



The Consumer Council

Elizabeth House
116 Hollywood Road
Belfast BT4 1NY
Tel 028 9067 2488
Fax 028 9065 7701
e mail

amcclenaghan@consumercouncil.org.uk

Our Ref: 3/4.2/18

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Mr Phil Cotterell
Department for Transport
Zone 1/25
Great Minster House
76 Marsham Street
London
SW1P 4DR

Dear Mr Cotterell

Re: Consumer Council for Northern Ireland Response to the Department for Transport Consultation on the EC Air Services Regulation pricing provisions enforcement regime and leasing appeals

The Consumer Council for Northern Ireland (CCNI) welcomes the opportunity to respond to the Department for Transport (DfT) consultation on the EC Air Services Regulation pricing provisions enforcement regime and leasing appeals.

CCNI has challenged a number of airlines operating from Northern Ireland regarding pricing practices which contravene the requirements of article 23 of the Air Services Regulation (ASR). In particular, CCNI is concerned regarding the failure on the part of some airlines to include unavoidable taxes and charges and check-in fees in their advertised fares and the sale of optional services on an “opt-out” rather than an “opt-in” basis.

CCNI brought these and other issues to the attention of the European Commission. The Commission subsequently acknowledged a number of existing airline pricing practices are in contravention of article 23 of the ASR but emphasised the enforcement of the Regulation remains the competence of national enforcement authorities. CCNI therefore welcomes the proposed introduction of a second UK implementing regulation for the ASR, to establish a new enforcement regime for the pricing provisions of Chapter IV of the Regulation.

CCNI agrees that whilst the sanctions proposed in the DfT's "Regulating Air Transport" consultation may be appropriate for enabling the CAA to enforce the ASR, providing the CAA with suitable enforcement powers for the ASR is a matter of urgency. It is therefore appropriate that suitable enforcement powers are created for the CAA through an enabling regulation at the earliest opportunity.

CCNI believes it is essential that the Memorandum of Understanding (MOU) agreed by the OFT and CAA concerning how they will work together to enforce the ASR must make the respective roles of each organisation explicitly clear. The Consumer Council has previously highlighted the potential problems of a dual approach to regulation in reference to the regulation of UK personal and current accounts in which both the OFT and the Financial Services Authority have regulatory responsibility. It is the CCNI view that splitting the role between the two regulators is not conducive to effective regulation.

CCNI recognizes it is appropriate that the OFT's role as enforcement body for the ASR should extend to Northern Ireland. It is important, however, that the MOU between the CAA and OFT recognizes the role of CCNI as the complaints handling body for passengers travelling to and from Northern Ireland by air. Accordingly, the MOU should require the CAA and OFT to consult with CCNI and the Air Transport Users Council for information on trends in passenger complaints which highlight breaches of the ASR by airlines.

CCNI welcomes the proposal to give the CAA and OFT the power to take both civil and criminal sanctions against airlines for failure to comply with the requirements of the ASR. However CCNI is concerned the penalty proposed for a criminal offence, a fine of up to £5,000, may be insufficiently low to adequately ensure compliance with the ASR. CCNI recognises that failure to comply with an enforcement order can lead to an airline being found in contempt of court, which could lead to imprisonment. However, the severity of this punishment resulting from failure to comply with a civil sanction is significantly more stringent than the potential punishment under criminal sanctions, emphasizing the leniency of the criminal sanctions proposed. CCNI therefore recommends the maximum fine for airlines found to be in breach of the ASR should be significantly increased.

If you require additional information or wish to discuss any of the issues raised above in greater detail please do hesitate to contact Andy McClenaghan on 028 90674808 or amcclenaghan@consumercouncil.org.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Aodhan O'Donnell', written in a cursive style.

Aodhan O'Donnell
Director of Policy and Education