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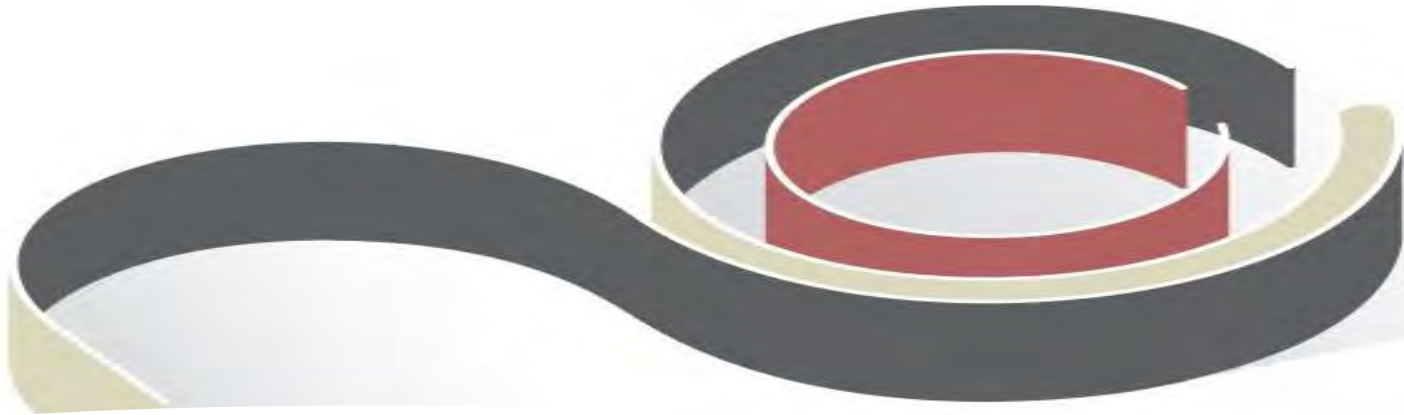
Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA



BRIEFING TO THE JOINT SITTING OF THE PORTFOLIO COMMITTEES OF THE DEPARTMENT OF TRADE INDUSTRY AND COMPETITION AND TRANSPORT

NATIONAL CONSUMER COMMISSION INVESTIGATIONS INTO THE CONDUCT OF FLYSAFAIR

1 APRIL 2025



DELEGATION

Mr. Hardin Ratshisusu – Acting Commissioner

Ms. Prudence Moilwa – Divisional Head:

Complaints and Investigations

OUTLINE

- ❖ NCC Mandate
- ❖ Legislative Framework: Overbooking and overselling
- ❖ Historical complaints
- ❖ FlySafair Investigation
- ❖ Conclusion





NCC MANDATE



MANDATE

- ❖ The National Consumer Commission (NCC) is established in terms of Section 85 of the Consumer Protection Act (CPA), 2008 (Act No. 68 of 2008).
- ❖ The purpose of the CPA is, amongst other purposes, to:
 - **Promote and advance the social and economic welfare of consumers** in South Africa generally, and in particular (a) low-income persons or persons in low-income communities, (b) those persons who live in remote, isolated or low-density areas, (c) minors, seniors or other vulnerable consumers, (d) those that are illiterate, vision impaired or with limited fluency in the language the information is presented;
 - **Protect consumers** from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
 - **Promote a fair, accessible, and sustainable marketplace** for consumer products and services and to establish national norms and standards relating to consumer protection.

Legislative Framework: Overbooking and overselling

Legislative framework: Overbooking and overselling

- ❖ CPA applies to every transaction taking place in South Africa, unless expressly excluded or exempted.
- ❖ Enabling provisions of the CPA with respect to overbooking and overselling practices generally include:
 - Section 19(2) (a)(i-ii);
 - Section 22 (1)(b);
 - Section 41(1)(a);
 - Section 47 (2), (3)(a-b);
 - Section 48 (1)(b); and
 - Section 49 (3), (4)(a-b).

Legislative framework: Overbooking and overselling

- ❖ The implicated provisions of the CPA:
 - **Section 19(2) (a)(i- ii):** Entitles a consumer to receive services that they paid for, as agreed with a supplier.
 - **Section 22 (1)(b):** The right to information in a plain and understandable language.
 - **Section 41(1)(a):** It is prohibited for suppliers to market goods or services falsely or in misleading or deceptive manner.
 - **Section 47 (2), (3)(a-b):** Overbooking or over-selling is prohibited, except under limited circumstances.
 - **Section 48 (1)(b):** Unfair and unreasonable contract terms are prohibited.
 - **Section 49 (3), (4)(a-b):** Suppliers are required to draw the attention of the consumer on certain terms and conditions that limit the liability of the supplier.

Historical Complaints

1time Low-cost Airline

- ❖ 1time Airline (Pty) Ltd was a South African low-cost airline that operated between 2004 and 2012.
- ❖ After a failed business rescue process, the company filed for liquidation and grounded all flights.
- ❖ NCC initiated a probe into the conduct of the company. The scope of the investigation was to determine:
 - Whether 1time airline continued selling tickets until hours before it announced the grounding of its fleet.
 - Whether the airline had in fact misled customers (through omission) by continuing to sell tickets to consumers fully aware that they would not deliver service to them (consumers).
 - What arrangements the airline had made with regards to reimbursing or making good to customers who had bought tickets.
- ❖ Because of the liquidation process, the investigation was closed.



FLYSAFAIR Investigation

FlySafair Investigation

- ❖ In January 2025, the NCC observed concerns on social media against FlySafair following an incident where a consumer booked a flight and paid, and on arrival at the airport, the consumer was informed that there were no seats available.
- ❖ Other consumers raised similar concerns citing the impact of overbooking, in particular the following:
 - Missed appointments and disruption to travel plans.
 - Need for adequate compensation because of overbooking.
- ❖ On 8 January 2025, the NCC then initiated an investigation into the conduct of overbooking and overselling by FlySafair to assess compliance with the CPA.



Some of **FlySafair's** public responses to allegations

❖ FlySafair's reported public responses:

- Explained overbooking of flights as a *“common practice in the industry”* in order to *“keep prices affordable.”* Implying that overbooking is done for the benefit of consumers.
- Mooted that *“every ticket sold is not a guarantee that the passenger will actually show up”*, due to various reasons.
- Asserted that if there is no overbooking, airlines would have more empty seats and consumers would need to pay a higher fare to cover the costs of those empty seats.

❖ These statements were not well received by consumers.



Progress of the investigation

- ❖ The following are some of the critical milestones in the investigation thus far:
 - FlySafair was served with the relevant Notice for investigation and related questions on the 8th of January 2025.
 - FlySafair provided a response on the 30th of January 2025 that included supporting information and data.
- ❖ Further probing of the submissions by FlySafair is required.
- ❖ Other major airlines rebutted the practice of overbooking or overselling of tickets, indicating that *“flights are sold only to the seating capacity of the aircraft”* and *“overselling flights amounts to unethical business practice.”*
- ❖ The NCC intends to engage with the Department of Transport’s regulatory authorities in the airline space.
- ❖ The initial plan was to conclude the investigation in the first quarter of 2025/26, however given the volume of information to analyse the investigation is planned to be completed in the second quarter of 2025/26.

Conclusion

Conclusion

- ❖ The CPA prohibits a supplier from accepting payment for goods or services that do not exist.
- ❖ Given the nature of the allegations against FlySafair, this is a priority investigation.
- ❖ Consumers affected by this practice are urged to come forward and provide information that could assist the investigation.



Thank you

National Consumer Commission

Contact: + 27 12 065 1940

Email: www.thencc.org.za