



STATEMENT TO AUSTRALIAN SECURITIES EXCHANGE – December 14 , 2016

## FLIGHT CENTRE UPDATES MARKET ON COMPETITION LAW TEST CASE

THE Flight Centre Travel Group (FLT) today welcomed the end of the long-running ACCC competition law test case that the ACCC initiated against it.

The case concluded this morning, with the High Court of Australia overturning the unanimous Full Federal Court judgement that was delivered in FLT's favour in July 2015.

The High Court judgement was 4-1 in the ACCC's favour, with Chief Justice Robert French disagreeing with the majority decision to allow the ACCC's appeal. The High Court's majority decision establishes new law on the application of competition law to agents.

FLT and the ACCC will now return to the Full Federal Court next year for an appeal hearing about whether the original \$11 million penalty was excessive or inadequate.

The High Court did not award the ACCC its costs for the Full Federal Court or High Court hearings because the ACCC's primary case was rejected and the ACCC did not argue its secondary case in the Full Federal Court.

FLT managing director Graham Turner said the company was pleased that this long-running saga had been resolved and respected the Court's decision, but was disappointed that it reached this point.

"Flight Centre has sought to deliver cheaper airfares to the travelling public for more than 30 years and is not in the business of attempting to make airfares more expensive," he said.

"As an agent that provides considerable advice and help to the travelling public and extensive marketing for airlines, FLT asks for appropriate commissions from suppliers and also reasonable access to all deals that they release to the market.

"This is a logical and natural business request for an agent to make to ensure the customers it serves on behalf of airlines are not disadvantaged."

FLT will continue to review today's judgement, but does not currently believe there are any further implications for the business, given that it voluntarily and proactively adjusted its behaviour before the ACCC initiated legal action against it.

Mr Turner said FLT had co-operated fully with the ACCC before it pursued this test case and offered to meet with it to discuss any concerns that it may have had.

He said the ACCC rejected these offers and elected to pursue a long and expensive legal case that challenged new and complex areas of competition law.

"While the ACCC is well within its rights to test the law, we feel that this matter could have been resolved in a more amicable, timely and less expensive way," he said.

"The ACCC's willingness to pursue this case without discussion or negotiation is seemingly at odds with the approach it has taken in its recent dealings with the world's largest online travel agencies (OTAs).

"This is evidenced by the recent deal it agreed with the OTAs, specifically Expedia and Booking.com, in relation to access to hotel deals in Australia.

"This agreement allows these OTAs to continue to stop hotels from offering cheaper fares to the public via their websites than they were making available to those OTAs, but we expect the OTA agreement may now have to be revisited in light of the decision."

### **Background to the case**

In the initial case, which was heard in the Federal Court in 2012, the ACCC alleged that FLT had engaged in conduct which amounted to attempts to control prices on six occasions between 2005 and 2009.

While FLT rejected these allegations and presented evidence that its objective was to gain access to all fares that were available in the market, the Federal Court awarded judgement in the ACCC's favour and subsequently imposed financial penalties of \$11million on the company (paid during 2013/14).

FLT successfully appealed that judgement, with the Full Court of the Federal Court ruling in July 2015 that the primary judge in the initial case erred, with the result that the ACCC was required to refund the \$11million in financial penalties to the company. The ACCC then sought and was granted leave to appeal to the High Court.

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