

Price transparency provisions in  
Regulation 1008/2008 and other  
relevant EU legal texts

**Final Report**

Report

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## Executive Summary

### Background

1. Regulation 1008/2008 introduced a number of provisions to ensure that the price of air tickets was transparent during the booking process and in advertising. The Regulation:
  - requires prices to be displayed to include all unavoidable and foreseeable additional fees;
  - requires any optional additional services to be offered on an ‘opt-in’ basis;
  - requires a breakdown of taxes, fees and charges to be provided; and
  - prohibits discrimination on the basis of place of residence within the EU in terms of the prices that are offered.
2. Other European consumer legislation also includes provisions which require transparency about prices offered during the booking process and during airline advertising, and requires service providers (including those selling air tickets) to provide certain minimum levels of information about the characteristics of the products.
3. A review of compliance with Regulation 1008/2008 and other relevant European consumer protection legislation was undertaken by DG MOVE and DG SANCO in 2009. This study updates that assessment and identifies a number of new issues that have arisen as the air transport market has developed.
4. **The checklist used for this study was provided by the services of the Commission and represents their interpretation of the requirements of the legislation, in the absence of any clarification given by the European Court of Justice. The findings below do not constitute the allegation of an infringement by Steer Davies Gleave. Only national enforcement authorities are in a position to formally investigate infringements. Where the team applying the checklist was unable to classify a particular practice as clearly meeting or not meeting one of the criteria in the checklist, it was classified as partially compliant or unclear (colour code yellow).**

### Factual conclusions

#### *Compliance with the legislation*

5. All but one of the airlines, and all of the travel agents, assessed had at least one potential non-compliance with the legislation. Given this high prevalence it was important when assessing overall levels of compliance to consider the potential impact of each infringement on the consumer. We found non-compliances with the most critical areas of the legislation on 41% of websites, comprising 24 airlines and 17 travel agents. A further 35% of websites contained other significant infringements, with the remainder exhibiting no or only minor non-compliances. The performance of the airlines was better than the performance of the travel agents but nonetheless 65% of the airlines surveyed had at least one infringement which we considered either ‘critical’ or ‘significant’. The categorisation used to

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determine the severity of the non-compliances is explained in the 'Overall compliance' part of Section 3.

6. 83% of airlines and travel agents are complying with the requirement to indicate prices inclusive of all unavoidable and foreseeable taxes, fees and charges from the first stage of the booking process and in their advertising. However, in some cases the price excluding additional charges is shown as well, occasionally more prominently. In addition, several airlines add fees at a late stage in the booking process which, whilst theoretically avoidable, are in practice very difficult to avoid. These are most commonly charges for payment that are avoidable only if a payment method is used which most consumers would not have and could not readily obtain, such as Visa Electron.
7. It is unclear whether or not this practice is consistent with the Regulation:
  - it might be considered an infringement depending on the interpretation of the word 'unavoidable' (a Court might determine that 'unavoidable' includes a fee that was not reasonably avoidable by a typical passenger);
  - it might be considered an infringement of the Unfair Commercial Practices Directive on the basis that it is designed to mislead passengers about the level of the price until the end of the booking process; and
  - in some cases the free payment method is restricted to residents of certain Member States, which might be an infringement of the provisions on non-discrimination.
8. With respect to the other price transparency provisions in Regulation 1008/2008, we found compliance to be mixed:
  - 85% of airlines and travel agents offer any optional services on an 'opt in' basis, although in 24% of these the passenger has to actively opt in or opt out. 11% pre-selected some optional services and the remaining 4% did not offer any.
  - 74% do not discriminate in terms of the prices offered on the basis of place of residence. Where there is any discrimination on the basis of place of residence, this is usually through service fees which only apply to sales in particular States, or through payment fees which can only be avoided by residents of a particular State. Differences in prices arising in these ways are usually quite small (typically €5-15).
  - Only 22% provide a full and accurately labelled breakdown of taxes, fees and charges.
9. We also found compliance with the Unfair Commercial Practices, Unfair Contract Terms and E-Commerce Directives to be mixed:
  - 95% of airlines and travel agent websites accurately describe the airports served in their booking processes, although only 44% always do so in their advertising;
  - 91% indicate whether a flight involves a stop or connection;
  - where prices were advertised we were able to find fares at or below the advertised prices in 70% of cases (although depending on the design of the website, and given we were only able to conduct a finite number of searches,

we cannot exclude that tickets were also available at advertised prices on some of the others);

- we found no misleading advertising of ‘free’ tickets, except in a small number of cases where airlines inaccurately stated that tickets through their frequent flyer programme were free (taxes, fees and charges would be payable);
- provision of information on terms and conditions in advertising was poor, with 69% failing to provide information on conditions for cancellation and modification of tickets;
- airlines always provide their terms and conditions in the course of the booking process in a form that can be readily stored by the user, but travel agents provide their own conditions, not conditions applying to the airlines operating the flights;
- whilst the identify of companies and their contact details is provided, only 45% of airline and travel agents websites provide a contact email address as required by the E-Commerce Directive;
- 30% of airlines and travel agents do not provide their terms and conditions in the same range of languages as their booking processes and advertising; and
- most airlines provide the statement on liability required by Regulation 889/2002, but in some cases this is modified, and it is almost never provided by travel agents.

#### ***Unbundling of ticket prices***

10. A general issue identified in the research is that many airlines are unbundling the ticket price into a base fare which covers a basic transport service and additional fees for other services. Although this practice was pioneered by the low cost airlines, it is being adopted increasingly by network airlines. Some airlines now report that ancillary revenue accounts for over 20% of their revenue.
11. Although these ancillary charges are probably not an infringement of any existing EU consumer legislation, they do raise some issues:
  - The proliferation of charges makes price comparison between airlines more difficult and time consuming for the consumer, potentially limiting the effectiveness of price competition.
  - Charges for additional services are often very high compared to the incremental costs the airline is likely to incur in providing the service. This will be an infringement of the Consumer Rights Directive (with respect to payment charges), and indicates that at least part of the purpose of the separation of these charges is to delay presentation of part of the price.

#### ***Enforcement***

12. To date, most enforcement bodies have sought to persuade airlines to comply with the legislation through informal contacts, rather than through imposition of sanctions. In some cases this approach has been successful, but it is also slow, partly because airlines may not wish to change their practices unless their competitors do the same.
13. The main issues that we have identified with enforcement of the legislation are:

- At the time of our research several States had not introduced penalties into national law for infringements of Regulation 1008/2008, although some States said that it was possible to take action under legislation implementing the Unfair Commercial Practices Directive.
  - There is no requirement to designate enforcement bodies. Although it is clear for the States which responded to our study which organisation is responsible for enforcement for each area of legislation, this does not seem to be the case for all other States.
  - In most Member States no penalties have been imposed as yet for infringements of this legislation.
  - Even where sanctions do exist, they may not be effective, either because there are difficulties in imposing them or collecting them from non-national airlines, or because the circumstances in which they can be imposed are very limited.
14. Legal action has also been taken against airlines by consumer representatives in civil courts. To date, these cases have mostly related to the national laws implementing the Unfair Contract Terms Directive.

### **Policy options and recommendations**

15. The report sets out policy options and recommendations in three areas:
- measures to ensure the transparency of the total price;
  - provision of an appropriate and useful breakdown of taxes and charges; and
  - measures to improve enforcement.
16. Some of these measures would require revisions to the legislation, in which case an impact assessment would be required.
- Improve the transparency of the total price*
17. Regulation 1008/2008 has been successful in ensuring that advertised prices include additional charges which can (at least in theory) be avoided. However, as discussed above, the price will often increase during the booking process due to the selection of 'optional' services by the passenger. Recent research by the UK Office of Fair Trading found that, of all the pricing practices considered, 'drip pricing' such as this was most likely to lead to consumer detriment, partly due to an increased risk of errors being made by the consumer (for example if the consumer stops searching elsewhere for a cheaper product earlier than they would otherwise do).
18. In our view the appropriate policy options should distinguish between:
- charges that are theoretically optional, but in practice very difficult to avoid, such as charges for payment that are only avoidable with a Visa Electron; and
  - charges for genuinely additional, optional services.
19. In our view the greatest problem for price transparency is the practice of imposing theoretically-avoidable charges for payment. These charges often substantially exceed costs, by a factor of 10 or more. The main effect of the separation of the charge from the base fare appears to be to delay presentation of the full price until later in the booking process, and to exclude part of the price from advertised



prices, whilst remaining compliant with the requirement to present the price including all ‘unavoidable’ fees. Whilst there is not a clear infringement of the existing legislation; this is not consistent with the spirit or objectives of the price transparency provisions in Regulation 1008/2008, and it is likely that such practices could be considered misleading under the Unfair Commercial Practices Directive.

20. This could be addressed in three ways:
- **Enforcement of existing legislation:** As discussed above, these practices could be found misleading under the Unfair Commercial Practices Directive. Therefore, an enforcement authority could bring a test case which would clarify this issue.
  - **Consumer Rights Directive:** The new Consumer Rights Directive will prohibit service providers from levying charges for payment (including credit or debit card fees) which exceed their costs incurred in handling transactions. However, this will not eliminate the charges altogether, and cost-based regulation can be difficult to apply and enforce, so it is unclear what impact this will have.
  - **New legislation:** New legislation could be introduced which specifically prohibits charges for payment by debit cards, probably the cheapest method of payment for the retailer to handle. Any such measure should not be specific to air transport as these charges are also levied in other sectors.
21. Action by enforcement authorities in each State has been partially coordinated to date. But the risk of different interpretations being applied in different States remains, and these efforts should therefore be strengthened. The Commission should encourage Member States to coordinate their actions, and may also be able to facilitate coordinated action by national enforcement authorities.
22. There is a stronger justification for separation of charges which are for genuinely optional services. Most stakeholders that expressed a view agreed that carriers should be able to charge separately where a service has an additional cost and use of the service can be readily avoided by a significant proportion of passengers, and in principle this separation should benefit passengers.
23. However, as noted above, these charges still present issues for passengers, particularly if they are not transparent at the time of booking. Prices for these additional services in some cases far exceed the costs of the additional service, which may be impossible for a proportion of passengers to avoid (for example charges for checked luggage). This indicates that at least part of the objective of the separation of the charge may be to reduce the proportion of the total price shown at the start of the booking process and in advertising. Therefore, these charges raise some of the same issues of potential consumer detriments as the theoretically avoidable payment charges.
24. We have considered a number of different options by which the presentation of prices could be changed, such as a ‘standard ticket price’ which would include a specified range of services. However, the key issue with this is that it is likely to be very difficult to define in legislation what should be included within the presented price. The most practical option might be to require that additional

services are included in the initially presented price when purchased by more than 50% of consumers, as this avoids these problems of definition.

25. It would also be helpful if airlines disclosed information on ancillary charges to third parties such as the GDS and price comparison websites. At present prices shown via these channels generally do not include ancillary charges.

### ***Breakdown of taxes, fees and charges***

26. As discussed above, most airlines and travel agents do not comply with the requirement in Regulation 1008/2008 to provide a full breakdown of taxes, fees and charges, either because they do not provide the breakdown required, or provide a breakdown that is either inaccurate or inaccurately labelled. Although some stakeholders interviewed for this study considered that this provision was important for transparency, others argued that it was unnecessary and likely to confuse consumers, and noted that there is no equivalent requirement in other sectors.
27. In most circumstances this information is not relevant to consumers as they cannot avoid paying the additional charges. The only exception to this is where a tax or charge is levied by either governments or airport management companies on a per-passenger basis, and therefore should be refundable if the passenger cannot travel, even if the rest of the ticket price cannot be refunded.
28. We suggest that consideration should be given to replacing the requirement to provide a breakdown with a requirement to separately identify per-passenger government taxes and other fees which are refundable if the passenger does not travel. This approach was recommended in a recent report by a number of enforcement authorities acting through the Consumer Protection Network.<sup>1</sup>

### ***Enforcement***

29. Section 4 identified that enforcement of this legislation by Member States has been quite limited to date. Some Member States have not introduced penalties into national law for infringements of Regulation 1008/2008.
30. The Commission should encourage Member States to comply with the obligation in Article 24 to ensure compliance and to define penalties that are effective, proportionate and dissuasive. If necessary this should include infringement proceedings against States that have failed to introduce penalties into national law or have failed to take necessary action to ensure compliance.
31. If Regulation 1008/2008 were to be revised, we also suggest that States should be required to define which body is responsible for enforcement. This is required for other passenger rights legislation but is not required by this Regulation.

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<sup>1</sup> CPC Report on Airlines' Taxes, Fees, Charges, and Surcharges

# 1 Introduction

## Background

- 1.1 The single market for air transport has brought about significant benefits to consumers, including a wider choice of air services and lower fares, and there has been intense price competition between European air carriers. In order to mitigate any potential negative impacts that this might have on service quality, the Community has taken a number of measures to protect passengers, including introduction of requirements for compensation and assistance to passengers in the event of delay, cancellation or denied boarding; assistance to passengers with reduced mobility; and enhanced levels of airline liability in the event of death or injury, or loss, damage or delay to luggage. In addition, general consumer protection legislation has been introduced which contains provisions which are relevant to sale of air tickets. Nonetheless, price competition has tended to focus on the ‘headline’ price initially offered to consumers; the price passengers pay may in reality be significantly higher.
- 1.2 Provisions were introduced in the new Air Services Regulation (1008/2008) to require that advertised prices include all unavoidable additional charges, and that other services (such as insurance) had to be offered on an ‘opt-in’ basis. The Regulation also banned price discrimination on grounds of nationality or place of residence. A review of compliance with the price transparency provisions in Regulation 1008/2008 and other European consumer protection legislation was undertaken by DG MOVE and DG SANCO in 2009.

## The need for this study

- 1.3 Airlines and travel agencies whose websites were reviewed as part of the 2009 study in most cases entered into voluntary commitments with the Commission to improve their practices. However, there are still outstanding issues in many cases. For example, whilst airlines generally comply with the requirement to include unavoidable charges in prices shown on websites, in some cases these are shown less prominently than prices which do not include charges.
- 1.4 In addition, the air transport market changes quickly, and some new issues have arisen:
- Many airlines have introduced charges which are in theory avoidable and so do not have to be included in advertised prices, but in practice are difficult or costly to avoid for most passengers - such as charges for payment by debit card.
  - As airlines have sought to maximise ancillary revenue, the range of different ‘optional’ charges has increased. Many airlines now charge separately for services which would previously have been included in the ticket price, such as catering, carriage of checked luggage, and even airport check-in.
  - The level of many ‘optional’ charges has increased, and in some cases is disproportionate to the cost incurred. For example, several times greater than the actual cost of processing debit card transactions.

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### This report

- 1.5 This report is the Final Report for the study. It sets out the work undertaken over the four month duration of the study, and draws conclusions on the current functioning of the legislation.
- 1.6 The rest of this report is structured as follows:
- Section 2 summarises the methodology used for the study;
  - Section 3 presents the results of the desk-based research and stakeholder interviews relating to compliance by airlines and travel agents with the current legislation;
  - Section 4 discusses the views of stakeholders regarding enforcement and the effectiveness of the legislation; and
  - Section 5 presents conclusions and recommendations.
- 1.7 Note that the names of airlines and travel agents have been redacted in all discussions of the results of the desk-based research. Where website screenshots are provided company names and airline flight numbers have also been removed.

## 2 Research methodology

### Introduction

2.1 This section provides a summary of the research methodology. The research phase was comprised of two main parts:

- **Desk-based research** of websites, pricing and advertisements to assess the level of compliance of airlines and travel agents with the legislation; and
- **Stakeholder interviews** to evaluate the enforcement and effectiveness of the legislation, and options for changes to it.

2.2 These tasks are described in turn below.

### Desk-based research

2.3 The first research task undertaken was a review of relevant previous studies, including the September 2007 ‘sweep’ focusing on the Unfair Commercial Practices Directive and the 2009 ‘Health Check’ covering the Air Services Regulation, Unfair Commercial Practices (UCP) Directive, the Unfair Contract Terms (UCT) Directive and the E-commerce Directive. We have used the studies to support the development of our methodology, and to assess the extent to which the market has changed since the 2009 ‘Health Check’.

2.4 The main phase of the desk-based research comprised three core tasks:

- A standard website checklist including both price and non-price elements completed by staff based in London;
- A simultaneous review of pricing by staff based in our London, Madrid and Rome offices, in order to check whether airlines are using IP addresses to price discriminate based on place of residence; and
- A review of newspaper advertisements by staff based in our London, Madrid and Rome offices in order to check whether airline and travel agent advertising in the UK, Spain and Italy is compliant with the relevant legislation.

2.5 The standard website checklist was completed for 100 websites, comprising 67 airlines and 33 travel agents. The simultaneous pricing review was conducted across a sub-sample of 20 airlines, details of which are provided below.

### *Sample selection*

2.6 The sample of airlines is based on that used by the 2009 Health Check, adapted to exclude airlines no longer operating or retaining separate websites following mergers or takeovers. Five airlines were removed from the sample:

- MyAir (declared bankrupt in 2010);
- Northwest (no longer retains its own website following merger with Delta Airlines, which was completed in 2010);
- SATA International (shares a website with SATA Air Açores);
- SkyEurope Airlines (declared bankrupt in 2009); and
- Turkish Cyprus Airlines (declared bankrupt in 2010).

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2.7 We selected replacements for these five carriers on the basis of total seats scheduled from EEA airports in 2010, derived from OAG data. The additional carriers were:

- Jet2.com;
- Monarch Airlines;
- United Airlines;
- Vueling; and
- Widerøe.

2.8 The full list of airline websites is given in Table 2.1 below, with an additional column to indicate the 20 airlines assessed by the simultaneous pricing review.

**TABLE 2.1 AIRLINE WEBSITE STATUS**

Carrier	State	Included in pricing review?
Adria Airways	Slovenia	
Aegean Airlines	Greece	
Aer Arann	Ireland	
Aer Lingus	Ireland	
Aeroflot	Russian Federation	
Air Berlin	Germany	✓
Air Europa	Spain	
Air France	France	✓
Air Malta	Malta	
Air One	Italy	
airBaltic	Latvia	
Alitalia	Italy	✓
Austrian	Austria	
Binter Canarias	Spain	
Blue1	Finland	
Blue Air	Romania	
Bmi	United Kingdom	
Bmibaby	United Kingdom	
British Airways	United Kingdom	✓
Brussels Airlines	Belgium	

Bulgaria Air	Bulgaria	
Carpatair	Romania	
Cimber Sterling	Denmark	
CityJet	Ireland	
Condor	Germany	
Cyprus Airways	Cyprus	
Czech Airlines	Czech Republic	
Delta Airlines	United States	
easyJet	United Kingdom	✓
Emirates	United Arab Emirates	✓
Estonian Air	Estonia	
Finnair	Finland	
Finncomm Airlines	Finland	
Flybe	United Kingdom	
Germanwings	Germany	
Iberia	Spain	✓
Jet2.com	United Kingdom	✓
KLM	Netherlands	
LOT	Poland	✓
Lufthansa	Germany	✓
Luxair	Luxembourg	
Malév	Hungary	
Malmö Aviation	Sweden	
Meridiana Fly	Italy	✓
Monarch Airlines	United Kingdom	
Niki	Austria	✓
Norwegian	Norway	
Olympic Air	Greece	
Pegasus Airlines	Turkey	
Royal Air Maroc	Morocco	✓
Ryanair	Ireland	✓

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SAS	Sweden	✓
SATA Air Açores	Portugal	
Skyways	Sweden	
Spanair	Spain	
Swiss	Switzerland	
TAP Portugal	Portugal	✓
TAROM	Romania	
Transavia.com	Netherlands	✓
TUIfly	Germany	
Turkish Airlines	Turkey	✓
United Airlines	United States	
Virgin Atlantic Airways	United Kingdom	
Vueling	Spain	✓
Widerøe	Norway	
Wind Jet	Italy	✓
Wizz Air	Hungary	

- 2.9 The initial sample of travel agents was also drawn from that used for the 2009 Health Check, although the number of companies surveyed is smaller. We have aimed to ensure that the sample is broadly representative of travel patterns across the EU; using ECTAA estimates of total travel agency employees in each of the States as an indicator of the extent of use of agent websites in each State (this broadly reflects the overall size of their aviation markets). This data was used to define a target number of Health Check travel agents to be selected for each State. We also aimed to maintain a similar split between companies assessed as satisfactory, unsatisfactory and worrying as in the Health Check.
- 2.10 We also selected some additional companies to reflect changes in the market and improve coverage for the larger States:
- Expedia, as although its parent company is based in the US, it provides national-language versions of its website for several European States;
  - Nouvelle-Frontieres and Promovacances, to improve coverage of France;
  - Jahn Reisen, to improve coverage of Germany; and
  - Olympia Viaggi, to improve coverage of Italy.
- 2.11 In two other instances we had to amend the sample in response to issues encountered when attempting to review the websites:



- For the Netherlands, World Travel Center replaces Kuoni, as its website did not allow flight-only bookings; and
- For Spain, Barceló Viajes replaces Terminal A, whose website was inactive awaiting a relaunch.

2.12 The final list of travel agent reviewed is given in Table 2.2, including both the full company names used in the Health Check and the short names by which they are referred to throughout the report.

**TABLE 2.2 TRAVEL AGENT WEBSITE STATUS**

State	Full Name (as used in Health Check)	Short Name
<b>Travel agents listed in proposal</b>		
Austria	VERKEHRBUERO-RUEFA REISEN GMBH	Ruefa
Belgium	Connections-Eurotrain SA	Connections-Eurotrain
Bulgaria	Bulgarian Viptravel LTD	Bulgarian VIP Travel
Czech Republic	Student Agency, SRO	Student Agency
France	Go Voyages SAS	Go-Voyages
	-	Nouvelles-Frontieres
	-	Promovacances
Germany	DER DEUTSCHES REISEBUERO GMBH & CO.	DER Reisebüro
	DERTOUR GMBH & CO KG	DERTOUR
	-	Jahn Reisen
	TUI Holding GMBH	TUI
Greece	Grecian Travel	Grecian Travel
Hungary	Malév Air Tours Ltd.	Malév Air Tours
Italy	CTS Viaggiatori	CTS Viaggiatori
	-	Olympia Viaggi
Netherlands	D-REIZEN VAKANTIE VOORDEELWINKELS B.V.	D-reizen
	-	World Travel Center
Poland	Weco Travel SP Z.O.O.	Weco-Travel
Portugal	Viagens Abreu	Abreu
Romania	Accent Travel	Accent Travel
Spain	-	Barceló Viajes
	-	Halcon Viajes
	Viajes El Corte Ingles	Viajes El Corte Ingles

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	Viajes Iberia	Viajes Iberia
Sweden	Flygpoolen	Flygpoolen
United Kingdom	eBookers	eBookers
	Edreams	eDreams
	Last Minute Network Ltd	LastMinute
	Opodo	Opodo
	Southall Travel Ltd	Southall Travel
	STA Travel Ltd	STA Travel
	Thomas Cook	Thomas Cook
United States	-	Expedia

2.13 We have found there were relatively few airline and travel agent advertisements in the newspapers that we checked, perhaps reflecting the switch to online advertising, and the fact that the summer is not a peak period for leisure travel bookings (most summer travel would have been booked during the Spring).

### *Approach*

2.14 The standard website checklist was designed to assess compliance with all relevant aspects of the legislation. In order to allow for comparison between the results of this study and the 2009 Health Check we adopted a similar structure to the checklist used for this study, but with some minor amendments to:

- Reflect recent market developments;
- Cover all of the questions in the Commission's Task Specifications; and
- Where possible, divide questions into sub-questions, to be more specific and ensure questions were clear.

2.15 The questions relating to the booking process were addressed by booking a sample journey up to (but not including) the point of confirming the booking. Where advertisements were not provided on the front page of the website the evaluator would consult the 'offers' section (or equivalent); assessing price lists if full adverts were not provided.

2.16 Although we have strove to ensure that the approach adopted provides the best possible assessment of compliance by airlines and travel agents, there remain some limitations which should be noted:

- Notwithstanding subsequent reviews of certain items, the bulk of the analysis was undertaken in June and July 2011. Airlines and travel agents change their websites regularly, and therefore it is likely that some will have changed since the research was undertaken.
- We have checked booking processes and other readily accessible information. Due to the complexity of some websites, it is possible that some issues may be

missed. In some cases we found certain information (for example the statement of liability required by Regulation 889/2002) to be present, but difficult to find.

- As we were not able to enter credit card details and actually make the booking, there is the possibility that examples of discrimination by credit card address have not been detected.
- For some companies, website design varies between States and it is possible that there may be some issues which are specific to certain versions.
- It is possible that other issues could arise if the websites were used to check different journeys to those we checked.

- 2.17 The simultaneous pricing review was undertaken by staff based in London, Madrid and Rome; with each of the three reviewers recording the following information:
- The initial quoted total price for a pre-defined journey;
  - Whether the total price changed during the booking process; and
  - Whether there were any differences in terms of the optional services offered.
- 2.18 Two sample journeys were assessed for each of the 20 airlines, with each reviewer booking a given journey at the same time.
- 2.19 The review of newspaper advertisements was also undertaken by staff based in London, Madrid and Rome. Each advertisement found was subjected to the same questions as used in the advertisement section of the standard website.

### **Stakeholder interviews**

- 2.20 The stakeholders we invited to take part in the study can be grouped into the following categories:
- National organisations with responsibility for enforcement of the relevant legislation;
  - European Consumer Centres (ECCs) and other relevant national consumer bodies;
  - European passenger and consumer bodies;
  - Airline representatives; and
  - Travel agent and other industry representatives.
- 2.21 The subsequent section explains the choice of stakeholders within each category, and is followed by a summary of the process adopted in engaging with each organisation.

### **Sample selection**

- 2.22 For each of the States surveyed we approached:
- The main organisation that has been notified by the State to the Commission as responsible for enforcing the price transparency provisions in Regulation 1008/2008 (generally the civil aviation authority or equivalent); and
  - Where separate, the organisation responsible for enforcing the consumer protection Directives (States are not required to designate organisations for enforcement but are required to designate bodies for cross-border cases under Regulation 2006/2004 on consumer protection cooperation).

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- 2.23 Six of the eight States were selected as the largest aviation markets in Europe (the United Kingdom, Germany, Spain, France, Italy and the Netherlands), together with a Scandinavian state (Norway) and a central European state (Poland) to improve the geographical spread of the sample. The relevant legislation all applies in Norway as it is a Member State of the European Economic Area (EEA).
- 2.24 The selection of national consumer organisations was based primarily on our experience of those organisations which have recently been active in the field of air transport and could therefore contribute usefully. In addition, we approached the Norwegian organisation, as we hoped to meet it at the same time as the enforcement authority in Oslo.
- 2.25 Finally, we approached all the key EU-wide industry and passenger representative organisations.
- 2.26 We also received a number of unsolicited responses from organisations which had taken an interest in the study. These comprised:
- The Global Business Travel Association (GBTA);
  - Austrian Airlines;
  - Air France;
  - Lufthansa;
  - Ryanair;
  - LOT Polish Airlines;
  - TAP Portugal;
  - The European Technology & Travel Services Association (ETTSA); and
  - Amadeus.
- 2.27 However, the receipt of additional responses from the airlines was at the expense of not receiving (or only receiving partial) responses from the airline associations.

### ***Approach***

- 2.28 We conducted face-to-face interviews and discussion of options with national enforcement authorities for two States - the UK and Norway. We also offered face-to-face meetings as an alternative to telephone interviews:
- In our offices for organisations which could easily travel to London (this opportunity was taken up by GBTA and ETTSA); and
  - For Brussels-based stakeholders (this opportunity was taken up by IACA and BEUC).
- 2.29 The remaining stakeholders contributed in writing and/or by telephone.
- 2.30 The approach adopted in making initial contact with the stakeholders was as follows:
- Contact the organisation to invite them to participate in the study;
  - Send a question list to the organisation; and
  - Either arrange a face-to-face meeting or agree a timescale for their written response, indicating that this may be followed by a subsequent telephone interview to clarify any outstanding issues.

- 2.31 Question lists were developed for each of the five types of stakeholder identified at the start of this section. These were designed to both assess compliance with key aspects of the legislation, and to investigate the issues highlighted by the Commission in the Terms of Reference. For the benefit of stakeholders less familiar with the legislation we also appended a 1-page summary of the key requirements.
- 2.32 For face-to-face interviews the remaining steps were:
- Conduct face-to-face interview;
  - Collate (if more than one interviewer attending) and produce notes from interview; and
  - Send written notes of the meeting to the participants in order to ensure that they agree with the record of what was said.
- 2.33 And for other stakeholders:
- Await receipt of written response to question list, discussing progress with the respondent if this is not received within the agreed timescale;
  - On receipt of the written response analyse for omissions;
  - Send clarification questions by email or conduct telephone interview to clarify remaining points;
  - Combine the written submission with the additional notes; and
  - In the case of telephone interviews, send these annotated notes to the participants in order to ensure that they agree with the record of what was said.
- 2.34 Most stakeholders preferred to respond to our clarification questions by email rather than via a telephone interview.
- 2.35 A full list of all stakeholders involved in the study, and the status of each contact is given in Table 2.3. The list excludes stakeholders who are not participating because their organisation no longer exists or has a relevant enforcement role.

**TABLE 2.3 STAKEHOLDER CONTACT STATUS**

State	Organisation	Status
<b>Enforcement authorities</b>		
France	Direction Générale de l'Aviation Civile (DGAC)	Submission received
	Direction générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF; General Directorate for Competition, Consumer Affairs and Consumer Protection)	Submission received
Germany	Bundesministerium für Verkehr, Bau- und Stadtentwicklung (BMVBS)	Not participating
	Luftfahrt-Bundesamt (LBA)	Not participating
	Bundesministerium der Justiz (Federal Ministry of Justice)	Not participating

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Italy	Ente Nazionale per l'Aviazione Civile (ENAC)	No submission received
	Autorità Garante della Concorrenza e del Mercato (AGCM; Antitrust Authority)	Submission received
Netherlands	Consumentenautoriteit (Consumer Authority)	Submission received
Norway	Forbrukerombudet (Consumer Ombudsman and the Market Council)	Meeting held on 24 <sup>th</sup> June
Poland	Civil Aviation Office	Submission received
	Prezes UOKIK (Office of Competition and Consumer Protection)	Submission received
Spain	Agencia Estatal de Seguridad Aérea (AESA)	Submission received
	Instituto Nacional del Consumo (National Consumer Institute)	No submission received
United Kingdom	Civil Aviation Authority	Meeting held on 11 <sup>th</sup> July
	Office of Fair Trading	Meeting held on 13 <sup>th</sup> July

### European Consumer Centres (ECCs) and other relevant consumer bodies

Belgium	Test-Achats	Submission received
Norway	Forbrukerrådet (Norwegian Consumer Council)	Not participating
Spain	FACUA	Submission received
United Kingdom	Which?	Submission received

### European passenger and consumer bodies

EU	European Consumers' Organisation (BEUC)	Meeting held on 7 <sup>th</sup> July
EU	European Passenger Federation (EPF)	Not participating
EU	Global Business Travel Association (GBTA)	Meeting held on 27 <sup>th</sup> June

### Airline representatives

EU	Association of European Airlines (AEA)	Not participating (but members responding directly - see airlines below)
EU	European Regions Airline Association (ERAA)	Submission received
EU	European Low Fares Airline Association (ELFAA)	Submission received
EU	International Air Carrier Association (IACA)	Meeting held on July 7 <sup>th</sup>
EU	International Air Transport Association (IATA)	Submission received
Austria	Austrian Airlines	Submission received
France	Air France	Submission received

Germany	Lufthansa	Submission received
Ireland	Ryanair	Submission received
Poland	LOT Polish Airlines	Submission received
Portugal	TAP Portugal	Submission received
<b>Travel agent representatives</b>		
EU	European Travel Agents and Tour Operators Association (ECTAA)	Submission received
EU	European Technology & Travel Services Association (ETTSA)	Meeting held on 28 <sup>th</sup> July
Spain	Amadeus	Submission received

#### *Stakeholders not participating*

- 2.36 **BMVBS** replied that they did not have time to respond to our questions, and that they had recently had a very detailed conversation with the Commission regarding Regulation 1008/2008.
- 2.37 The German **Federal Ministry of Justice** informed us that they would not respond as they do not have competence in this area, nor do they have any enforcement power; which in Germany is primarily conducted by private organisations.
- 2.38 Our contact at **LBA** stated that he would be unable to respond given a significant and protracted increase in workload.
- 2.39 We have assumed that the **Norwegian Consumer Council** will not be responding to our list of questions, in part because our contact has been on leave following the recent events in Oslo, and was not expected to return in sufficient time for any response to be incorporated in our report. In our meeting with the Consumer Ombudsman we were advised that the organisation has no statutory role with regard to the legislation, and that its involvement was largely limited to passing on complaints to the Consumer Ombudsman for action.
- 2.40 Our contact at the **European Passenger Federation** has chosen not to participate due to the organisation never having directly received any complaints relevant to the legislation; therefore any response could only be based on opinion and unsubstantiated information rather than concrete evidence.
- 2.41 The **Association of European Airlines (AEA)** preferred to forward the question list to its members rather than to reply directly itself.

#### *Stakeholders which have not yet provided a written submission*

- 2.42 **ENAC** were due to reply by July 27<sup>th</sup>. When we were last able to speak to her, our contact informed us that she was in hospital but would be returning to the office the following day. However we were not able to contact her again within the timescale of the consultation.
- 2.43 Finally, unanticipated work pressures meant that our contact at the Spanish **National Consumer Institute** could not reply by July 26<sup>th</sup> as agreed; instead he

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promised to reply by August 5<sup>th</sup>. However, we never received this response and were unable to make contact again within the consultation period.



## 3 Compliance by airlines and travel agents

### Introduction

3.1 This section evaluates levels of compliance by airlines and travel agents with the current legislation. It includes the results of both the desk-based research and stakeholder interviews. Given the overlapping nature of the tasks, we present the results by theme:

- **Booking process:**
  - Presentation of base fare;
  - Specification of unavoidable fees and charges;
  - Additional services (communication at start of booking process and offering services on 'opt in' basis only);
  - Price discrimination by place of residence;
  - Description of routings offered (use of full airport names and stating whether flights are direct); and
  - Access to terms and conditions.
- **Advertising:**
  - Advertisement of free tickets;
  - Description of routings;
  - Pricing; and
- **Legal information;**
  - Contact details;
  - Statement on air carrier liability for passengers and baggage; and
  - Refund procedures.

3.2 Throughout this section reference is made to the 'stages' of a website. We adopt the following definition:

- i) **Front screen:** choice of destination and ticket type;
- ii) **Initial quoted price:** daily or flight-specific;
- iii) **Flight specific price:** only if daily initially provided at stage (ii) above;
- iv) **Consolidated final price:** just before purchase; and
- v) **Transaction:** final add-ons may be included.

3.3 Finally, the charts used in this section of the report share a basic colour coding structure, which is as follows:

- **Red:** Potentially non-compliant with the requirement;
- **Yellow:** Partially compliant or unclear - isolated issues, misleading or open to interpretation;
- **Green:** Compliant with the legislation.

The checklist used for this study was provided by the services of the Commission and represents their interpretation of the requirements of the legislation, in the absence of any clarification given by the European Court of Justice. The findings below do not constitute the allegation of an infringement by Steer Davies Gleave. Only national enforcement authorities are in a position to formally investigate infringements. Where the team applying the checklist was unable to classify a particular practice as clearly meeting or not meeting one of the criteria in the checklist, it was classified as partially compliant or unclear (colour code yellow)

### Booking process

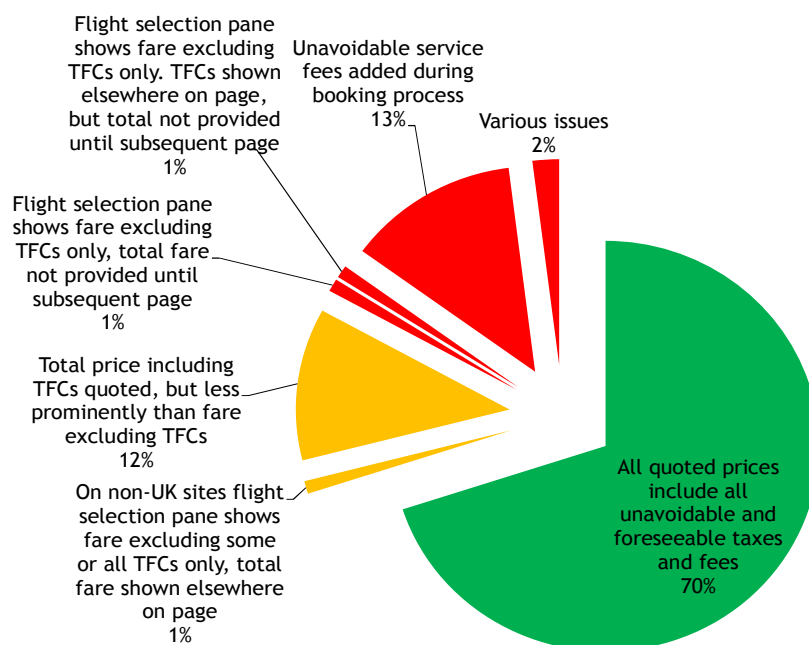
#### *Presentation of base fare*

- 3.4 This section evaluates compliance with Article 23(1) of the Air Services Regulation 1008/2008 which states that “the final price to be paid shall at all times be indicated and shall include the applicable air fare or air rate as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication”.
- 3.5 The first part of this section focuses on taxes, fees and charges (hereafter TFCs) that are clearly unavoidable, for example ‘service fees’ levied on all passengers regardless of nationality or State of departure. In addition, some carriers levy payment fees which can in theory be avoided, but sometimes may in effect also be unavoidable; these are discussed subsequently.

#### *Inclusion of unavoidable TFCs in the total fare*

- 3.6 Although most carriers include TFCs in the base fare presented on their websites, problems were identified with 30% of the websites, as indicated in Figure 3.1 and Figure 3.2 below. The extent of compliance with this requirement did not vary significantly by carrier or company type.

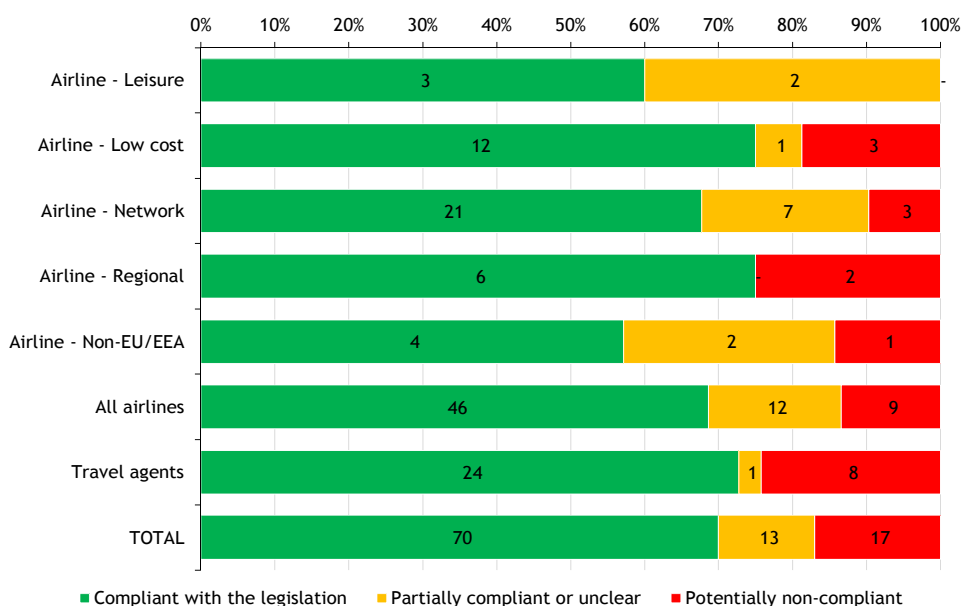
FIGURE 3.1 PRESENTATION OF BASE FARE: ALL WEBSITES



3.7 The 'various issues' cited for two airlines comprise the following:

- One of the network carriers provides a flight selection pane which shows fares excluding TFCs, but does provide a total elsewhere on the page. However, this total excludes an unavoidable service fee. The website also exhibited unexplained changes in the total taxes and fees; for example for one journey tested, the taxes and fees change from £183.09 at the initial quoted price stage to £187.49 at the final price and transaction stages.
- One regional carrier also provides a flight selection pane which shows fares excluding TFCs, and again provides a total inclusive fare elsewhere on the page. The customer is also notified of an unavoidable airport fee (Galway), which is not included in the fare at any point in the booking process. This appears to be an infringement of Article 23(1) although it should be noted that this fee is paid directly to the airport, not the airline.

FIGURE 3.2 PRESENTATION OF BASE FARE: COMPLIANCE BY COMPANY TYPE



- 3.8 17% of the websites reviewed clearly did not meet the requirement to show the total price at all stages of the booking process. The most common non-compliant practice identified was adding unavoidable service fees at a later stage in the booking process. Although the customer is frequently warned that such fees will be added, they are not included in the initial price quoted to the customer.
- 3.9 One of the non-EU airlines adopted the unusual practice of excluding TFCs from the fares shown on its flight selection pane, then provided a separate TFCs figure elsewhere on the page; but no total fare until the next page in the booking process.
- 3.10 We also found a further 13 websites adopted practices that were (at best) not consistent with the spirit of the Regulation but where it was not clear that there was any infringement of the text. The most common such practice was providing a flight selection pane which shows fares excluding either unavoidable service fees or all TFCs, whilst showing a total elsewhere on the page (often less prominently).
- 3.11 One low cost carrier presents prices differently on the UK version of its website from other EU versions of the website. The UK version only shows fares including unavoidable TFCs, but non-UK versions showed fares excluding TFCs on the flight selection pane. We understand that the UK version of this carrier’s site has been amended in response to the threat of enforcement action by the UK CAA and Office of Fair Trading. Interestingly, the UK version suggests that ‘low fares are available’ on days which the (for example) Portuguese site indicate that no flights operate. This practice could potentially be considered a misleading action under Article 6 of the Unfair Commercial Practices Directive, which defines the accurate communication of the availability of a product as a key requirement.
- 3.12 Whilst showing prices excluding TFCs as well as (and perhaps less prominently than) prices including TFCs may not be an infringement of Regulation 1008/2008, as this only specifies that the total price must at all times be indicated (not that another price cannot be shown), it does not seem consistent with the objectives of

the Regulation. It could also potentially be considered an infringement of the Unfair Commercial Practices Directive, either with regard to Article 7(4)(c), which defines the price including taxes as material information, the omission of which would be regarded as misleading, or Article 6(1)(d), which defines deceiving information on price as justification for a commercial practice to be regarded as misleading.

#### *Payment fees*

- 3.13 38% of websites impose fees which vary by payment type. Although in all cases a free means of payment is offered, this may not be readily available to the majority of customers. Although the legal position regarding the imposition of payment fees which are difficult to avoid is unclear, such fees:
- might be considered an infringement of Article 23(1) of Regulation 1008/2008 depending on the interpretation of the word ‘unavoidable’;
  - might be considered an infringement of the Unfair Commercial Practices Directive on the basis that the separation of the fees is designed to mislead passengers; and
  - where the fees can only be avoided with a payment method that is specific to a given State, appear likely to be a breach of Article 23(2) of Regulation 1008/2008 on non-discrimination.
- 3.14 Figure 3.3 shows the extent to which *de facto* unavoidable payment fees are levied by all the airlines and travel agents surveyed (i.e. not just the websites which levy any form of payment fee). This only shows fees which are avoidable at least for some passengers; where there is a fee described as a payment fee, but no free payment method at all, we consider these ‘service fees’ rather than payment fees. This is because these are in effect fees to recover the standard cost for sale or issue of a ticket, rather than a cost associated with a specific payment type.

FIGURE 3.3 PAYMENT FEES: ALL WEBSITES

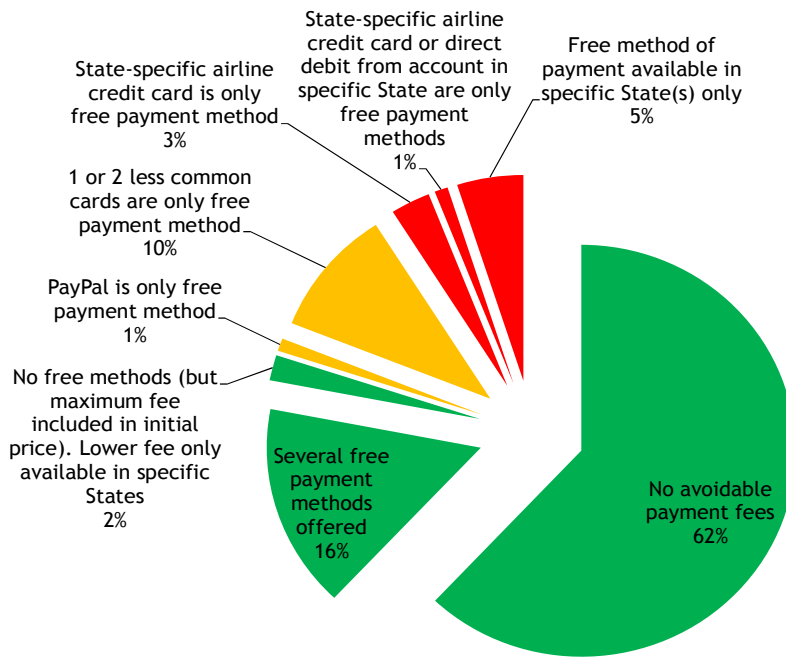
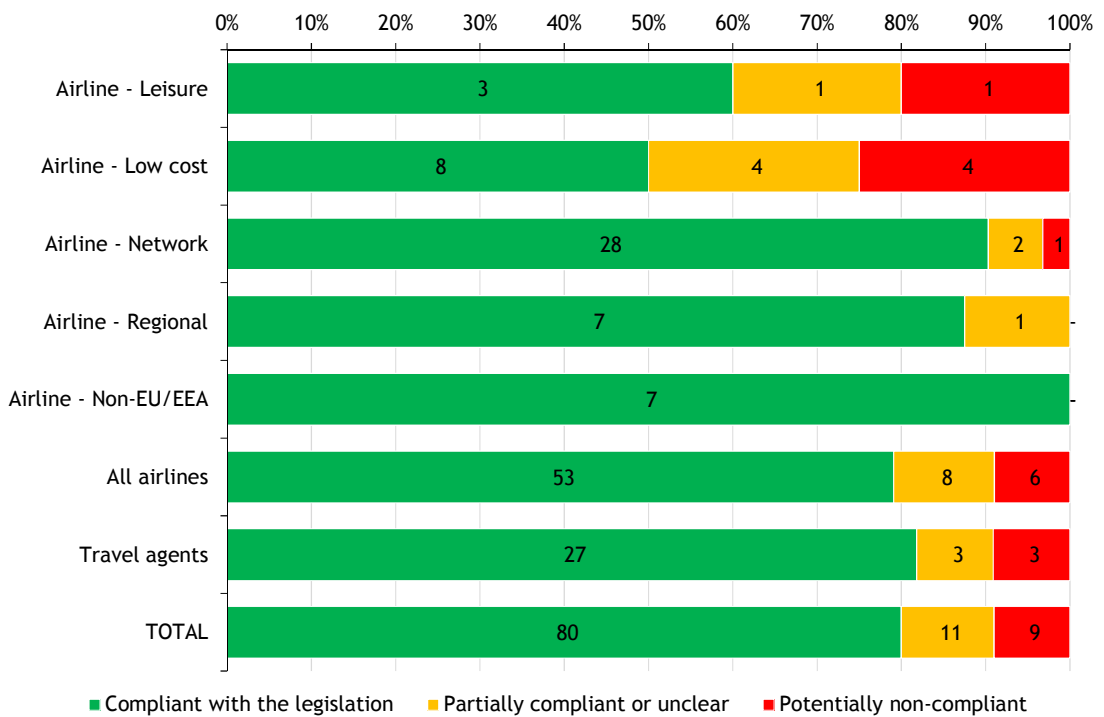


FIGURE 3.4 PAYMENT FEES: COMPLIANCE BY COMPANY TYPE



3.15 Six websites offered free payment methods which were only available to residents of certain States, either by offering specific cards as free options only in certain versions of the website only, or by offering free transfers from holders of bank accounts in certain States. For example, the only free payment method available

on one travel agent's website was the Visa Dankort credit card which is only available in Denmark and is only offered on the Danish version of the website. One of these, plus three others, allow free payment by holders of their own airline credit cards, which are only available to residents of certain States (usually the home State of the airline).

- 3.16 This practice appears to contravene the prohibition on price discrimination in Regulation 1008/2008 (discussed in more detail below), as well as, on versions of the website for States where no free methods are available, the requirement in Article 23(1) that the total fare should include all unavoidable fees and surcharges. Given the fees are unavoidable for residents of certain States, not including the minimum payment fee in the initial price could also constitute a misleading omission under Article 7(4)(c) of the Unfair Commercial Practices Directive.
- 3.17 The other most common issue is the practice of allowing free payment only for holders of cards which are uncommon or difficult to obtain. The cards identified in the graph above comprise the following:
- Diners Club (one travel agent);
  - Eurocheque card (one leisure airline);
  - Pre-paid MasterCard (three airlines);
  - Solo (one low cost airline); and
  - Visa Electron (five mostly low cost airlines and two travel agents).
- 3.18 The Eurocheque card has been largely replaced by MasterCard, although remains available in certain States. Visa Electron and Solo cards are not widely available in most Member States, and tend to be associated with accounts for younger people or those on lower incomes, who are less likely to book air tickets. Although pre-paid MasterCards can be relatively easily purchased online (at least in some Member States), providers of these cards charge for their purchase and/or use and therefore it is not possible to travel at the price advertised by the airline. Despite the fact that these issues were observed for only a relatively small percentage of airlines, the fact that the airlines include the two largest low cost airlines suggests that the proportion of passengers affected is high.
- 3.19 Two low cost / leisure carriers adopt the unusual practice of including a €17 service fee in the total fare, which is then discounted to €10 for payments by direct debit from bank accounts in Austria, Germany and the Netherlands. This practice is non-compliant with the price discrimination requirement in Regulation 1008/2008 but, as the maximum fee is included in the initial quoted total fare, in our view should be compliant with the price transparency requirement.
- 3.20 A large proportion of the websites (29%) did not indicate payment fees until after the flight price stage. However, it should also be noted that:
- Many of these websites indicate that a charge might apply without specifying its level; and
  - Payment fees are often stated in the website's terms and conditions, which are available to view prior to purchase.

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### *Research conducted by other organisations*

- 3.21 Several of the national enforcement and consumer organisations which took part in the study have conducted their own investigation into the prevalence and effects of ‘drip pricing’, i.e. the practice of adding further elements to the fare initially advertised.
- 3.22 FACUA published the results of its research in February 2011, which indicated that 65% (24 out of 37) of airlines surveyed advertised lower prices for tickets than they eventually charged consumers. The additional elements identified included charges for the printing of boarding passes, hold luggage or payment by credit card (although these are probably not ‘unavoidable’ charges). Similar results emerged from the research conducted in July 2011 by NCA, which found differences between initial and final price on 58% (15 out of 26) of websites.
- 3.23 In March 2011 the UK consumer organisation Which? presented OFT with a ‘Supercomplaint’ regarding credit and debit card surcharges across the transport sector, which included a review of the practices of 10 major airlines. It found that:
- Almost all passengers travelling on low cost airlines booked online;
  - The vast majority of the 10 airlines surveyed only made provision for customers to pay online using credit or debit cards;
  - There was a large variation in the level of payment fees and types of free payment options available;
  - Some free methods are not widely available or used by consumers - for example Electron and Solo cards each comprised a fraction (5% and 3% respectively) of payments by value in 2009, compared with 65% for Visa Debit and 27% for Maestro cards; and
  - The fees levied by airlines were much higher than a ‘fair’ level.
- 3.24 OFT conducted a study in 2010 into the effects of various pricing practices on consumer decision making and welfare. Five practices were evaluated, with ‘drip pricing’ emerging as the most likely to cause consumer detriment. Issues were identified in several areas:
- The chances of errors in search activity (visiting fewer retailers than is optimal) and purchasing behaviour (not buying the optimal amount of a good) were substantially higher than with any of the other pricing practices tested;
  - If a consumer sees a low base price which leads them to want to purchase, they shift their ‘reference point’ because they imagine already possessing the good. When they later realise that there are additional costs, it becomes more difficult for them to give up the good which in their mind they already have, especially if it is assumed that other traders will use similarly time-consuming drip pricing; and
  - Subjects reported disappointment because, although they often purchased the good after finding out about the additional charges, they felt cheated and annoyed because their pay-off (which was initially expected to be high) was reduced.
- 3.25 Interestingly, the study did not find that the practices which were detrimental to consumers were those which performed best for sellers - simulated sales using a



drip-pricing approach were found to be equivalent to sales under the baseline approach.

***Specification of unavoidable fees and charges***

3.26 Article 23(1) of Regulation 1008/2008 requires that:

**“In addition to the indication of the final price, at least the following shall be specified:**

**(a) air fare or air rate;**

**(b) taxes;**

**(c) airport charges; and**

**(d) other charges, surcharges or fees, such as those related to security or fuel**

**where the items listed under (b), (c) and (d) have been added to the air fare or air rate”**

3.27 Compliance with this requirement to display the full breakdown of the fare was extremely poor, with only 22% of websites both providing this and labelling it accurately. However, this should be considered in light of the final part of the extract reproduced above, which states that the specified elements only have to be listed if part or all of them have been added to the base fare. Given that Article 22 allows airlines to determine the structure of the base fare, it could be interpreted that where an airline considers that (for example) taxes form an intrinsic part of the fare, no taxes have therefore been added to the base fare and do not need to be separately identified.

3.28 Most websites present taxes and airport charges alongside service fees, but do not provide a full breakdown between the individual elements comprising the total taxes and charges. However, most of the large network carriers (and some others) do provide a full breakdown of all TFCs. Compliance by travel agents was even lower, with none of the websites reviewed providing the full breakdown between the various elements of the total fare.

3.29 We also assessed the degree to which TFCs were correctly identified by the airlines and travel agents. Figure 3.5 summarises the results of our assessment.

FIGURE 3.5 LABELLING OF FEES AND CHARGES: ALL WEBSITES

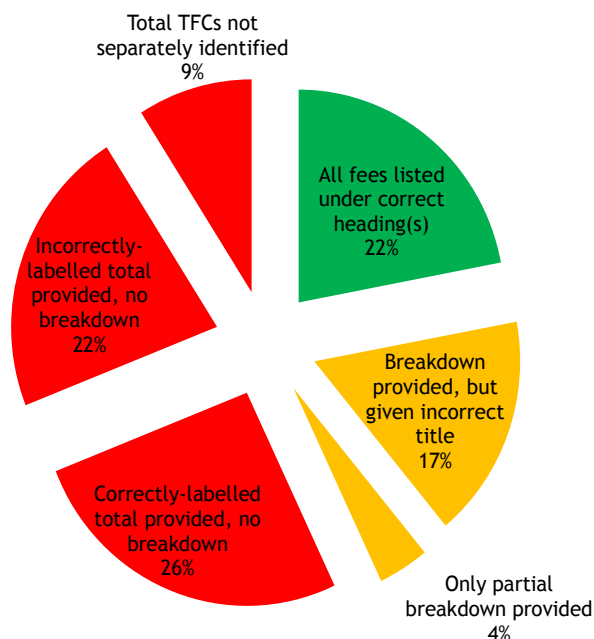
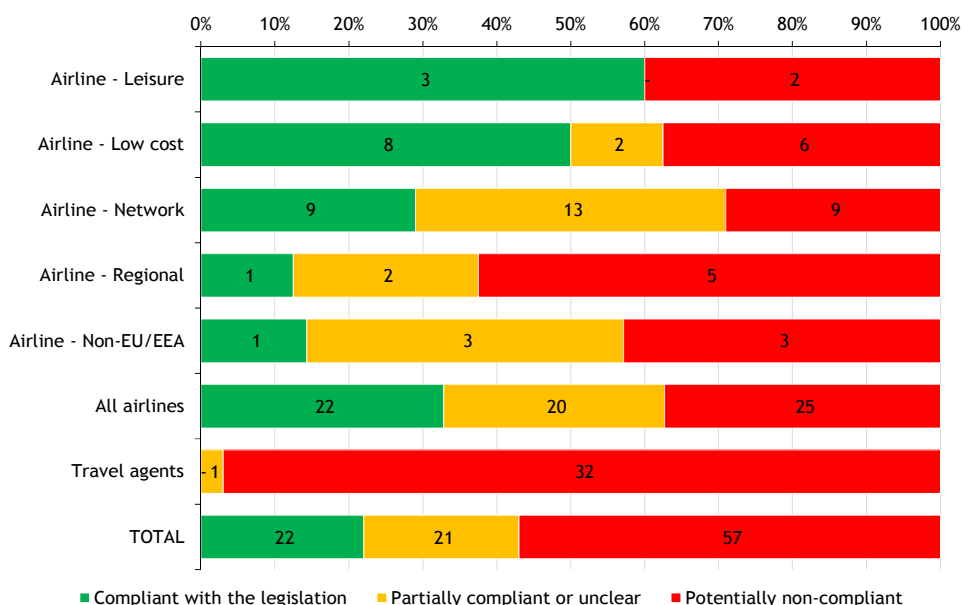


FIGURE 3.6 LABELLING OF FEES AND CHARGES: COMPLIANCE BY COMPANY TYPE



3.30 Of the airlines which did provide a full breakdown of TFCs, less than half listed these under the correct heading. The most common issue was listing all TFCs under a ‘taxes’ hyperlink, although in some cases this linked to a correctly-labelled list of ‘taxes and charges’ (or equivalent).

3.31 Around half of the websites which did not provide a full breakdown of TFCs incorrectly labelled the total TFC figure: again this was most commonly entitled

'taxes'. Given that all major European airports levy some form of airport charge, this suggests one of the following:

- The 'tax' category includes airport charges and is therefore incorrectly labelled; or
- Airport charges are included in either the fare or service charge (or equivalent), meaning that these categories are incorrectly labelled.

3.32 The same conclusions are likely to apply when only a partial breakdown is provided. For example, one of the low cost carriers identifies only an Airport Fee, Security Fee and Force Majeure Cancellation Fee on a flight from the UK, where Airport Passenger Duty is payable. This tax must therefore be captured elsewhere, implying that the respective category has been incorrectly labelled.

3.33 We also observed some more confusing examples:

- Two airlines and two travel agents cited 'airport tax'. It is unclear whether this is an airport charge or an actual tax; or even the sum of the two.
- One low cost airline provides a breakdown of several of its own fees, but adds a general taxes and fees category within which no breakdown is provided. This category appears to include government taxes and airport charges but the amount was higher than the combination of government taxes and per-passenger airport charges on the route we checked, and therefore we assume this might include other unspecified fees.

3.34 The research conducted by the NCA in July 2011 found that 81% of a sample of 26 websites did not provide a sufficient breakdown of the total price.

#### ***Additional services***

3.35 Article 23(1) of Regulation 1008/2008 also specifies that **"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"**.

3.36 'Optional price supplements' includes some charges and fees which are theoretically avoidable, but may be unavoidable for many passengers, for example charges for checked baggage or sports equipment. We have also assessed whether it is clearly stated that additional services are offered by third party providers (where relevant); this is discussed in the legal information section below.

3.37 We found that, where charges for checked baggage were identified, in most cases this was at the initial or flight price stages. There were 5 websites which did not indicate the level of luggage charge until after this stage:

- Two airlines and one travel agent identify that a charge may apply, but do not indicate its level.
- A low cost airline and travel agent do not indicate that a luggage charge may apply until the flight price stage.

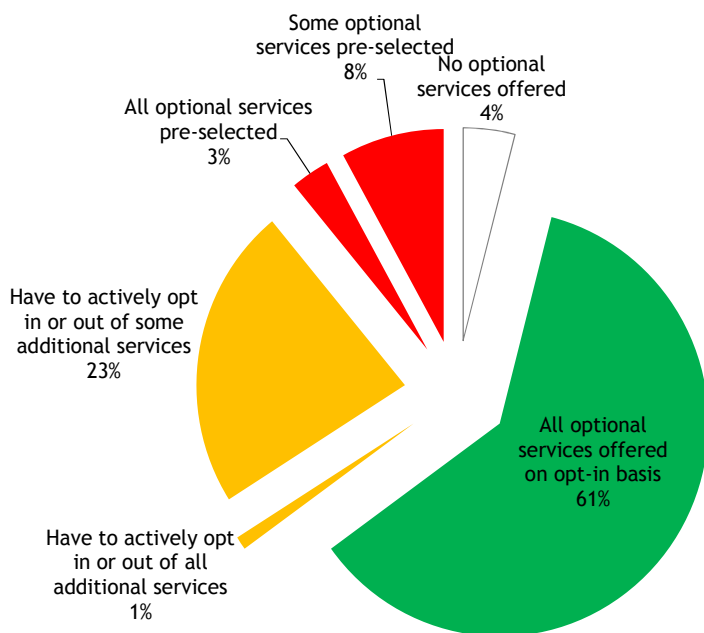
3.38 Three of the five websites identified above indicate the level of luggage charges elsewhere on their websites. One of the travel agents provides limited information for a selection of carriers, and one of the airlines provides details of charges for its own flights in the customer help area of its website. However, all differ from the

approach adopted by other websites of providing a clear link to this information as part of the booking process.

3.39 We found two low cost airline websites pre-selected checked baggage (although in one of these cases this then had to be confirmed). On a further 11 websites the user is required to actively opt in or out of the checked baggage option - i.e. if the customer does not actively specify whether they wish to check in bags they are asked to confirm if they are sure, or are forced to return to the page to enter the number of bags to be checked in. No websites pre-selected sports equipment.

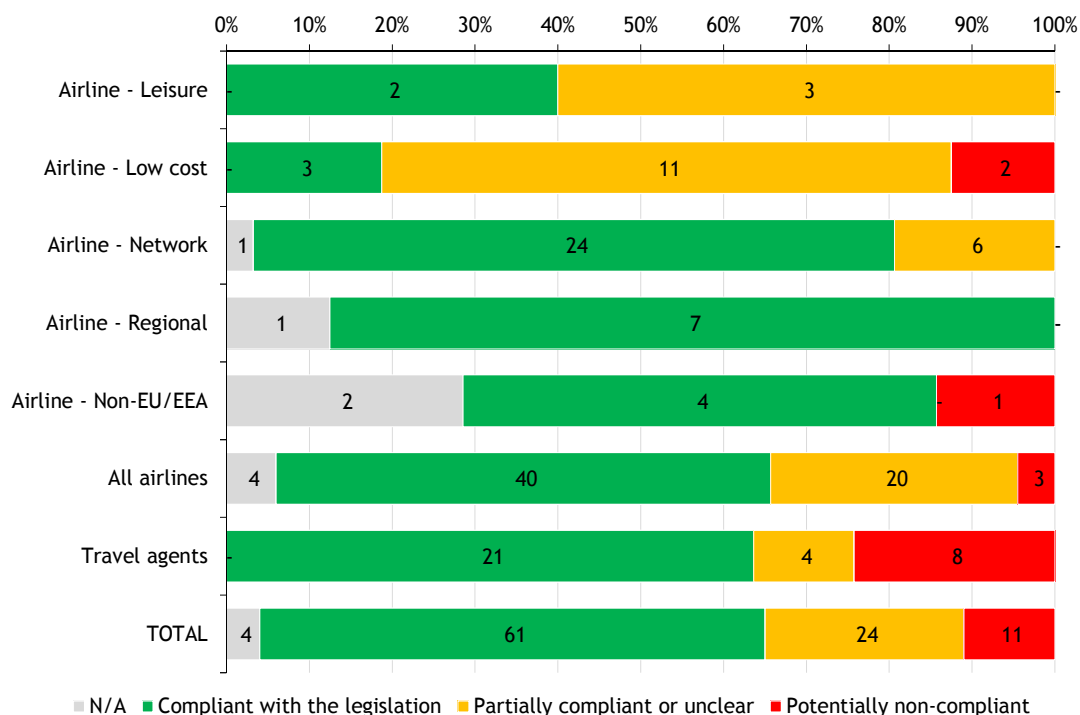
3.40 A wide range of optional additional services were offered by the airlines and travel agents, with the most common being hotels, travel insurance<sup>2</sup> and car rental. Although the majority of additional services are offered by air carriers on a purely 'opt in' basis, some carriers require the customer to either opt-in or opt-out. Figure 3.7 shows the extent to which optional services were offered on a purely 'opt in' basis.

**FIGURE 3.7 PROVISION OF OPTIONAL SERVICES ON 'OPT IN' BASIS: ALL WEBSITES**



<sup>2</sup> Subsequent to undertaking this analysis we have been informed of a reference to the CJEU by the Higher Regional Court of Cologne regarding whether the requirement in Article 23(1) of Regulation 1008/2008 that optional price supplements are communicated on an opt-in basis at the start of the booking process applies to third party supplements like insurance (case C112/11).

**FIGURE 3.8 PROVISION OF OPTIONAL SERVICES ON 'OPT IN' BASIS: COMPLIANCE BY COMPANY TYPE**



- 3.41 The following websites pre-selected some or all of their optional services:
- One low cost carrier offers delay warranty and flexible booking in what appear to be an 'opt in' manner. However, subsequently the customer is automatically opted in to these services, and the means for opting out is not entirely clear. In addition, the descriptions used could be considered misleading, as the customer may not immediately appreciate that a voucher offered for the passenger's next booking is only payable in the event of a delay of more than 1 hour.
  - SMS confirmation is pre-selected by one of the non-EU airlines;
  - Travel insurance is pre-selected by seven travel agents (this is the only optional service offered by three of the companies); and
  - Delay warranty is pre-selected by another travel agent.
- 3.42 As indicated above a further 24 websites require the user to actively opt in or out of additional services. This is particularly confusing on one low cost carrier's website: the customer is required to select 'No Travel Insurance' from a drop-down list of countries of residence, and in our opinion a customer not reviewing this carefully could mistakenly assume that the drop-down list is simply asking for the passenger's country of residence rather than referring to insurance.
- 3.43 Which? also indicated that pre-selection of optional services continued to be an issue, with the practice being more common among larger companies than smaller, specialist travel companies. This view is supported by the NCA's research, which found that 42% of the airlines in its sample of 26 used pre-checked boxes in their booking processes.

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- 3.44 Amadeus, ETTSA and GBTA all questioned the extent to which airlines were communicating all price supplements to GDS providers as required by Regulation 1008/2008. This includes not providing all relevant information regarding the core air travel service, and a lack of communication of the full range of ancillary services available. Thus any assessment of the communication of additional services by travel agencies should note these issues.

### *Price discrimination by place of residence*

- 3.45 Article 23(2) of Regulation 1008/2008 requires that “**access to air fares and air rates for air services...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**”.
- 3.46 We checked for price discrimination by place of residence by checking several State versions of airline/travel agent websites. For a sample of airlines, we also undertook a simultaneous assessment of prices using teams based in three different States.
- 3.47 It should be noted that the Regulation only requires prices to be consistent for the same journey - implying the same ticket, booked at the same time, for the same flight. Airlines may still offer different fares for similar, but different, journeys: for example a lower fare could still be offered for Paris-London-New York than Frankfurt-London-New York, or just London-New York, even if the long haul journey was on the same flight and the booking was made at the same time.<sup>3</sup> Therefore, when checking fares, we compared exactly the same journey regardless of the version of the website on which this was checked.

### *Website assessment*

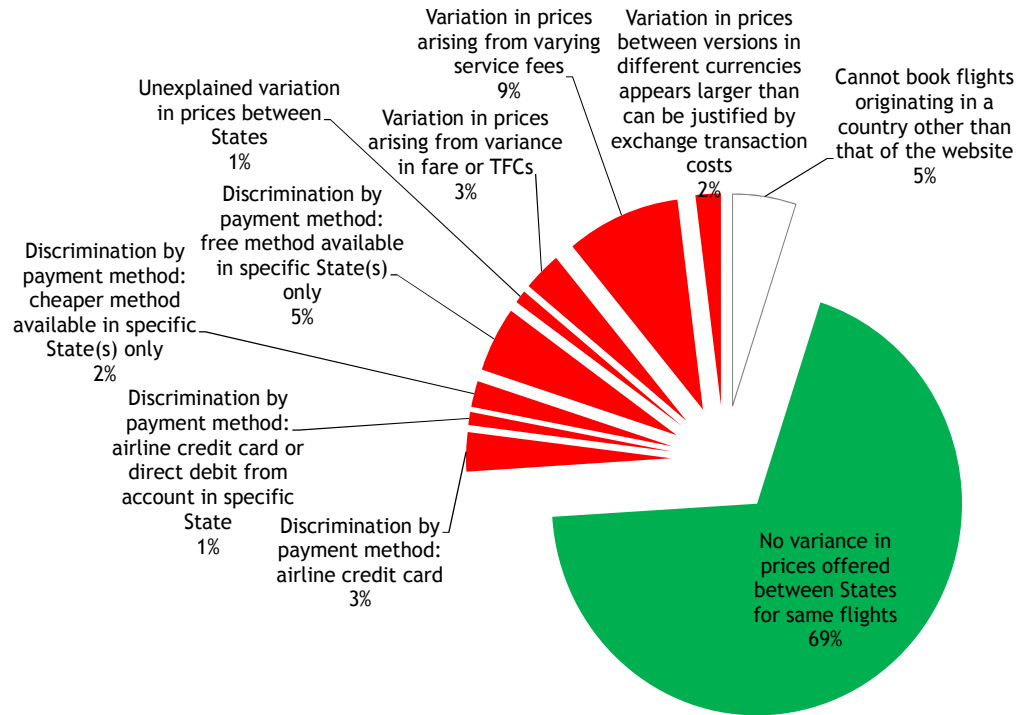
- 3.48 We found that 95% of the websites surveyed allowed customers to book flights from States other than that of the website. The exceptions comprised one airline and four travel agents; some other airlines allow booking from other State versions of the website but then redirect the customer to the respective national site. Whilst the practice of requiring flights to originate in the State of the website is not ideal from a passenger perspective, it does avoid any possibility of price discrimination by residence, because a given flight can only be booked from one version of the website.
- 3.49 We found that 15 websites offered different fares depending on the place of residence of the passenger. These differences most commonly arose from the imposition of State-specific service fees, with the variation in the remainder of cases occurring either in the fare excluding TFCs, or the TFCs themselves.
- 3.50 Incorporating the results of the analysis of payment methods discussed above suggests that 25 websites are discriminating by place of residence in one form or another, as shown in Figure 3.9 and Figure 3.10 below. We did not encounter any

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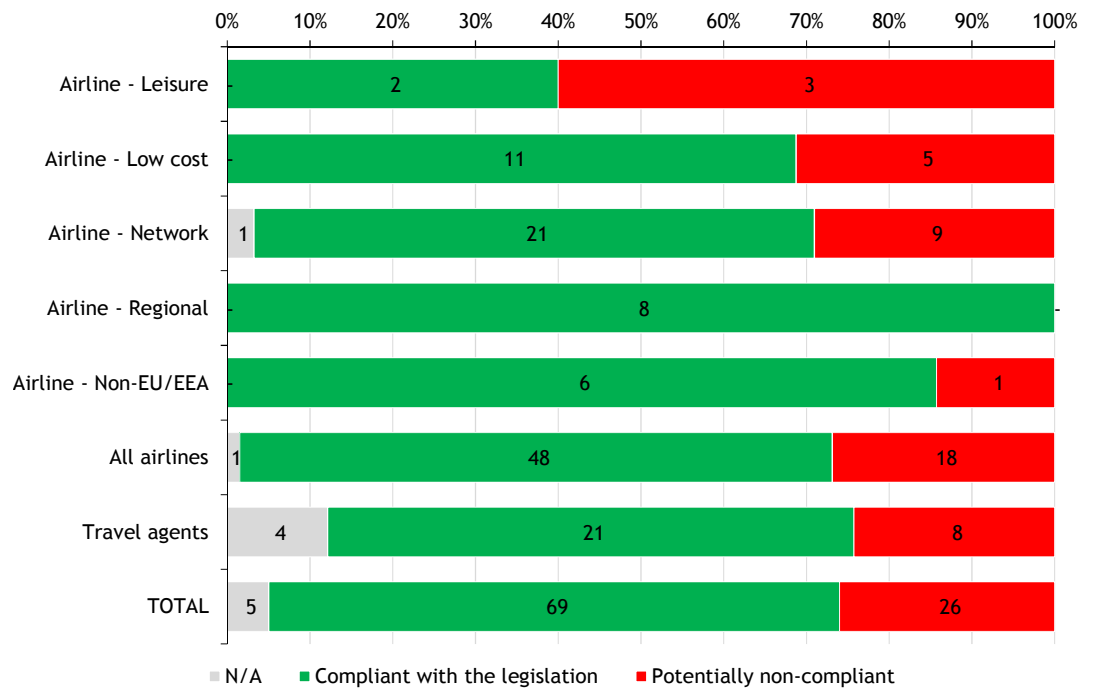
<sup>3</sup> Note however that this practice may only be commercially viable for the airline if it can require sequential use of coupons, and some national courts have found this to be an infringement of the Unfair Contract Terms Directive (see section 4).

websites which price discriminated both in terms of the fares offered and by payment method. There was no significant difference in the rate of compliance by company type.

**FIGURE 3.9 PRICE DISCRIMINATION BY PLACE OF RESIDENCE: ALL WEBSITES**



**FIGURE 3.10 PRICE DISCRIMINATION BY PLACE OF RESIDENCE: COMPLIANCE BY COMPANY TYPE**



- 3.51 9 websites levy service fees which vary by State: for example, one network carrier levies an internet booking fee of €8 in Finland, increasing to €10 in Germany and the Netherlands; and another imposes a variable ‘service fee’ of €5 on the Spanish and French versions of the websites, and €10 for the Dutch version. Application of service fees which vary by place of residence appears to be an infringement of Article 23(2).
- 3.52 In addition, as discussed above, 10 websites offered a lower price payment method to residents of specific States, including carriers which offer free or discounted payments only to holders of their credit cards. This also appears to be an infringement of Article 23(2).
- 3.53 Variances in exchange rate assumptions explain some of the other differences in price observed. Although we would not necessarily expect amounts offered in different currencies to match exactly, as the airline could reasonably pass through foreign exchange transaction costs, in two cases the variation from the actual exchange rate was quite large and this may also be an infringement. For example, we found one fare where the euro and pound values varied by 4.2%.
- 3.54 In the remainder of cases we observed variations either in the fare excluding TFCs, or the value for total TFCs:
- We encountered small variations in the level of TFCs charged for the same flight on different versions of one travel agent’s website;
  - One travel agent offered an equal total fare on all except the French version of its website, on which the fare for our sample journey was 4% higher than for all the other States surveyed. It is not possible to identify the source of this difference, as no breakdown of the fare into its constituent parts is provided; and
  - Another travel agent was found to be offering different fares excluding TFCs.
- 3.55 We also discovered different fares on the various versions of the one of the other travel agents’ website; however given the substantial differences between each of the sites we have treated each as a separate company, and therefore have not considered the organisation to be non-compliant.
- 3.56 In most cases the variations in fares between versions of the website were small but this was not always the case. For example, the initial quoted price for a journey from Milan to New York on one network carrier’s Spanish site was 33% higher than that offered for the same journey on the Portuguese site, with no obvious explanation. We found varying differences on each of several other sample journeys booked on the site, with the cheaper site varying depending on the journey.
- 3.57 We found no examples of the price changing in response to a customer entering place of residence in the address field later in the booking process, although we were unable to assess whether the fare to be paid changed after credit card details were fully completed and submitted.



*Synchronised pricing assessment*

3.58 The synchronised pricing assessment entailed the assessment of the prices offered on two sample journeys for 20 airlines. We found small differences in price on five of the websites surveyed, all of which could be attributed to at least one of the following:

- The application of differential ‘service fees’ (or equivalent - as specified above this would be an infringement of Article 23(2));
- Small variations (<2.5%) in prices in different currencies, due to the exchange rates offered by the airline; or
- Non-availability of discounted tickets in one or more of the States which, if numbers of such tickets are limited, could arise from one of the other reviewers making a booking at the same time.

*Research conducted by other organisations*

3.59 AGCM cited a case against one airline which found discrimination in the level of its credit card surcharge, which varied depending on whether the buyer was of British nationality. ECTAA conducted in May 2010 a survey of pricing across 6 States (Belgium, Germany, Ireland, Italy, and the United Kingdom) which found discrepancies based on place of residence in 10 out of the 11 airlines surveyed. In some cases, the fare, fees or taxes corresponding to a given booking class differed depending on the country from where the CRS was consulted. In other cases, some classes are available when checked from one country, but not from another where it is shown that there are no seats left in the given class, which also resulted in different fares being made available to the public.

3.60 Although the ECTAA study indicates a much greater prevalence of price discrimination than has been found in our own research, it is important to note some differences in its approach:

- The use of CRS systems may account for some of the discrepancies. The ECTAA study also found some differences in the fares offered for the same flights between CRS providers.
- Where variations of less than 2.5% are excluded, this eliminates one of the itineraries with discrepancies remaining, reducing the total to 9.
- In some cases different booking classes were chosen by ECTAA’s assessors. Given the different focus of our survey we excluded these instances, as we could not determine whether this would reflect genuine non-availability due to other surveyors attempting to book at the same time; or a deliberate policy of limiting availability of cheaper classes in certain States, which would be an infringement of the Regulation. If these instances are excluded the number of discrepancies reduces to 4; and
- In 3 of the remaining 4 instances the class of travel booked is not indicated for all States, so it is not possible to judge whether this is the same.

3.61 Therefore it is possible that only 1 discrepancy out of the 11 would have been detected under the approach adopted by our pricing review.

### *Description of routings*

3.62 This section assesses compliance against the requirements to provide information in the Unfair Commercial Practices Directive 2005/29/EC. The relevant articles from the Directive are:

- Article 6(1)(b), which states that a commercial practice shall be regarded as misleading if it contains **false information** or in any way deceives or is likely to deceive the average consumer in relation to its main characteristics, and in either case causes or is likely to cause the consumer to take a transactional decision that would not otherwise have been taken;
- Article 7(1), which states that a commercial practice shall be regarded as misleading if it **omits material information** that the average consumer needs to take an informed transactional decision and thereby causes or is likely to cause the consumer to take a transactional decision that would not otherwise have been taken; and
- Article 7(4)(a), which states that In the case of an invitation to purchase, the main characteristics of the product shall be regarded as material information.

3.63 The Commission interprets these requirements as follows:

- Article 6(1)(b) is interpreted as requiring the use of the **full and official names of the origin and destination airports** served, not just well known cities nearby.
- Article 7(1) can be interpreted as a requirement to state whether a booked service will **make stops en-route** and, if so, **whether the passenger will need to change aircraft**.

3.64 The results of our assessment are discussed in turn below.

### *Full and official names of the origin and destination airports*

3.65 The Commission considered the following practices to be aligned with its interpretation of the legislation:

- The use of full airport names; and
- A combination of city names and airport IATA codes.

3.66 The airline and travel agents performed well in this regard, with 95% of their websites adopting either of the two practices described above. Nonetheless, we did discover some isolated issues:

- One network airline uses city names on the front screen, followed with IATA airport codes or full airport names at the initial quoted or flight specific price stage;
- Two of the airlines only use full airport names where they serve more than one airport in a given city;
- One of the regional carriers uses full airport names for London and Paris, but for Belfast it does not shown on the initial screen which of the two airports is served;
- In some cases one low cost airline either does not use the full names of airports (for example Berlin for Berlin-Schönefeld); or describes them in a way which

could be misleading: for example, Barcelona (Reus) for Reus Airport, which is 100km west of the city.

#### *Identification of indirect flights*

- 3.67 To assess whether carriers are providing full information regarding stops made en-route we attempted to book indirect journeys, except where this was impossible due to the carrier providing only point-to-point services or only selling point-to-point tickets on its website. Our interpretation is that, whilst failure to state that a flight will stop en-route is unacceptable, failure to state that a flight is non-stop should not be considered an issue (as a non-stop flight would generally be considered preferable to an indirect flight). In terms of identifying whether a change of plane was required, we considered it acceptable to display the two legs of the journey on separate lines with different flight numbers, as the average passenger should be able to interpret this as indicating a change of plane. Notwithstanding this some websites did also include an explicit statement along the lines of 'change of plane required'.
- 3.68 On this basis, alignment with this interpretation of the legislation was again good, with 91% of websites stating whether flights are non-stop and whether changes of aircraft are required. However, we did observe three potentially non-compliant websites, which did not state whether flights would make stops en-route.
- 3.69 The remaining websites which could be considered partially aligned with this interpretation of the legislation were:
- One regional airline and two travel agents state whether flights will make stops en-route, but not whether the passenger will need to change aircraft. For example, the airline's website refers only to a '20 minute stopover in Waterford'; which to many passengers may not offer a clear indication of whether they need to change plane; and
  - One of the low cost airlines indicates flights as being 'via X', but does not clearly state whether this is a stop requiring a change of aircraft.
- 3.70 The stopover issue was reflected in the submission made by Which?, which highlighted the difficulty in distinguishing between 'non stop' and 'direct' flights, with many consumers believing them to be the same.

#### **Advertising**

- 3.71 In this section we reflect both the advertising provided by airlines and travel agents on their websites, and advertisements posted in newspapers.

#### *Pricing*

- 3.72 This section of the checklist identifies whether advertised prices include all unavoidable elements, and whether travel can actually be booked at a price less than or equivalent to the price advertised. This is required by Article 23(1) of Regulation 1008/2008, discussed under 'specification of unavoidable fees and charges' above, as well as point 5 of Annex I of Directive 2005/29/EC on Unfair Commercial Practices (prohibition on bait advertising).
- 3.73 Over 60% of the websites which included price advertisements provided an indication of the content of the advertised prices, most stating that the fare

included TFCs. However, five websites clearly stated that fares were exclusive of unavoidable TFCs:

- one travel agent's website contains an airline advertisement for fares excluding tax;
- When undertaking our initial review we found one of the network airlines to be advertising fares for Barcelona - Mallorca from €12 *no incluye tasas ni cargos por gestión* (excluding taxes and administration fees). However, the website is now advertising Barcelona - Mallorca from €36 *todo incluido* (including taxes and charges);
- An airline and a travel agent explicitly advertise fares exclusive of unavoidable €10 service fees;
- One non-EU carrier advertises fares on its websites exclusive of taxes and fees.

3.74 Some airlines advertise fares excluding unavoidable TFCs without specifically stating this:

- One of the low cost airlines advertised fares to Pisa from €21, but this excludes an unavoidable €10 service fee.
- Another low cost carrier advertises fares excluding their credit card charges, which as stated earlier are impossible to avoid for customers not resident in the home States of the airlines.

3.75 We were able to find tickets for a price equivalent to or below that advertised on over 70% of the websites which included pricing advertisements, although this frequently required searching for flights several months into the future. Although in the remainder of cases we were not able to find tickets at the advertised price, we were only able to conduct a finite number of searches, so for websites which do not provide an availability calendar (or equivalent) it remains a possibility that the advertised fare could be booked for some combination of dates.

### ***Description of routings***

3.76 The relevant legislation in this context is given in the 'description of routings' section of the booking process review, discussed above.

3.77 Of the websites which included reviewable advertisements, only 51% of these provided full airport names. In the case of the legacy carriers, this could arguably be less of an issue as generally the main airport is served. However, the use by some carriers of 'London' and 'New York' could still be confusing to the passenger, as both cities have multiple international airports. An example on one network carrier's website included several confusing omissions (New York, London, Chicago and Orlando; which all have more than one airport). The use of 'London' could be particularly confusing as the carrier flies from both Heathrow and Gatwick, although in the case of the other cities the carrier does serve the main (largest) airport.

3.78 Only 6% (3 airlines and 3 travel agents) of the website advertisements assessed indicated whether flights were non-stop. However, in the vast majority of cases non-stop flights were available on the routes advertised, and therefore the omission of this information should not necessarily be considered a significant

issue. In the case of the travel agents this is partially dependent on which airlines are advertising on the site at a given time.

- 3.79 None of the advertisements indicated whether a change of plane was required.
- 3.80 Of relevance to the website advertisements is the fact that, in most cases, clicking on an advert will lead the passenger to the main booking process where, as noted previously, non-use of full airport names is a less significant issue. The likelihood of a consumer being misled into making a transactional decision which they would not otherwise have done is therefore substantially reduced.

#### *Advertisement of free tickets*

- 3.81 Annex 1 of Directive 2005/29/EC specifies a number of commercial practices which in all cases should be considered unfair; including point (20), which concerns **‘describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item’**.
- 3.82 None of the airlines surveyed were found to be advertising tickets as ‘free’, either on their websites or in newspapers. However, 16 of the sample airlines advertise tickets available through their frequent flyer schemes as being free, whereas in almost all cases the passenger would have to pay TFCs. In all but two of these cases, it is stated elsewhere that frequent flyer points cannot be redeemed to pay TFCs. One network airline stated that points cannot be redeemed to pay taxes within Europe, and one regional carrier did not indicate whether points could be redeemed to pay TFCs. Some of these carriers display clear disclaimers alongside the advertisements, but others only provide this information in their terms and conditions.
- 3.83 None of the travel agent websites have been found to advertise any type of free ticket, nor did we find any newspaper advertisements for any free tickets. Finally, although our checklist included an evaluation of tickets advertised as free but purchased through a distinct intermediary, we did not find any such advertisements.

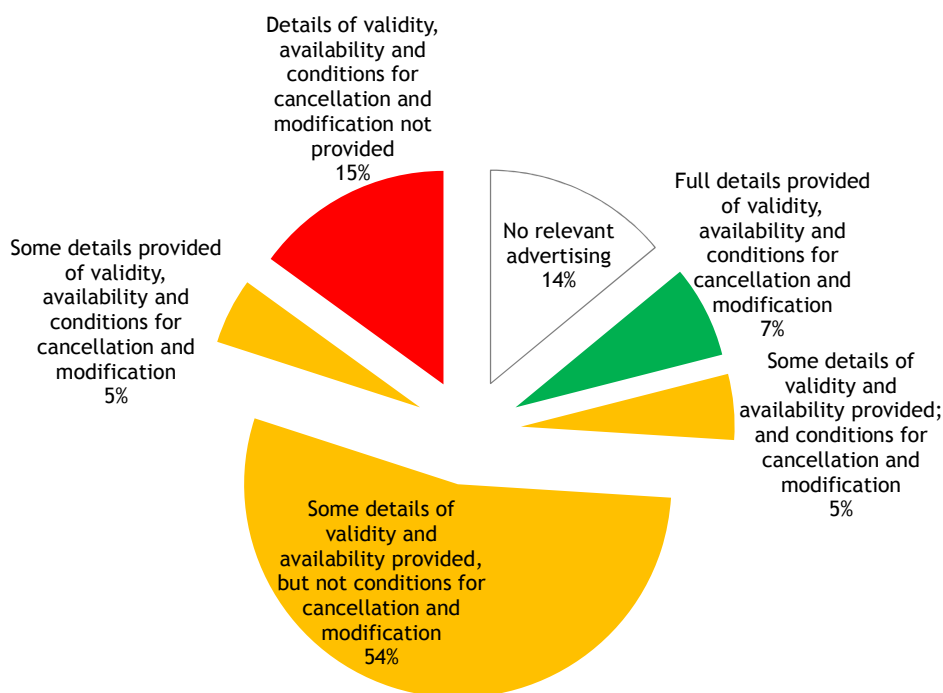
#### *Access to terms and conditions*

- 3.84 The most relevant aspects of legislation assessed here are:
- Annex point 1(i) of Directive 93/13/EEC, which states that a potential **unfair contract term** could be one that has the effect of **‘irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract’**;
  - Article 7(2) of Directive 2005/29/EC states that **‘It shall also be regarded as a misleading omission when...a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner...material information...and where...this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise;**
  - Article 6(c) of the E-Commerce Directive 2000/31/EC, which requires that the conditions attached to promotional offers **‘shall be easily accessible and be presented clearly and unambiguously’**; and

- Article 5 of Directive 93/13/EEC, which requires that written contract terms ‘...must always be drafted in plain, intelligible language’.

3.85 We addressed these requirements by assessing the degree to which websites provided details of validity and availability (for example, required booking or travel dates); and terms and conditions alongside their advertisements. Figure 3.11 summarises the results of our assessment.

**FIGURE 3.11 PROVISION OF TERMS AND CONDITIONS ATTACHED TO OFFERS**



3.86 As indicated above the provision of terms and conditions within or alongside website advertisements was particularly poor, with only 7 websites providing sufficient information. Even where this information was provided, it was limited in scope - the simple statement provided by one network airline of ‘No change, no refund’ is fairly typical. We also found such information to be largely absent from the newspaper advertisements we reviewed (many stated only that ‘terms and conditions apply’). The lack of this information could constitute a significant omission given that the fares which are advertised by airlines are most likely to be of a promotional nature with restrictive conditions.

3.87 A larger proportion of the assessed websites have included some degree of information regarding permitted dates of booking and travel, although frequently the travel dates provided do not include ‘blackout’ days or other short periods during which the cost of travel is likely to be higher. We also found that booking dates were provided more frequently than dates of travel.

**Legal information**

***Access to terms and conditions***

3.88 The aspects of legislation of relevance here are:

- Annex point 1(i) of Directive 93/13/EEC, which states that a potential **unfair contract term** could be one that has the effect of ‘**irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract**’;
- Article 10(3) of Directive 2000/31/EC, which requires that ‘**contract terms and general conditions...must be made available in a way that allows [the recipient] to store and reproduce them**’;
- Article 7(2) of Directive 2005/29/EC states that ‘It shall also be regarded as a **misleading omission** when...**a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner...material information...and** where...this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise; and
- Article 5 of the Unfair Contract Terms Directive 93/13/EEC, which specifies that ‘**in the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language**’.

- 3.89 The references to clear and intelligible language in the three Directives can also be interpreted as including the use of the appropriate language for the intended audience of the website. There are therefore three key questions addressed by the website checklist:
- i) Are the relevant terms and conditions readily available before purchase is made?
  - ii) Can the terms and conditions be stored and reproduced by the consumer?
  - iii) Would the language used be clear and intelligible to an average member of the website’s intended national audience?
- 3.90 77% the websites provide the main conditions of tickets as part of the booking process, with a further 19% websites providing this information in the terms and conditions only. Although most websites provide a link to the terms and conditions as part of the booking process (usually accompanied by a check box to confirm acceptance) it is perhaps less likely that the average consumer will read them when compared with a simple summary provided during the booking process.
- 3.91 Provision of the main conditions of tickets was typically poorer among the travel agents, perhaps due to the higher complexity in combining details from different sources. All of the websites which did not provide this information were travel agents.
- 3.92 We found that all the airline websites surveyed allowed the user to access, store and reproduce terms and conditions in some form. However, the scope and quality of the information provided was variable. None of the travel agents provided terms and conditions specific to the relevant airline, although in all but three cases we could access the standard terms and conditions of the travel agent.
- 3.93 Two key results emerge from our analysis of the languages used by the airline and travel agent websites:



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- 47% of websites do not provide the main booking process, advertising, and standard terms and conditions in the national languages of all of States in which they market tickets; and
  - 30% of websites do not provide full terms and conditions in the same languages as advertising and the booking process.
- 3.94 Some of the issues we encountered included websites which provide only their ‘front page’ in the national language; only provide an abridged version of the terms and conditions; or do not provide any translation of these. For example, although one network carrier provides both Dutch and Polish language versions of its website, their scope is limited. Only the front page of the booking process is provided in these languages (the remainder is in English), and standard terms and conditions are provided in English only. Although some Polish advertising is offered none is provided in Dutch.
- 3.95 Several consumer and enforcement authorities cited instances of companies not providing terms and conditions in the relevant national language. For example, AGCM cited its numerous interventions in this area, and the Polish Office of Competition and Consumer Protection (OCCP) indicated that many airlines only provide their terms and conditions in English, and that some state on their Polish websites that customer service correspondence will only be accepted in English. DGCCRF also noted that some foreign low cost airlines operating in France do not provide terms and conditions in French.

### *Contact details*

- 3.96 Article 7(4) of the Unfair Commercial Practices Directive defines a number of omissions which can be considered sufficiently material to result in a commercial practice being misleading. The item relevant in this context is point (b), which specifies ‘**the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting**’.
- 3.97 Article 5(1) of the E-Commerce Directive requires that the following are also provided:
- (a) the **name** of the service provider;
  - (b) the **geographic address** at which the service provider is established;
  - (c) the **details** of the service provider, including his **electronic mail address**, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- 3.98 Although not specified in the Directive, we have also checked whether a phone number for the customer service department is provided as this would appear to be good practice.
- 3.99 We have found that:
- All airline and travel agent websites have included the **name** of the service provider;
  - 87% have provided a **geographic address**;



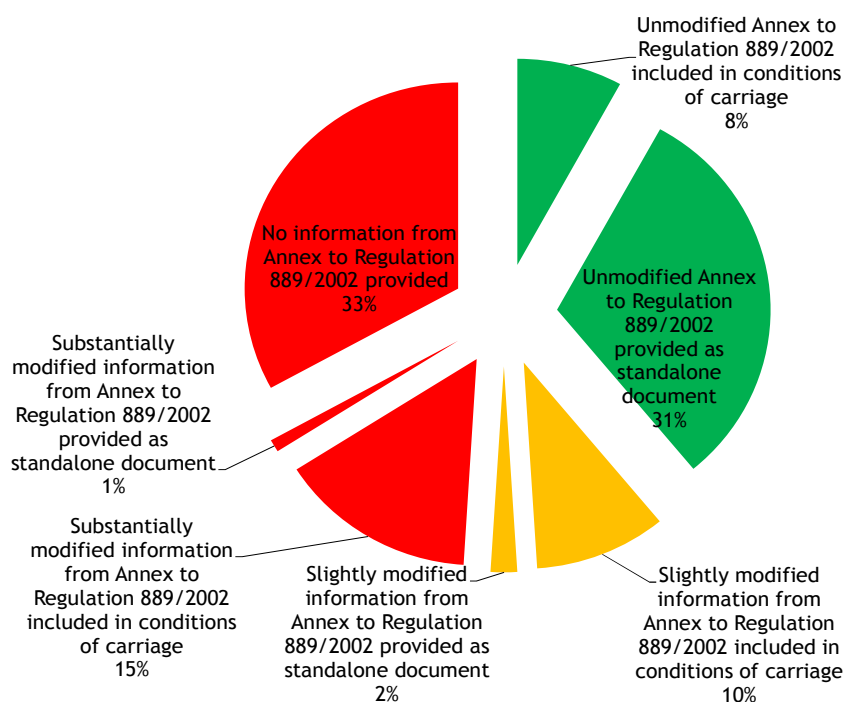
- 45% of airlines and travel agents provide an **email address**. Although most provide an online form as an alternative means of contact, 7 airlines and 2 travel agents did not provide this information; and
- 94% provide a **telephone number** for the customer services department (or equivalent).

3.100 One low cost carrier is particularly difficult carrier to contact, providing only a premium rate telephone number and no postal address or email address (or online form). These requirements could also be interpreted as being applicable to the provision of optional additional services by third parties. The majority of airlines and travel agents which did provide optional services stated at least the name of the provider.

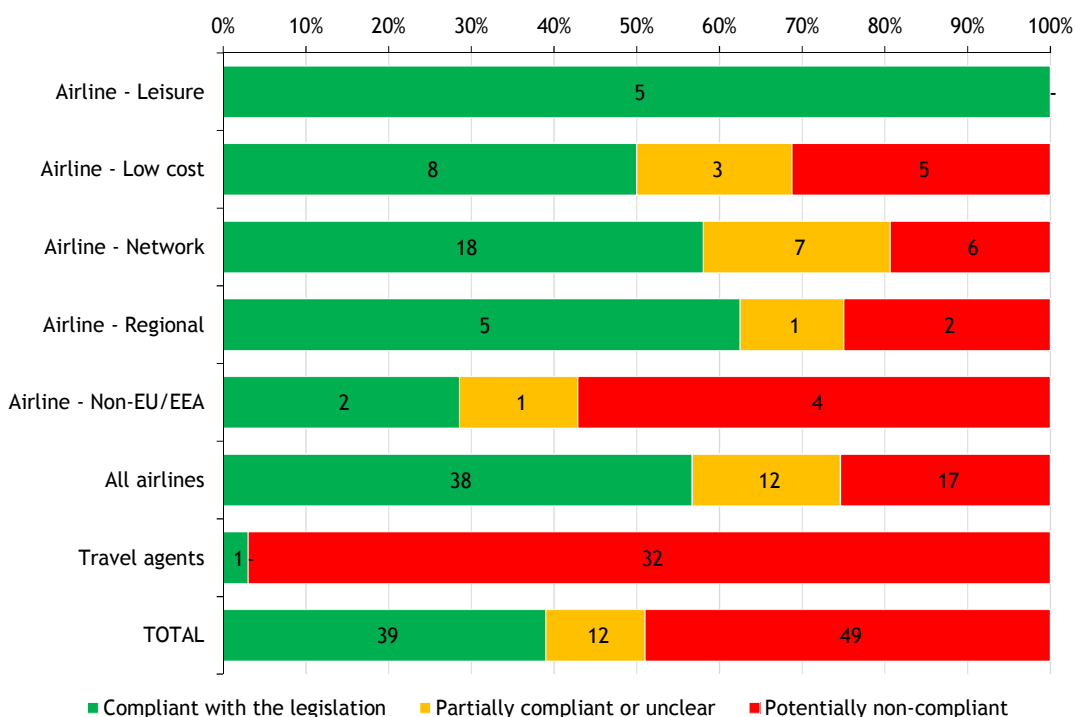
***Statement on air carrier liability for passengers and baggage***

3.101 Regulation 889/2002 incorporated the Montreal Convention into EU law and extended its scope to cover domestic flights within Member States. In addition, Article 6 requires that EU carriers include the summary of the provisions of the Regulation provided in its annex. Figure 3.12 shows the patterns of compliance observed.

**FIGURE 3.12 PROVISION OF REGULATION 889/2002 INFORMATION: ALL WEBSITES**



**FIGURE 3.13 PROVISION OF REGULATION 889/2002 INFORMATION: COMPLIANCE BY COMPANY TYPE**



3.102 28 of the 33 websites which did not provide this information were travel agents. Reflecting this, only 1 travel agent provided the unmodified Annex on its website. Although most websites provided information from Regulation 889/2002 in a modified form, it is important to note that, despite strictly being in contravention with the Regulation, such modifications often add further detail than is provided in the unmodified Annex. However, there were a number of websites which made substantial modifications to the Annex to the Regulation, some examples of which include:

- The main modification made by four airlines is the addition of a statement that the maximum baggage liability limit does not apply ‘...if the damage resulted from our act or omission done with intent to cause damage or recklessly and with knowledge that damage would probably result’. The Annex to Regulation 889/2002 states that the carrier is liable for all checked baggage unless defective.
- Two airlines and one travel agent provide a statement which combines the provisions of the Montreal and Warsaw conventions which omits much of the detail provided in the Annex to Regulation 889/2002;
- Two airlines exclude liability from its liability passengers whose age, mental or physical condition is such that carriage poses a danger to themselves;
- Two airlines and a travel agent exclude liability for minor damage to baggage arising from normal wear and tear;

- The information provided in one low cost carrier's Conditions of Carriage and on a travel agent's website does not include all that provided in the Annex to the Regulation; and
- One network airline excludes information regarding the higher limits on baggage;
- One of the low cost carriers asserts a '...strict liability to 100,000 SRDs', and excludes minor damage to baggage; and
- One travel agent refers to the Regulation but provides only a brief summary of its key points.

#### *Refund procedures*

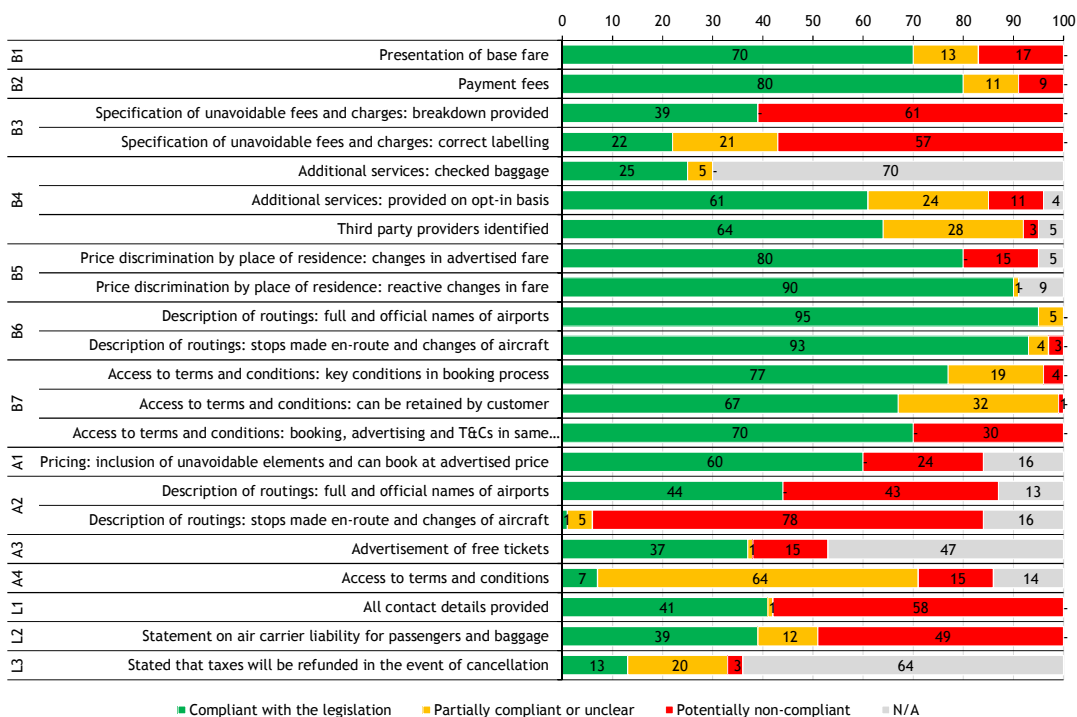
- 3.103 Many air tickets are partly or wholly non-refundable. However, a significant proportion of the price may be accounted for by per-passenger government taxes or airport charges collected through the ticket price that the carrier does not have to pay if the passenger does not travel. There is no specific requirement in EU law that these must be refunded, although it could be argued that a term specifying that government taxes or airport charges are not refundable in case of cancellation would be unfair, as it would require the passenger to pay a cost that the carrier does not incur and therefore could be considered a significant imbalance in the rights and obligations under the contract.
- 3.104 We checked whether the companies surveyed correctly informed that, even though certain tickets are non-refundable, holders of such tickets should be eligible for refunds of government taxes and possibly also certain surcharges in the event of cancellation by the passenger.
- 3.105 47 websites provided this information, usually within their terms and conditions. Although the information was frequently unclear, it was relatively clearly stated on 32 of these websites that at least some taxes would be refunded in the event of cancellation by the passenger. One network airline adopts a particularly informative approach in its booking process, clearly stating 'There are no refunds except for any government & airport taxes' but many other airlines state only that the ticket is non-refundable. Failing to inform the customer that taxes are refundable even if the ticket is non-refundable could potentially be considered a misleading omission under the Unfair Commercial Practices Directive.
- 3.106 In the remainder of cases it was frequently indicated that certain ticket types were non-refundable or that cancellations were not permitted, but none of the airlines or travel agents specifically stated that taxes would not be refunded.
- 3.107 However, despite the fact that a number of airlines do indicate that refunds of taxes are possible, without a full breakdown of taxes passengers may have difficulty in ascertaining the level of refund they will be entitled to. A further issue arises where administration fees are charged for refunds - in some cases these are sufficiently high to neutralise any benefit gained in securing a tax refund. Of the airlines and travel agents which did clearly state that taxes would be refunded, 23 indicated that an administration fee may be payable. Only 13 indicated the level of the fee, with £25 (€28) being the most common level. Focusing on the example of Air Passenger Duty levied in the UK, seeking a refund of tax is only worthwhile for economy class passengers travelling over 2000 miles, for which the rate of APD

is £60 (€68). Thus for all intra-EU passengers the fee for seeking a refund is higher than the tax itself, which is £12 (€14).

### Overall compliance

3.108 Figure 3.14 summarises compliance of all the websites assessed with each of the key legislative requirements discussed in the preceding text.

FIGURE 3.14 COMPLIANCE SUMMARY BY REQUIREMENT



3.109 We have also assessed overall compliance of the airlines and travel agents via an evaluation of the number and severity of infringements each has, distinguishing between infringement of the most critical requirements of the legislation (in terms of their potential impact on passengers), other significant infringements, and more minor infringements.

3.110 We define the most critical non-compliances as comprising:

- Unavoidable TFCs not being included in the initially presented price; and
- Variation in fares for the same journey between different country/language versions of website, including when as a result of payment fees which are discriminatory on the basis of State of residence.

3.111 We have defined other significant infringements as being:

- Failure to provide a full breakdown of TFCs;
- Pre-selection of optional services;
- No longer possible to travel on booked flight if customer identifies as being from a different State, and/or if the State of flight origin is changed;
- Failure to provide conditions for cancellation or modification of the ticket;
- Terms and conditions not available prior to booking and/or cannot be retained;

- Terms and conditions not provided in same languages as the booking process;
- Unmodified Annex to Regulation 889/2002 not provided;
- Invalid advertisement of ‘free’ frequent flyer tickets; and
- Inability to book flights for price advertised.

3.112 Infringements in the remaining areas addressed by the checklist are defined as minor. Table 3.1 summarises compliance across the sample of websites. The performance of airlines was better than the performance of travel agents, but nonetheless 65% failed to comply with an element of the legislation we have considered either ‘critical’ or ‘significant’.

**TABLE 3.1 TOTAL COMPLIANCE**

Summary	Airline	Travel agent	Total
One or more non-compliances with most critical requirements	24	17	41
One or more other significant non-compliances	19	16	35
No or minor non-compliances only	24	0	24

3.113 We have not presented total compliance using the approach adopted in the 2009 Health Check as we did not find this to provide a meaningful distinction between the websites and advertising evaluated. Only one airline would emerge as fully satisfactory (no infringements at all), and a large proportion would be considered ‘worrying’. Although this suggests a worsening of compliance, this may not be the case, for the following reasons:

- The range of issues assessed in this study is broader than that included in the Health Check, increasing the likelihood of an airline or travel agent being identified as having at least one infringement.
- The assessment against each criterion relies on a degree of judgment, and therefore we cannot be sure that our results are directly comparable to those from the Health Check.

## 4 Enforcement of the legislation

### Introduction

4.1 This section discusses the approaches adopted in enforcing the relevant legislation by Member States. It also describes legal actions that have been taken by consumer associations and others, independently of national enforcement authorities, to enforce the legislation.

### Enforcement of the legislation by Member States

4.2 This section discusses the ways in which the legislation has been enforced by the Member State authorities.

4.3 Unlike other passenger rights legislation, the relevant legislation for this study does not specifically require Member States to establish national enforcement authorities. However:

- Regulation 2006/2004 on consumer protection co-operation requires States to designate such organisations for cross-border cases relating to the three consumer protection Directives (although not Regulation 1008/2008); and
- It is hard to see how a State can comply with the obligation in Article 24 of Regulation 1008/2008 to ensure that provisions are respected if it has not designated a body with responsibility for doing this.

4.4 Table 4.1 displays the relevant national organisations and the legislation which they are required to enforce. In the subsequent text we discuss only the authorities which contributed to the study.

**TABLE 4.1 THE ROLE OF THE NATIONAL ENFORCEMENT AUTHORITIES**

State	Organisation	Regulation 1008/2008	Regulation 889/2002	Directive 2005/29/EC	Directive 2000/31/EC	Directive 93/13/EEC
France	Direction Générale de l'Aviation Civile (DGAC)		✓			
	Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF)	✓ <sup>4</sup>		✓	✓	✓
Germany	Bundesministerium für Verkehr, Bau- und Stadtentwicklung (BMVBS)	✓				
	Luftfahrt-Bundesamt (LBA)	✓	✓			
Italy	Autorità Garante della Concorrenza e del	✓ <sup>5</sup>		✓		

<sup>4</sup> DGCCRF has not been formally nominated as the NEB for Regulation 1008/2008, but monitors compliance on an informal basis

State	Organisation	Regulation 1008/2008	Regulation 889/2002	Directive 2005/29/EC	Directive 2000/31/EC	Directive 93/13/EEC
	Mercato (Antitrust Authority; AGCM)					
	Ente Nazionale per l'Aviazione Civile (ENAC)		✓			
Netherlands	Consumentenautoriteit (Consumer Authority; NCA)	✓		✓	✓	✓
Norway	Forbrukerombudet (Consumer Ombudsman and the Market Council; CO)	✓ <sup>6</sup>		✓	✓	✓
Poland	Civil Aviation Office (CAO)	✓	✓			
	Prezes UOKIK (Office of Competition and Consumer Protection; OCCP)			✓	✓	✓
Spain	Agencia Estatal de Seguridad Aérea (AESA)		✓			
	Instituto Nacional del Consumo <sup>7</sup>	✓		✓	✓	✓
United Kingdom	Civil Aviation Authority (CAA)	✓	✓	✓	✓	✓
	Office of Fair Trading (OFT)	✓		✓	✓	✓

### ***National legislation***

4.5 National legislation is required to transpose the consumer protection Directives into national law, and to define penalties for infringements of the Regulations. Details of the relevant laws are provided in Table 4.2 and Table 4.3 below. This shows that the majority of the States that were reviewed for this study have not yet introduced penalties into national law for infringements of Regulation 1008/2008.

**TABLE 4.2 NATIONAL LAWS SPECIFYING PENALTIES FOR INFRINGEMENTS OF REGULATIONS**

State	Regulation 1008/2008	Regulation 889/2002
France	No specific penalties defined	No specific penalties defined
Italy	No specific penalties defined	Not known

<sup>5</sup> Although Italy has not specified a competent national authority for the enforcement of Articles 23 and 24 of the Regulation, its requirements are considered to be adequately addressed by the transposition of Directive 2005/29/EC

<sup>6</sup> The Regulation has not yet been transposed into Norwegian law, but it is anticipated the transposition will nominate the Consumer Ombudsman as the enforcement authority

<sup>7</sup> The consumer authorities in each Autonomous Community have the powers to inspect and sanction companies under the consumer protection Directives and the price transparency provisions of Regulation 1008/2008. The INC coordinates action between these, and liaises with European authorities, but does not have these powers itself.

State	Regulation 1008/2008	Regulation 889/2002
Netherlands	Wet Handhaving Consumentenbescherming (Consumer Protection Enforcement Law, 2006)	Not known
Norway	No specific penalties defined	Not known
Poland	No specific penalties defined	Not known
Spain	Not known	Law 1/2011 of March 4
United Kingdom	No specific penalties defined	Air Carrier Liability Regulations, 2004

**TABLE 4.3 NATIONAL LAWS TRANSPOSING DIRECTIVES**

State	Directive 2005/29/EC	Directive 2000/31/EC	Directive 93/13/EEC
France	Act of 3 January 2008 for the development of competition serving consumers  Act of 4 August 2008 on the modernization of the economy (Articles 83 and 84)	Trust in Digital Economy Act (Law No. 2004-575 of June 21, 2004)	Law 95-96 of 1 February 1995 modifying the Consumer Code.
Italy	Legislative Decree 145/2007 transposes Article 14.  Legislative Decree 146/2007 transposed the 1 to 13 and 15 to 17. This was then merged with the Consumer Code (adopted by Decree-Law 206/2005) which amended Title III, Articles 18 to 27.	Legislative Decree 70/2003  Ordinary Supplement to Official Gazette of the Italian Republic - General Series - No 87 of 14/04/2003	New chapter of Civil Code, ex CC Art. 1469-bis to 1469sexies
Netherlands	Transposed into the Dutch Civil Code and mentioned in the Dutch Consumer Protection Enforcement Act.	Transposed into the Dutch Civil Code and mentioned in the Dutch Consumer Protection Enforcement Act.	Transposed into the Dutch Civil Code and mentioned in the Dutch Consumer Protection Enforcement Act.
Norway	Marketing Control Act, 2009	Act on E-Commerce, 2003	Marketing Control Act, 2009
Poland	Act of 23 August 2007 on Unfair Commercial Practices (Dz. U. No 171, item 1206)	Act of 18 July 2002 on the Provision of Services by Electronic Means (Dz. U. No 144, item 1204, as	Act on 23 April 1964 - the Civil Code (Dz. U. No 16, item 93, as amended)



State	Directive 2005/29/EC	Directive 2000/31/EC amended)	Directive 93/13/EEC
Spain	Law 29/2009, of December 30, amending the law relating to unfair competition and advertising to improve the Consumer and Users protection.	Law 34/2002, of July 11, on services of information society and electronic commerce.	Articles 80 to 91 of Royal Legislative Decree 1 / 2007 of 16 November, which approved the Consolidated General Law for the Protection of Consumers and Users and other complementary laws.
United Kingdom	Consumer Protection from Unfair Trading Regulations, 2008	Electronic Commerce (EC Directive) Regulations, 2002	Unfair Terms in Consumer Contracts Regulations, 1999

- 4.6 We were also advised by the Norwegian Consumer Ombudsman that, as Norway is an EEA State, EU Regulations also have to be transposed into national law in the same way as Directives in EU Member States. However, Regulation 1008/2008 has still to be transposed into Norwegian law.

#### ***Penalties for infringements***

- 4.7 With the exception of Regulation 889/2002 and Directive 93/13/EEC, the relevant Regulations and Directives require the implementation of effective, proportionate and dissuasive penalties for infringements. Directive 93/13/EEC is less specific, requiring only that States ensure that ‘adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers’.
- 4.8 Our research suggests that these requirements have not been sufficiently implemented in all States, as shown in the table below. However, although Norway, Italy and the UK have not as yet introduced penalties into national law for infringements of the price transparency provisions in Regulation 1008/2008, the enforcement authorities in these States informed us that they could use the national laws implementing the Unfair Commercial Practices Directive to enforce the provisions relating to display of the price including all unavoidable additional charges. It is not clear whether these laws could also be used to enforce the other provisions of Regulation 1008/2008.

**TABLE 4.4 PENALTIES AVAILABLE FOR INFRINGEMENT OF REGULATIONS**

State	Regulation 1008/2008	Regulation 889/2002
France	No specific penalties defined, but draft law defines administrative penalties of €3,000 for an individual or €15,000 for a corporation.	No specific penalties defined
Italy	No specific penalties defined, but	Not known

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State	Regulation 1008/2008	Regulation 889/2002
	Directive 2005/29/EC used as basis for enforcement	
Netherlands	Administrative fine of up to €76,000 per infringement	Not known
Norway	No specific penalties defined, as not yet transposed into Norwegian law, but the Marketing Control Act provides current basis for enforcement.	Not known
Poland	No specific penalties defined but legislation being drafted and Act on Competition and Consumer Protection used as current basis for enforcement.	Not known
Spain	Not known	Administrative fine of €4,500 to €70,000
United Kingdom	No specific penalties defined but legislation being drafted and Directive 2005/29/EC used as current basis for enforcement	Criminal fine of up to £5,000 (€5,700) per offence

4.9 Below we discuss the circumstances under which the national enforcement authorities will consider levying these penalties, the actual sanctions which have been applied to date, and the key issues identified by the enforcement authorities in levying sanctions.

### *France*

4.10 The organisation responsible for enforcement of the consumer protection Directives is DGCCRF. However, to date, the necessary legislation has not been enacted to give DGCCRF staff authority to take actions with respect to Regulation 1008/2008, and no sanctions have been introduced in national law. Nonetheless, DGCCRF has monitored compliance with the legislation in France and considers that, with some exceptions, airlines are complying.

4.11 DGAC is responsible for enforcement of Regulation 889/2002. It encourages compliance with Regulation 889/2002 in two ways:

- By reminding airlines of the existence of the Regulation and their required obligations to passengers. This is particularly important for non-EU carriers, which sometimes neglect their obligations; and
- By reminding passengers of their rights under the Regulation and encouraging them to assert their rights before the civil court.

4.12 Since the Regulation does not require States to establish sanctions none have been introduced under French law.

*Italy*

- 4.13 AGCM is responsible for enforcement of all of the relevant legislation other than Regulation 889/2002. Since 2008, it has initiated 16 proceedings against airlines relating to presentation of prices on their websites, using the national laws transposing the Unfair Commercial Practices Directive. To date 12 of these proceedings have been concluded, with the average sanction being €219,000.
- 4.14 Although the maximum level of sanction which can be levied is unaffected by the domicile of the company, AGCM informed us that there were significant difficulties in collecting sanctions from companies based outside Italy. 5 of the 12 sanctions identified above were levied on non-Italian airlines but AGCM could not confirm whether any of these had been paid as yet.
- 4.15 AGCM addresses less serious issues by dialogues with the companies involved, attempting to persuade them to change their practices to avoid the need for formal enforcement action.
- 4.16 A problem with enforcement in Italy identified by AGCM was fragmentation of the organisations responsible for enforcing the relevant legislation, in particular the division between AGCM and ENAC. It also highlighted the limited resources available to the organisation, although added that has not compromised the effectiveness of their enforcement.
- 4.17 As discussed in section 2 above, the Italian CAA (ENAC), which would be responsible for enforcing Regulation 889/2002, did not respond to our information request within the timescale of the study, and therefore we have no information on the enforcement of this legislation in Italy.

*Netherlands*

- 4.18 The NCA is responsible for enforcement of all of the relevant legislation other than Regulation 889/2002. It can either impose sanctions for past infringements, or impose a 'dissuasive penalty' to force a company to change its behaviour (this would be a requirement to take a particular action with a per-period penalty if the action was not taken). Often the two are combined to ensure that the past infringement is rectified and is not repeated in the future.
- 4.19 The NCA would consider imposing a sanction when the provisions of Regulation 1008/2008 are clearly breached, an example being if optional elements were pre-selected on an airline's website. To date no penalties have been applied; however the NCA has only had the required legal powers since April 2011.
- 4.20 The NCA has issued several fines for breaches of the Directives, often by means of an order to comply accompanied by a fine for each day of non-compliance.
- 4.21 The NCA has also been in close contact with ANVR, the Dutch travel industry association, in particular to secure the cooperation of the industry in eliminating the use of pre-checked boxes during the booking process. The NCA has also issued a press release and has provided information to consumers via its ConsuWijzer website, both to raise awareness among the public of their rights and expectations.
- 4.22 The NCA informed us that a key problem with enforcement in the Netherlands is that the process for collecting fines from non-national airlines could be slow and

complicated. Although in principle sanctions can be imposed on any company to which the Treaty applies (i.e. within the EU/EEA), collecting the fine in another state would require a 'recovery decision' from a Dutch court.

### *Norway*

- 4.23 The CO is the enforcement authority for all of the relevant legislation in Norway other than Regulation 889/2002. However, as noted above, the CO is not able to levy sanctions for infringements of Regulation 1008/2008, as this has not been transposed into Norwegian law. Nonetheless, the alternate option exists of addressing price transparency issues as infringements of the Marketing Control Act, which transposes Directives 2005/29/EC and 93/13/EEC. Clear breaches can be addressed by fines; and for lesser infringements the CO would first try to seek agreement with the company concerned. If an agreement cannot be reached the CO can make a prohibition decision, and if this decision is not complied with, the CO can then levy a fine.
- 4.24 To date no penalties have been applied, but the CO has on several occasions required airlines to include all unavoidable elements in their prices, and negotiated changes to contract terms.
- 4.25 The practicality of imposing sanctions on companies based outside Norway has not been tested, although there are indications that this could be successful:
- A prohibition decision was made against one low cost carrier and, although this was later overturned by the Court of Appeal, throughout the process the company was cooperative and attended meetings and court hearings.
  - In other sectors sanctions have successfully been imposed by the CO on companies based in other States, although this has not yet included a fine.
- 4.26 The CO said that there is also the opportunity to act through the CPC system, although this can be problematic as it relies on a willingness of enforcement authorities in other States to act, which has not always been evident.

### *Poland*

- 4.27 The CAO is responsible for enforcement of Regulations 1008/2008 and 889/2002. Although there is currently no specific legislation which defines sanctions for infringements of Regulation 1008/2008, the CAO has encouraged compliance with Article 23 by:
- raising awareness among aviation stakeholders through letters and its website (in 2008); and
  - conducting random checks of airline websites.
- 4.28 Where checks of airline websites have uncovered non-compliances the CAO has requested the airlines involved to modify their practices. Similar action has been taken in response to alerts of possible breaches being received from consumers.
- 4.29 OCCP is responsible for the consumer protection Directives, with regard to the elimination of infringements of collective consumer interests. Three examples of such infringements are specified in the 2007 Act on Competition and Consumer Protection:

- Application of standard contract terms that have been entered in the Register of Prohibited Clauses;
  - Providing consumers with inaccurate, untrue or incomplete information; and
  - Unfair commercial practices or acts of unfair competition.
- 4.30 If the President of the OCCP recognises any of these practices it may rectify and prevent future infringements by:
- Identifying measures for removing lasting effects of the violation (in particular by binding the organisation to ‘...issue a single or recurring declaration with contents and in form as prescribed in the decision’);
  - Order the decision to be published at the expense of the trader; or
  - Impose a fine of up to 10% of the trader’s income.
- 4.31 Although the opportunity exists to levy penalties, to date none have been applied by the President of the OCCP.
- 4.32 The OCCP has also encouraged compliance with the Directives using a range of informational and educational actions, including publications, press conferences and press releases; intended both to inform consumers of their rights and traders of their obligations.
- 4.33 The OCCP suggested that penalties for intra-community infringements could also be levied on airlines via the CPC system; although the effectiveness of this approach has to date not been tested.

#### *Spain*

- 4.34 AESA is responsible for the enforcement of Regulation 889/2002 in Spain. It monitors compliance with Regulation 889/2002 on an annual basis, verifying that airline Conditions of Carriage include the information required by the Regulation. AESA will levy sanctions on any airlines which do not set out their liability, the limits to their liability and the availability of higher liability limits for passengers which require this.
- 4.35 In 2010 AESA levied 13 sanctions for breaches of Regulation 889/2002, of which 5 have so far been paid by the airlines. Although AESA could not specify the average sanction for infringements of Regulation 889/2002, the average sanction issued for infringements of all laws within their area of regulatory oversight was €1,879.
- 4.36 AESA confirmed that there were no limitations on the imposition of sanctions for breaches of passenger rights arising in its territory, except as provided by Community law.
- 4.37 As discussed in section 2 above, the national authority for the other legislation in Spain (the Instituto Nacional de Consumo) did not respond to our information request within the timescale of the study, and therefore we have no detailed information on the enforcement of the other legislation in Spain. However, we understand that the consumer authorities in each of the 17 Autonomous Communities have the powers to inspect and sanction companies under the consumer protection Directives and the price transparency provisions of Regulation 1008/2008. The Instituto Nacional de Consumo helps coordinate action between these bodies, and liaises with European authorities, but does not have these

powers itself. This situation is a result of the fact that the Spanish Constitution defines that consumer policy is a matter for the Autonomous Communities rather than the national government.

### *United Kingdom*

- 4.38 The CAA and OFT share responsibility for enforcement of the relevant legislation in the UK (other than Regulation 889/2002 which is enforced by the CAA alone). The CAA is the lead enforcement body for Regulation 1008/2008 but this can also be enforced by the OFT; the OFT is the lead enforcement body for the consumer protection Directives but the CAA is also designated as an enforcement body for these Directives in the air transport sector under section 8 of the Enterprise Act.
- 4.39 There is currently no legislation in the UK which defines penalties for infringements of Regulation 1008/2008. Currently the CAA enforces the Regulation as a Community information obligation under the national law transposing the Unfair Commercial Practices Directive.
- 4.40 The approach currently adopted by the CAA is to consult with business in order to seek compliance within an agreed timescale. If this compliance is not secured the CAA will seek a formal undertaking. If the formal undertaking is not complied with an Enforcement Order will be sought which, if breached, would enable contempt of court proceedings, punishable from a superior court by an unlimited fine or up to 2 years imprisonment; or a fine of up to £2,500 (€2,800) or 1 month imprisonment if the case was heard by a Magistrates Court. The CAA is currently developing a consumer enforcement policy which it plans to consult on later this year, so the current system is subject to future amendment.
- 4.41 The CAA recently undertook an 18-month review of price transparency. Following this review the CAA obtained formal undertakings from two carriers to amend their practices and include all unavoidable TFCs in their headline prices; it is still seeking similar agreements with three further airlines. The undertakings received from these two carriers were published by the CAA via a press notice, which is viewed as a further means of encouraging compliance. To date no financial penalties have been issued for infringements of Regulation 1008/2008.
- 4.42 Regulation 889/2002 is also enforced primarily by consulting with businesses to seek compliance within agreed timescales. If this compliance is not secured the CAA's Head of Aviation Regulation Enforcement would decide whether there is sufficient evidence to proceed with a criminal prosecution; to date, there has been no such prosecution.
- 4.43 There is no option under UK law to impose civil penalties for past infringements of Regulation 1008/2008 or the consumer protection Directives. The CAA acknowledged this could be a weakness as such an approach could encourage more rapid compliance. However, the perceived benefit of the current system is that it helps to ensure that future behaviour is compliant to the benefit of consumers, rather than punishing past conduct.
- 4.44 The OFT encourages compliance with the consumer protection Directives across all sectors in four ways:

- By encouraging businesses to comply with competition and consumer law and to improve their trading practices through self-regulation;
  - By acting decisively to stop hardcore or flagrant offenders;
  - By studying markets and recommending action where required; and
  - By empowering consumers with the knowledge and skills to make informed choices and get the best value from markets, and helping them resolve problems with suppliers through a website and telephone helpline (Consumer Direct).
- 4.45 In order to encourage businesses to comply, OFT has produced guidance on the three Directives. It is also developing further guidance for airlines and travel agents jointly with the CAA to help improve future levels of compliance. Additionally, the CAA has written to all airlines serving the UK to provide guidance on the requirements of Regulation 1008/2008.
- 4.46 Although it is considered that any practice which harms UK consumers could justify action in a UK court, difficulties may be encountered if an airline has no presence at all in the UK (although this is uncommon, as airlines will normally have at least an agent which notices could be served on); the CAA also noted that a major non-UK low cost carrier has been successfully prosecuted in the UK (for an issue unrelated to this legislation) even though it is not registered in the UK. For non-EU airlines, permits to operate are issued on the basis that they comply with the relevant laws, and therefore in theory these could be withdrawn if they did not comply.

#### **Legal actions taken by consumers and other organisations**

- 4.47 We have been in contact with four other organisations which have been active in securing compliance with the legislation:
- FACUA (Spain);
  - Test-Achats (Belgium);
  - Which? (UK); and
  - The European Consumers' Organisation (BEUC).
- 4.48 All the organisations have taken some form of action with regard to the consumer protection Directives in the air transport sector, either by launching legal action against service providers, or by alerting enforcement authorities to issues and raising awareness among the public and industry stakeholders. Which? has the more formal option of using its powers under UK law to make a 'Super-complaint' powers to force a response by the relevant enforcement authorities, and recently used these powers to prompt an investigation by the Office of Fair Trading (OFT) into the payment surcharges levied by airlines and other transport operators.
- 4.49 Although we were not informed of any cases in which individual consumers had taken action against airlines and travel agents in response to breaches of the legislation relating to price transparency, such cases would usually be heard in local courts using simplified procedures for small claims, and centralised information is not available on such cases.



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- 4.50 Examples of the enforcement decisions issued by national authorities following actions conducted by consumer organisations include:
- Companies to display prices including all unavoidable TFCs;
  - Carriers to reimburse airport taxes which passengers were required to pay without being notified by the airline beforehand; and
  - Airline terms and conditions to be combined in a single comprehensive document clearly labelled as such, and terms attached to special offers to be clearly displayed.
- 4.51 The following practices have been deemed unfair by national courts, and hence to infringe the Directive on Unfair Contract Terms:
- Charges for issuing tickets via the internet, requiring passengers to print their own boarding passes or pay penalties to have these printed at the airport<sup>8</sup>;
  - Terms which deny the rights of passengers to cancel their contracts (force majeure)<sup>9</sup>;
  - Terms which require the sequential use of coupons<sup>10</sup> (although the national courts have been inconsistent on this issue);
  - Limitation of airline liability for third-party services provided on their own websites<sup>11</sup>.

### Conclusions on enforcement

- 4.52 Section 3 identified that compliance with the most critical price transparency provisions of Regulation 1008/2008 was relatively good, and therefore enforcement is a less critical issue for this legislation than some other passenger rights legislation. However, overall compliance is poorer, and enforcement is important to ensure that all airlines and travel agents do comply.
- 4.53 At the time of our research several States had not introduced penalties into national law for infringements of Regulation 1008/2008. In addition, there is no requirement to designate an enforcement body, and although it is clear for the States covered above which organisation is responsible for enforcement of each element of the legislation, this does not seem to be the case for all other States. In particular, despite repeated efforts by our team, we were not able to obtain a clear response from national authorities in Germany as to which body was responsible for enforcement of Regulation 1008/2008, and it is not clear what if any actions have been taken in Germany to enforce it. Several stakeholders (including airlines) pointed out that there were significant differences in the effectiveness of enforcement between Member States and that in some States enforcement was not effective; these differences may distort competition within the single market for air transport.

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<sup>8</sup> Judgement of Commercial Court of Barcelona, 2010. Note that the ruling against the charge for reissue of a boarding pass was overturned on appeal.

<sup>9</sup> Judgement of Namur Commercial Court, 2010

<sup>10</sup> Judgement of Namur Commercial Court, 2010; and several court judgements in Spain

<sup>11</sup> Judgement of Namur Commercial Court, 2010



- 4.54 In most Member States no penalties have been imposed as yet for infringements of this legislation, although penalties have been imposed in Italy relating to Regulation 1008/2008 and in Spain for infringements of Regulation 889/2002. As for other EU legislation which relies on enforcement by national authorities, there are some issues with the approach to imposition of sanctions which means that this may be less effective than it should be in encouraging compliance:
- In some States there are problems in either imposing sanctions on, or collecting sanctions from, airlines that are not based within the State. This is a particular issue for airlines based in other EU States as these would not generally have a registered office within the State.
  - In some States (for example Norway and the UK) penalties can only be imposed for a failure to correct a practice when identified, not for an infringement that has previously taken place. This is likely to be less effective in deterring infringements, a fact which was acknowledged by the UK CAA. However, in our view this is a less significant problem for legislation of this nature which relates to general practices (such as the design of the booking process) than legislation such as Regulation 261/2004 which relates to individual events and actions (such as actions in the event of cancellation of a flight).
  - In certain States there is a reliance on criminal prosecutions, which other studies have found are not effective for dealing with civil and commercial matters, as a result of the complexity of the process, level of proof required, and lack of any relationship between the size of any fine and the commercial benefit obtained. Although the States covered by this study generally imposed administrative sanctions, the UK can only impose sanctions for infringements of Regulation 889/2002 through a criminal prosecution process.
- 4.55 Several enforcement authorities have taken actions short of imposition of sanctions to encourage compliance, and in many cases these actions have been successful. However, a problem highlighted by the UK CAA is that there are difficulties in securing rapid progress as all airlines and travel agents want to amend their practices at the same time as each other - a company would not generally want to present prices in a more transparent way, and incur other costs to comply with the legislation, if their competitors were not doing the same. This emphasises that enforcement will be most effective at ensuring compliance if sanctions can also be imposed.
- 4.56 Legal action has also been taken against airlines by consumer representatives in civil courts. To date, these cases have mostly related to the national laws implementing the Unfair Contract Terms Directive. However, we note that some of the practices which have been found to infringe these laws are still commonly followed by airlines. Whilst this approach may be successful in addressing infringements in specific cases or forcing changes to terms and conditions by specific airlines in specific States, this does not appear to have led to wider changes to airline commercial practices.

## 5 Conclusions and policy options

### Conclusions

- 5.1 We found non-compliances with the most critical areas of the legislation on 41% of websites, comprising 24 airlines and 17 travel agents. A further 35% of websites contained other significant infringements, with the remainder exhibiting only relatively minor non-compliances. Almost all of the websites checked were non-compliant with at least some elements of the legislation.

### Enforcement

- 5.2 Several stakeholders (including airlines) pointed out that there were significant differences in the effectiveness of enforcement between Member States; these differences may distort competition within the single market for air transport.
- 5.3 The main issues that we have identified with enforcement of the legislation are:
- At the time of our research several States had not introduced penalties into national law for infringements of Regulation 1008/2008, although some States said that it was possible to take action under legislation implementing the Unfair Commercial Practices Directive.
  - There is no requirement to designate enforcement bodies, and although it is clear for the States which responded to our study which organisation is responsible for enforcement for each area of legislation, this does not seem to be the case for all other States - in particular it is not clear for Germany.
  - In most Member States no penalties have been imposed as yet for infringements of this legislation.
- 5.4 Most of this legislation requires States to introduce sanctions into national law. However, as for other EU legislation which relies on enforcement by national authorities, there are also some issues with the approach to imposition of sanctions which means that this may be less effective than it should be in encouraging compliance:
- In some States there are problems in either imposing sanctions on, or collecting sanctions from, airlines that are not based within the State. This is a particular issue for airlines based in other EU States as these would not generally have a registered office within the State.
  - In some States penalties can only be imposed for a failure to correct a practice when identified, not for an infringement that has previously taken place. This is likely to be less effective in deterring infringements, although in our view this is a less significant problem for legislation of this nature which relates to general practices (such as the design of the booking process) than legislation which relates to individual events and actions.
  - In certain States there is a reliance on criminal prosecutions, which other studies have found are not effective for dealing with civil and commercial matters.

- 5.5 Several enforcement authorities have taken actions short of imposition of sanctions to encourage compliance, and in many cases these actions have been successful. However, this process can be slow, partly because all airlines and travel agents want to amend their practices at the same time as each other - a company would not generally want to present prices in a more transparent way, and incur other costs to comply with the legislation, if their competitors were not doing the same. This emphasises that enforcement will be most effective at ensuring compliance if sanctions can also be imposed.
- 5.6 Legal action has also been taken against airlines by consumer representatives in civil courts. To date, these cases have mostly related to the national laws implementing the Unfair Contract Terms Directive. However, we note that some of the practices which have been found to infringe these laws are still commonly followed by airlines. Whilst this approach may be successful in addressing infringements in specific cases or forcing changes to terms and conditions by specific airlines in specific States, this does not appear to have led to wider changes to airline commercial practices.

***Pricing provisions in Regulation 1008/2008***

- 5.7 The analysis in section 3 shows that 83% of airlines and travel agents are complying with the requirement in Article 23(1) to indicate prices inclusive of all unavoidable and foreseeable taxes, fees and charges (TFCs) from the first stage of the booking process.
- 5.8 However, this conclusion is subject to two key qualifications:
- Many airlines show prices excluding TFCs whilst showing prices including TFCs elsewhere on the same page (sometimes less prominently).
  - Some airlines add fees at a later stage in the booking process which, whilst theoretically avoidable, are in practice very difficult to avoid. These are usually fees for payment which can be avoided by use of a specific payment method but often one that is not easy for passengers to obtain. The most common free payment method is Visa Electron, but these cards may be limited to bank accounts for young people or basic accounts for those on low incomes. These payment fees also may substantially exceed the actual costs of taking payment.
- 5.9 It is not clear whether these practices represent an infringement of Article 23(1) or not, and ultimately only a Court could determine this; to date, no enforcement action has been taken and therefore it is not possible to predict how a Court might rule. These practices:
- might be considered an infringement of Article 23(1) of Regulation 1008/2008 depending on the interpretation of the word ‘unavoidable’ (a Court might determine that ‘unavoidable’ includes a fee that was not reasonably avoidable by a typical passenger);
  - might be considered an infringement of the Unfair Commercial Practices Directive on the basis that they are designed to mislead passengers about the level of the price; and
  - in some cases the free payment method is restricted to residents of certain Member States, which is not necessarily an infringement of the price

transparency provisions in Article 23(1) but might be an infringement of the provisions of Article 23(2) on non-discrimination.

- 5.10 Airline and travel agent advertising also showed prices which included unavoidable taxes, fees and charges in the vast majority of cases. However, this is subject to the same qualification as above regarding taxes, fees and charges which are difficult but theoretically possible to avoid. We also identified a few isolated examples of advertising which excluded unavoidable fees.
- 5.11 Article 23(1) also requires any additional services to be on an 'opt in' basis. We found that 85% of airlines and travel agents were also complying with this provision and a further 5% offered no optional services. However, in 24% of cases passengers would have to actively opt in or opt out of the provision of the service; this does not appear to infringe the requirement in the Regulation although again only a Court could determine this.
- 5.12 In contrast, only 22% of the airlines and travel agents surveyed comply with the requirement in Article 23(1) to provide a full breakdown of government taxes, airport taxes and other fees which are added, or provided an incomplete, inaccurate or mis-labelled breakdown. Many stakeholders interviewed for the study considered that this requirement was not helpful in improving transparency, arguing that only the total price is of relevance to consumers.
- 5.13 69% of airlines and travel agents complied, at least for the journeys we tested, with the requirement in Article 23(2) not to discriminate on the basis of place of residence, and for a further 5% it was not possible to book flights originating in a State different to that of the website. 26% did not comply with this requirement. In most cases the differences in fares between States was relatively small and arose from either:
- free or discounted payment methods that were restricted to residents of certain States (often airline credit cards that could only be obtained by residents of a specific State or States);
  - service fees for ticket issue that varied depending on place of residence; or
  - differences in prices between versions of the website which used different currencies, but which were larger than could reasonably be explained by foreign exchange transaction costs.
- 5.14 Whilst the variations in prices between States were generally small (€5-15), these still do appear to be infringements of Article 23(2).
- 5.15 We did not identify any cases where the price changed in response to the passenger entering the State of registration of their credit card.

### ***Provisions in other relevant legal texts***

- 5.16 As part of this study we also checked whether airline and travel agent advertising and booking processes complied with other EU consumer legislation, particularly with regard to presentation of prices and other relevant information, such as terms and conditions. The relevant legislation is:
- Directive 93/13/EEC on Unfair Terms in Consumer Contracts;
  - Directive 2005/29/EC on Unfair Commercial Practices; and

**I Directive 2000/31/EC on E-Commerce.**

- 5.17 These Directives set general principles for business to consumer transactions with which all businesses, including airlines and travel agents, must comply. In most cases they do not set specific requirements and therefore it is not possible to determine whether a specific practice is or is not compliant with the Directives; only a Court could determine this, based on a case-by-case assessment of a specific practice. However, we have checked whether the airline and travel agent websites are aligned with the Commission's interpretation of the requirements of these Directives.
- 5.18 We found that 95% of airlines and travel agents **comply with the requirement to accurately describe the airports served** in their booking processes, although we did find some isolated examples of use of incomplete or misleading names. The vast majority of airlines and travel agents also **indicated accurately whether or not flights involved a stop or connection**, although in a few cases it was not possible to tell if a change of aircraft was actually required.
- 5.19 In 70% of cases we were able to find **tickets available at the prices shown in airline and travel agent advertisements**. Whilst some airlines and travel agents provide a simple facility to search for the lowest fares available in a period, others only allow individual combinations of days to be checked, and therefore we cannot exclude that no fares were available in some of the other cases, as the number of searches we could do was finite.
- 5.20 We found **airlines did not advertise tickets as 'free' when they were not**. The only cases we found where airlines misleadingly advertised 'free' tickets related to tickets obtained through frequent flyer programmes: in almost all cases these are not free because the passenger would have to pay TFCs which, particularly on a short haul route, might account for a significant proportion of the ticket price. However, the majority of airlines did not describe tickets obtained through their frequent flyer programmes as 'free', or immediately qualified 'free' as not relating to TFCs.
- 5.21 **Airlines always provided their terms and conditions, and these were always in a form that could be stored by the consumer, in the course of the booking process**. In contrast, travel agents provided their own terms and conditions but not the terms and conditions for the airline, which would probably be more relevant to the consumer. **Airlines also usually provided information on the key conditions of tickets** (for example whether they were refundable) during the booking process; in contrast we could not find this information on the websites of four of the travel agents reviewed, and travel agents often only presented the full fare rules which might be much harder for a consumer to understand. We found that in some cases the information provided on airline websites was misleading in that tickets were described as being non-refundable, whereas in fact a significant proportion of the ticket was accounted for by per-passenger government taxes or airport charges, which generally would be refundable if the passenger did not travel; since this is misleading it appears to be an infringement of the Unfair Commercial Practices Directive.

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- 5.22 Although provision of information on terms and conditions in the booking process was good, provision of information in advertising was poor. 77% of airlines and travel agents did not include important information on conditions for cancellation and modification of tickets in their advertising.
- 5.23 We found that **around half of airline and travel agent websites do not offer the booking process and the relevant terms and conditions in the languages of all of the States** in which they market tickets. Perhaps more significantly, 30% do not provide the full terms and conditions in the same range of languages that they provide the booking process.
- 5.24 The E-Commerce Directive requires that service providers specify their geographic address and an email address. Whilst we were able to locate geographic addresses on the vast majority of the websites, **we could only find email addresses on 45%**. Most of the remainder provided an online contact form but it is not clear whether this is sufficient to meet the requirement in the Directive to provide an email address and 9% did not even provide this.
- 5.25 In addition, we checked compliance with the requirement in Regulation 889/2002 to provide the statement on liability for passengers and their baggage. The vast majority of airlines surveyed for the study did comply with this requirement: although in many cases the information was modified. The main issue identified was with travel agents - most did not provide this notice at all.

### *Unbundling of ticket prices*

- 5.26 A general issue identified in the research is that many airlines are unbundling the ticket price into a base fare which covers a basic transport service and additional fees for other services. Although this practice was pioneered by the low cost airlines, it is being adopted increasingly by network airlines. For example, certain network airlines have introduced charges for food and drink, seat selection and credit card payment; and one now charges for payment by any method other than PayPal. EU network airlines still usually do not charge for checked baggage but most low cost carriers do and this practice is common amongst network airlines in the US; therefore it might be expected that EU network airlines may adopt this practice in the future.
- 5.27 We have sought to identify from airline accounts whether these ancillary charges account for significantly different proportions of revenue for different airlines or airline types. Some low cost airline accounts show a substantial proportion of revenue is now obtained from ancillary services: for example, two major low cost carriers report 19% and 22%<sup>12</sup>. However, the main network airlines that we checked did not make a clear distinction in their accounts between ticket and ancillary revenue, and therefore it is not possible to confirm that ancillary revenue is currently more significant for low cost carriers, although this would appear to be the case from the research undertaken for this study.
- 5.28 Although these ancillary charges are probably not an infringement of any existing EU consumer legislation, they do raise some issues:

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<sup>12</sup> Source: airline annual accounts 2010

- the proliferation of charges makes price comparison between airlines more time consuming for the consumer, potentially limiting the effectiveness of price competition; and
- charges for additional services are often very high compared to the incremental costs the airline is likely to incur in providing the service (for example one low cost airline charges more than its average ticket price for printing a boarding pass at the airport).

5.29 Policy options to address these issues are discussed further below.

#### ***Overall effectiveness of Regulation 1008/2008***

5.30 As requested in the Terms of Reference we have considered the overall effectiveness of Regulation 1008/2008 in meeting its objectives. The main price transparency objectives of Regulation 1008/2008, as described in the recitals to the Regulation, were:

- Customers should have access to all air fares and air rates irrespective of their place of residence within the Community or their nationality
- Customers should be able to compare effectively the prices for air services of different airlines, and therefore the final price should at all times be indicated.

5.31 Overall the Regulation has been partially effective in meeting these objectives. The main reasons why the Regulation has not been more effective are:

- Some airlines and travel agents are not complying with these provisions of the Regulation, and they do not necessarily have an incentive to do so, because to date enforcement has not been sufficient in all States.
- Some airlines and travel agents have adopted practices which, whilst not necessarily inconsistent with the text of the Regulation, are clearly inconsistent with its objectives. The most significant of these is the levying of substantial charges for payment which in practice are very difficult to avoid.

5.32 The Terms of Reference also ask us to consider whether the objectives of the Regulation could have been achieved without legislation, through self-regulation. In our view the objectives could not have been achieved without legislation, because due to strong (headline) price competition and low profit margins airlines are reluctant to change their practices unless their competitors have already changed their own practices.

5.33 Stakeholders have not reported any increased administrative burdens as a result of the legislation.

#### **Policy options and recommendations**

5.34 Previous studies undertaken for the Commission and by others have identified that an increasing proportion of air ticket prices is accounted for by TFCs. At the time of a previous study we undertook for the Commission<sup>13</sup>, many airlines did not include unavoidable TFCs in their advertised prices or in the prices initially presented on their websites. As a result of Regulation 1008/2008, most airlines and

<sup>13</sup> Review of airline ticket transparency, 2006



travel agents now do so. However, as discussed above, the price will often increase during the booking process due to the selection of optional services by the passenger. Recent research by the UK Office of Fair Trading found that, of all the pricing practices considered, ‘drip pricing’ such as this was most likely to lead to consumer detriment, partly due to an increased risk of errors being made by the consumer (for example if the consumer stops searching elsewhere for a cheaper product earlier than they would otherwise do).

- 5.35 In our view the appropriate policy options to address this should distinguish between:
- charges that are theoretically optional, but in practice very difficult to avoid; and
  - charges for genuinely additional, optional services.
- 5.36 In addition, we discuss below issues that have arisen with the requirement to provide a breakdown of taxes, fees and charges; and set out some other recommendations to address the issues we have identified.
- Enforcement**
- 5.37 Section 4 identified that enforcement of this legislation by Member States has been quite limited to date. Some Member States have not introduced penalties into national law for infringements of Regulation 1008/2008.
- 5.38 The Commission should encourage Member States to comply with the obligation in Article 24 to ensure compliance and to define penalties that are effective, proportionate and dissuasive. If necessary this should include infringement proceedings against States that have failed to introduce penalties into national law or have failed to take necessary action to ensure compliance.
- 5.39 In some States, penalties could only be imposed where a service provider does not respond when required by an enforcement authority; there is no other option to impose penalties to punish past infringements. It has been identified with respect to some other consumer-protection legislation in the air transport sector that this approach may be insufficient to provide airlines with an incentive to comply consistently. However, in this case, this is less of an issue: the purpose of any penalty would be to encourage one-off changes to booking processes or Conditions of Carriage, rather than incentivise proper handling of day-to-day events such as delays and cancellations by punishing infringements when they occur. Therefore, it does not seem necessary for States to change the structure or level of penalties.
- 5.40 If Regulation 1008/2008 were to be revised, we suggest that States should be required to define which body is responsible for enforcement. This is required for other passenger rights legislation but is not required by this Regulation. The lack of any defined body responsible for enforcement in some States (for example Germany) may have contributed to the limited enforcement of the Regulation to date.
- 5.41 We suggest that enforcement to the existing Regulation should be improved before revision to the Regulation is considered.



*Theoretically-avoidable charges*

- 5.42 As discussed above, some airlines have introduced charges for services which are theoretically avoidable and therefore are not included in the price that is advertised or initially presented to consumers. In practice these are, for most passengers, sometimes very difficult to avoid. The main issue is fees that can only be avoided if payment is by a method that few passengers would have and would be difficult to obtain (such as Visa Electron), or a payment method for which the passenger would have to pay a fee to the card issuer (such as a prepaid MasterCard).
- 5.43 Whilst the practice of imposing fees which are difficult to avoid is confined to a minority of airlines, the fact that it is adopted by the two largest low cost airlines means it impacts a significant proportion of passengers. Since other airlines need to compete with these airlines, this practice might in the future be copied by other airlines and there is some evidence that this is already happening: for example one network carrier has recently introduced charges for payment by credit or debit card, although it does offer free payment by PayPal which is readily available at no charge to the consumer.
- 5.44 These charges often substantially exceed the costs of the payment: for example, the recent study by the UK Office of Fair Trading estimated debit card transaction costs would be around €0.60 per transaction<sup>14</sup>, whereas some airlines charge up to €6 per passenger per segment or €10 per booking. Credit card processing costs are higher, but still far below the fees charged by some airlines. Since these charges are difficult for passengers to avoid and often substantially exceed costs, the main effect of the separation of the charge from the base fare appears to be to delay presentation of the full price until later in the booking process, and to exclude part of the price from advertising, whilst remaining compliant with the requirement to present the price including all ‘unavoidable’ fees (subject to interpretation of the word unavoidable). This is not consistent with the spirit or objectives of the price transparency provisions in Regulation 1008/2008, and it is likely that such practices could be considered misleading under the Unfair Commercial Practices Directive. As the OFT research discussed above identifies, practices such as this have a high risk of detriment to consumers.
- 5.45 This issue could be addressed in three ways:
- **Enforcement of existing legislation:** As discussed above, these practices could be found misleading under the Unfair Commercial Practices Directive. An enforcement authority could bring a test case against an airline which, particularly if there was a referral to the European Court of Justice, would ultimately clarify this issue.
  - **Consumer Rights Directive:** The new Consumer Rights Directive, which was recently approved by the European Parliament, will prohibit service providers from levying charges for payment (including credit or debit card fees) which exceed their costs incurred in handling transactions. As airline credit and (particularly) debit card charges are often set at levels which substantially

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<sup>14</sup> UK Office of Fair Trading - Payment Surcharges: Response to the Which Super-Complaint (June 2011)

exceed the costs that are incurred, this is likely to result in a reduction in the level of these charges and may also reduce the incentive for airlines and travel agents to separate (particularly) debit card charges. However, as noted in the recent OFT report, costs can be difficult to define, making cost-based regulation problematic, and therefore it is too early to predict what impact this legislation might have.

- **New legislation:** As an alternative, new legislation could be introduced which specifically prohibits charges for payment by debit cards, which are likely to be the cheapest method of payment for the retailer to handle in most cases. Any such measure should not be specific to air transport as there is evidence of similar charges being applied in other sectors. If new legislation was to be introduced, an impact assessment would be required.

### *Other ancillary charges*

- 5.46 There is a stronger justification for separation of charges which are for genuinely optional services which the passenger can readily avoid. Most stakeholders that expressed a view agreed that carriers should be able to charge separately where a service has an additional cost and use of the service can be readily avoided by a significant proportion of passengers. In principle this separation should benefit passengers: if airline pricing provides an incentive to minimise the use of additional services such as checked luggage which incur additional costs for the airline, airline operating costs are reduced, and hence ticket prices can also be reduced. Several airlines argued in submissions for this study that this practice benefited consumers. Article 8(2) of the Consumer Rights Directive requires that the service provider specifies the total price including any further costs before the consumer confirms the purchase, and we did not identify any instances where airlines failed to do this.
- 5.47 These services could include, for example:
- check-in at the airport, as this cost is avoidable if the passenger checks-in online;
  - carriage of checked luggage, as this is avoidable if the passenger carries hand luggage only; and
  - payment by credit (but not debit) card: there is some justification for an additional charge for payment by credit card, as this cost is avoidable if the passenger pays by debit card or another payment method with lower processing costs for the airline (in contrast, for the reasons discussed above, we think a charge for debit card payments is unjustifiable).
- 5.48 However, as noted above, these charges still present issues for passengers, particularly if they are not transparent at the time of booking, because some passengers will not be able to avoid them. For example, passengers travelling on an annual holiday are unlikely to be able to avoid carrying checked luggage; and passengers who are away from home may not be able to find a way to print their boarding pass.
- 5.49 In addition, prices for these additional services in some cases far exceed the costs of the additional service, which in the case of payment fees would constitute an infringement of Article 19 of the Consumer Rights Directive; and indicates that at

least part of the objective of the separation of the charge may be to reduce the proportion of the total price shown at the start of the booking process and in advertising. Therefore, these charges do raise some of the same issues of potential consumer detriments as the theoretically-avoidable payment charges discussed above.

- 5.50 We have considered the following options to address this:
- presentation of a standard ticket price;
  - presentation of a price including all optional additional services;
  - presentation of a price including additional services where bought by the majority of passengers; or
  - as an alternative, a requirement to divulge information to, and co-operate with, bodies providing price comparison information.
- 5.51 It has also been pointed out by the European Travel Retail Council (ETRC) that the practice of strict enforcement by some airlines of hand baggage limits, coupled with charges for checked baggage, deters passengers from using airport retail. Since profits from airport retail often cross-subsidise airport charges, this policy might increase the level of airport charges in the future. However, we would expect this is an issue that could be best addressed through commercial negotiations between airports and airlines: airports might wish to apply higher charges to airlines that adopt this policy if it reduces their retail revenue.
- 5.52 The rest of this section provides an initial analysis of the advantages and disadvantages of these options. If any of these were to be progressed further an impact assessment would be required.
- A standard ticket price*
- 5.53 We discussed with stakeholders whether airlines could be required to present some type of standard ticket price, which would be defined to include the full range of services that a typical passenger would need to buy.
- 5.54 The key advantage of this is that it would ensure that the price presented on airline websites and in advertising reflected what passengers would typically need to pay. This could facilitate price comparisons between airlines and therefore improve price competition, to the benefit of consumers.
- 5.55 The key problem with this is that it would be hard to define what a standard ticket price should include. For example:
- **Checked baggage:** On a long haul route or a route with a high proportion of holiday passengers, most passengers would need to check in baggage and therefore arguably this should be within the definition of a standard ticket price. However, on a short haul business-orientated route, the majority of passengers should not need to check in luggage, and therefore a standard ticket price which included luggage would be misleadingly high.
  - **Seat selection:** Many passengers might consider advance seat selection to be unnecessary extra which should not be included in a defined 'standard price'; however, families with young children might consider this essential. Some airlines do not offer services such as this at all.

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5.56 A further issue is that commercial practices in the airline sector tend to evolve quickly. Whilst a standard ticket price could be defined in a way which included all elements of the service which are currently split out by airlines, it is not impossible that airlines may in the future unbundle other elements of their services or introduce other new services. It would be very difficult to design a standard ticket price to take into account all future innovations airlines might introduce; and this might give airlines an incentive to introduce new fees for services currently included in the ticket price but not mentioned in the definition of a 'standard ticket price'.

5.57 It is probable that the introduction of a standard ticket price would result in an increase in the level of the base fare, although we have not received any information from airlines to support this.

### *Presentation of price including all optional services*

5.58 Another option would be to require prices presented on airline websites and in advertising to include all optional services; the price would therefore reduce as the passenger declined these options.

5.59 The key advantage of this option is that it might avoid the problems of definition associated with a standard ticket price, whilst still presenting the same benefit in terms of facilitating price comparisons between airlines.

5.60 However, this option also has important disadvantages:

- It might still be necessary to define which optional additional services should be included. For example, many airlines offer travel insurance, but it is clearly not necessary for passengers to buy this and therefore it is difficult to argue that it should be included in the advertised or initially presented price. Therefore the problems of definition would not be avoided altogether.
- Airlines might be deterred from offering additional services which are of benefit to consumers. For example, an airline which did not generally allocate seats, but allowed advanced seat selection for an additional fee, might decide not to offer this if the fee had to be included in all advertised prices. If airlines stopped offering these services for additional fees, they would have to increase the base fare to cover their costs.

### *Presentation of price including all services that the majority of passengers buy*

5.61 The problems of definition associated with the previous options could be avoided if there was a requirement to include fees for additional services in presented prices or advertising, where 50% or more of passengers purchased the service.

5.62 The advantage of linking the requirement to include the fee in the presented price with the proportion of passengers buying the service is that it avoids the need to define what should and should not be included in the advertised price. It appears more feasible than the options described above for this reason.

5.63 However, this option could still have some disadvantages:

- It would be necessary to define over which group of customers the 50% criteria should apply, and this might be problematic. For example, over 50% of passengers on a given airline might purchase luggage, but on short haul routes

the proportion might be less than 50%. It would have to be determined whether the calculation was at the airline level, route level, or some other level.

- This option might be difficult and expensive to enforce. Enforcement authorities would have to check data on the proportion of passengers purchasing given services with each airline, but this might require more resources and powers than the enforcement authorities typically have.

*Presentation of price information via third parties*

- 5.64 In some other industry sectors, such as insurance, third parties provide price comparisons; consumers can select which services they want to purchase and the price comparison website presents appropriate offers that meet these criteria.
- 5.65 Although there are many price comparison websites covering the air transport sector, these do not usually present information on ancillary charges and have limitations in terms of which airlines are covered, which make them significantly less useful than they could be. This is at least partly because airlines may not provide information on ancillary charges: representatives of the GDS (global distribution systems) and travel agents interviewed for this project said that many airlines do not provide information on, or allow purchase of, ancillary services through the GDS. It is also not clear whether airlines would currently allow third parties to present prices including ancillary charges when their own practice is not to do so; airlines sometimes require third parties presenting their prices to sign licensing agreements, and it is not clear what the conditions of these agreements are. However, another possible explanation could be that (to date) there has not been sufficient market demand for price comparisons which allow inclusion of all ancillary fees.
- 5.66 In principle, this could be addressed through legislation, for example amending the code of practice on Computer Reservation Systems to require airlines to provide information on ancillary services through the GDS and potentially also to require airlines to allow third parties to publish their price information including ancillary charges free of charge and without any restriction on how the price is presented.
- 5.67 However, this approach would also have disadvantages. Airlines have previously argued that they should have the right to require that bookings are through their own channels, for example to ensure that the correct terms and conditions are presented. We note in this context that the analysis in section 3 shows that airlines are better than third parties such as travel agents in complying with the requirements of EU consumer law relating to provision of information on terms and conditions. Airlines may also argue that they should be able to control the channels for distribution of their services. In other industry sectors there is usually no legal requirement to provide information or allow purchases via third parties.
- 5.68 A study is being undertaken in parallel to this on the Regulation on the Code of Conduct for Computer Reservation Systems, which will evaluate these issues in more detail.

*Breakdown of taxes, fees and charges*

- 5.69 As identified in section 3 above, most airlines and travel agents do not comply with the requirement in Regulation 1008/2008 to provide a full breakdown of TFCs,

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either because they do not provide the breakdown required, or provide a breakdown that is either inaccurate or inaccurately labelled. Although some stakeholders interviewed for this study considered that this provision was important for transparency, others argued that it was unnecessary and likely to confuse consumers, and noted that there is no equivalent requirement in other sectors.

- 5.70 In most circumstances this information is not relevant to consumers as they cannot avoid paying the additional charge. The only exception to this is where a tax or charge is levied by either governments or airport management companies on a per-passenger basis, and therefore should be refundable if the passenger cannot travel, even if the rest of the ticket price cannot be refunded.
- 5.71 It is not clear whether existing law requires these taxes and fees to be refundable and there was no consensus on this issue amongst enforcement authorities interviewed for this project. We note that many airlines, even those selling entirely non-refundable tickets, do allow refunds of taxes and (usually) airport charges - although our research also indicated that they rarely stated this prominently and sometimes levied administration fees which would be close to or exceed the potential amount of the refund.
- 5.72 We suggest that consideration should be given to replacing this requirement in Article 23(1) with a requirement to separately identify per-passenger government taxes and other fees which are refundable if the passenger does not travel. This approach was recommended in a recent report by a number of enforcement authorities acting through the Consumer Protection Network.<sup>15</sup>
- 5.73 At the same time, as recommended in the same report, the Commission should consider amending the law to clarify that per-passenger taxes and fees must be refundable if the passenger does not travel. Since the airline does not have to pass on these taxes or charges if the passenger does not travel, if it does not refund the passenger it is actually better off if the passenger does not travel. We also suggest that consideration be given to limiting any processing fees charged for this, as some of the fees airlines currently charge for processing these refunds appear disproportionately high.

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<sup>15</sup> CPC Report on Airlines' Taxes, Fees, Charges, and Surcharges

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