



Section 5.3 of the revised UCPD guidance: Travel and transport

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**Unit E2 - Consumer and Marketing Law
DG Justice and Consumers
European Commission**



Horizontal issues

The role of travel intermediaries

- **Article 2(b) UCPD:** trader is also "anyone acting in the name of or on behalf of a trader". Hence, the UCPD applies to intermediaries operating between traders and consumers.

- **For example:**
 - ❖ An online travel agent that offers flight tickets to consumers should inform consumers whether luggage is included in the price for the flight or whether it is subject to an extra fee. The online travel agent should also inform consumers whether flights can be rebooked or refunded.
 - ❖ A hotel booking portal should inform consumers whether the hotel rooms booked on its website can be cancelled and whether this will involve extra costs.

"Drip pricing" (I)

- **Articles 6(1)(d) and 7(4)(c):** the **advertised price** should include, from the outset, **all applicable fees and charges**. The **final price to be paid** shall at **all times be indicated** and shall include the applicable charges and taxes which are **unavoidable and foreseeable** at the time of publication/booking, including payment surcharges.
- **"Drip pricing":** particularly detrimental for consumers when comparing prices from different traders.
- **For example:** A trader offering holiday flats omitted to indicate in the price mandatory costs such as cleaning costs, city taxes and additional service charges for booking. A German Court of appeal found this practice to be in breach of professional diligence and a misleading omission according to the UCPD (OLG Hamm, 06.06.2013, Az. I-4 U 22/13).

"Drip pricing" (II)

- **2012 study on Price Transparency in the air transport sector:** many airlines show the **price excluding taxes, fees and charges**, some **add charges at later stages** of the booking process – although these charges are, de facto, unavoidable – qualifying them as "optional".
- **For example:** Charge-free payment only if the specific credit card of the airline is used – not realistic for many consumers. If the advertised price excludes this charge, the trader omits to inform about a charge which is **unavoidable** for most consumers.
- **2015 joint CPC enforcement action on car rental:** advertised price should be the **"drive-away price"**, i.e. it should include all costs that are unavoidable in order to use the car.
- **For example:** Mandatory charges linked to local roadworthiness requirements should be included in the headline price.

Terms and conditions (T&C) in the travel and transport sector

- When are T&C "**material information**" within the meaning of Article 7 UCPD?
- Article 7: T&C providing information that the **average consumer needs to take an informed transactional decision**, the omission of which is **likely to cause the consumer to take a transactional decision** he would not have taken otherwise = "material information" not to be omitted.
- ***For example:*** information about the type of car, the costs for the car rental or the extent of waivers can be included in the T&C. This is likely to be "material information" related to main characteristics of the product according to Article 7(4)(a).

Consumer Rights Directive – provisions applicable to transport & travel (I)

- **CRD Article 8(2) also precludes "drip-pricing"**: For contracts to be concluded by electronic means, trader must make the consumer aware, in a clear and prominent manner and directly before the consumer places his order, of the total price of the goods and services inclusive of taxes and, where applicable, of any other costs that may be payable.
- **CRD Article 22 precludes default options** which the consumer has to reject in order to avoid additional payments rather than requesting the consumer's express consent to extra payments, such as in the case of pre-ticked boxes. Consequence of breach: the consumer "shall be entitled to reimbursement of this payment."

Consumer Rights Directive – provisions applicable to transport & travel (II)

- **CRD Article 19 prohibits charging the consumer fees** in respect of the use of a given **means of payment** that exceed the cost borne by the trader for the use of such means. Applies to all kind of fees which are directly linked to a means of payment, regardless of how they are presented to consumers.
- **For example:** In online ticketing, especially for airlines and ferry companies, fees referred to as administration, booking or handling fees are common. Traders using such fees must respect Article 19 CRD.



Issues specific to air transport

Main characteristics of flights

- **Articles 6(1)(b) and 7(4)(a) UCPD:** Traders offering flight tickets to consumers should be careful in displaying the main characteristics of the flights. In particular, they should not mislead consumers on the existence of stop overs, or the place of destination of the flight.
- **For example:** Indicating a destination as "Barcelona" if the airport is based in Reus (which is 100 km from Barcelona) could possibly be considered misleading. On the other hand, indicating the destination as "Barcelona Reus" would be more likely to be in line with UCPD requirements.

Price components

In addition to UCPD Articles 6(1)(d) and 7(4)(c) & CRD Article 8(2): **Article 23(1) of the Air Services Regulation:**

- **"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**".
- **final price to be broken down into components** (e.g. air fare, taxes, airport and other charges) and optional price supplements to be communicated in a clear, transparent and unambiguous manner at the start of the booking process.
- **optional price supplements** must be communicated in a clear, transparent and unambiguous manner at the start of the booking process and must be **accepted by the customer on an 'opt-in' basis**.

Price components (2)

The UCPD complements CRD & Air Services Regulation.

For example:

Latvian Consumer Protection Authority 2013 (decision confirmed by Latvian courts in 2014 and 2015):

- Consumers not wanting travel insurance had to select a "**no insurance**" option. In breach with Article 22 CRD and Article 23(1) Air Services Regulation. Also an unfair commercial practice (aggressive, Articles 8 and 9 UCPD, and in breach of professional diligence, Article 5(2) UCPD).

Italian Competition Authority 2013:

- Consumers not wanting travel insurance required to select "**no insurance**" option **hidden in a list of countries of residence**. Unfair, according to Article 23(1) Air Services Regulation, incompatible with professional diligence (Article 5 (2) UCPD) and misleading (Article 6 and 7 UCPD).



Issues specific to car rental

Full/empty tank and price (I)

Issue: car rental companies make consumers pay an additional cost for a full tank when taking possession of the vehicle, and then expect consumers to **return the car with an empty tank, without providing any reimbursement** if there is still fuel in the tank.

Article 6(1)(b) and (d), Article 7(1) and 7(4)(a) and (c) UCPD:

- Information that the consumer will have to pay for the fuel ahead could be considered as **material information**.
- If the trader cannot calculate the price for the fuel in advance, it should be clearly indicated in the invitation to purchase that **fuel cost should be added** to the rental price.
- Cost will be likely to qualify as non-optional = part of the price of the product. To be **provided from the beginning of the booking process**.

Full/empty tank and price (II)

- **Article 5(2) UCPD:** if consumers have to pay for significantly more fuel than they actually use: Could be contrary to the requirements of **professional diligence**.
- **For example:** The geographical location (e.g. a car rented in a small island) could make it unlikely that the consumer will be able to empty the tank. In this case, the fuel costs would, de facto, function as a hidden charge to be added to the rental cost. Obliging the consumer to pay for a full tank, while preventing any reimbursement of non-used fuel, could be considered contrary to the requirements of professional diligence.

Main characteristics

- **Articles 6(1)(b) and 7 (4)(a) UCPD:** consumers should be clearly informed about the main characteristics of the car rental offer – those could, for example, include information about the type of vehicle, the costs, the extent of waivers, possible options (such as winter tyres and child seats).

- **For example:**
 - ❖ It could be misleading to advertise "Opel Corsa or similar" if, in fact, the car rental company does not have any Opel Corsa in stock.
 - ❖ It could be misleading for a trader to claim "0 liability" if, in fact, an excess on the part of the consumer will always be applied in case of damages, even at a small cost.



Thank you!

In case of further questions, please
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