

ETTSA addresses Lufthansa's discriminatory practices and the European Commission's shortcomings with the European Ombudsman

Brussels, 19 July 2018

Today, the European Technology & Travel Services Association (ETTSA) has filed a formal complaint with the European Ombudsman against the European Commission for failure to properly enforce EU law.

In September 2015, in an attempt to force European consumers to use their biased website, the Lufthansa group of airlines started introducing surcharges on tickets purchased through independent distributors, such as online travel agencies. ETTSA estimates that between 2015 and 2018, consumers paid hundreds of millions of Euros in surcharges to Lufthansa. Recently, other major airlines have followed Lufthansa's example, thus increasing the amount of surcharges that will be paid by consumers.

For the past three years, the European Commission has been assessing complaints against these unfair practices which had been filed in September 2015 by ETTSA and other associations for breach of key provisions of the EU's Code of Conduct on computerised reservation systems (CRSs).

In late May 2018, the Commission finally communicated to complainants that it took the preliminary view that it did not need to act upon the complaints. Rather than taking a position on substance, as one would legitimately expect after an assessment process lasting almost 3 years, the Commission said it intended to turn down the complaint merely on the basis that the Code *"no longer reflects market reality and that it may be revised in the future"*.

Today, in its complaint with the Ombudsman, ETTSA argues in particular that the Commission:

- Failed to act within a reasonable time limit, taking more than 30 months to send to ETTSA a very short and unsubstantiated pre-rejection letter.
- Claimed that it could cease investigating a complaint based on the Code of Conduct for CRSs simply in view of potential future changes that could be made to the Code, thus abdicating its competencies under such legislation and ignoring the fact that any changes to the present Code of Conduct would require the approval of the Parliament and the Council.

Indeed, the Commission did not deny that Lufthansa's conduct is illegal but stopped short of enforcing EU law.

This is a critical and concerning development on various counts. For consumers, the Commission is tacitly giving the thumbs-up to Lufthansa's unfair conduct, which consists of weakening the effectiveness of neutral distribution channels used by consumers to compare prices of different airlines. This undermines transparency and ultimately leads to price hikes.

The Commission's inaction is bad for industry, bad for innovation, bad for competition, bad for the single market, and frankly bad for respect for Community law. The only winner is Lufthansa and every large airline adopting similar anticompetitive practices. Everyone else loses.

Christoph Klenner, Secretary General of ETTSA, commented: *"Our complaint in front of the Ombudsman is only a first step. We also call on the services of DG Competition to rigorously look into Lufthansa's practices and those of the other large carriers that have followed its lead and are considering further actions. The EU's regulatory framework does not allow for the sort of discrimination that Lufthansa is using to punish consumers and push its competitors out of the market. The Commission should therefore act to protect European consumers."*

"We are fortunate that many Members of the European Parliament are siding with consumers on this important issue," Klenner added. *"At a public hearing on 10 July, Transport Committee Chairwoman Karima Delli (Greens) and MEPs Wim van de Camp, Deirdre Clune (both EPP) and Ana-Claudia Tapardel (S&D) said in no uncertain terms that the Commission must enforce EU law, in the interest of competition and to the benefit of European travellers."*

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