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File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
QANTAS AIRWAYS LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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No. VID685/2023

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

QANTAS AIRWAYS LIMITED (ACN 009 661 901)

Respondent

STATEMENT OF AGREED FACTS AND ADMISSIONS

PART I INTRODUCTION

1. This Statement of Agreed Facts and Admissions (**SAFA**) is made jointly by the applicant, the Australian Competition and Consumer Commission (**ACCC**), and the respondent, Qantas Airways Limited (**Qantas**), for the purposes of section 191 of the *Evidence Act 1995* (Cth).
2. By reason of the agreed facts set out in this document, Qantas admits that between 21 May 2021 and 26 August 2023 (**Relevant Period**)¹, it:
 - a. engaged in misleading or deceptive conduct, made false or misleading representations, and engaged in conduct liable to mislead the public in contravention of sections 18, 29(1)(b), 29(1)(g) and 34 of the Australian Consumer Law (**ACL**), which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**), by offering for sale, and selling, tickets for flights for 2 or more days after Qantas had already decided to cancel those flights; and
 - b. engaged in misleading or deceptive conduct and made false or misleading representations in contravention of sections 18, 29(1)(b) and 29(1)(g) of the ACL, by continuing to display flight information on the “Manage Booking” page to consumers who purchased tickets or made bookings for certain flights for 2 or more days after Qantas had decided to cancel those flights, with no indication that Qantas had already decided to cancel those flights.
3. The details of the contraventions admitted by Qantas are set out in paragraphs 34 to 38 and 48 to 52.
4. The ACCC does not press its allegations in respect of s 36 of the ACL.

¹ The period set out in the Originating Application was 21 May 2021 to 7 July 2022. For the purposes of reaching an agreed resolution in this proceeding the parties have agreed the relief in this proceeding be based on conduct that occurred in the expanded period set out in paragraph 2 of this Statement of Agreed Facts and Admissions.

5. In connection with the admitted contraventions, the ACCC has accepted an undertaking given by Qantas for the purposes of section 87B of the CCA (**Undertaking**). A copy of the Undertaking is at Annexure A.

PART II QANTAS' BUSINESS

6. Qantas is a publicly listed company incorporated in Australia. Qantas is Australia's largest domestic and international airline. Qantas supplies air transport services to consumers within Australia and to and from Australia.
7. Qantas is made up of the following four operating segments, referred to collectively as the **Qantas Group**:
 - a. **Qantas Domestic** (operated by Qantas), the largest domestic airline in Australia. Qantas Domestic includes the operation of regional airlines QantasLink and Network Aviation;
 - b. **Qantas International** (operated by Qantas), the largest airline into and out of Australia. Qantas International includes Qantas' freight operations;
 - c. **Jetstar Group**, which comprises Jetstar Airways Pty Ltd (**Jetstar**) (a subsidiary of Qantas), Jetstar Asia Airways Pte Ltd (majority-owned by Westbrook Investments, with Qantas holding 49% ownership) and Jetstar Japan Co., Ltd. (a joint venture between Qantas, Japan Airlines and Tokyo Century Corporation). The Jetstar Group operates on domestic and international routes; and
 - d. **Qantas Loyalty**, which operates the Qantas Frequent Flyer and Qantas Business Rewards loyalty programs, as well as Qantas' insurance and credit card businesses.
8. As at June 2024, Qantas held 38% of the Australian domestic airline passenger market with Qantas' subsidiary, Jetstar, holding a 25% share of that market (such that the combined market share for the Qantas Group was 63% in May 2024).²
9. During the Relevant Period, the Qantas Group's total revenue, revenue attributed to Qantas Domestic and Qantas International, underlying profit and assets were as follows:

² ACCC, 'Domestic airline competition in Australia' (August 2024) p.2 < <https://www.accc.gov.au/system/files/domestic-airline-competition-august-2024-report.pdf> >.

| Financial year | FY2020/21 | FY2021/22 | FY2022/23 | FY2023/24 |
|--|-----------------|-----------------|----------------|----------------|
| Total revenue (Qantas Group) | \$5.9 billion | \$9.1 billion | \$19.8 billion | \$21.9 billion |
| Revenue attributable to Qantas Domestic and Qantas International | \$4.3 billion | \$7.2 billion | \$14.7 billion | \$15.9 billion |
| Underlying profit before tax | \$(1.8) billion | \$(1.9) billion | \$2.5 billion | \$2.08 billion |
| Total assets | \$17.9 billion | \$19.7 billion | \$20.4 billion | \$20.6 billion |

10. During the Relevant Period, Qantas carried the following numbers of passengers:

| Financial year | FY2020/21 | FY2021/22 | FY2022/23 |
|---|---------------|---------------|----------------|
| Total passengers carried (Qantas Group) | 15.9 million | 21.3 million | 45.7 million |
| Passengers carried on Qantas Domestic (estimate) | ~ 8.4 million | ~10.6 million | ~ 19.5 million |
| Passengers carried on Qantas International (estimate) | ~ 171,176 | ~1.5 million | ~ 6.6 million |

11. For the purposes of calculating the maximum penalty for the contraventions admitted by Qantas,³ the parties agree that:

- a. in the period from 21 May 2021⁴ to 9 November 2022, the applicable maximum penalty for each contravention ranged from between \$537.3 million to \$1.48 billion⁵; and

³ As set out in paragraphs 69 to 71 of this SAFA, the parties agree that Qantas obtained benefits that are reasonably attributable to Qantas' contravening conduct, but the value of those benefits cannot be determined. In those circumstances, the maximum penalty is to be calculated by reference to s224(3A)(c) of the ACL.

⁴ The beginning of the Relevant Period.

⁵ For the period from 1 September 2018 to 9 November 2022 (inclusive), the maximum penalty calculated in accordance with s 224(3A)(c) of the ACL was, relevant to the admitted contraventions, 10% of the company's annual turnover in the 12 months ending in the month of each relevant contravention. By way of example, for contraventions that occurred at the start of the Relevant Period (in May 2021), the maximum penalty is to be calculated by reference to 10% of Qantas' turnover from 1 June 2020 to 31 May 2021, being \$537.3 million. For contraventions that occurred later in the period, in November 2022 (pre-9 November 2022), the maximum penalty is to be calculated by reference to 10% of Qantas' turnover from 1 December 2021 to 30 November 2022, being \$1.48 billion. Accordingly for this period, the maximum penalty ranged between \$537.3 million to \$1.48 billion depending on when the contravention occurred.

- b. in the period from 10 November 2022 to 26 August 2023⁶, the maximum penalty for each contravention ranged from between \$4.45 billion to \$6.1 billion⁷.

PART III CONTINUED SALE CONDUCT

Background to contravening conduct

12. During the Relevant Period, Qantas offered for sale, and sold, flights to consumers through direct channels such as its website and mobile app, and indirect channels such as travel agents and third-party websites.
13. Consumers searching for or booking Qantas flights using the direct channels could:
- a. access Qantas' website (at the URL www.qantas.com.au or www.qantas.com) (**Qantas Website**) on a desktop computer or mobile device; and
 - b. access Qantas' app on either Android or iOS devices (**Qantas App**).
14. At all times during the Relevant Period, Qantas was the operator of the Qantas Website and the Qantas App and was responsible for the creation and display of the content viewed by consumers on those platforms. A third-party technology vendor called Amadeus provided (and continues to provide) technical infrastructure to facilitate the display of the booking flow on those platforms.
15. During the Relevant Period, Qantas offered tickets for sale through the direct and indirect channels described in paragraph 12 including by reference to:
- a. a flight number;
 - b. a scheduled departure date and time;
 - c. a scheduled arrival date and time;
 - d. a scheduled departure and arrival airport;
 - e. cabin class of travel; and
 - f. a particular fare type within the selected cabin class of travel.
16. Throughout the Relevant Period, the booking flow for consumers searching for or booking flights on Qantas' Website and Qantas App could be accessed through the homepage and

⁶ The end of the Relevant Period.

⁷ For the period on and from 10 November 2022, the maximum penalty calculated in accordance with s 224(3A)(c) is, relevant to the admitted contraventions, 30% of the company's adjusted turnover during the breach turnover period for each relevant contravention. By way of example, for contraventions that occurred early in this period, i.e. November 2022 (post-10 November 2022), the maximum penalty is to be calculated by reference to 30% of Qantas' adjusted turnover from 1 December 2021 to 30 November 2022, being \$4.45 billion. For contraventions that occurred at the end of the Relevant Period, in August 2023, the maximum penalty is to be calculated by reference to 30% of Qantas' adjusted turnover from 1 September 2022 to 31 August 2023, being \$6.1 billion. Accordingly for this period, the maximum penalty ranged between \$4.5 billion to \$6.1 billion depending on when the contravention occurred.

comprised four pages: **Flights, Options, Passengers** and **Payment**. Screenshots which display parts of the homepage and Flights, Options, Passengers and Payment pages (on the Qantas Website (both desktop and mobile) and the Qantas App) during the Relevant Period appear at pages 2-13 and 17-27 of Annexure B.⁸

17. The price of tickets on flights during the Relevant Period from the same origin to the same destination on the same day may have varied based on a number of factors, including:
 - a. the time of departure;
 - b. demand and availability of seats (influenced by matters such as inbound/onward connecting traffic, seasonal factors, special events and the day of the week);
 - c. the availability of alternative travel options (including competitor airlines); and
 - d. proximity to departure date.
18. Consumers selected fares on flights based on their particular needs, which may have included a preference for particular departure or arrival times.
19. Once a consumer had booked a flight and the payment was confirmed, consumers were presented with a "Transaction Summary" which set out the details of the flight(s) booked including the flight number, scheduled departure and arrival airport, scheduled departure date and time and scheduled arrival date and time. It also contained a link to the customer's "Manage Booking" page which is described below at paragraphs 40 to 45. A screenshot which is representative of the Transaction Summary page on the desktop version of the Qantas Website is at pages 14-16 of Annexure B.⁹
20. The consumer also received a confirmation email which attached an electronic ticket, itinerary and receipt. The E-Ticket Flight Itinerary attached to the confirmation email set out the details of the flight(s) booked by the consumer including the flight number, scheduled departure and arrival airport, scheduled departure date and time, scheduled arrival date and time and the status of the booking (which was stated as "confirmed"). A copy of such an email and attachments is at pages 28-39 of Annexure B.
21. Qantas' "Conditions of Carriage", which formed part of its terms and conditions with a consumer who had made a booking for a flight, were available on the Qantas Website and Qantas App and could be accessed throughout the booking flow. Clauses 5.2 and 9.1(a)

⁸ The appearance of the booking flow on the mobile version of the Qantas Website and Qantas App was substantially the same when accessed on Android and iOS devices.

⁹ The form and content of the Transaction Summary page on the mobile version of the Qantas Website and on the Qantas App was substantially the same as the Transaction Summary page on the desktop version of the Qantas Website (the appearance and layout of the page was modified for smaller devices). Further, the form and content of the Transaction Summary page on the Qantas Website and Qantas App was substantially the same when accessed on both Android and iOS devices.

of Qantas' Conditions of Carriage stated that *"We will use our reasonable endeavours to operate in accordance with our published schedules. However, we do not guarantee the flight times and they do not form part of your contract of carriage with us."* A copy of Qantas' Conditions of Carriage is at page 40-70 of Annexure B.

22. Annexure C sets out a list of the relevant flights scheduled to depart between 1 May 2022 and 10 May 2024 which were cancelled by Qantas during the Relevant Period (**Continued Sale Conduct Flights**). Annexure C contains, for each of the Continued Sale Conduct Flights, the following information:
 - a. scheduled departure date and time;
 - b. flight number;
 - c. departure airport and arrival airport;
 - d. scheduled arrival time;
 - e. fleet (i.e. aircraft) type;
 - f. the date on which Qantas decided to cancel the flight (described in Annexure C as the "cancellation decision date"); and
 - g. the last date on which the flight was offered for sale (described in Annexure C as the "last date flight available for sale").
23. During the Relevant Period, a team within Qantas known as the Qantas Network Team (**Network Team**) was responsible for developing a network plan and schedule for the Qantas fleet which, at a high level, involved deciding where, when and which aircraft will fly and building a schedule of flights accordingly.
24. Seat inventory and airfares for each flight were released for sale by Qantas around 355 days prior to departure for each respective flight (the **Selling Window**).
25. Planned and unforeseen events could arise at different points in the Selling Window, including aircraft maintenance, adverse weather conditions, international conflict, technical problems, workforce planning and shifts in consumer demand.
26. From time to time when such events occurred, Qantas' response included cancelling, rescheduling or adding new services.
27. For the Relevant Period, the Selling Window commenced in May 2021. For part of the Relevant Period, in addition to the matters referred to in paragraph 25 above, Qantas' operations were affected by matters arising from the COVID-19 pandemic which included travel restrictions (both domestic and international), border and airport closures, staff

absenteeism due to testing, reporting and isolation requirements for those with COVID-19 and ensuring that staff training was up to date.

28. During the Relevant Period, any cancellation decisions made five or more days prior to a flight's scheduled departure were made by the Qantas Network Team. Any cancellation decisions made less than five days prior to a flight's scheduled departure were made by Qantas' Integrated Operations Centre for Qantas branded flights and Qantas' Regional Operations Centre for QantasLink branded flights.
29. Almost all (99.9%) cancellation decisions made in respect of the Continued Sale Conduct Flights and the Delayed Notification Conduct Flights were made five or more days prior to departure and were made by the Qantas Network Team.
30. Qantas' process for cancelling a flight during the Relevant Period, where the Qantas Network Team made the cancellation decision, was as follows:
 - a. the Qantas Network Team made the cancellation decision by uploading a new flight schedule into Qantas' IT system;
 - b. Qantas' IT system allocated batches of changes to the flight schedule into a queue to be processed by Qantas' Schedule Distribution Team, which was responsible for managing the process of re-accommodating customers on the cancelled flights in each batch;
 - c. part of Qantas' IT system called Amadeus Enhanced Re-accommodation automatically allocated existing passengers on each cancelled flight to an alternative flight;
 - d. a specialist member of the Schedule Distribution Team manually reviewed each passenger re-allocation and, following the review of all of the re-accommodation arrangements required for the flight, provided a sign off which triggered:
 - i. removal of the flight from Qantas' sales inventory;
 - ii. the re-booking of passengers onto alternative flights;
 - iii. communication of the change to ticketholders who had booked through the direct channel (and to agents for those who had booked indirectly); and
 - iv. an update to the customer's "Manage Booking" page to reflect the fact that the flight had been cancelled.
31. During the Relevant Period, the following factors affected the time it took the Schedule Distribution Team to manually review and process the allocations of Amadeus Enhanced Re-accommodation:

- a. proximity to travel – Qantas prioritised re-accommodating and communicating with customers impacted by a flight cancellation relatively close to the scheduled departure date;
 - b. the time taken to identify and develop re-accommodation options, which in some cases required consulting and negotiating with other carriers, particularly for international services;
 - c. actual and anticipated call volumes to, and the capacity of, the Customer Contact Centre – due to resourcing constraints within its Customer Contact Centre, in particular during the COVID-19 pandemic, Qantas at times deferred communications to customers;
 - d. whether the change required a bespoke Qantas process and/or communications to customers about their options, for example, in respect of a delayed recommencement of services or route suspension; and
 - e. there were constraints within the IT system, which set a limit of 5,000 bookings that could be processed per hour.
32. During the Relevant Period, Qantas had the ability to implement a manual 'stop sell', which had the effect of immediately removing a flight from sale without waiting for the completion of the cancellation process described above. The 'stop sell' process involved Qantas setting the number of seats available on a particular flight to zero in the Amadeus System. The 'stop sell' process did not result in existing ticketholders being rebooked or notified that the flight had been cancelled.¹⁰
33. Qantas did not implement a manual 'stop sell' for any of the Continued Sale Conduct Flights.

Qantas' admissions

34. Qantas admits that, during the Relevant Period, it offered to the public tickets for sale, as described in paragraphs 12 to 21 above, on each of the Continued Sale Conduct Flights for 2 or more days after Qantas had made a decision to cancel the flight, and 86,597 consumers made bookings on, or were re-accommodated to, some of those flights after Qantas had decided to cancel the relevant flight (**Continued Sale Conduct**).

¹⁰ A manual 'stop sell' was implemented by Qantas during the Relevant Period where it considered there were (or were reasonably likely to be) insufficient re-accommodation options available to enable the Qantas Network Team and the Schedule Distribution Team to follow their normal process as set out above at paragraphs 30 to 31 above. This usually occurred when a decision was made to cease, reduce or pause flying to a particular port and/or where reasonable re-accommodation options may be more complex to execute or were limited (which may be the case on some low frequency domestic routes, some international routes and in respect of some route exits).

35. Qantas admits that by engaging in the Continued Sale Conduct, in trade or commerce, it represented to consumers that:
 - a. the relevant flights with the corresponding stated flight number and scheduled date and time were still available (**Scheduled Flight Representations**); and
 - b. it would use reasonable endeavours to operate the relevant flights at the scheduled date and time (**Reasonable Endeavours Representations**).
36. Qantas admits that the Scheduled Flight Representations were false and misleading in respect of each of the Continued Sale Conduct Flights because, at the time the Representations were made, there was no longer a flight with the stated flight number and scheduled date and time as Qantas had already decided to cancel it.
37. Qantas admits that the Reasonable Endeavours Representations were false and misleading in respect of each of the Continued Sale Conduct Flights because Qantas did not have reasonable grounds for making the representations as Qantas had already decided to cancel the flight.
38. Qantas admits that by making the Scheduled Flight Representations and the Reasonable Endeavours Representations it contravened sections 18(1), 29(1)(b), 29(1)(g) and 34 of the ACL.

Nature and extent of the Continued Sale Conduct

39. Qantas engaged in the Continued Sale Conduct from 21 May 2021 until 26 August 2023 in respect of flights scheduled to depart between 1 May 2022 and 10 May 2024. During that period:
 - a. 70,543 flights (69,237 domestic/trans-Tasman and 1,306 international) were affected by the Continued Sale Conduct;
 - b. whilst the total number of consumers exposed to the representations arising from the Continued Sale Conduct cannot be quantified, it at least included consumers who made bookings on, or were re-accommodated to, a flight that Qantas had already decided to cancel;
 - c. 86,597 consumers made bookings on, or were re-accommodated to (after the flight they had booked was cancelled), a flight that Qantas had already decided to cancel (81,238 of those consumer bookings related to a domestic/trans-Tasman flight and

5,359 related to an international flight). In respect of bookings that were ticketed, the total amount paid by consumers in relation to those tickets was \$17.9 million;¹¹ and

- d. on average, tickets on the Continued Sale Conduct Flights were offered for sale for approximately 11 days after Qantas had decided to cancel the flight, and in some cases, for up to 62 days after Qantas had decided to cancel the flight.

PART IV DELAYED NOTIFICATION CONDUCT

The “Manage Booking” page

40. After a customer books a flight with Qantas via the direct or indirect methods described in paragraph 12 above, the customer can view details of the booking on the “Manage Booking” page of Qantas’ Website or on the Qantas App (**Manage Booking Page**). At all times during the Relevant Period, Qantas was the operator of the Manage Booking Page and was responsible for the creation and display of the content viewed by consumers on it.
41. During the Relevant Period, for each customer booking, the Manage Booking Page on the Qantas Website and the Qantas App displayed, in a box under the heading “Flights”:
 - a. the flight departure date, time and departure airport;
 - b. the flight arrival date, time and destination airport; and
 - c. the flight duration.
42. On the Qantas Website (desktop format), the upcoming flight details were displayed on the Manage Booking Page in the following format:

[insert days to departure] days to go

Here’s where you can manage your flight booking from [departure location] to [arrival location] departing on [day] [date] [month] [year] at [time].

43. Until the cancellation of a flight was processed against the relevant booking and the customer was sent a communication notifying them of the cancellation of their flight (see paragraph 30(d) above), the status of a customer’s booking as displayed on the Manage Booking Page was unchanged (with no indication that the flight had been cancelled).
44. The Manage Booking Page was updated to inform customers that their flight had changed due to a cancellation at the same time that Qantas sent a communication informing the relevant passengers of the change.

¹¹ This figure includes bookings that were ticketed and paid for by: any form of cash; a combination of cash and points (“Points plus Pay”); and redeeming a flight credit. The figure does not include tickets paid for by redeeming points for a “classic reward” ticket, although does include any fees or taxes paid in cash for such tickets.

45. Screenshots which are representative of the Manage Booking Page on the desktop and mobile versions of the Qantas Website are at page 71-77 of Annexure B.¹²
46. Annexure D sets out a list of the relevant flights scheduled to depart between 1 May 2022 and 1 May 2024 which were cancelled by Qantas during the Relevant Period and subject to the Delayed Notification Conduct (as defined in paragraph 48 below) (**Delayed Notification Conduct Flights**).
47. Annexure D contains, for each of the Delayed Notification Conduct Flights, the following information:
 - a. scheduled departure date and time;
 - b. flight number;
 - c. departure airport and arrival airport;
 - d. scheduled arrival time;
 - e. fleet (i.e. aircraft) type;
 - f. the date on which Qantas decided to cancel the flight (described in Annexure D as the “cancellation decision date”); and
 - g. the date on which the Manage Booking Page of ticketholders was updated to reflect the fact that the flight had been cancelled, and on which customers were notified that the flight had been cancelled (described in Annexure D as the “date customers notified”).

Qantas' admissions

48. Qantas admits that, during the Relevant Period, it continued to display flight details for each of the Delayed Notification Conduct Flights on the Manage Booking Page of consumers who had purchased tickets or made bookings for those flights for 2 or more days after Qantas had made a decision to cancel the flight with no indication that Qantas had already decided to cancel the flight (**Delayed Notification Conduct**).
49. Qantas admits that by engaging in the Delayed Notification Conduct, in trade or commerce, it represented to consumers that:
 - a. the relevant flight with the stated flight number and scheduled date and time displayed on the Manage Booking Page was unchanged (**Flight Unchanged Representations**); and

¹² The form and content of the Manage Booking Page on the Qantas App was substantially the same as the Manage Booking Page on the mobile version of the Qantas Website. Further, the form and content of the Manage Booking Page on the Qantas Website and Qantas App was substantially the same when accessed on both Android and iOS devices.

- b. it would use reasonable endeavours to operate the flight displayed on the Manage Booking Page at the scheduled date and time (**Manage Booking Representations**).
50. Qantas admits that the Flight Unchanged Representations were false and misleading in respect of each of the Delayed Notification Conduct Flights because, at the time the Representations were made, there was no longer a flight with the stated flight number and scheduled date and time as Qantas had already decided to cancel it.
51. Qantas admits that the Manage Booking Representations were false and misleading in respect of each of the Delayed Notification Conduct Flights because Qantas did not have reasonable grounds for making the representations as Qantas had already decided to cancel the flight.
52. Qantas admits that by making the Flight Unchanged Representations and the Manage Booking Representations it contravened sections 18(1), 29(1)(b) and 29(1)(g) of the ACL.

Nature and extent of the Delayed Notification Conduct

53. Qantas engaged in the Delayed Notification Conduct from 21 May 2021 until 26 August 2023 in respect of flights scheduled to depart between 1 May 2022 and 1 May 2024. During that period:
- a. 60,297 flights (57,274 domestic/trans-Tasman and 3,023 international) were affected by the Delayed Notification Conduct;
 - b. the Manage Booking Pages of up to 883,977 consumers were subject to the Delayed Notification Conduct (806,406 of those consumers held bookings on a domestic/trans-Tasman flight and 77,571 held bookings on an international flight). In respect of bookings that were ticketed, the total amount paid by consumers in relation to those tickets was \$170.9 million;¹³ and
 - c. on average, it took approximately 11 days for consumers who had purchased tickets on these flights to be notified that a cancellation decision had been made regarding their flight, and in some cases, up to 67 days after a cancellation decision had been made.

¹³ This figure includes bookings that were ticketed and paid for by: any form of cash; a combination of cash and points ("Points plus Pay"); and redeeming a flight credit. The figure does not include tickets paid for by redeeming points for a "classic reward" ticket, although does include any fees or taxes paid in cash for such tickets.

PART V QANTAS' OPERATING AND SCHEDULING SYSTEMS

Qantas' systems

54. Qantas' process for cancelling a flight is set out at paragraph 30 above. During the Relevant Period, Qantas' operating and scheduling systems did not always ensure that cancelled flights were promptly removed from sale, or that consumers were notified of the cancellation of their flight promptly (and at least within 2 days of a cancellation decision).

Knowledge of senior managers

55. Senior managers responsible for different aspects of Qantas' systems and operations knew:
- a. that flights the subject of a cancellation decision were not immediately removed from sale;
 - b. that some consumers could and did make bookings on flights after those flights had been the subject of a cancellation decision;
 - c. that consumers who had made bookings on flights that were the subject of a cancellation decision were not notified of that decision immediately; and
 - d. that the Manage Booking Pages for flights that were the subject of a cancellation decision were not updated to reflect that decision promptly,

although no single person knew all these matters.

56. As a result, Qantas was aware of the way in which its system operated in relation to the removal of cancelled flights from sale, and the notification of consumers regarding flight cancellations.

Changes to Qantas' systems

57. Following commencement of this proceeding, Qantas made changes to its systems so that it can now promptly remove cancelled flights from sale and notify existing ticketholders following cancellation of a flight.
58. After initially assigning personnel to manually 'stop-sell' flights that were the subject of a cancellation decision, in mid-December 2023 Qantas implemented a solution that effectively automates the manual closure process (**Automated Closure Solution**). The solution was able to be built and implemented in this period because (following commencement of this proceeding) it was joined into an on-going Qantas project to build and deploy an improved in-house revenue management solution which commenced in 2021. The Automated Closure Solution was not part of the original design for the improved in-house revenue management project.

59. The Automated Closure Solution involved new steps that have been inserted in the flight cancellation process. Depending on the volume of cancellation decisions, the new process usually takes between minutes and hours to complete (assuming no technical issues arise).
60. In relation to the Manage Booking functionality, as stated in paragraph 30(d) above, during the Relevant Period the Manage Booking Page was updated via an automated process which was triggered when cancellation communications were sent to customers, including with information regarding the re-accommodation options available. Following the commencement of this proceeding, Qantas took steps to facilitate the flight cancellation process for any cancellation decisions being completed (and therefore the Manage Booking Page updated) within 48 hours.
61. Qantas has provided training regarding the new processes to relevant Qantas employees and developed a Business Continuity Plan to be deployed if technical issues occur with the Automated Closure Solution and a reversion to manual processing is necessary.
62. Further, as part of an additional step linked to the Automated Closure Solution, Qantas has investigated whether it is possible to simultaneously retrieve each affected passenger booking and tag it with a “flight cancellation pending” marker that the Manage Booking application can recognise to inform customers accessing Manage Booking that a change to their booking is pending. Since early June, Qantas has deployed this solution for customers that booked through direct channels and anticipates it will be in a position to deploy the proposed solution for customers booked through indirect channels before the end of the year.
63. As set out in Part II above, Qantas is a substantial and very well-resourced company. Qantas could have introduced these changes earlier. Had these measures been introduced earlier, the contravening conduct would not have occurred.

PART VI AFFECTED CONSUMERS & HARMS CAUSED

64. Qantas’ contravening conduct affected a service that is critical to the Australian economy and to consumers. Air travel plays a crucial role in connecting communities, with aviation accounting for a significant proportion of travel undertaken by Australians annually. Due to Australia’s large landmass, dispersed population and relative geographical isolation, consumers rely heavily on aviation, and airlines.
65. As set out in paragraphs 39 and 53 above, Qantas’ contravening conduct affected a significant number of consumers over an extended period.

66. Consumers suffered harm as a result of Qantas' contravening conduct. Qantas' Continued Sale Conduct caused some consumers to make bookings on flights that had been cancelled, based on false and misleading information. Some of those consumers may have lost the opportunity to choose a different flight, including at a lower cost, either with Qantas or a different carrier. For example, some consumers may have paid a higher fare to fly at a particular chosen time, and may not have done so, or may have sought to travel at a different time or date or with an alternative airline, if they had been aware that a decision had been made to cancel the flight they were booking. Further, some consumers may have suffered loss as a result of making travel or other arrangements based upon expected flight schedules. For example, consumers may have paid for travel arrangements which were not flexible or refundable, or which became non-refundable in the period between the date on which the consumer booked the relevant flight and the date on which Qantas notified the consumer that the flight had been cancelled.
67. As a consequence of the Delayed Notification Conduct, consumers may have incurred greater costs in making alternate arrangements closer to their scheduled departure date, and may have had more limited alternative options available to them than if they had been promptly notified of the cancellation.
68. Qantas offered re-accommodation options to passengers on cancelled flights, in accordance with the process outlined at paragraphs 30 and 31. Many of those re-accommodation offers were for an alternative flight which was close to the departure time of the consumer's original flight. For some consumers, re-accommodation of this kind may have limited or ameliorated the harm suffered as a result of Qantas' contravening conduct. However, for other consumers, the offered re-accommodation option may have been inconvenient or unsuitable, for example because it involved travel by an indirect route and/or an arrival time inconsistent with the purpose of the travel. Further, the offer of re-accommodation options for some consumers did not address the harm associated with a consumer's loss of opportunity, described at paragraph 66 above.

BENEFITS

69. Qantas benefitted from engaging in the Continued Sale Conduct by:
- a. obtaining revenue from consumers who may have chosen a different or less expensive flight with Qantas had they been aware that their chosen flight had already been the subject of a cancellation decision;
 - b. retaining revenue from consumers who may have chosen to fly with a different carrier had they been aware that their chosen flight had already been the subject of a cancellation decision;

- c. retaining revenue from consumers who, having purchased a ticket from Qantas, were less likely to change carrier when they were ultimately notified their flight was cancelled; and
 - d. avoiding the costs associated with making the changes to its systems to avoid the Continued Sale Conduct occurring, including associated labour costs, that it has now made, at an earlier point in time.
70. Qantas benefitted from engaging in the Delayed Notification Conduct by:
- a. retaining revenue from consumers who were less likely to change carrier when they were ultimately notified their flight was cancelled; and
 - b. avoiding the costs associated with making the changes to its systems to avoid the Delayed Notification Conduct occurring, including associated labour costs, that it has now made, at an earlier point in time.
71. The value of the benefits described above cannot be determined.

PART VII COMPLIANCE PROCESSES & PRIOR CONDUCT

Compliance processes

72. Qantas carries millions of passengers each year. Qantas' business involves significant interactions with consumers on a day-to-day basis.
73. During the Relevant Period, Qantas relevantly had in place the following:
- a. a Code of Conduct and Ethics, which contained a brief section titled 'Competition and Consumer Law Compliance Policy'. The Competition and Consumer Law Compliance Policy required employees to:
 - i. comply with competition and consumer laws including the ACL and specified consequences for employees who were in breach of such laws, including disciplinary action and personal responsibility for payment of associated costs and fines;
 - ii. report suspected non-compliance to the legal team; and
 - iii. undertake mandatory competition and consumer law training if they were in contact with competitors, customers or suppliers (**Relevant Personnel**).
 - b. a Competition Law Compliance Roadmap which:
 - i. required Relevant Personnel to complete an online training course (**Online Course**) as soon as possible (and at the latest within three months of

commencement with Qantas) and then at least once every two years. The Online Course contained a section on consumer law; and

- ii. provided that face-to-face training sessions would be provided upon request from a manager or where the competition law team has identified a business segment with this particular need. It also provided that where such training sessions were organised, attendance by personnel within the relevant area was compulsory;
 - c. methods for reporting suspected, attempted or actual breaches including through a whistle-blower policy; and
 - d. a Competition Law Compliance intranet site, which relevantly contained a Quick Guide for advertising.
74. Qantas' compliance policies and training failed to ensure compliance by Qantas with the ACL and to prevent the contravening conduct from occurring, notwithstanding the knowledge of senior managers described in paragraphs 55 and 56.
75. As part of the Undertaking, Qantas has agreed to review and amend its Competition and Consumer Law Compliance Program (**Updated Compliance Program Requirements**), being amendments designed to minimise Qantas' risk of future breaches of the ACL, and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL.

Prior conduct

76. Qantas has not previously been found by a court to have engaged in a breach of the ACL.
77. On 14 December 2018, the ACCC accepted an undertaking for the purposes of s 87B of the CCA from Qantas in relation to misleading or deceptive conduct and the making of false or misleading representations concerning the nature and potential application of the consumer guarantees to flights sold by Qantas, including about the remedies that consumers may be entitled to in the event of flight delays or cancellations. Pursuant to that undertaking, Qantas was required to take various steps to review and update its compliance program and policy, and make updates to its website.
78. On 8 June 2002 (varied on 20 November 2004), the ACCC accepted an undertaking for the purposes of s 87B of the CCA from Qantas to address the ACCC's concerns regarding the manner in which airlines advertised airfares in relation to the disclosure of charges, levies and taxes, as part of an industry-wide change intended to minimise any possible risk of confusion to consumers. Pursuant to that undertaking, Qantas is required to

advertise airfares that are inclusive of all amounts payable by a consumer in respect of the fare.

79. Qantas' subsidiary, Jetstar, has been found to have contravened the ACL on two occasions.
80. In 2019, the Federal Court ordered Jetstar to pay a penalty of \$1.95 million in respect of contraventions of ss 18 and 29(1)(m) of the ACL between 10 April 2017 and 13 March 2018: see *Australian Competition and Consumer Commission v Jetstar Airways Pty Ltd* [2019] FCA 797. The conduct concerned false or misleading representations on Jetstar's website regarding consumers' rights under the consumer guarantees in the ACL. Jetstar admitted the contraventions.
81. In 2015, the Federal Court found that Jetstar had made false or misleading representations on its website on 14 May 2013 and its mobile site on 21 March 2014 in contravention of ss 18(1), 29(1)(i) and 29(1)(m) of the ACL: *Australian Competition and Consumer Commission v Jetstar Airways Pty Ltd* [2015] FCA 1263. The representations concerned the price Jetstar would charge for particular flights where those representations did not disclose the existence of certain booking and service fees which applied. Jetstar was ordered to pay a penalty of \$545,000: *Australian Competition and Consumer Commission v Jetstar Airways Pty Limited (No 2)* [2017] FCA 205.

PART VIII COOPERATION, REMEDIATION AND FUTURE COMMITMENTS

82. Qantas has cooperated with the ACCC to resolve this proceeding. By resolving this proceeding early, Qantas has saved the Court's time and resources including by obviating the need for contested hearings on liability and penalty.
83. Qantas has also offered to the ACCC (and the ACCC has accepted) the Undertaking set out at Annexure A.
84. Pursuant to the Undertaking Qantas will:
 - a. provide remediation up to the total amount of approximately \$20 million to passengers who made a booking, or were re-accommodated onto, flights the subject of the Continued Sale Conduct;
 - b. where it decides to cancel a flight on or after the commencement date of the Undertaking:
 - i. send a communication to all existing ticketholders informing them of the cancellation and update the Manage Booking Page of all existing ticketholders

as soon as practicable and in any case within 48 hours of the cancellation decision; and

- ii. cease offering tickets for sale for that flight as soon as practicable and in any case within 24 hours of the cancellation decision;
- c. procure all relevant subsidiaries of Qantas based, or operating, in Australia (including Jetstar) to comply with the requirements outlined in paragraph 84(b) above; and
- d. review and amend its compliance program to minimise the risk of future breaches of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL.