



**THE EUROPEAN TRAVEL AGENTS'
AND TOUR OPERATORS' ASSOCIATIONS**

Associations Internationales sans but lucratif

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By E-mail

Mr. Boris Žgomba, President

The Members

The Members of the Legal Committee

**The Members of the Air Matters
Committee**

**The Members of the Technology
Working Group**

GEBTA

Brussels, 19 October 2012

Dear Members,

Re: IATA affairs: NDC resolution has been adopted

In short

The NDC resolution was adopted on 18 October 2012.

ECTAA will approach DG Competition and DG MOVE as soon as possible to report and explain serious concerns raised by the NDC project in regard of EU legislation.

IATA airlines adopted on 18 October within the Passenger Service Conference a resolution on a Foundation Standard for a New Distribution Capability (Please find enclosed the draft resolution – we will circulate the adopted text as soon as available).

As a reminder, NDC is an IATA project aiming at revolutionising distribution of air tickets and ancillary services in all channels, including via travel agents. The project aims at enabling airlines to distribute personalised products and more ancillary services, in the framework of a single standard for all distribution channels. The standard would apply to airlines' direct channels and to various indirect channels including direct connection between an airline and a distributor, or channels through an aggregator such as a GDS. A salient point of the project is that airlines would no longer file fares through ATPCO and GDSs. They would instead provide an offer in response to a specific request including information on the requestor. The airline would determine its offer depending on the requestor.

The Secretariat has listed below EU legislation which may have an impact on NDC or with which NDC may not comply. In regard of this list, ECTAA will approach DG Competition and DG MOVE as soon as possible to report and explain serious concerns about the NDC project. We may consider if we should also approach other DGs (notably JUST on package travel and data protection).

I. EU Competition rules prohibiting anti-competitive agreements

Airlines are collectively determining a new distribution model under a single standard. A single standard automatically limits competition.

Airlines are arguing that the single standard will promote efficiency, better service and transparency with more complete offers through all channels.

The stated objective to make more airline products and more complex airline products (notably ancillary services) available in indirect channels, is rather pro-competitive, even though consumers are not asking for fare unbundling, which has led to the current situation.

The resolution adopted by IATA airlines does not ensure that more products will be distributed in all channels; the Resolution provides indeed that content distribution across all channels is subject to the terms and conditions determined by the airline distribution the content. Thus, the commercial policy of each airline will prevail concerning distribution of content through various channels.

Moreover, the NDC model, of which the main lines were determined by airlines only, without consulting other stakeholders, has very far reaching implications which can be detrimental to other stakeholders and consumers, and without any evidence that this model is necessary to reach the stated objectives. In particular:

- ▶ ***The end of public fares, which currently enable full spectrum comparison shopping; Instead, consumers and distributors could only compare on the basis of case-by-case personalised offers.***

As the level of price transparency will decrease (shelter from commodity price comparison), this may entail a risk of price increase.

Tony Tyler, IATA CEO, expressly stated in a speech on 16 October 2012:

“For the 60% of air travel that is sold indirectly via travel agents using Global Distribution Systems (GDSs), the model is different... this model is focused only on finding the lowest ticket price. This has resulted in the commoditization of air travel.

Airlines are trying to escape the commoditization trap through differentiation, and merchandizing, such as offering a low, mid and high price point for every offer. They are developing products and services, such as special meals, expedited boarding, roomier seats and access to airport lounges. But at the end of the day, the travel agent sees only codes—F, J, Y and their various derivatives. There is no way to tell if your “J” product is a flat bed or an economy class seat with an empty seat beside it. “

- ▶ ***The use of Direct Connect seems tied into the principles of the standard*** (see § 1.2.3 of the Resolution)

Airlines may therefore use a collective dominant position to cut out data aggregators and make comparison shopping more difficult.

- ▶ ***Airline’s ownership of the content and PNR, as well as airlines building information on customers, may be tied into the standard.***

Airlines may therefore use a collective dominant position to gain competitive advantages for their direct distribution to customers and to make travel agents less competitive.

- ▶ ***The clear intention that the new distribution model facilitates the distribution by airlines of other services than air services (hotel, car rental, etc.).***

This is combined with the concern that agents may be prevented from amending a carrier’s products on which commercial agreements are made.

Airlines may therefore use a collective dominant position to enter/reinforce their position on the market for the distribution of travel services.

- ▶ ***There is no regard to proportionality between the cost of changes and the benefits.***

II. EU Regulation 80/2009 on a Code of Conduct for CRSs¹

Neutral display

Article 5§1 of the Regulation provides that CRSs “*shall include the data provided by participating carriers in a neutral and comprehensive manner and without discrimination or bias.*”

Comment: IATA has confirmed during a meeting that NDC will result in CRSs displaying detailed offers for airlines participating in NDC and basic offers for airlines not participating in NDC. A CRS display can hardly be neutral if it provides more details and more space to certain offers.

Annex I (6) provides that “*Information on bundled products shall not be featured in the principal display*”. Bundled products are defined in Article 2(14) as *prearranged combination of transport with other services not ancillary to transport and offered at an inclusive price.*

Comment: This provision limits the possibility for airlines to distribute through CRSs or other NDC aggregators falling under the definition of a CRS, products combining air transport and other travel services.

Data protection (Article 11 of the Regulation)

Article 11(1): *Personal data collected in the course of CRS activities for the purpose of making reservations or issuing tickets for transport products shall only be processed in a way compatible with these purposes.*

Article 11(2): *Personal data shall only be processed in so far as processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.*

Comment: NDC provides for communication and possibly storage of historical data based on previous transactions (see §1.2.5.1 of the IATA Resolution). It is questionable whether historical data is compatible and necessary to the purpose of making a reservation or issuing a ticket.

Article 11(3): Special categories of data under Article 8 of Directive 95/46² (notably revealing ethnic or religious, or trade-union membership) shall only be processed where the data subject has given his explicit consent.

Comment: it will have to be checked whether data requested by airlines to ask for an offer contain elements revealing ethnic or religious, or trade-union membership.

Article 11(1): *The system vendor shall be considered as a data controller .*

Comment: airlines should have the responsibility of a data controller, if they are fixing the data to be provided in the request for an offer.

Article 11(4): *Information under the control of the system vendor concerning identifiable individual bookings shall be destroyed within 3 years and shall only be accessed for billing-dispute reasons.*

¹ Regulation 80/2009 on CRSs available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0080:EN:NOT>

² Directive 95/46 on Personal data protection available at :

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:NOT>

Comment: The NDC project foresees that historical data on previous transactions will be used for commercial purposes to make a personalised offer to the passenger. This goes beyond billing-dispute reasons.

Article 11(10): *Where a system vendor operates databases in a different capacity, technical and organisational measures shall be taken to prevent the circumvention of data protection rules through the interconnection between databases, and to ensure that personal data are only accessible for the specific purpose for which they were collected.*

Comment: even if NDC was to be considered a different system than CRSs, it could not be used to circumvent data protection rules.

III. Regulation 1008/2008 on Air Services³

Optional elements on an opt-in basis

Article 23(1): *“Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an ‘opt-in’ basis”.*

Comment: If an airline sends in response to an individual request a personalised offer including price supplements which are not offered in response to another individual request, such price supplements can be considered as optional, but failing to be offered on an opt-in basis to certain passengers.

Discrimination

Article 23(2): *access to air fares for flights departing from an EU airport, available to the general Public, shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place of establishment of the air carrier's agent or other ticket seller within the Community.*

Comment: considering that airlines will provide personalised offers depending on the passenger, passengers will have no possibility to check that the personalised offer they receive from an airline is not discriminating on the basis of the passenger's place of residence or the travel agent's place of establishment.

IV. Regulation 1107/2006 on persons with reduced mobility travelling by air⁴

Discrimination

Article 3: *An air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or of reduced mobility (a) to accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies;*

Article 10: *An air carrier shall provide the assistance without additional charge to a disabled person or person.*

Comment: considering that airlines will provide personalised offers depending on the passenger, passengers will have no possibility to check if an airline is not responding to a request for a flight because the passenger is a PRM or if the price proposed by an airline is higher than for a non-PRM.

³ Regulation 1008/2008 on Air services available at :
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R1008:EN:NOT>

⁴ Regulation 1107/2006 on PRMs travelling by air available at :
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1107:EN:NOT>

V. Directive on Package Travel⁵

Airlines putting together different travel services through NDC expose themselves to obligations in the EU Package Travel Directive, notably the liability to perform all bundled services, a financial guarantee in case of insolvency and exhaustive information obligations.

NDC may also be taken into consideration for the review of the Package Travel Directive.

We remain at your disposal if you have questions or comments.

With kind regards,

Isabelle Leroy
Legal Advisor

⁵ Directive 90/314 on Package Travel available at :
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0314:EN:NOT>