the instructions and control of the air carrier, in which, for technical and safety reasons, their possibilities of communicating with the outside world are considerably restricted. In such circumstances, passengers are unable to carry on, without interruption, their personal, domestic, social or business activities. Although such inconveniences must be regarded as unavoidable as long as a flight does not exceed the scheduled duration, the same is not true if there is a delay, in view, inter alia, of the fact that the passengers cannot use the 'lost time' to achieve

the objectives which led them to choose precisely that flight. It follows that the concept of 'actual arrival time' must be understood as the time at which such a situation of constraint comes to an end.

The situation of passengers on a flight does not change substantially when the aircraft touches down on the runway or when the aircraft reaches its parking position, as the passengers continue to be subject, in the enclosed space in which they are sitting, to various constraints. It is only when the passengers are permitted to leave the aircraft and the order is given to that effect to open the doors of the aircraft that the passengers cease to be subject to those constraints and may in principle resume their normal activities.

The Court concluded that the 'arrival time', which is used to determine the length of the delay to which passengers on a flight have been subject, corresponds to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

(Source: CJEU, 4 September 2014)

CJEU

Catharina Smets, Franciscus Vereijken v TUIfly GmbH (Case C-279/14)T

The Landgericht Hannover (Germany)) has lodged a request for a preliminary ruling on the following questions:

In the light of recital 15 in its preamble, is Regulation No 261/2004 to be interpreted as meaning that the occurrence of an exceptional circumstance – which leads the air carrier, after that circumstance has occurred, to deliberately reroute flights and to first reschedule those flights which were directly affected by the exceptional circumstance – can justify a delay within the meaning of Article 5 of that regulation and release the air carrier from its obligation to pay compensation under Article 5(1)(c) of Regulation No 261/2004 to the passenger whose flight was operated only after the exceptional circumstance had been dealt with and all flights could be rescheduled?

In this context, is Article 5(3) of Regulation No 261/2004 to be interpreted as meaning that the air carrier which operates flights using a rotation procedure took all reasonable measures and is accordingly released from its obligation to pay compensation, when transporting passengers whose flight has already been significantly delayed due directly to an extraordinary circumstance, as a priority with aircraft which, in principle, are used differently in the rotation?

Is recital 15 to be interpreted as meaning that only the aircraft directly affected by the strike, which is liable to affect one or more flights of that aircraft, may be affected by extraordinary circumstances, or does the circle of affected planes extend to several aircraft?

In the context of reasonable measures within the meaning of Article 5(3) of Regulation No 261/2004, is the airline permitted to use aircraft that are not affected in order to minimise the consequences of the strike for passengers who are directly affected and accordingly to spread the effects of a strike among several aircraft and passengers?

The European Consumers Centres Network Annual Report for 2013

In its latest annual report the ECC Network has published a series of case studies from Member States on how the ECC has helped consumers gain redress in travel cases. A selection of the many case studies is provided below.

Austria

Case 1: An Austrian family wanted to book a cruise via the German website of an Italy-based cruise company, where a family cabin cost EUR 849. The company refused the booking as the family had no German residential address and was re-directed to the Austrian website where an identical cabin cost EUR 2,499. After ECC Austria complained, the

company changed its policy and now allows Austrian consumers to book cruises on the German site too and benefit from lower prices.

Case 2: Two Austrian consumers booked return flights from Vienna to Paris. When the couple wanted to check in for the inbound flight, they were refused because the flight was overbooked. So, the consumers were forced to spend a night in Paris. In such cases of denied boarding the EU air passenger rights regulation (Regulation 261/2004) provides for compensation of EUR 250 per person. The airline did not pay that upfront, but did so after the ECC-Net intervened for the couple.

Belgium

The centre intervened to help a Belgian tourist who had to cancel his hotel reservation with a well-known international online travel agency, because he was ill. He struggled to receive a refund, even though this was promised in such a case by the website's general conditions of trade. He asked ECC Belgium to intervene on his behalf and the travel agency offered a refund.

Croatia

A German consumer rented a car in Dubrovnik and was charged a deposit of HRK 1,500 (EUR 197) via his credit card. This was not refunded, despite the consumer returning the car without damage. Requests for a refund yielded repayment promises, but no money. ECC Germany referred the case to ECC Croatia, which secured the refund.

Cyprus

A Syrian resident of Cyprus was travelling with his Romanian wife from Paphos to Girona, Spain, with an Irish airline company. He was denied boarding, since according to the airline's ground staff he did not hold appropriate travel documents. He disagreed. After contacting ECC Cyprus and ECC Ireland, the consumer was reimbursed the price of the ticket and received EUR 400 in compensation.

Czech Republic

While the ECC-Net resolves problems out of court, last year and for the first time, ECC Czech Republic successfully helped a consumer win a court action abroad. A Paris court ruled that a French air carrier should compensate a Czech passenger with EUR 400 for an eight-hour delay of a flight from the Caribbean island of Martinique to Paris in 2009. Based on this ruling, the air carrier also compensated another 11 Czech passengers on the same flight with about Czech Crowns CZK 10,800 (EUR 393.30) per passenger.

Estonia

A Dutch consumer rented a car in Tallinn, the Estonian capital. After returning the car and arriving home, he noticed the rental company had overcharged him EUR 500. Contacting the agency, he was told the surcharge was a fine for driving on unpaved roads. The consumer complained to ECC Estonia, which told the rental company that this charge was based on unfair and illegal contract terms, and insisted – successfully – that the EUR 500 be returned.

Romania

A Romanian consumer flew with a Dutch airline from Bucharest to Finland for a skiing holiday. His luggage was delayed for more than 24 hours, and he and his wife had to buy clothes and other necessary items worth EUR 400 upon arrival in chilly Finland. The airline only offered to cover EUR 100 expenses. He asked ECC Romania to intercede with the airline and it met his entire claim.

(Source: ECC Net Annual Report)

US Department of Transportation

The US DOT has launched a new webpage featuring information and resources provided by other federal agencies as a one-stop resource to assist cruise ship passengers in making informed vacation planning decisions. The website contains information on consumer assistance, vessel safety, and cruise line incident reporting statistics.

Information provided on the website includes:

Consumer Assistance

The Federal Maritime Commission (FMC) requires operators of passenger vessels carrying 50 or more passengers from a US port to be financially capable of reimbursing their customers in the event that a cruise is cancelled. The FMC also requires proof of ability to pay claims arising out of passenger injuries or death for which the ship operator may be liable. If a cruise is cancelled or if there is an injury during the cruise, the consumer will have to initiate action on his or her own behalf against the cruise line; however the FMC's Office of Consumer Affairs and Dispute Resolution Services (CADRS) is available to review any problems or inquiries that passengers bring to its attention and help ensure a quick and fair consideration of the issues involved.

Vessel Safety

The US Coast Guard is responsible for cruise ship safety. Although each cruise ship is subject to the vessel inspection laws of the country in which it is registered, as a condition of permitting the vessels to take on passengers at US ports, the Coast Guard requires the ships to meet the International Convention for the Safety of Life at Sea and other international regulations. Among other things, these regulations concern structural fire protection, firefighting and lifesaving equipment, watercraft integrity and stability, vessel control, navigation safety, crewing and crew competency, safety management, and environmental protection. The Coast Guard conducts routine onboard inspections of cruise ships to ensure compliance with applicable laws and regulations.

Cruise Line Incident Reporting Statistics

The Cruise Vessel Security and Safety Act of 2010 established security and safety requirements for most cruise ships that embark and disembark in the United States. The Act mandates that reports of criminal activity be reported to the FBI. Under the Act, the US Coast Guard is responsible for posting via internet portal cruise line reporting statistics provided by the FBI.

(Source: DOT, October 27, 2014

Competition and Consumer Protection Commission, Ireland

In September of this year following an investigation, the CCPC advised Ryanair of its concerns relating to the way they sold travel insurance on their website. They felt the information on Ryanair's site was unclear and could cause some consumers to unknowingly buy insurance.

Following contacts with the company, Ryanair agreed to change their website. The CCPC feels that this change will significantly reduce the possibility of a consumer purchasing unwanted travel insurance.

(Source: CCPC, 24 October 2014)

Australian Competition and Consumer Commission

The ACCC has instituted proceedings in the Federal Court of Australia against CLA Trading Pty Ltd, trading as Europcar Australia (Europcar), alleging that a number of terms in Europcar's vehicle rental contracts are unfair, and that Europcar has engaged in misleading or deceptive conduct and made false or misleading representations regarding the liability cover provided to car hire customers.

In Australia, Europcar has around 125 offices and a rental fleet that includes passenger vehicles, trucks and specialty vehicles. Europcar is part of the global Europcar vehicle rental business that has around 13,000 rental stations in approximately 150 countries worldwide.

The ACCC alleges that the following terms in Europcar's standard vehicle rental contract are unfair and should be declared void:

- terms requiring consumers to pay Europcar a "Damage Liability Fee" (currently up to $3,650) if the rental vehicle is damaged or stolen, or if there is third party loss, irrespective of fault; and
- terms making the consumer fully liable to Europcar if the rental vehicle is damaged or stolen, or if there is third party loss, where a consumer breaches the rental contract, no matter how trivial the breach and regardless of whether the breach caused the damage or loss.

The ACCC also alleges that Europcar engaged in misleading or deceptive conduct and made false or misleading representations on its website regarding the maximum amount that a customer would be liable for if there was loss or damage to the rental vehicle or third party loss. The ACCC alleges that these representations were misleading because in addition to the amounts specified, a customer would also be liable for loss or damage to an unlimited amount in some circumstances.

The ACCC seeks the following orders:

- declarations that certain terms in Europcar's rental contract are unfair and therefore void; and
- declarations, injunctions, pecuniary penalties, orders for the publication of corrective notices and compliance program orders.

(Source: ACCC, 10 November 2014)

Australian Competition and Consumer Commission

Ticketek and Ticketmaster have improved their pricing practices in response to concerns raised by the Australian Competition and Consumer Commission as part of its drip pricing investigation.

The ACCC had identified instances where it considered that these companies had failed to state single minimum total prices. The two ticketing companies will now include unavoidable fees in prices earlier in the online booking process.

Although the law does not prevent traders from charging fees, it does require that they are disclosed clearly to avoid consumers being misled. Drip feeding consumers with hidden charges has the potential to cause detriment to competition and to consumers. The Australian Consumer Law requires that when businesses present prices to customers, they must state the total price of the good or service as a single figure. The total price needs to be displayed at least as prominently as any part price, and should include any compulsory fee, tax, duty, levy or other additional charge applied to a transaction.

There were three types of ticketing fees considered during the ACCC's investigation:

- Payment Processing Fee – a fee applied to certain events by both ticketing companies for purchases made by credit or debit card. This fee does not apply to purchases made in person at their ticketing offices or outlets when using cash or when redeeming Ticketek or Ticketmaster gift vouchers.
- Ticketek's Service/Delivery Fee – a per transaction fee applied to certain events. This fee varies depending on choice of ticket delivery method, and where applied this fee is unavoidable regardless of payment method.
- Ticketmaster's Handling Fee – a per transaction fee applied to certain events. Where applied, this fee is also unavoidable regardless of payment method.

The ticketing companies cooperated with the ACCC during its investigation. To address the concerns raised the businesses now incorporate their minimum Payment Processing Fees into the per ticket prices they display on their websites.

Ticketek also now incorporates its Service/Delivery Fee into the total price displayed as soon as it is calculable, which it considers to be once the customer has selected the number of tickets for purchase and the delivery method. Similarly,

Ticketmaster now incorporates its Handling Fee into the total price displayed once the user has selected the total number of tickets for purchase.

The ACCC has also been in contact with Live Performance Australia (LPA), the industry association representing employers in Australia's live performance industry. LPA has been responsible for producing a Ticketing Code of Practice for its members since 2001. It has worked with the ACCC to alert its members about drip pricing issues and the importance of compliance with the Australian Consumer Law. LPA has also directed its members to free online consumer law training provided by the ACCC at www.ccaeducationprograms.org

(Source: ACCC, 23 October 2014)

Advertising Standards Authority: InterContinental Hotels Group plc

Claims on www.ihg.com, a hotel booking website, stated "Best Price Guarantee ... We're so sure the best prices for our hotels are found on our websites that we were the first to offer the most powerful price guarantee ever by a global travel company. Every hotel reservation booked through an IHG web site [sic] is guaranteed to have the lowest room price (room rate) or total room cost (including all taxes and fees) publicly available on the internet or IHG will provide the first night's room price free and match the lower average nightly room price found for that stay for the rest of the nights of that stay (subject to the Terms and Conditions of the Guarantee)".

Text on the "Best Price Guarantee FAQs" page stated, "If you find a lower room price (room rate) with a lower total room cost (including all taxes and fees) on a publicly available competing Web site [sic] for the same hotel, type of accommodations and rate restrictions on the same dates, we'll not only match that lower room price, we'll give you your first night's room price free, subject to the Best Price Guarantee Terms and Conditions ... Rooms on the competing Web site [sic] must be publicly available, viewable and bookable on the Internet at the time of verification."

Text on the "IGH Best Price Guarantee Terms and Conditions" page stated "Matching prices – Currency Requirements. The currency of the hotel controls the comparison with the room price and the total room cost on the non-IHG website, and the room price and the total room cost on the non-IHG website must be available, viewable, quoted, booked, and paid for in the currency of the hotel".

The complainant, who was told their claim for the best price guarantee did not qualify under the terms and conditions because the competitor's website was registered in the USA, challenged whether the ad was misleading.

InterContinental Hotel Groups plc (IHG) said the claim did not meet the conditions of the offer because the terms and conditions clearly stated that the comparator rate must be "available, viewable, quoted, booked and paid for in the currency of the hotel". They also said the terms and conditions of the comparator's website stated the credit card would be charged in US dollars. They highlighted the relevant sections of their and the competitor's terms and conditions.

The complaint was upheld. The ASA understood that some online competitors might initially set out their prices in one currency, but ultimately bill in a different currency. It was a condition of the guarantee that "the total room cost on the non-IHG website must be available, viewable, quoted, booked, and paid for in the currency of the hotel", which the ASA considered was material information. While that information appeared in the terms and conditions, the ASA noted they were one-click away from the Best Price Guarantee page and considered that was not sufficiently prominent. Because they considered the condition was not sufficiently prominent, the ASA concluded the ad was misleading.

(Source: ASA, 15 October 2014)