

# THE DIGEST



## NEWS AND RECENT DEVELOPMENTS IN LAW AND PRACTICE IN THE TRAVEL INDUSTRY

### Air Travel Trust

The Air Travel Trust (ATT) has published a new policy for making payments in the event of an ATOL holder failure, following the introduction of reforms to the ATOL scheme in April this year.

The new policy sets out the circumstances in which the trustees of the ATT will make payments for the benefit of consumers when an ATOL holder fails. For example, payments may allow consumers to complete their holidays, provide refunds where consumers are unable to travel or make contributions to Flight-Plus arrangers in the event that their seat supplier ATOL holder has failed.

The policy makes clear that travel businesses must have the correct documentation in place; in the past the ATT has been concerned that poor standards of documentation in the industry have confused consumers and made it difficult for the CAA to handle claims efficiently and avoid delays for consumers in receiving their refunds.

However, with the introduction of the ATOL Certificate as part of reforms to the ATOL scheme, consumers will now have greater clarity on how their holiday arrangements are financially protected and by whom. The trustees believe that the certificate will lead to real improvements in consumers getting their refunds more quickly in future.

In addition, agency agreements – also brought in as part of ATOL reform – will confirm the relationships between the principal ATOL holders and their agents and remove any questions about liability between these parties. These are vital pieces of documentation that the travel trade must have in place and

issue correctly, as otherwise payments made by the ATT may be affected and potentially agents could find themselves responsible for refunding customers.

The ATT payment policy is available from the ATOL website.

(Source: ATT, 6 August 2012)

### Civil Aviation Authority

UK holidaymakers can now compare the cost of any optional extra fees and charges for their flights, thanks to the UK Civil Aviation Authority's (CAA) comparison tool.

The online tool allows passengers to compare the optional fees and charges applied by the top 23 airlines operating in the UK. It includes information on how much airlines charge passengers for checking in luggage, having an in-flight meal and a host of other services that passengers may have to pay for in on top of the ticket price.

Originally launched earlier this year, the comparison table has been fully updated following a comprehensive review. Thousands of passengers have already used the CAA's information on fees and charges to help them book their flights knowing the full price picture from the start.

The table contains information on charges ranging from booking priority boarding, to taking sports equipment on the flight, reserving a seat and having a meal.

Andrew Haines, Chief Executive of the CAA said: "The UK has a fantastically diverse aviation market that offers choice and value to millions of passen-

gers each year, and if passengers are to really see the benefit of that diversity, they have to know the full picture about the flight they are booking.

"We made this tool available to help give passengers that full picture; allowing them to make informed decisions about what flight suits them best, safe in the knowledge they are aware of any potential fees and charges they may have to pay on top of the price of the ticket. It's proved very popular, and we hope even more passengers will now take advantage of this useful tool."

The fees and charges comparison table is available from the CAA's Passenger Portal, which also includes a range of additional advice for passengers to use before they fly, on board the aircraft and after they return from their trip.

Where fees and charges are not optional extras but unavoidable e.g. air passenger duty, they must by law be included in the price of the ticket at the start of the booking process. The CAA is continuing to work to ensure this happens. The Office of Fair Trading also recently announced that following enforcement action, a group of 12 airlines have agreed to include debit card surcharges in the headline price rather than surprise consumers at the end of the booking process.

(Source: CAA, 31 July 2012)

## The Air Travel Insolvency Protection Advisory Committee

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) has welcomed the first phase of ATOL Reform, but says much more must be done to protect holidaymakers.

In its annual report, the Committee supports the introduction of Flight Plus sales into ATOL, and the forthcoming production of ATOL Certificates for anyone buying ATOL-protected holidays. ATIPAC believes the Certificate will give an enormous boost to awareness of ATOL, which is long overdue.

ATIPAC has long called for reform to modernise the ATOL scheme and extend consumer protection to

ensure the ATOL scheme catches up with changes in the way holiday travel services are provided and consumers purchase them. In this report it says that the current proposals do not go far enough, and that legislation should be introduced to ensure that all flights are protected.

John Cox, Chairman of ATIPAC, said: "ATOL reform is very welcome. But it is a belated recognition that the travel industry has changed beyond recognition in the past twenty years. ATIPAC is clear that there is much, much more to do to create clear and comprehensive financial protection for holidaymakers."

Looking to the future, the report sets out the Committee's view that the outlook for the travel industry during the current financial year remains one of instability created by a number of factors: the volatility of sterling exchange rates, the continuing problems within the Euro zone, and the effect on bookings caused by the London 2012 Olympics and Paralympics Games. Moreover, reports of airlines reducing capacity during the summer period could have a detrimental effect on the holiday industry. Both increases in APD and in the cost of fuel add to airlines' costs; these costs are inevitably passed on to tour operators and thence to their customers. The Committee concludes that none of this bodes well for any short term recovery of the travel industry.

The ATIPAC Annual Report is available on the ATIPAC website: [www.atipac.org.uk](http://www.atipac.org.uk)

(Source: ATIPAC, 24 July 2012)

## Civil Aviation Authority/ABTA

The CAA and ABTA has launched new guidelines (Pre-Notification Guidance – for Supporting Passengers with Reduced Mobility), for the travel industry to help deliver a smooth airport experience for people with reduced mobility. The guidelines were drafted by the CAA in conjunction with ABTA and developed by an industry group. They aim to give information and advice for travel companies and airports on how to provide the optimal experience for passengers who require assistance at the airport.

Under European law (Regulation 1107/2006), all passengers who are disabled or have difficulty moving around can receive assistance when they fly, free of charge. The number of disabled and persons with reduced mobility (PRM) passengers who are pre-booking assistance has increased since the implementation of the legislation in 2008. However, the levels continue to vary significantly across airlines and on specific flight routes. There are also problems with the accuracy of the information that is collected and transferred and this impacts on the airports' ability to plan resources accordingly.

The document is intended to supplement the Department for Transport's 2008 Code of Practice detailing the requirements of the legislation on providing assistance to disabled persons and PRMs by offering practical guidance based on experience. The key focus is pre-notification. Pre-notification is essential to help ensure the airports put the right resources in place at the right time to provide assistance to PRMs. The guidelines cover what should happen during the booking process, after the booking has been made and at the airport. They include the IATA codes commonly used to transmit information about the specific assistance required.

Nikki White, Head of Destinations and Sustainability at ABTA said: "Delivering a good travel experience to all customers is a key priority for our members. It can be deeply distressing for passengers to arrive at the airport and not have access to the assistance they require. By working together we have been able to develop practical guidelines that will help ensure a smooth and seamless experience for passengers with reduced mobility, from collecting the right information at booking to ensuring the resources are in place when they arrive at the airport."

Sandra Webber, CAA Director of Consumer Support, said: "Travelling if you have restricted mobility can be especially challenging and stressful without good planning and effective processes from airlines and agents. The CAA believes that pre-notification is the key to airports and airlines providing PRMs with the assistance that best suits their needs. We think that this guidance will help travel companies and airports

in ensuring that PRMs pre-notify their assistance needs to their travel company or airline, with a view to helping to ensure the airports provide appropriate assistance. But if PRMs find that they are not receiving their rights, they can contact the CAA who will look into the problems and may take up their complaints with the airline or airport concerned."

(Source: ABTA, 13 July 2012)

## Office of Fair Trading

Following an OFT investigation, Euroteam AS, Uncus AS, Ticket and Travel AS and the controlling director of these companies, Andreas Gyrré, have given undertakings to the High Court in relation to the unauthorised sale of tickets to the London Olympics.

Under the terms of the undertakings, the traders have committed to provide a full refund to any of their customers who either do not receive their tickets or are refused entry to an event as the tickets supplied are not valid. People who are refused entry should ensure that they retain their tickets, or get a receipt from the Games Organisers if their ticket is seized indicating that the customer was unable to gain entry. They should send a copy of their void ticket or the receipt to the trader when applying for their refund. The traders have also promised the High Court that they will make their contact details available on their websites so that customers can submit their refund requests easily.

Mr Justice Kenneth Parker granted an interim enforcement order requiring 12 websites owned and operated by the Norway based traders to stop selling Olympic tickets, failing which the OFT would be able to have the sites redirected to a holding page. He ruled that the traders had misled consumers by failing to make clear that they were unauthorised to sell Olympic tickets, that they may not be able to supply the tickets ordered, and any tickets they do supply may not in fact allow the purchaser to enter the Games. Following the traders' agreeing to undertakings, the OFT agreed to release six of the websites.

The investigation was initially launched over concerns that the traders are not authorised to sell Olympic tickets. The OFT has worked in partnership with the Metropolitan Police and Serious Organised Crime Agency (SOCA) during the course of the investigation. Under the terms of conditions of the tickets, the tickets are only valid if purchased from an authorised ticket seller. In July 2012, the OFT was informed that approximately 20,000 tickets were purchased from the websites but the traders had only sourced 5,000 to supply.

(Source: OFT, 1 August 2012)

## Office of Fair Trading

The OFT has issued a Statement of Objections alleging that Booking.com B.V. (Booking.com), Expedia Inc (Expedia) and InterContinental Hotels Group plc (IHG) have infringed competition law in relation to the online supply of room only hotel accommodation by online travel agents.

The Statement of Objections alleges that Booking.com and Expedia each entered into separate arrangements with IHG which restricted the online travel agent's ability to discount the price of room only hotel accommodation.

The OFT considers that the alleged infringements are, by their nature, anti-competitive in that they could limit price competition between online travel agents and increase barriers to entry and expansion for online travel agents that may seek to gain market share by offering discounts to consumers.

The formal investigation was initiated in September 2010, following a complaint submitted by a small online travel agent, alleging that it was being prevented by various hotel chains from offering discounted sale prices for room only hotel accommodation.

The OFT limited the scope of its investigation to a small number of major companies, with a view to achieving a swift and effective outcome. However, the investigation is likely to have wider implications as the alleged practices are potentially widespread in the industry.

Clive Maxwell, OFT Chief Executive, said:

"We want people to benefit fully from being able to shop around online and get a better deal from discounters that are prepared to share their commission with customers.

"The OFT's provisional view is that Booking.com, Expedia and InterContinental Hotels Group have infringed competition law. However, these are the OFT's provisional findings only. All parties will now have a full opportunity to respond to our Statement of Objections before we decide whether competition law has in fact been infringed."

(Source: OFT, 31 July 2012)

## Office of Fair Trading

Following OFT enforcement action, 12 airlines have agreed to include debit card surcharges in the headline price rather than surprise consumers at the end of the booking process. Any surcharges for paying by credit card will be easy to find when booking online.

Aer Lingus, BMI Baby, Eastern Airways, easyJet, Flybe, German Wings, Jet2, Lufthansa, Ryanair, Thomas Cook, Thomson (TUI) and Wizz Air were subject to an OFT consumer law investigation and have agreed to change their practices.

The OFT believes that people should not have to incur surcharges to use a debit card online. Debit cards are the online equivalent of cash which means that headline prices should be the price people can pay.

The OFT believes that traders may still impose surcharges for credit cards, which can be more costly to process. However, it is critical that these charges are transparent and not sprung on shoppers towards the end of the booking process. As part of the OFT's enforcement action the airlines agreed to make surcharges for credit cards more transparent so that these charges will be clearer and easier to find during the booking process.

Following recommendations from the OFT last year, the Government has also announced plans to bring

forward legislation to ban excessive debit and credit card surcharges across the economy. The OFT estimated that debit and credit card surcharging in the airlines sector cost consumers £300 million a year.

Eastern Airways, easyJet, Flybe, German Wings, Lufthansa, Thomas Cook, Thomson (TUI) and Wizz Air have already made changes to their pricing structures, websites and marketing materials agreed during the course of the OFT investigation. Other airlines agreed to change their advertising practices by 1 August and fully complete further changes over the coming months.

In June last year, the OFT responded to a super-complaint from Which? and warned the airline industry to change practices or risk enforcement action.

(Source: OFT, 5 July 2012)

## Advertising Standards Authority. Acropolis Hotels Ltd

An ad for the Cedar Court Hotel, heard on Stray FM, featured the voices of three children comparing how special their mothers were. One child said "My dad says my mum's so special he's taking her to the Cedar Court Hotel for Mother's Day lunch". A woman's voice said "Harrogate's most special mums will be looked after at the Cedar Court Hotel for Mother's Day this year. If your mum's worth it, call [telephone number]".

A listener challenged whether the ad unfairly targeted children.

Cedar Court Hotels said the ad had run in previous years without comment. They said that, compared with market competition at the time of the ad, the Cedar Court Hotel would not be considered "expensive". They said that, while the ad used children's voices, it was aimed at the father to decide whether, if they were going out for lunch, it would be to the Cedar Court. They said they did not intend to target families with young children and that, of the guests who ate Mother's Day lunch in the restaurant, only 5.5% were children under the age of 18 years. Stray FM endorsed Cedar Court Hotels' response.

The complaint was not upheld. The ASA noted that the ad featured children talking about their mothers, with one saying that, because hers was so special, her father was taking her to the hotel for Mother's Day lunch. We considered the ad was aimed at adults or fathers and suggested lunch at the hotel was a possible treat for the children's mothers, but we did not consider that it was something that was likely to hold particular appeal for the children themselves. In that context, we did not consider that the children's conversation was likely to encourage children who heard the ad to ask their parents or guardians to purchase or enquire about lunch at the hotel and that it did not unfairly target them.

(Source: ASA, 18 July 2012)

## Advertising Standards Authority. TUI UK Ltd t/a Thomson Holidays

A brochure and the website [www.thomsonholidays.co.uk](http://www.thomsonholidays.co.uk) promoted Thomson Holidays.

- a. The brochure ad was titled "Ermones, Atlantica Grand Mediterraneo Resort" and featured a box under pictures of the resort that stated "Exclusively for Adults".
- b. The website ad stated "Atlantica Grand Mediterraneo Resort & Spa in Ermones, Corfu. An adults-only hotel with a dramatic Cliffside setting ... Exclusively for Adults – Thomson's Exclusively for Adults range offers you the chance to find total tranquillity in a resort free from the bustle of families and young people – This carefully selected range of resort offers you the chance to enjoy a relaxed and independent break with your partner or a group of close friends – Thomson and the resort owners guarantee not knowingly to sell to anyone under the age of 16 – See Adult Properties in the A-Z Guide for more information ...".

A complainant challenged whether the claims "Exclusively for Adults" and "An adults-only hotel" were misleading, because she stayed at the hotel and found children were booked in.

Thomson Holidays (Thomson) said that, during the

period the complainant stayed at the hotel, there were a small number of children staying. They said that for one day there were three children staying, for four days there were two children, and for the remaining three days there were no children staying. They said that was a very small number considering the hotel had 267 rooms.

Thomson said the A-Z guide stated that they could not guarantee that there would not be any children at the hotel. They said it was impossible to completely control the presence of children at the hotel and believed it was unreasonable to expect there would never be a child at the hotel. They said that, while they did their best to ensure there would not be children present, occasionally there might be children booked into the hotel or using the facilities. They said they could also not do anything to prevent people booking children into a hotel as an adult, which did sometimes happen. They said, however, that problems with children being present at "Exclusively for Adults" hotels were rare and believed that an occasional complaint was exceptional.

Thomson said they included detailed specifications in their contracts with hoteliers so that they were fully aware of what their "Couples" brand involved, and what the hoteliers needed to provide to their customers. They said hoteliers agreed to those specifications and it formed part of their agreement with them. They said hoteliers should not be accepting any bookings from anyone under the age of 16.

Thomson said the hotelier in the complainant's case had told Thomson that they were obliged to take bookings from a few families with children after they received a warning from their local authority after a family they refused to accept a booking from had complained. Following notification of the complaint made to the ASA, Thomson subsequently reached an agreement with the hotel that, because all their rooms were allocated to tour operators, they could legitimately say they had no vacancies if they received similar enquiries in future and would not be obliged to take local bookings from families with children.

The complaint was upheld. The ASA acknowledged

that it was rare for a child to be booked into an "Adults-Only" hotel. It was also noted that Thomson had a contract in place with Atlantica Grand Mediterraneo Resort & Spa that made clear they were offering their customers an "Adults-Only" hotel experience and had taken action following notification of the complaint made to the ASA so that in future the hotel would not be obliged to take local bookings from families with children. Nevertheless, the ASA noted that children had been staying at the hotel for some of the time for which the complainant was there and that, while Thomson had taken action to avoid similar situations occurring again, they could not guarantee that children would never be present in the hotel. The ASA considered that to be able to book a hotel where customers could avoid children also staying there was an important consideration. The ASA considered that "Exclusively for Adults" and "An adults-only hotel" were absolute claims which were contradicted by the information in the A-Z guide. Because Thomson had not substantiated the claim, and because the information in the A-Z guide contradicted it, the ASA concluded that the claims were misleading.

(Source: ASA, 27 June 2012)

## Advertising Standards Authority. Carnival plc

Three ads for a Norwegian Fjords and North Cape Discovery cruise, departing on 22 June 2012, were published in the April, September and December 2011 editions of the Cunard brochure. All of the ads featured different promotional offers and gave a "Voyage Only Fare" and a "Voyage Only Fare Less Savings". The "Voyage Only" prices differed between each of the editions of the brochure.

A complainant challenged whether the "Voyage Only" prices in each of the ads were genuine, because she believed the cruises were not sold at those prices and that the savings claims in the "Voyage Only Less Savings" sections were therefore exaggerated.

Carnival plc t/a Cunard Line (Cunard) said that

Cunard Voyages brochure November 2011 – April 2012 was published in four editions and featured a “Voyage Only Fare” and a “Voyage Only Fare Less Savings”. They said that both of the prices were “from” prices and that the brochures made clear that those fares might rise throughout the life of the brochure. They said the “Voyage Only Fare” was the price at which they expected to be able to sell the applicable voyages when pricing was first set, based on their estimate of what market conditions would be like at the time at which the voyages went on sale. They said prices were set months before the publication of the brochure.

They said the “Voyage Only Fare Less Savings” was the “Voyage Only Fare” minus the relevant early booking savings that were applied in the brochure in question. They explained that these savings were applied until they had sold at least 10% of the inventory at the maximum saving and that the savings were usually, market permitting, decreased, resulting in an increase in fares. They said the hope and expectation when the pricing was set was that the fares would increase to the “Voyage Only Fare” and beyond (once sufficient inventory had been sold in order to enable them to increase the fares further and market demand was such as to support the raising of fares). They said the strategy was to incentivise early booking and the aim was to increase prices above and beyond the “Voyage Only Fare”. They said that in the past this had been possible and that it was in their interest to maximise prices.

With regard to the voyage that was the subject of the complaint, they explained that the fares changed throughout the three editions and that the fourth edition would be published in March 2012. They said that the fares that were paid increased from the starting fare (in the first edition) in small increments up towards the full “Voyage Only Fare” so that some of the bookings made during that time were very close to the full “Voyage Only Fare”. They said that for the time during which the voyages had been available for sale, 20 of the 438 places had been sold within a very small percentage of the full “Voyage Only Fare”. They said that economic conditions throughout all of 2011 meant that it had not

been possible to increase the pricing in line with their target. They explained that, in respect of the voyage in question, just prior to the final brochure being issued, they had not reached the level of sales that they hoped to have sold. They said this was a challenging commercial position, resulting from the economic conditions and low consumer confidence, making it more difficult to increase their pricing in line with how they would have hoped. They said that, for other voyages they had met their target of increasing prices to the full “Voyage Only Fare”.

They said that, notwithstanding the economic pressures to date, their intention was to revert inventory in the Cunard Voyages brochure November 2011 – April 2013 to the “Full Voyage Only Fares” for a period in February 2012 so that the voyages would be sold at the “Voyage Only Fare” for a sustained period.

Because the entire 2011–2012 brochure period was not yet complete, they also provided sold data from 2010–2011 period to demonstrate the number of voyages on which bookings were made at the full “Voyage Only Fare” (of which there were 145). Cunard provided detailed sold data for seven of these 2010–2011 cruises. They explained that where the full “Voyage Only Fare” had been reached, it had occurred as a combination of fares available with travel agent exclusive offers such as on board spending money, fares with a past passenger loyalty discount from full “Voyage Only Fare” and fares that had naturally reached the full “Voyage Only Fare”. Cunard presented data to show the number of bookings made at the full brochure fare as a percentage of the whole ships’ inventory and as a percentage of those bookings that were made through ‘brochure channels’ (i.e. excluding those bookings to which the brochure fare is not relevant such as bookings made overseas, bookings made on tactical promotions such as staff concessions, friends and family concessions and late, non-brochured fares). The percentages of those bookings that were made through ‘brochure channels’ were 11.84%, 15.02%, 16.43%, 5.36%, 3.42% and 3.51% respectively.

The complaint was upheld. The ASA noted the

"Voyage Only Fare" was the price at which Cunard had anticipated they would be able to sell the cruise from but that, due to the fluidity of the pricing structure and the many discounts and offers that occurred during the early stages of selling places on the cruise, it was often the case that the discounts would reduce toward the end of the booking period for each brochure, resulting in bookings incrementally increasing in cost until the "Voyage Only Fare", or above, was achieved. The ASA understood that the intention was that the "Voyage Only Fare" in the ad was a "from" price and that Cunard's intention was that these prices would be exceeded in some cases. The ASA noted Cunard's comments that the unstable economy had resulted in a change in customer booking habits and that therefore Cunard had not always been able to increase pricing in line with its planned approach, resulting in a significantly lower number of places being sold at the "Full Voyage Only Fare".

The ASA understood that in the period during which the three brochure ads that were the subject of this complaint were published, booking numbers had reduced at that point in the selling cycle compared to previous years resulting in a low number of the full "Voyage Only Fares" being achieved. The ASA also noted both fares (the "Voyage Only Fare" and the "Voyage Only Fare Less Savings") fluctuated over the different editions of the brochure but that it was towards the end of the selling phase (in the final editions of the brochure) that Cunard intended to reach and exceed the final "Voyage Only Fare".

The ASA understood that, for each brochure, there were a number of incremental rises from the discounted price and that these moved up toward the "Voyage Only Fare" and that it was often the case for each brochure booking period that where the "Voyage Only Fare" was not achieved, some bookings were made at near to the "Voyage Only Fare". However, because of the change in economic conditions and consumer spending the ASA noted that Cunard were not able to always meet their target of increasing the early booking fares to the full "Voyage Only Fares". The ASA noted Cunard intended to revert to the full brochure price (of the

November 2011 – 2013 "Voyage Only Fare") during a sustained period between the third and fourth edition of the brochure in order to ensure they could sell at the final "Voyage Only Fare" and beyond. Because each edition of the brochure included different prices and a different period by which a booking needed to be made, the ASA considered that each edition of the brochure should be considered as stand-alone ad. The ASA considered that this was also the case because the average consumer was only likely to look at one edition of the brochure and make their booking accordingly.

In the absence of full sales data for 2011–2012 brochure period, the ASA considered that alternative sold data from the previous year would be sufficient to demonstrate that the full "Voyage Only Fares" for the cruise in question were commonly being paid by consumers. The ASA noted Cunard had provided sales data for its 2010–2011 cruises and the "Voyage Only Fare" price had been reached a number of times in the third brochure selling period and that, where it had not been met, some bookings had been made at incremental prices between the discounted price and the "Voyage Only Fare". However, the ASA noted the percentage of bookings made at the "Voyage Only Fare" was not significant for each brochure period and that in some brochures the "Voyage Only Fare" was not reached in a sufficient number to demonstrate that this was a price from which places on the cruise were regularly being paid by consumers.

The ASA understood that changing consumer spending patterns and the economic climate had resulted in a shift in the booking pattern, resulting in few of the full "Voyage Only Fares" being met for that period. The ASA also noted the sold data from the previous brochure period demonstrated that there had been a low percentage of sales at the full "Voyage Only Fares" which suggested that the 2011–2012 full brochure price were being set at a level which was unlikely to be regularly paid by consumers booking through the brochures.

The ASA considered that consumers would expect the "Voyage Only Fares" listed in the brochure(s) to be genuine maximum prices which consumers

regularly paid and that the full "Voyage Only Fare" less savings was an accurate representation of how much money they would save by booking at that time. The ASA noted it was in Cunard's interest to make as many bookings as they could at the full "Voyage Only Fare" and that this was a price that they intended to achieve and which their pricing mechanism was focussed on achieving. However, whilst the "Voyage Only Fare" less savings were themselves genuine prices that increased incrementally as time passed, the ASA considered that because the "Voyage Only Fares" were not commonly being paid by consumers booking through each of the separate editions of the brochure, these "Voyage Only Fares" therefore exaggerated the value of those discount prices. The ASA therefore concluded that the brochure ads breached the Code.

(Source: ASA, 13 June 2012)

## ECC-Net Annual Report 2011

The ECC-Net is an EU-wide network that provides information to consumers on their rights when shopping cross-border and helps them find solutions if something goes wrong. It has been operational since 2005. There is a European Consumer Centre in 29 countries – every EU Member State plus Norway and Iceland. Their website address is: <http://ec.europa.eu/ecc-net>

In their latest annual report they publish a number of case studies from around EU where a European Consumer Centre has intervened successfully on behalf of consumers. Some of those cases which relate to travel are published below:

### *UK*

A Slovenian consumer bought a flight ticket at London Stansted to get home to Ljubjana. He had ended up in dispute with his original British airline as the check-in had closed early and he effectively

missed the flight. The first airline rejected his claim for costs. ECC Slovenia shared the case with ECC United Kingdom. After several months of negotiations, the Slovenian consumer received a full refund of £261.

### *Sweden*

Several consumers contacted ECC Sweden regarding signed memberships with a Greek vacation club. They tried to cancel their contracts through their right of withdrawal, but the company refused to accept their cancellations. Thanks to the efforts of ECC Sweden, the company have issued cancellations on 14 consumer contracts so far. The total value of the contracts varied between €2,400 and €4,700.

### *Romania*

A Romanian consumer rented a car from an Italian trader online. In order to rent the car, the consumer had to pay €100 in advance. As soon as he arrived in Italy, the trader refused to hand over the car, explaining that according to the company policy, cars could no longer be hired by Romanian consumers. A complaint against the company was made by the consumer, asking for compensation consisting of the amount of money he had to spend to hire a car from a different company. ECC Romania contacted the trader and the consumer received the requested compensation.

### *Portugal*

A Spanish consumer booked a room in a hotel in Lisbon, made the payment and instead of only one confirmation e-mail, he received two because of a system error. Therefore, the trader asked for a second payment. The consumer refused to pay twice and decided not to stay in that hotel any longer, turning to the ECC-Net for help. After the intervention of ECC Portugal, the consumer was reimbursed €370

## Luxembourg

A consumer from Luxembourg took part to a trekking tour that was organised by a French travel agency for €3,000. As the promised activities and accommodation did not correspond to the offer, the consumer asked for a partial reimbursement which the trader denied because of lack of evidence. ECC Luxembourg, in collaboration with ECC France, delivered the necessary documents to the trader who finally reimbursed €1,200.

## Lithuania

A consumer used an airline's loyalty card to collect miles. After buying some goods online (paying with the collected miles), he noticed that he was charged three times, but the goods were not delivered. After his complaint to the trader, miles and money were refunded, but some miles were still missing. Moreover, the consumer could not buy the goods with the offered discount while using the miles. After turning to the ECC-Net, his miles were refunded and he also received additional miles as a compensation for the unused opportunity to buy discounted goods.

## Latvia

A Lithuanian consumer booked a flight with a Latvian airline. After landing in Vilnius airport, he realised that his luggage was lost. He complained to the airline without any success. After the intervention of ECC Latvia, the consumer was asked to submit a list of lost items, dates of purchase and values, with the respective receipts. As soon as the company received the requested documents, the consumer was reimbursed €1,136.

A Lithuanian consumer joined the loyalty programme of a Latvian airline with the possibility of earning points to be spent online. After earning more than 20,000 points, he decided to purchase something online; however he noticed that 405 points were missing. Afterwards, he made another purchase, but after 3 errors on the webpage all points were lost. The consumer contacted the

company: missing points were returned, except for 405. After the intervention of ECC Latvia, the company gave him 405 points back and awarded him 4,000 extra points – as compensation for the technical mistakes that occurred online – together with a letter of apology.

## European Commission. DG Justice

DG Justice held a stakeholders' conference on the revision of the Package Travel Directive on 5th June. For those readers who wish to obtain a flavour of the debate a live stream is available on the website at: <http://scic.ec.europa.eu/str/indexh264.php?sessionno=6a4d5952d4c018a1c1af9fa590a10dda>

## US Department of Transport

The US Department of Transportation (DOT) has fined Philippine Airlines, Santa Barbara Airlines, and ticket agent Pacific for Less for violating the Department's expanded airline passenger protection rules that took effect in January.

Philippine Airlines and Pacific for Less violated the rule requiring all taxes and fees be included in advertised fares. Philippine Airlines was assessed a civil penalty of \$80,000 and Pacific for Less was assessed a civil penalty of \$20,000. Santa Barbara Airlines, a carrier based in Venezuela, violated the rule requiring the disclosure of fees for baggage, and was assessed a civil penalty of \$80,000. Each company was also ordered to cease and desist from further violations.

DOT requires all advertisements that include airfares to state the entire price to be paid by the consumer. Prior to a rule that took effect on January 26, advertised fares were not required to include certain government-imposed taxes as long as these additional charges were clearly disclosed in the ad. Under the new rule, all government taxes and fees must be incorporated into the fare. The rule applies to both US and foreign airlines as well as ticket agents.

Airfare searches on Philippine Airlines' website made after January 26 by the Department's Aviation Enforcement Office resulted in listings of base fares for outbound and inbound legs that did not include additional government taxes and fees. The total fare to be charged, including taxes and fees, was disclosed only on the following web page.

A review of Pacific for Less's website after January 2012 showed that the company advertised prices for tour packages with an air component that did not include the entire price to be paid by the consumer. The advertised prices of tour packages were followed by an asterisk that referred consumers to a statement at the bottom of the page that indicated that taxes and fees were additional.

Under DOT's new rule, which took effect on January 26, carriers must disclose to consumers booking a flight that they may have to pay baggage fees in addition to the basic ticket price. When consumers book a flight on-line, carriers must clearly and prominently disclose on the first screen that offers a specific itinerary that additional baggage fees may apply and tell the consumer where they can view the fees. The rule applies to all airlines selling air transportation in the United States, including foreign carriers.

Airfare searches on Santa Barbara's website made by the Department's Aviation Enforcement Office after January 26 found that the airline failed to disclose on the first screen in which it offered a fare quotation for a specific itinerary that additional airline fees for baggage may apply, and where consumers could see those fees.

(Source: DOT, 2 August 2012)

## US Department of Transportation

The US Department of Transportation (DOT) has fined online travel agent Travelocity \$180,000 for violating the Department's rule on full-fare advertising by failing to include fuel surcharges and other fees in advertised airfares and ordered it to cease and desist from further violations.

An investigation in September 2011 by the Department's Aviation Enforcement Office found that Travelocity's "flexible dates tool" did not always include fuel surcharges that were part of many international airfares. Consumers searching for flights were shown fares from lowest to highest, resulting in fares that omitted the surcharges being listed above those in which the surcharges were included. In addition, the consumer was informed only on the final page before purchasing the ticket that some itineraries required a paper ticket with a minimum additional delivery fee of \$29.95. Consumers were shown the full price, including the fuel surcharges and ticket fees, only after selecting an itinerary. As a result, some consumers may have purchased airfares on dates and carriers that they might not have chosen if they had had accurate fare information.

These ads violated the Department's rules requiring all carrier-imposed surcharges and fees to be included in every advertised fare. Prior to new price advertising rules that took effect on January 26, the only charges airlines could omit from the advertised fare were certain government-imposed taxes. Under DOT's new price advertising rule, carriers and ticket agents must show the total price, including all government taxes and fees, in every advertised fare. The rules apply to travel agents as well as airlines.

(Source, DOT, July 27, 2012)

## European Commission. DG Mobility and Transport

Passengers stranded at airports or awaiting missing luggage may now use a smartphone application to check their rights immediately and on the spot. The European Commission has launched an application for smartphones which covers air and rail transport and works on four mobile platforms: Apple iPhone and iPad, Google Android, RIM Blackberry and Microsoft Windows Phone 7. The app is available in 22 EU languages. It currently covers air and rail transport and will be extended to bus/coach and marine travel in 2013 when these rights come into force.

European Commission Vice President Siim Kallas, responsible for Transport said:

“How many of us have stood in an airport and felt the frustration of people telling you that you have no rights when you know you have! With this application millions of travellers can have easy access to the right information about their passenger rights when they most need it, when unexpected situations arise.”

Whether a flight is cancelled, a package holiday hotel is not as advertised or a train time is changed – the situation is much easier to deal with if the passenger knows his or her entitlements.

For each potential problem, the app explains the passenger’s rights. For example, if a flight is cancelled and the passenger is consequently denied boarding, he or she may be entitled to compensation of between €125 and €600. If your luggage is damaged as a result of an accident, you may also be entitled to compensation. It is also good to know that rail and air companies are obliged to provide transparent information on pricing and assist passengers with reduced mobility.

If you feel that your rights have not been respected, the app also provides information on who to contact in order to complain.

During a large-scale emergency, such as experienced following the Icelandic volcanic ash crisis in 2010, the app may also display travel information and advice from the European Commission.

(Source: DG Mobility and Transport, 4 July 2012)

## European Commission. DG Mobility and Transport

Many disabled and reduced mobility air travellers still face problems of unjustified refusals, and other unfair demands when attempting to travel. As thousands of disabled Paralympians and spectators prepared to travel to London for the 2012 Olympic Games, the Commission published guidelines to clarify their rights when travelling by air.

The guidelines cover travellers at all EU airports and the operations of EU carriers anywhere in the world. They also cover non-EU carriers within or leaving Europe.

The aim is to clarify existing EU rules on passenger rights for disabled people and people with reduced mobility travelling by air (EC Regulation 1107/2006). They deal with problems in 22 areas on access to air travel without discrimination.

The key concerns are:

1. *Pre-notification*: The guidelines highlight the importance of pre-notification. In order to allow service providers (airports or airlines) to arrange the required assistance, it is essential that disabled persons and persons with reduced mobility notify their needs at least 48 hours before the published time of departure.
2. *Unjustified refusals*: Passengers report recurring problems with refusals and inconsistent requirements for medical certificates and for passengers to be accompanied.
  - *Medical Certificates*: The guidelines clarify that medical certificates should, as a norm, not be required for those with a stable condition – for example blind people or those confined to wheelchairs.
  - *Accompanying persons*. The guidelines clarify that if you are self-reliant, the norm is that you should not be required to be accompanied, except where there are specific safety requirements of which you should be advised.
3. *Problems with medical and mobility equipment*
  - *Mobility equipment*: The guidelines underline that disabled passengers and passengers with reduced mobility are allowed to have two pieces of mobility equipment transported for free. A passenger using an electric wheelchair is obliged to notify the carrier at least 48 hours in advance. The guidelines further underline that recognised guide and assistance dogs shall travel within the cabin subject to appropriate prior

notice. As for any passenger, sports equipment which is not mobility equipment is covered by the airlines' general rules on luggage.

- Oxygen on-board: Passengers needing to travel with oxygen must pre-notify in advance. The guidelines clarify that it is for the airline to determine whether passengers can bring their own oxygen and there is no requirement on an airline to provide oxygen. However, this information must be made clearly available by the airline.

(Source: DG Mobility and Transport, 14 June 2012)

## Commission for Aviation Regulation, Ireland

In its annual report the CAR summarised the number of complaints it received last year.

The Commission received 4,084 queries during 2011. While this figure represents a 20.5% reduction on the 2010 figure, it is 64% higher than the 2009 figure of 2495.

If a legacy of the volcanic ash and bad weather crises of 2010 is a heightened awareness of passenger rights amongst the general public, it appears that passengers are still unclear as to which public body is competent to address their various complaints.

Of the 4,084 queries received, 2,954 related to an assortment of baggage, pricing, safety and air carrier policy issues.

## Consumers Association of Ireland. When holidays become horror days

The Consumers Association of Ireland has posted a video on its website providing graphic details of a holiday to Egypt which went badly wrong for a group of Swedish tourists. The video can be viewed

at: <http://www.euronews.com/2012/05/28/when-holidays-become-horror-days>

## European Court of Justice. ebookers.com Deutschland GmbH, Case C-112/11

A person selling air travel may not include flight cancellation insurance as a default setting when selling air tickets over the internet. As an 'optional supplement', flight cancellation insurance may be offered only on an opt-in basis

Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p.3) seeks, inter alia, to provide greater transparency in air fares for flights departing from the EU. Persons selling air tickets are required at all times to indicate the 'final price', that is to say, the price of the flight in addition to all taxes, fees and surcharges which are essential for the purposes of that flight. On the other hand, 'optional price supplements' relating to additional services which are not compulsory must be communicated clearly at the start of any booking process and accepted by the customer on an 'opt-in' basis.

The company ebookers.com Deutschland operates an online portal by which it sells air travel. When a customer selects a specific flight during the booking process, the costs are listed in the top right-hand corner of the internet page, under the heading 'your current travel costs'. In addition to the price of the flight, that list also contains amounts in respect of 'taxes and fees' and 'cancellation insurance', calculated automatically. The total of those costs represents the 'total price of travel'. A notice at the bottom of the internet page indicates how the customer should proceed if he wishes to reject the cancellation insurance which has been included as a default setting. That procedure is by means of an opt-out. Once the customer pays after finalising his booking, ebookers.com then pays the flight costs to the air carrier, the taxes and fees to the appropriate

authorities and the insurance premium to the insurance company, which is legally and economically separate from the air carrier.

A German consumer protection association took proceedings against ebookers.com before the German courts with a view to requiring that company to refrain from automatically including cancellation insurance with the air fare. In that context, the Oberlandesgericht Köln (Higher Regional Court, Cologne) asked the Court of Justice whether the prices of such services provided by third parties, which are charged to the customer by the company offering the flight, together with the air fare, as part of a total price, constitute 'optional price supplements', with the result that the services in question must be offered on an 'opt-in' basis.

The Court pointed out, first of all, that EU law seeks to ensure that there is information and transparency with regard to the prices for air services, and thus contributes to safeguarding customer protection. It found that 'optional price supplements' relate to services which supplement the air service itself. Those services are neither compulsory nor necessary for the purposes of the flight and the customer may choose either to accept or refuse them. It is precisely because a customer is in a position to make that choice that EU law requires such price supplements to be communicated in a clear, transparent and unambiguous way at the start of each booking process, and that their acceptance must be on an opt-in basis. That requirement is designed to prevent a customer from being induced to purchase additional services which are not necessary for the purposes of the flight unless he chooses expressly to purchase them and to pay the corresponding price supplement.

The Court then went on to hold that it would be at odds with the objective of protecting customers if that protection were to depend on whether the optional service is provided by an air carrier or by another party which is legally separate from that carrier. By contrast, what matters is that the optional additional service and the corresponding price are offered in relation to the flight itself during the flight booking process.

The Court answered that the concept of 'optional price supplements' covers costs, connected with the air travel, arising from services – such as flight cancellation insurance – supplied by a party other than the air carrier and charged to the customer by the person selling that travel, together with the air fare, as part of a total price.

(Source: ECJ, 19 July 2012)

## Austria: Appellate court decides on "fly all or pay up" clauses

In their General Conditions of Carriage, Lufthansa and Austrian Airlines had incorporated clauses which provided that a passenger who doesn't use all the flight coupons of his ticket or doesn't use them in the original order can be required to pay the tariff applicable at the time of booking for the actual routing otherwise the airline would be entitled to deny boarding. Thus, a passenger who had purchased a low fare return ticket and then only used the outward flight could be required to pay the more expensive one way fare.

In two parallel decisions, the Oberlandesgericht Wien (Vienna Court of Appeals) has recently held that these clauses were unexpected and detrimental to the passengers: no average passenger would reasonably expect to have to pay more if he uses less of the contractual transportation services. The court regarded a combination of flights as severable services. The passenger had no obligation to use all the services contracted for and therefore was entitled to use only a part of the combination of flights. A vacant seat on parts of the flights would not constitute any damage to the airline as the passenger had paid for it, anyway.

The clauses therefore were held unlawful and the court ordered the airlines to cease and desist from their further use. However, because of the general importance of the issue the court admitted further appeal to the Supreme Court (OGH). The judgments therefore are not final yet. (*Verein für Konsumenteninformation v Austrian Airlines AG*)

(Source; Michael Wukoschitz, IFTA, 2 July, 2012)

## European Court of Justice. Eva-Marie Brännström and Rune Brännström v Ryanair Holdings plc (Case C-150/12)

A reference for a preliminary ruling from the ECJ has been made in the case of *Brannstrom v Ryanair* by the Högsta domstolen (Sweden), lodged on 29 March 2012.

### *Questions referred*

Does the carrier's liability for damage caused by delay under Article 19 of the Montreal Convention also include cases where the passengers' arrival at the destination is delayed as a result of non-operation of a flight? Does any importance attach to the stage at which the flight was cancelled, for example, after check-in?

Can a technical problem with the airport, which alone or together with weather conditions makes landing impossible, constitute an 'extraordinary circumstance' under Article 5(3) of Regulation (EC) No 261/2004?

Can the assessment of what constitutes such a circumstance be affected by the fact that the airline was already aware of the technical problem?

If the answer to the first question in point 2 is in the affirmative, what measures must the airline take in order to avoid the obligation to pay compensation under Article 5(3) of the regulation?

Can the airline be required, and if so on what conditions and to what extent, to have extra resources in the form of, for example, aircraft or crew available to operate a flight which would otherwise have had to be cancelled, or in order to be able to operate a flight in the place of a flight which has been cancelled?

Can an airline be required to offer passengers re-routing under Article 8(1)(b) of the regulation? In that case what is the obligation as regards carriage, for example, in respect of time of departure and the use of other carriers?

If the answer to the question in point 1 is in the affirmative, is there any difference between the measures which an airline must take to avoid the obligation to pay compensation under Article 5(3) of the regulation and the measures which it must take to avoid liability for damage under Article 19 of the Montreal Convention?

## HolidayTravelWatch. Lemon Travel Awards

HolidayTravelWatch is creating a campaign to improve the service of travel agents/providers and highlight the ways in which those companies treat their Consumers. The organisation seeks its inspiration for the creation of these awards from the US 'Lemon Laws', which whilst directed at motor vehicles that are not fit for purpose, creates an analogy with holidays that do not meet with the promise of the brochure. To illustrate the point of poor service, the organisation points to the experience of one holidaymaker who booked a package holiday departing from London to Morocco through a major travel provider based in the south-east:

1. After paying for her holiday, she was told that she would receive her e-ticket the next day as they were 'busy';
2. The holidaymaker did not receive her e-ticket the next day, so she called the company to enquire where the ticket was;
3. She was told that there was a problem with the flight;
4. Despite having booked and paid for her flight, she was advised 2 hours later that the flight was not available;
5. Another flight was found but she was contacted shortly after to be told that the flight was no longer available;
6. She was then told that instead of going to Morocco, they could send her on a holiday to Paphos in Cyprus (she chose Morocco because they had been to Cyprus on many occasions and wanted a change of destination)!
7. As her family were expecting to travel the next day, the holidaymaker simply told the travel company to get on and book the holiday!

8. To add insult to injury, the travel company then advised her that the flight would not leave from London, but Bristol instead!
9. She was also told that she would have to pay an extra £328 for the holiday!
10. When she arrived at Bristol airport, she discovered that they had not added her luggage to the cost so she had to pay for this 'extra';
11. When the client arrived in Cyprus (not Morocco), she discovered that not only had they taken £328 from her account, but a further £360 was also claimed!
12. She contacted the travel provider who advised that they would return the £360 and in turn they added another £100 in 'compensation';
13. She also considered that the 4\* promised hotel was only equivalent to a 2\*;
14. The hotel was not on the beach as promised;
15. When she arrived at the hotel, they had to wait 1 hour as the room was not ready;
16. They were then given a key for their room to find that it was already occupied;
17. The reception apologised – they had given them the wrong key;
18. They were given another key and again found that other people were using the room;
19. They had to wait a total of 3 hours to be allocated a room in the hotel.

HolidayTravelWatch intends to formally launch the Lemon Travel Awards in the latter part of 2012 and has invited holidaymakers to send their stories or nominations for consideration.

(Source: HolidayTravelWatch 15 August 2012)

## Canadian Transportation Agency. Air Canada, WestJet and Air Transat

In five separate decisions the Canadian Transportation Agency has ruled on the reasonableness of international tariff provisions of Air Canada, WestJet and Air Transat, and domestic tariff provisions of Air Canada and WestJet relating to the overbooking, cancellation, delay and rerouting of flights.

Passengers should be able to fully understand their rights and the remedies available to them simply by reading the tariff, which is the contract between the carrier and the passenger. When considering the reasonableness of a carrier's tariff, the Agency strikes a balance between the rights of passengers to be subject to reasonable terms and conditions of carriage and the carrier's statutory, commercial and operational obligations.

Tariffs are governed by the Canada Transportation Act, the Air Transportation Regulations and the Montreal Convention. The Agency evaluated the tariffs in light of these instruments.

The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in purely commercial requirements. There is no presumption that a tariff is reasonable. In the decisions, the Agency considered what measures were reasonable for carriers to take when the overbooking and cancellation of flights are within their control.

Prior to these decisions, the tariffs of the three air carriers were more restrictive with regards to passenger rights. For example, when flights were overbooked or cancelled, the options for rebooking as well as choice of a refund versus rebooking was at the discretion of the carrier. As for situations in which a refund was warranted, the tariffs only provided for a refund of the unused portion of the tickets.

The decisions increase the rights and remedies for passengers travelling with Air Canada, WestJet and Air Transat. In the event a flight is delayed, overbooked or cancelled, passengers can now choose whether they prefer a refund or to be rebooked. In certain cases, carriers must consider rebooking passengers on the first available flight(s), including flights with non-partnered carriers. If overbooking or cancellation of a flight results in the passengers choosing to no longer travel, they will be entitled to a return flight home within a reasonable time, free of charge, and a full refund of the ticket price.

By applying consistency to the carriers' international and domestic tariff provisions, the Agency is endeavouring to ensure that consumers are protected while travelling with the airlines both within and to/from Canada.

Although WestJet and Air Transat already filed proposed tariff amendments that meet most of these enhanced passenger rights, the Agency's Decision Nos. 249-C-A-2012, 248-C-A-2012 and 252-C-A-2012 found that certain proposed amendments remained unclear or unreasonable. Both air carriers had until July 28, 2012 to revise their tariffs to incorporate the ordered tariff amendments set out in these Decisions.

In Decisions Nos. 250-C-A-2012 and 251-C-A-2012, the Agency also found that certain tariff provisions are unreasonable and is directing Air Canada to make amendments to its tariff provisions on overbooking, cancellation, delay and rerouting.

As WestJet and Air Transat had already filed proposed tariff wording related to passenger rights, the Agency referred Air Canada to the Agency's findings on the tariff language as set out in the other carriers' decisions. Air Canada had until August 12, 2012 to revise its tariffs in accordance with the Agency's decisions.

(Source: CTA, June 28 2012)

## 'Selling Tourism Services at a Distance. An Analysis of the EU Consumer Acquis'

This book, written by Josep Maria Bech Serrat, and published by Springer examines the rules on distance selling that apply in the EU to tourism contracts.

New rules on distance selling provided by the Consumer Rights Directive will apply to contracts concluded after 13 June 2014 but not to package holiday or contracts falling within the scope of the Timeshare Directive. Contracts for passenger transport services and contracts for the provisions of accommodation, car rental, catering or leisure services, if the contract provides for a specific date or period of performance, are not covered by some of these rules either. Yet measures aimed at protecting the consumer when a contract is concluded via the phone, the internet, by mail or other means of distance communication are important to tourism. This book helps readers to navigate through uncertainties in travel contracts regarding information requirements, the right of withdrawal, and providing alternative services. Findings reveal that the consumer *acquis* is not adapted to the features of the tourism industry when an optional instrument based on the Draft Common Frame of Reference might be used in the future.

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