

Initial Assessment

Complaint submitted by Mr Jason Vecchio against
Flight Network / Gotogate Pty Ltd

11 September 2024

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Executive summary

1. On 30 October 2023, the Australian National Contact Point for Responsible Business Conduct (AusNCP) received a complaint from an individual consumer, Mr Jason Vecchio (**notifier**), against Flight Network / Gotogate Pty Ltd (**Flight Network**, or the **enterprise**), under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines).¹
2. The complaint arose in relation to requests for a refund of tickets for flights that had been cancelled. The notifier had purchased the tickets through the enterprise with a third-party airline.
3. The notifier alleged the enterprise failed to adequately respond to requests for a refund. The tickets were purchased in February 2023 for flights in July 2023. Several attempts were made by the notifier to request a refund. While the enterprise acknowledged the request, as at the date of the complaint on 30 October 2023, the notifier had yet to receive a refund or any confirmation from the enterprise that he would receive a refund and if so, when.
4. On 5 December 2023, the AusNCP notified the enterprise of the complaint and invited a response, which was received on 15 December 2023.
5. On 24 December 2023, the enterprise processed a refund.
6. The notifier advised the AusNCP that while receiving the refund was important, he wished to pursue the complaint as to the manner in which the enterprise had dealt with his grievance, which he considered unduly difficult, lengthy and opaque.
7. The Independent Examiner considered the six admissibility criteria of the Initial Assessment process and engaged with the parties.²
8. The Independent Examiner considers:
 - 8.1. the notifier has a legitimate interest in the matter and the complaint relates to the operations of a multinational enterprise operating in Australia through an Australian registered company

¹ OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en> (*OECD Guidelines (2023)*). All references in this report to page numbers of the OECD Guidelines are to the official English copy.

² AusNCP Complaint Procedures (2022) (*AusNCP 2022 Procedures*), available at <https://ausncp.gov.au/sites/default/files/2022-07/AusNCP-complaint-procedures.pdf>, (*AusNCP Procedures*), [4.11]. This Initial Assessment was undertaken by the Independent Examiner prior to the release of revised procedures on 9 April 2024, available at <https://ausncp.gov.au/sites/default/files/2024-04/ausncp-complaint-procedures.pdf>. Accordingly, the AusNCP 2022 Procedures are referred to throughout.

- 8.2. the complaint raises issues as to whether the enterprise's dispute resolution and redress mechanism is compliant with the expectations contained in the Consumer Interest chapter of the OECD Guidelines, which is a material and substantiated issue
 - 8.3. there is a link between the enterprise's activities and the issue raised in the complaint
 - 8.4. the protection of consumers in online marketplaces is a significant issue both in Australia and throughout the world, including in OECD and adhering countries
 - 8.5. the enterprise has significant global reach and capacity to impact millions of consumers
 - 8.6. in all the circumstances, consideration of the complaint would contribute to greater understanding of, and compliance with, the Consumer Interests chapter of the OECD Guidelines (Chapter VIII).
9. The complaint has therefore been accepted and an offer of AusNCP 'good offices' (dispute resolution services) extended to the parties.
 10. The AusNCP notes that this outcome is not a determination on the merits of the claims presented, nor is it an assessment of whether the enterprise's actions are consistent with the OECD Guidelines.
 11. This statement is available on the AusNCP website at www.ausncp.gov.au.

Shanta Martin

Independent Examiner

Australian National Contact Point for Responsible Business Conduct

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

Initial assessment

Parties

12. The notifier is an individual consumer, based in Australia.
13. The enterprise is a seller of airline tickets, registered in Australia.
14. Documents provided by the notifier in support of his complaint contained emails from the enterprise with a banner at the bottom of each email identifying the enterprise as 'Flight Network / Gotogate Pty Ltd, 7-11, 18 Coldstream Street, Yamba, NSW 2464, Australia' and contained a NSW telephone number.³ Gotogate Pty Ltd is registered in Australia at the Yamba, NSW address, with Australian Company Number (ACN) 616 342 717.
15. The notifier booked his flights through a website operated by the enterprise with an Australian domain name, flightnetwork.com.au. The enterprise also operates another website with an Australian locator, au.gotogate.com. Both sites contain the same 'contact us' information, identifying the enterprise's registered office in Yamba NSW, the NSW telephone number and a generic customer service email.
16. The enterprise is part of the Etraveli Group, which states it is 'the largest technology company selling flights in Europe'.⁴ The Etraveli Group website identifies its headquarters as being in Sweden.⁵ The official Swedish Companies Registration Office identifies that both Etraveli Group AB and Etraveli Group Holding AB are based in Uppsala, Sweden.⁶ Communications received by the AusNCP have been from Customer Relations personnel of the Etraveli Group, based in Sweden.
17. The complaint has a clear connection to Australia by reason of:
 - 17.1. the location and nationality of the notifier
 - 17.2. the enterprise's operations in Australia
 - 17.3. the formation of the contract in Australia

³ For completeness, it is noted that early in his correspondence with the enterprise the notifier at times also received emails from the enterprise that used a United Kingdom email address.

⁴ <https://www.flightnetwork.com.au/rf/about-us>, accessed 15 March 2024.

⁵ The Etraveli Group website variously identifies its headquarters as in Uppsala (<https://www.etraveligroup.com/careers/who-we-are/>) and Stockholm (<https://www.etraveligroup.com/about-etraveli-group/>), accessed 27 March 2024.

⁶ Bolagsverket, <https://foretagsinfo.bolagsverket.se/sok-foretagsinformation-web/foretag?sokord=etraveli>, accessed 27 March 2024.

17.4. the fact that the parties to the contract are the notifier and the Australian-registered enterprise.

18. Accordingly, the Independent Examiner considers the AusNCP is the appropriate NCP to lead the complaint. However, in light of the enterprise's connection with Sweden, the AusNCP has coordinated with the Swedish NCP and will continue to keep the Swedish NCP informed.⁷

Complaint

19. The following sets out the complaint received by the AusNCP as alleged by the notifier. Many of the assertions are disputed by the enterprise, whose position is set out further below. The initial assessment does not determine the merits of the claim, but considers whether the complaint is to be accepted into the AusNCP process against the criteria detailed at paragraph 55.

20. The notifier purchased tickets for flights through the enterprise in February 2023. The tickets were for two connecting flights in Indonesia. The flights were scheduled for July 2023.

21. Between purchasing the tickets and the date of travel, the notifier alleged that there were several changes made to the flights and the enterprise was 'impossible to deal with regarding these changes and did not make promised changes to my itinerary after several phone conversations and emails'.

22. The notifier alleged that after 'repeated failed attempts at finding an alternative with [Flight Network] over the course of several days', he had to book a flight with a different company. He claimed this caused him to incur additional costs, time and inconvenience as the flights were more expensive and he had to apply for an additional visa. The time expended in doing so was time taken away from his holiday.

23. The notifier stated that the enterprise offered the option of rebooking or a refund and on 22 July 2023, he requested a refund.

24. The notifier alleged that he followed up with the enterprise by way of approximately 10 emails and 10 phone calls, but received little to no substantive response and by 30 October 2023, was yet to receive a refund.

25. The notifier noted that the enterprise communicated in its email to the notifier in July 2023 that the enterprise's average turnaround time for refunds after receiving funds from an airline was 6 days, but that the entire process can take up to 10 to 15 business days, from the time a customer confirms their cancellation until the enterprise processes the payout. The notifier alleged this representation was misleading as after 68 business days, he was yet to receive a refund.

⁷ The AusNCP Secretariat initially believed Flight Network's head office was in Canada and therefore informed the Canadian NCP. The AusNCP has since clarified this position with the Canadian NCP.

Enterprise response

26. On 5 December 2023, the AusNCP notified the enterprise of the complaint and requested a response.
27. On 15 December 2023, the enterprise submitted information to the AusNCP in response to the complaint.
28. The enterprise denied that it did not seek a change to the itinerary as requested by the notifier. The enterprise stated that after a flight was cancelled by the airline, the enterprise sought a rescheduled flight as requested by the notifier, but that the rescheduled flight was also cancelled by the airline.
29. The enterprise stated that upon receiving the notifier's request for a refund, the enterprise placed a refund request into its system and sent the notifier a cancellation confirmation email which stated 'if the request is granted by the airline, we will then process your refund'.
30. The enterprise's position is that, in respect of the refund of monies, it acts exclusively as an intermediary and therefore need only act if and when an airline provides a refund. The enterprise stated that in respect of other matters, it acts independently of the airline, for example in issuing tickets, correcting passenger details or by responding to general inquiries from customers. The enterprise referred to its terms and conditions, which were confirmed as read by the notifier prior to his purchase. These terms specify that refunds are paid from the applicable airline and the enterprise as an intermediary will only process the refund after it is received from the airline.
31. The enterprise response included screenshots to demonstrate that a refund request had been submitted to the airline on 27 July 2023, but the status remained 'pending supervision' as at 15 December 2023. The enterprise stated that after contact from the AusNCP it had contacted the airline to request them to promptly review the application. The enterprise also stated that it was 'closely monitoring' the claim and awaiting a response from the airline and had sent another reminder to the airline.
32. The response initially made no reference to the notifier's allegation that he had sought to contact the enterprise approximately 20 times without resolution between 27 July and 30 October 2023. On 7 June 2024, the parties were provided a draft of this initial assessment. Upon receipt of the draft, the enterprise subsequently stated that it accepted that the notifier had sent about 10 emails and that the enterprise's records showed the notifier had called on 5 occasions. However, the enterprise considered that it 'lack[s] the capability to resolve rebooking and/or refund requests without the corresponding responsive action by the airline. If the customer had opted to make a reservation directly with the airline, which he was free to do, he would have been justified in expecting an immediate resolution to his support errand. The customer chose, however, to make his reservation through an intermediary. An intermediary requires the cooperation of both parties to mediate a resolution.'

33. The enterprise denied the allegation that its communications about refunds were misleading. The enterprise stated 'it was clearly and unambiguously communicated to the customer that any refund to be paid by us must be preceded by a payment from the airline' and noted that this was also reflected in its terms and conditions.

Outcomes sought

34. The primary outcome initially sought in the complaint was a refund of the ticket.
35. As referred to at paragraph 5, a refund was processed to the notifier on 24 December 2023.
36. The notifier informed the Independent Examiner that while he was pleased that the initiation of the AusNCP complaint had prompted a refund, he wished to pursue issues regarding the enterprise's complaints handling mechanism. The notifier reported to the Independent Examiner that these issues allegedly included the following:
- 36.1. unclear timelines for obtaining a refund
 - 36.2. when a consumer complains to the enterprise, the enterprise says it is escalating the matter, but does not actually act
 - 36.3. the enterprise used a significant amount of the notifier's time and took several months to facilitate a refund
 - 36.4. the notifier contacted the enterprise many times via email and telephone, but the enterprise only responded once or twice, and only by email
 - 36.5. the enterprise does not proactively update the customer, but relies on an online system ('MyPortal') which the customer has to log in to access
 - 36.6. the enterprise's contact mechanism is a No Reply email address and there is no continuity of discussions visible to the consumer. This results in the consumer having to repeatedly explain the issue to a new enterprise representative each time. The notifier alleged the enterprise had deliberately made the complaint mechanism difficult to interact with.
37. The enterprise strongly disputed each of the issues alleged by the notifier. The enterprise stated that its timelines are as clear as they can be while acting as an intermediary and that it does proactively update customers of any significant changes to their refund case outside of the online 'MyPortal', but not if there is no change in the status of the refund. It denied the use of No Reply email addresses aside from automated emails, and it alleged that customers can contact the enterprise via telephone, chat, email or an online complaint form. The enterprise stated that the entire order history is available to customer support agents. The enterprise also commented that the relevant airline, through its inaction, had used a significant amount of the customer's and the enterprise's time alike. The enterprise strenuously denied it had deliberately made the complaint mechanism difficult to interact with.

38. The notifier identified the following objectives in pursuing his complaint:

38.1. if the enterprise is going to continue to operate in Australia, he would hope for a better, more proactive and streamlined dispute resolution and redress mechanism, including greater transparency and comprehensive feedback as part of this mechanism

38.2. the introduction of a timeline where, if a customer cannot get a timely refund from the underlying airline, the enterprise provides the refund directly or at least a credit. The notifier observed there should be some sort of guarantee that the customer will receive something in a reasonable timeframe.

38.3. Where there is a failure by the enterprise to abide by reasonable complaints handling practices, there should be potential for a monetary remedy in recognition of the frustration and time spent by the consumer in pursuing their claim. The notifier considered that such remedy should not be constituted by a credit that could only be utilised on the enterprise's platform.

39. The enterprise disputed the need for, and/or the feasibility of, the objectives identified by the notifier.

Relevant OECD Guidelines

40. The OECD Guidelines were refreshed between June 2022 and June 2023, with the updated version released on 8 June 2023.⁸ As part of this process, the chapter on Consumer Interests (Chapter VIII) was revised.

41. The complaint relates to conduct from July 2023 onwards. While that conduct may be assessed against the refreshed OECD Guidelines, the Independent Examiner recognises that the refreshed version may not have been broadly known by July 2023.

42. The Consumer Interests chapter of the OECD Guidelines includes the following text (new text inserted in June 2023 is underlined and text removed from the 2011 version is struck through):⁹

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

...

2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information ... about available dispute resolution and redress options. The information should be presented in a comprehensible and easily accessible manner using plain language, while also regarding the needs of

⁸ More information on the process is available at <https://mneguidelines.oecd.org/targeted-update-of-the-oecd-guidelines-for-multinational-enterprises.htm>.

⁹ OECD Guidelines (2023): refer n 1. The 2011 version is available at <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

accessibility for consumers with disabilities. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.

3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.

4. Not make representations or omissions, nor engage in any other practices that are deceptive, misleading, fraudulent or unfair or that otherwise subvert consumer choice in ways that harm consumers or competition.

...

8. Take into consideration, in applying the above principles, i) the needs of vulnerable and disadvantaged consumers, especially those who may be experiencing vulnerability or disadvantage, and ii) the specific challenges that e-commerce may pose for consumers.

43. The OECD Guidelines' Commentary on Chapter VIII: Consumer Interests identifies that the chapter draws on other relevant standards in the area of consumer protection.¹⁰ Specifically, paragraph 3 of Chapter VIII reflects the language used in the OECD Council's Recommendation on Consumer Dispute Resolution and Redress, adopted in 2007 (*OECD Consumer Redress Recommendation*).¹¹ It states that consumer complaints mechanisms should be **'fair, easy to use, timely and effective ... without unnecessary cost or burden'** (emphasis added).

44. The Commentary on Chapter VIII also refers to the United Nations (UN) Guidelines on Consumer Policy, updated in 2015, which apply to business-to-consumer transactions including in the provision of services.¹² This document provides guidance to Member States in consumer protection. It similarly identifies that principles for good business practice include businesses making available:

... complaints-handling mechanisms that provide consumers with **expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden**.¹³

(Emphasis added)

45. The Independent Examiner also considers Chapter II (General Policies) paragraphs 11 to 14 of relevance to the complaint.¹⁴ These paragraphs reflect the expectation that enterprises should:

45.1. carry out risk-based due diligence

¹⁰ OECD Guidelines (2023), Commentary on Chapter VIII: Consumer Interests, para 93: refer n 1, p 44.

¹¹ OECD, Recommendation of the Council on Consumer Dispute Resolution and Redress, OECD/LEGAL/0356, (*OECD Consumer Redress Recommendation*) available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0356>. See Recommendation (IV)(2)(a).

¹² As updated and adopted by Resolution 70/186 of the General Assembly on 22 December 2015 (*UN Consumer Policy Guidelines*), available at https://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf.

¹³ *UN Consumer Policy Guidelines*, (11)(f).

¹⁴ OECD Guidelines (2023), Chapter II General Policies, paragraphs 11 to 14: refer n 1, pp 14-15.

- 45.2. avoid causing or contributing to adverse impacts by their activities on matters covered by the Guidelines (which as noted above, include consumer interests)
 - 45.3. address impacts caused by their own activities (which in 2023 was clarified to include through providing for or cooperating in remediation)
 - 45.4. seek to prevent or mitigate adverse impacts directly linked to their services by a business relationship, and
 - 45.5. encourage entities with which the enterprise has a business relationship to apply responsible business conduct compatible with the OECD Guidelines.
46. The Independent Examiner notes that the update to the OECD Guidelines produced by the 2023 revision did not change the substance of the above referenced paragraphs. In particular no changes were made to paragraph 3 of the Consumer Interests chapter, which contains the primary matter of relevance to the complaint. Paragraph 3 of the Consumer Interests chapter expresses the expectation that enterprises will have in place dispute resolution and redress mechanisms that meet certain criteria, namely: fair, easy to use, timely and effective, and accessible without unnecessary cost or burden.
47. The 2023 revision of the OECD Guidelines emphasised that information regarding such mechanisms should be made available to consumers in a manner that facilitates access by vulnerable or disadvantaged individuals. The Independent Examiner considers this updated emphasis consistent with a dispute resolution and redress mechanism that is fair and easy to use. Accordingly, the relevant changes to the OECD Guidelines in 2023 as outlined at paragraph [37] above did not increase the expectations regarding such mechanisms, but rather clarified those outlined in the 2011 version of the OECD Guidelines.
48. As there is little substantive difference in the relevant key paragraphs of the 2011 and 2023 versions of the OECD Guidelines, and in circumstances where the conduct complained of took place after the introduction of the 2023 version of the OECD Guidelines, the Independent Examiner considers it appropriate to assess the complaint with reference to the 2023 version of the OECD Guidelines.

Initial assessment process

49. On 31 October 2023, Independent Examiner Shanta Martin was allocated the complaint.
50. Following receipt of the enterprise's response as outlined in paragraph 25 above, the Independent Examiner requested from the enterprise further details regarding:
- 50.1. the dates on which the enterprise had followed up with the airline on the refund request
 - 50.2. copies of any correspondence in which the enterprise updated the notifier on steps taken, and

50.3. information about any processes the enterprise has in place to ensure customers have access to an easy to use, timely and effective mechanism to resolve complaints. The AusNCP requested a response by 19 January 2024.

51. On 13 January 2024, the enterprise advised the AusNCP that:

51.1. after issuing a refund application in July 2023 it did not send updates to the customer but the customer could log into the enterprise's website to see the status of the refund. The enterprise's logs showed the customer had contacted the enterprise on 21 August, 23 September and 8 October 2023 and was informed the airline had yet to handle the application for refund

51.2. the enterprise contacted the airline on 5 December 2023. The airline could not locate the refund application and requested the enterprise send another application. The enterprise provided another application on 19 December 2023 and contacted the airline to request the airline expedite the refund. The airline refunded the ticket and on 24 December 2023, the enterprise processed the refund to the notifier, excluding a non-refundable credit card fee.

51.3. The enterprise's response to the request for information about its dispute resolution and redress mechanisms and processes was that it 'depends on the type of complaint'. The initial explanation to the AusNCP was unclear. Upon request for clarification, the enterprise stated that it has two departments:

51.3.1. one is the 'Customer Service' department, which deals with 'regular complaints for issues such as refund delays'. When asked to clarify, the enterprise stated that the Customer Service department assists customers with general queries regarding their reservations, and also generic complaints, such as issues or queries while making a reservation on the website. The Customer Service department do not make decisions as to whether or not a customer is entitled to monetary compensation from the enterprise

51.3.2. the other team is the enterprise's 'Customer Relations' department, based in Sweden. It deals with claims from customers asking to be monetarily compensated due to errors they believe the enterprise has made, whether technical, contractual, or human. The Customer Relations department has an average 30-day handling time. The enterprise stated that if a customer asks to send in a claim, they are provided with a link to fill out information. Once sent, the customer will receive a confirmation stating an average handling time of 30 days.

52. Given the enterprise's response was that the type of complaint affected the dispute resolution mechanisms and processes it utilised, the Independent Examiner requested that the enterprise explain how a customer would be aware of these differences. The enterprise did not initially respond to this question. On 7 June 2024, the parties were provided with a draft of the initial assessment. On 23 July 2024, the enterprise provided comments on the draft. Those comments

included that the internal processes it uses for assigning complaints had ‘nothing to do with how complaints are received and how the process is presented to the customer’. The enterprise clarified that its claims and complaints organisation is divided into four sub-teams, and that its view was that ‘it would not benefit the customers having to themselves determine which team/subdepartment to address their complaint to’.

53. The Independent Examiner had also invited the enterprise to identify any procedures that govern the complaint mechanism(s), how a customer would be aware of these procedures, and what (if any) process is available to customers to escalate their complaints within the enterprise. The enterprise’s response on 23 July 2024 questioned why a customer should be aware of these matters and queried the position that would be taken by its competitors.
54. The Independent Examiner considered the material provided by the parties in accordance with the *AusNCP Complaint Procedures (AusNCP 2022 Procedures)*,¹⁵ and the principles set out in the OECD Procedural Guidance,¹⁶ to determine whether the complaint was raised in good faith and is relevant to the implementation of the Guidelines.

Assessment criteria

55. As noted in the *AusNCP 2022 Procedures*,¹⁷ NCPs conducting Initial Assessments take into account six admissibility criteria:
1. the identity of the party concerned and its interest in the matter
 2. whether the issue was material and substantiated
 3. whether there seemed to be a link between the enterprise’s activities and the issue raised in the complaint
 4. the relevance of applicable laws and procedures, including court rulings
 5. how similar issues have been, or are being, treated in other domestic or international proceedings, and
 6. whether consideration of the complaint would contribute to the purposes and effectiveness of the Guidelines.
56. These admissibility criteria are sometimes ‘interrelated and necessitate examination as a whole’.¹⁸ The initial assessment should be undertaken in a manner which promotes

¹⁵ *AusNCP 2022 Procedures*, paragraph 4.11. Refer n 2 regarding application of the *AusNCP Procedures* to this Initial Assessment.

¹⁶ As referred to in the *AusNCP 2022 Procedures*, with reference to the 2011 version of the OECD Guidelines. It is noted that the principles and criteria in the 2011 OECD Guidelines are very similar in the refreshed OECD Guidelines (2023), Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct: refer n 1, pp 55 ff.

¹⁷ *AusNCP 2022 Procedures*, paragraph 4.11.

¹⁸ OECD (2019), *Guide for National Contact Points on the Initial Assessment of Specific Instances, OECD Guidelines for Multinational Enterprises*, available at <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>

accessibility, predictability, transparency, impartiality, and compatibility with the OECD Guidelines.¹⁹

Criterion 1: Parties' identities and interests

57. The complaint is brought by a consumer allegedly adversely affected by the enterprise's consumer dispute resolution and redress mechanism.
58. The enterprise offered and continues to offer services in Australia. It is part of a group that offers flight ticket sales worldwide. It is clearly a multinational enterprise operating in Australia. There is no doubt that the OECD Guidelines apply to the enterprise and that a complaint may be brought to the AusNCP in respect of it.
59. The Independent Examiner considers that the notifier has a legitimate interest in the issues raised in the complaint.

Criterion 2: Is the issue material and substantiated?

60. The AusNCP interprets 'material and substantiated' to mean that the issues are plausible and related to the application of the OECD Guidelines, and that there is a plausible link between the enterprise's activities and the issues raised.²⁰
61. The issues raised by the complaint relate to whether or not the dispute resolution and redress mechanism of the enterprise meets the criteria set out in the OECD Guidelines. There is, accordingly, a plausible link between the enterprise's activities and the issues raised and the application of the OECD Guidelines.
62. For completeness, the Independent Examiner notes that a complaint may be 'material and substantiated' despite not raising issues of high monetary value.
63. The Independent Examiner considers it relevant that the enterprise engages with a very large number of consumers. This Initial Assessment does not determine whether the experience of the notifier is also the experience of other consumers, but notes that the notifier alleges commonality of his experience and that of other consumers.
64. The Independent Examiner notes that the notifier also raised an issue as to whether the enterprise's reference to the timeframes in which refunds are usually processed constituted misleading information. The email to which the notifier referred stated:

Our current average handling time for refunds after receiving funds from the airline is 6 days. We promptly submit claims to the airline(s) upon receiving your request. While most airlines

¹⁹ AusNCP 2022 Procedures, paragraph 2.2.

²⁰ AusNCP 2022 Procedures, paragraph 4.12. Note that the *AusNCP Complaint Procedures (2024)*, continue to use the same approach: see para 31.

process refunds in under 5 business days, the entire process can take 10-15 business days from the time you confirm cancellation until we process the payout.

65. The Independent Examiner considers it appropriate to consider in good offices whether such a statement may give rise to an expectation that the enterprise would take further steps in the event these timeframes were significantly exceeded as part of operating a dispute resolution and redress mechanism in line with the OECD Guidelines. These are matters appropriately considered in the context of the adequacy of the enterprise's dispute resolution and redress mechanism.
66. After consideration of both the complaint and the enterprise's response, the Independent Examiner considers the issues raised are material and substantiated.

Criterion 3: Link between the enterprise's activities and the issue

67. The complaint is about the enterprise's own conduct in addressing a grievance by a consumer regarding the enterprise's services.
68. While the complaint arises in the context of the cancellation of a service (a flight) that was to be provided by a third party, the complaint is not about the failure to provide that service. Nor is the complaint about the failure of the third-party airline to refund the enterprise. The complaint is about the alleged failure of the enterprise to adequately deal with a dispute raised by a consumer about the enterprise's conduct.
69. Whether or not the OECD Guidelines would expect the enterprise to do more when a third party business fails to deliver its service is a matter that would be an appropriate matter for good offices or examination. It is unnecessary to resolve that matter in order to assess criterion 3.
70. The Independent Examiner considers that there is a link between the activities of the enterprise and the issues raised. In so doing, no determination has been made as to whether the OECD Guidelines have been complied with by the enterprise.

Criterion 4: Applicable law and procedures

71. Although not presently required by Australian law, there is no basis for considering that current Australian law prevents or prohibits an enterprise having a dispute resolution mechanism that meets the elements set out in paragraph 3 of the Consumer Interests chapter of the OECD Guidelines. The applicable law therefore does not limit the AusNCP's ability to contribute to the resolution of this issue.
72. Further, the OECD Guidelines 'extend beyond the law in many cases', and 'enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law'.²¹

²¹ OECD Guidelines (2023), Chapter I: Concepts and Principles, paragraph 2: refer n 1 p 12.

73. The Independent Examiner also observed that there is a multi-year and ongoing inquiry in Australia into consumer protections in the context of digital platforms including electronic marketplace services. This inquiry is being conducted by the Federal regulatory body tasked with protecting consumer interests, the Australian Consumer and Competition Commission.²² The Independent Examiner is of the view that consideration of the extent to which Australian consumer law and policy reflects the expectations set out in the *OECD Consumer Redress Recommendation* and the *UN Consumer Policy Guidelines*, may assist in the implementation of the OECD Guidelines.
74. Accordingly, the issue of whether the enterprise has dispute resolution and redress mechanisms that are compliant with the OECD Guidelines is a matter that would benefit from attention in the context of good offices.

Criterion 5: Treatment of similar issues in domestic or international proceedings

75. Neither party to the complaint identified any parallel proceedings past or present that are considering, or will consider, the adequacy of the enterprise's dispute resolution and redress mechanisms as regards the specific instance or more generally.
76. It is noted that the existence of such proceedings would not necessarily preclude the AusNCP determining that the complaint merits further consideration. The Commentary on the Procedural Guidance provides that, '[w]hen assessing the significance for the specific instance procedure of the other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned'.²³
77. Nevertheless, identification of similar issues that have been or are being considered in other domestic or international proceedings assists in ensuring relevant comparative experiences are known. This promotes consistency, avoids duplication, and prevents prejudicing parties who may be engaged in other proceedings.

Criterion 6: The purposes and effectiveness of the OECD Guidelines

78. The OECD Guidelines recognise that consumer satisfaction and related interests constitute a fundamental basis for the successful operation of enterprises.²⁴
79. The common aim of the governments adhering to the OECD Guidelines is 'to encourage the positive contributions that multinational enterprises can make to economic, environmental and

²² Australian Consumer and Competition Commission, Digital Platform Services Inquiry 2020-25, <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25>.

²³ OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (2011), paragraph 26.

²⁴ OECD Guidelines (2023) Commentary on Chapter VIII: Consumer Interests, paragraph 94: refer n 1, p 44.

social progress and to minimise the difficulties to which their various operations may give rise'.²⁵ Adhering Governments wish to encourage the widest possible observance of the Guidelines.²⁶

80. If acceptance of the complaint and offering of good offices can assist to achieve the above-stated aims and contribute to the effectiveness of the Guidelines, it ought to be offered.
81. Adherents to the OECD Guidelines, including Australia, declared that the effectiveness of the Guidelines is enhanced by NCPs that respond to enquiries and 'contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances'.²⁷ Thus, a relevant consideration is whether there is an opportunity to positively contribute to a resolution of issues regarding implementation of the OECD Guidelines.
82. As noted above, consumer protection in the context of online marketplaces is a significant and emerging issue in Australia, and internationally.
83. Considering the expectations of enterprises that provide dispute resolution and redress mechanisms compliant with the OECD Guidelines is therefore likely to assist in providing clarification in this area, which may advance the purposes and effectiveness of the OECD Guidelines.
84. Further, it is noted that the enterprise is part of a multinational group with very broad potential to impact consumers. The enterprise states that Etraveli Group 'operate in 75 countries worldwide and serve over 30 million travellers annually'.²⁸
85. The Independent Examiner considers that examination of these matters is therefore relevant to contributing to the purposes and effectiveness of the OECD Guidelines.

Conclusion

86. Consistent with the AusNCP 2022 Procedures and the principles set out in the OECD Guidelines' Procedural Guidance, the AusNCP considered the complaint and reviewed the material provided by the parties.
87. Having considered the six admissibility criteria of the Initial Assessment process, the AusNCP considers the complaint merits further consideration and would be appropriate for good offices within the OECD Guidelines to help the parties involved to resolve the issues.

²⁵ OECD Guidelines (2011), Preface, paragraph 9. See similarly, OECD Guidelines (2023), Preface, paragraph 1: refer n1 p 10.

²⁶ OECD Guidelines (2023), Chapter I, paragraph 6: refer n1 p 12.

²⁷ OECD, Decision of the Council on the OECD Guidelines for Multinational Enterprises (as amended 2023), available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0307> Chapter I paragraph 1.

²⁸ <https://www.flightnetwork.com.au/rf/about-us>, accessed 15 March 2024.

88. Acceptance of the complaint and the offering of good offices is not an assessment of whether the enterprise's actions are consistent with the OECD Guidelines.

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Australian National Contact Point for Responsible Business Conduct

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

Annexes

Annex A: Publications

OECD, [An individual & a Canadian-based enterprise active in the transportation sector](#), OECD Database of specific instances, n.d., accessed 9 April 2024²⁹

²⁹ At the time of registering the specific instance with the OECD, the AusNCP Secretariat believed Flight Network's head office was in Canada. However, the enterprise is part of the Etraveli Group, whose website identifies its headquarters as being in Sweden. The OECD Database entry for this complaint will be updated accordingly.

Annex B: Institutional arrangements

1. The Australian Government is committed to promoting the use of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and implementing them effectively and consistently. Through business cooperation and support, the OECD Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.
2. The OECD Guidelines are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines and to perform to the standards they recommend. In countries where domestic laws and regulations conflict with the principles and standards of the OECD Guidelines, enterprises should seek ways to fully honour such principles and standards, which does not place them in violation of domestic law.
3. Importantly, while Australia is an adhering country to the OECD Guidelines and the OECD Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law. They represent standards of behaviour that supplement Australian law and therefore do not create conflicting legal requirements.
4. The OECD Guidelines can be seen as:
 - A useful aid to business in developing their own code of conduct. They are not aimed at replacing or preventing companies from developing their own codes.
 - Complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery. For example, the human rights chapter in the OECD Guidelines as well as other key concepts align with the [United Nations Guiding Principles on Business and Human Rights](#).
 - Providing an informal structure for resolving issues that may arise in relation to implementation of the OECD Guidelines in complaints.

Annex C: Governance

1. Governments adhering to the OECD Guidelines have flexibility in organising their National Contact Points for Responsible Business Conduct (NCPs). NCPs are expected to meet core effectiveness criteria, by operating in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the OECD Guidelines. NCPs are also expected to seek the active support of social partners, other stakeholders and relevant government agencies.
2. Accordingly, the OECD Guidelines stipulate that:
 - NCPs will be composed, organised and sufficiently resourced to provide an effective basis for dealing with the broad range of issues covered by the OECD Guidelines, have access to expertise on all relevant aspects of the NCP mandate, and operate in an impartial manner and maintain an adequate level of accountability to the adhering government
 - NCPs can use different forms of organisation to meet the effectiveness criteria and maintain stakeholder confidence.
 - Governments are encouraged to include representatives of the business community, worker organisations, civil society and other non-governmental organisations in advisory or oversight bodies to assist the NCP in its tasks and contribute to the effectiveness of the OECD Guidelines.
3. The [AusNCP Governance and Advisory Board](#) (AusNCP Board) includes representatives from Australian Government agencies, business, civil society and unions. The AusNCP Board provides independent expert advice and assistance to the AusNCP and the Independent Examiners on complaints handling. Board members use their networks, events and publications to promote responsible business conduct standards under the OECD Guidelines and the AusNCP services. The AusNCP Board is consulted on all AusNCP statements.
4. The AusNCP Board helps to ensure that the AusNCP meets the effectiveness criteria of the OECD Guidelines. AusNCP Board Members may be called on to conduct procedural reviews of AusNCP complaints and may be consulted on various operational and administrative matters as needed.
5. From September 2019, all new cases are managed by Independent Examiners, who are supported by the AusNCP Secretariat and the AusNCP Board.