

Brussels, 2 December 2008

## Airline Sweep Investigation – Background information

The **Airline Sweep investigation** was an EU wide enforcement investigation - involving 15 EU national authorities as well as Norway – against misleading advertising and unfair practices on airline ticket selling websites. In the first every co-ordinated consumer enforcement investigation, over 400 websites were checked for compliance with the law in terms of clear pricing, bait advertising and unfair contract terms (see [MEMO/08/287](#) for details).

### How does an enforcement "sweep" work in practice?

There are two steps:

- The first step is **the co-ordinated sweep action** where participating Member States systematically check for practices on different websites. For instance, it is against consumer protection rules not to clearly indicate the total price. It is also against consumer protection rules not to clearly indicate the conditions which apply, for instance if a special offer is limited in availability.
- The second step is the **enforcement action**. During this phase, authorities will further investigate websites flagged as "having irregularities" during the sweep and take appropriate follow up actions to ensure that non compliant sites are corrected and/or closed. National authorities will investigate and take enforcement actions for national cases. Where it is a cross border case enforcement authorities will request assistance from colleagues in other authorities (e.g. where the trader operates from another country). This is done via the recently established Consumer Protection Co-operation Network of national enforcement authorities from 27 Member States and Norway & Iceland. During this enforcement phase the companies have a right of reply and an opportunity to correct practices which are illegal. Those who fail to do so could face legal action leading to fines or closure of their Web sites.

The **results of the preliminary investigations** showed a high number of irregularities. The key findings were: 1 in 3 websites required follow up enforcement action for breaches of consumer law; many sites had **multiple problems: misleading pricing**; irregularities related to **contract terms** (missing or wrong language version, and pre-checked boxes for optional services); problems with **non-availability of advertised offers**. The mid term report in May 2008 showed that more than 50% of sites had been corrected. These procedures are currently ongoing: they are expected to be concluded in the coming months..

A final report will be issued in May 2009.

**Since September 2007**, two important pieces of legislation have come into force in the European Union which impact on this area of activity: the Unfair Commercial Practices in 12 December 2007 and the Air Services Regulation in 1 November 2008. The following measures now apply to sale of air tickets:

- Directive 2005/29/EC on unfair commercial practices;
- Regulation 2008/1008/EC on air services;
- Directive 93/13/EC on unfair terms in consumer's contracts;
- Regulation 889/2002/EC on air carrier liability (EU legislation transposing parts of the Montreal Convention for the Unification of Certain Rules for International Carriage)

The **new legislation** will raise consumer awareness and expectations on compliance.

**Compliance with current legislation** cannot be negotiable. In addition the Commission will like to see information on consumers' rights at the point of sale, eg: a checklist of rights for consumers to consult prior to booking tickets on line to be included in the home pages of airlines and air tickets selling agents (see Annex). This could be developed by professional bodies. In a joint letter written to the federations representing the major airlines and travel operators, EU Consumer Commissioner Kuneva and Vice President Tajani have set out the next steps to ensure full compliance with EU law (see IP/08/1857).

**Participants at the meeting** between the Commission and industry representatives. Some of industry's most prominent representatives participated in this week's meeting with the European Commission including: the European Low Fares Airline Association (ELFAA), the Association of European Airlines (AEA), the European regional Airlines Association (ERAA), the International Air Carrier Association (IACA – charters), the International Air Transport Association (IATA) and the European Travel Agents and Tour Operators Association (ECTAA).

**The Commission has asked the industry** to make a formal commitment to comply with the new checklist by February 2009. Industry has been requested to produce in the home page of their Internet sites an information point with a link to the Commission's checklist for consumers to check before booking an air ticket on line. After that deadline an independent study to check compliance with the checklist will be carried out and the results will be made public. The Commission will name both the good and the bad performers and the list of bad performers will be passed to Member States for further investigation and enforcement.

### **What sanctions can be taken?**

EU consumer laws are enforced – and sanctions and penalties are therefore set – at national level. Possible measures can include a request to a company demanding to change or cease a prevailing practice, imposing and collecting fines, or closing down web-sites. Enforcement authorities are obliged to take measures (repeatedly if need be) until the infringement has ceased.

## **ANNEX 1: Draft Check List for compliance with Consumer Rights Legislation in the Airline Sector**

1. Do all price indications include all unavoidable and foreseeable taxes, charges, surcharges and fees? (Unfair Commercial Practices Directive, UCP + Air Services Regulation)
  - are unavoidable booking fees included in the indicated prices?
  - are unavoidable payment fees (e.g. credit card fee) or other administrative fees included in the indicated prices?
  - if there are different fees for different payment methods, are they indicated (is the lowest existing payment fee included in the price )?
  - are unavoidable check-in fees included in all price indications?
2. Are optional boxes shown in the booking process on an "opt-in" base? (Air services regulation).
3. Does the consumer deliberately choose for options without "pre-ticked" boxes? (Air services regulation)
4. Do statements of free tickets respond to real situations in which consumers gets a valid ticket without any payment of any kind? (UCP Directive) (This also applies to frequent flyer programmes)
5. Are limitations or conditions to the offer disclosed? (UCP Directive)
6. Do the identity of the company and its contact details are clearly indicated? (UCP Directive)
7. Is the language used in the advertising and pricing maintained throughout the selling process, including the terms and conditions displayed in the conformity box? (UCP Directive)
8. Do special offer indicate the number of tickets available and the periods for which the offer is valid? (UCP Directive)
9. Is access to air fair granted without any discrimination based on nationality, place of residence or place of establishment of the air carrier's agent or ticket seller within the Community? (Regulation on air services)
10. Is it stated whether it is a direct flight or it has a stop-over? (UCP Directive)
11. Are the steps to follow clearly stated so that the consumer is fully aware of the moment when the transaction has been produced? (UCP Directive)
12. If the arrangements for payment are unusual (depart from the requirements of professional diligence), are consumers clearly and timely informed? (UCP Directive)
13. Are the amounts indicated (in the breakdown of the price) the correct amounts due by the air carrier? (Regulation on Air Services)
14. Where certain charges cannot be calculated in advance (check-in fee; luggage fees), are consumers clearly informed such charges may be payable and the manner they will be calculated?(UCP Directive)
15. Are the airports of departure and of destination clearly indicated by the name of the nearest town and not by the capital or the best known city in the country? (UCP Directive).

16. Are all the applicable conditions, limitations to special offers or any information relevant to the decision making process of consumers displayed in clear and readable characters?(Unfair Contract Terms Directive +Air Services Regulation)
17. Are the standard contract terms clearly available to the consumer before the ticket is bought? (Unfair Contract Terms Directive + Air Services Regulation)
18. Is there a clear and explicit indication of conditions of cancellation and modification of tickets? (Unfair Contract Terms Directive + Air Services Regulation).
19. Can the consumer print-out (or save otherwise) a copy of company's standard terms and conditions? (Unfair Contract Terms Directive )
20. Is the consumer's consent to the standard terms and conditions obtained in an opt-in manner (no pre-ticked box is used)? ( Unfair Contract Terms Directive + Air Services Regulation)
21. Are liability obligations related to lost luggage and accidents indicated in accordance with Regulation 889/2002 on air carrier liability (EU legislation transposing parts of the Montreal Convention on the Unification of Certain Rules for International Carriage)
22. Are the clauses free of limitation of service provisions based exclusively on the trader's will? (Unfair Contract Terms Directive + Regulation 889/2002)
23. Is the consumer not subject to compliance with any particular formality that would permit the company to fail in its obligation? (Unfair Contract Terms Directive + Regulation 889/2002)
24. Are there no provisions allowing the trader to retain sums paid by the consumer when the former is the party cancelling the contract? (Unfair Contract Terms Directive + Regulation 889/2002)
25. Is the company prevented from dissolving the contract on a discretionary basis permitting the corporation to retain the sums paid for services not yet supplied? (Unfair Contract Terms Directive + Regulation 889/2002)
26. Is the contract free of terms irrevocably bounding consumer of which he had no opportunity of reasonably becoming acquainted before the conclusion of the contract? (Unfair Contract Terms Directive + Regulation 889/2002).

## **ANNEX 2: Joint letter from Vice-President Tajani and Commissioner Kuneva to the Airline Industry**

The European Commission has been working hard to ensure the proper application of consumer rights for the more than 700 million air passengers who take to the skies each year. We believe that it is of utmost importance to preserve the confidence of consumers in the Internal Market in the middle of the current economic crisis.

Two major pieces of European legislation improving air passengers' rights have come into force recently: the Directive on Unfair Commercial Practices and the Regulation on Air Services. These two new measures create a clear and straight forward legal framework for business operators selling air tickets. Businesses are of course required to comply with these legal provisions and your role in this process as a representative of the industry's association is highly important.

The Commission intends to monitor compliance with the new rules very closely. We are engaging in a dialogue with ministries and national enforcement bodies to ensure that consumer legislation is respected. In the Spring, we will verify the practices of air-ticket selling websites all over the EU. This will amount to a "health check" of the sector: it will give us a picture of compliance with the new rules and it will identify compliant and non-compliant operators. We intend to publicise the names of non-compliant firms.

To guide our work, we propose to draw up a checklist together with industry, setting out obligations arising from all the different existing regulations protecting consumers. A draft of this list is enclosed. We would ask for your speedy feedback and would suggest that our services meet with your representatives before the end of this week, in order to finalise the list in time for 2 December.

In order to ensure effective consumer protection, we request that:

The members of your organization amend their web sites so that they comply with this list of obligations.

They provide a link on their home pages to a more user-friendly version of the checklist on the European Commission's web-site, so that consumers are made aware of their rights at the start of the booking process.

The Commission intends to make public the results of the health check of air ticket selling websites in May 2009. National authorities may subsequently wish to initiate investigations based on the findings of the study if they feel it necessary to secure compliance with rules. If national authorities were to persistently fail to act upon violations of the law, the Commission would consider infringement procedures.

We are confident that you agree with the importance of preserving a healthy market environment in the air transport market. We firmly believe that well functioning markets are in the interest of all. Together your members, the Commission and enforcers will produce important advances for consumers and fair competition for all business operators.