

Associations Internationales sans but lucratif

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**By E-mail**

**Ms. Emmanuelle MAIRE**

**Head of Unit**

**DG MOVE E 4**

**Internal Market and Airports**

**Cc: Mr. Carlos MESTRE ZAMARREÑO**

**Mr. Christophe DUSSART**

**Mr. Gabor NAGY**

Brussels, 30 October 2012

Dear Ms. Maire,

**Re: New air ticket distribution model set by IATA**

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ECTAA and GEBTA wish to alert you about a programme launched by IATA to radically change distribution of air tickets and ancillary services in all channels, including via travel agents. This programme is called New Distribution Capability (NDC).

An IATA resolution n°787 was adopted on 18 October 2012 by an IATA Conference composed of airlines only (see the adopted resolution enclosed). The IATA resolution prescribes a new distribution model, which IATA airlines shall have to apply when distributing enhanced content through multiple channels (see the introduction of the resolution). Enhanced content refers to the development of ancillary services in addition to the air fare (e.g. for baggage, access to lounge, meals, etc.). The new model could also cover the distribution of other travel services than air services by airlines.

As you know, the context of this project is contention within the industry about the availability of ancillary services developed by airlines in CRSs used by travel agents. Airlines tend to claim that CRSs are not able to display and distribute their ancillary services, while other industry stakeholders suggest that airlines deliberately withhold information on ancillary services from CRSs to show a lower fare on the CRS neutral display and to force travel agents to access airline systems directly without a CRS. Several large airlines have indeed attempted in the last years either to transfer their CRS costs onto travel agents or to circumvent CRSs by pressing travel agents to connect directly to the airline's inventory system. We understand that you have some insight on this context through the Fitness Check on EC Regulation 80/2009.

NDC is a model set by a few large airlines through IATA. It is presented as aiming at enabling airlines to provide personalised offers and ancillary services in the framework of a single standard for all distribution channels. We are very concerned that this objective is not

ensured by the adopted IATA resolution, while the chosen model has many other implications and likely detriments for travellers and industry stakeholders.

## I. MAIN LINES OF THE PROJECT

IATA airlines that do not distribute “enhanced content” will not be obliged to adopt this model. But IATA airlines that distribute “enhanced content” have an obligation under the IATA resolution to apply NDC. Considering that enhanced content is a heavy trend in the airline industry to maximise revenues, a number of airlines will be required to switch to NDC.

A salient point of the project is the way airlines would provide information on their products and prices. Currently, airlines upload their fares through the Airline Tariff Publishing Company (ATPCO) in computerised reservation system. Travel agents have access in CRSs to the fares uploaded by each participating airline. The EC Regulation 80/2009 on CRSs ensures that fares are displayed neutrally in CRSs. This enables an objective and efficient comparison between air services.

Differently, the NDC project foresees that airlines would no longer pre-file fares. Instead, it would only be possible for a consumer or travel agent to obtain information on an airline’s offer after sending a specific request to the airline. The request would have to specify information on the passenger, including historical data based on previous transactions (see §1.2.5.1 and 1.2.5.6 of the IATA resolution 787). The airline would determine its offer depending on this information. CRSs may continue to play a role in this model, as aggregators of the various responses made by different airlines to a given request.

Besides, NDC has no constraints for backwards compatibility (see § 1.2.4 of the IATA resolution 787), which is likely to create difficulties and costs for industry stakeholders to conciliate distribution under the current model and distribution under the NDC model.

## II. OUTLINE OF THE CONCERNS RAISED BY NDC

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

But the resolution 787 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 distributing the content” (see § 1.2.6 of the IATA resolution 787). The commercial policy of each airline will prevail. Any airline will be able to determine that it will not distribute certain fares and ancillary services through certain indirect channels, as airlines currently do to favour distribution through their own websites, and could further do to favour direct connections with travel agents (without a CRS).

The NDC model however has very far reaching implications, which can be detrimental to consumers and other stakeholders, without any evidence that this model is necessary to reach the stated objectives of distributing more content through all channels. In particular, we have concerns that it could further jeopardise air ticket price transparency. We also have doubts that the NDC model can comply with EU legislation in the field of air transport.

## 1) **NDC's negative impact on price transparency**

### **a. *The end of pre-filed fares, which currently enable full spectrum comparison shopping in CRS neutral display; Instead, consumers and distributors could only compare on the basis of case-by-case personalised offers.***

Considering that airlines would provide under NDC personalised offers depending on the passenger, travel agents and passengers would have no possibility to check if the price proposed by an airline in answer to a specific request is the lowest available price. Differently, the current model enables such search among all pre-filed fares. EC regulation 80/2009 on CRSs even refers to the possibility of choosing in the CRS a display ranking by price.

IATA acknowledges that NDC is a move away from commodity based prices and a way for airlines to shelter from commodity-based price competition. Tony Tyler, IATA CEO, expressly stated in a speech on NDC on 16 October 2012 (see the speech enclosed):

*“For the 60% of air travel that is sold indirectly via travel agents using Global Distribution Systems (GDSs), [the current] 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”...[With NDC], we will move from the mass commoditization of air travel to what one analyst called “mass customization”.*

Moreover, despite the IATA resolution 787 stating that NDC will facilitate a transparent display of products and enable comparison among different products (§ 1.2.5.4), there are serious doubts that this is compatible with the main objective of NDC to support differentiation between airline products. If each airline unbundles air services in its own manner and each airline proposes different ancillary services, we believe that it will be impossible to compare apples to apples.

The impossibility to check the lowest price on the market and the difficulty to compare offers between them will make the market less transparent for consumers and will pave the way for air service price increase. Besides, so-called personalisation of airline offers could in practice be discrimination between passengers, as we will explain below.

The end of pre-filed air fares may also seriously impede inter-modality and journey planning possibilities.

### **b. *No regard to compatibility with the current model***

NDC has no constraints for backwards compatibility (see § 1.2.4 of the IATA resolution 787). However NDC would co-exist with the current model, considering that NDC would only apply to airlines that distribute enhanced content through multiple channels. This is confirmed in §1.2.9 of IATA resolution 787, which provides that *“any cost attributable to the new business model will not be incumbent on IATA airlines who do not wish to adopt it.”*

We foresee numerous issues to make the current model and NDC co-exist, especially if NDC is not driven by compatibility with the current model:

- Difficulties to distribute code-share or interlining tickets involving an airline participating in NDC and an airline not participating in NDC. We have raised the question with IATA, which answered that this is not yet addressed and may not be fully addressed by the NDC standard in the end.
- Difficulties to ensure neutral display in CRSs according to EC Regulation 80/2009, of offers under the current model compared to new enhanced offers.

- Complexity and costs of developing new tools and processes in travel agents mid and back office systems.

An NDC standard with no regard to compatibility entails the risk that the level of service available to consumers decreases, notably with regard to interlining and code-share possibilities.

## **2) Questioned compliance of NDC with EU legislation on air transport**

### **a. *Regulation 80/2009 on a Code of Conduct for CRSs***

#### Neutral display

Article 5(1) of Regulation 80/2009 provides that CRSs “shall include the data provided by participating carriers in a neutral and comprehensive manner and without discrimination or bias.”

IATA has indicated that NDC could result in aggregators/CRSs displaying complex offers for airlines participating in NDC as well as basic offers for airlines not participating in NDC. We have concerns about the possibility to display neutrally and enable effective comparison between complex offers for airlines participating in NDC and basic offers for airlines not participating in NDC

#### Data protection

Articles 11(1) and 11(2) of Regulation 80/2009 provide that personal data shall only be processed in a way compatible with the purpose of making reservations or issuing tickets for transport products, and in so far as necessary for the performance of a contract to which the data subject is party or in order to take steps prior to entering into the contract.

NDC is based on airlines requiring and possibly storing historical data on passengers' previous transactions (see §1.2.5.1 of the IATA Resolution) in order for airlines to determine personalised prices and the nature of products offered. It is questionable whether such use of historical data on a passenger's previous transactions is compatible with and necessary to the purpose of making a reservation or issuing a ticket.

Article 11(3) provides that special categories of data under Article 8 of Directive 95/46 (notably revealing ethnic, religious or trade-union membership) shall only be processed where the data subject has given his explicit consent. It would have to be ensured that data required by airlines to make an offer within NDC does not contain sensitive personal data.

Article 11(4) provides that information concerning identifiable individual bookings shall be destroyed within 3 years and shall only be accessed for billing-dispute reasons. NDC plans to use historical data on previous transactions for commercial purposes to make personalised offers to passengers. Such use would clearly go beyond billing-dispute reasons.

### **b. *Regulation 1008/2008 on Air Services***

#### Optional elements on an opt-in basis

Article 23(1) of Regulation 1008/2008 provides that optional price supplements shall be communicated on an ‘opt-in’ basis”.

NDC may enable an airline to send 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 could be considered as optional, but failing to be offered on an opt-in basis to certain passengers.

### Discrimination

Article 23(2) of Regulation 1008/2008 provides that 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.

Considering that airlines would provide within NDC personalised offers depending on the passenger, passengers would 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.

We have the same concern in regard of discrimination against passengers with reduced mobility. As airlines would provide personalised offers depending on the passenger, passengers would 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. Such practices are however prohibited under Articles 3 and 10 of Regulation 1107/2006 on persons with reduced mobility travelling by air.

We consider that NDC is raising numerous concerns with a high impact on the distribution of air tickets and we would like to meet you at your earliest convenience to discuss these concerns.

With kind regards,



Michel de Blust  
*Secretary General*