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1 October 2021

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By email

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Re: Reforming Competition and Consumer Policy – Consumer Harm Caused by Unauthorised Intermediaries

Dear Ms Hewetson

Introduction

We are writing in response to the Government's consultation on Reforming Competition and Consumer Policy published on 20 Jul 2021 (the "**Consultation**"). We note that the Government is seeking views on a range of issues, including consumer rights, which are stated to cover *inter alia* the prevention of online exploitation of consumer behaviour and non-compliance on refunds.

Ryanair has an extensive consumer reach across the UK. Our business model operates an exclusive online distribution model which is built on direct sales to our passengers via our website and app. The prevention of online exploitation of consumer behaviour is therefore fundamental to the success of our business. Further, the provision of fake contact and payment details by unauthorised online travel agents has been a major issue for airlines processing refunds to passengers.

It is within this context, that we are writing to you. As requested, we have sought to frame this submission in direct response to the questions posed in the Consultation (in particular questions 46 & 47).

Background

Ryanair does not authorise third-parties to sell our flights online. Our exclusive online distribution model is formalised in the Terms of Use of Ryanair's website and app, and prohibits the use of our platforms for any non-private, commercial purposes¹. This model has served our customers well and allows us to sell the lowest fares. Notwithstanding that Ryanair prohibits the use of its website by intermediaries, Ryanair offers licensed API access to our flight data for flight comparison purposes only (i.e. not reselling) provided interested parties enter into and adhere to the terms of Ryanair's licence agreement.² Leading price comparison websites such as Google and Expedia avail of this licence.

Despite the option to access data on Ryanair's flights by legitimate means, unauthorised online travel agents, including eDreams, Lastminute, Opodo, LoveHolidays, Kiwi, Virgin Holidays, TUI UK, FlyGo etc. use screen scraper technology to circumvent our technical security measures, in breach of our exclusive distribution model, to resell our flights and ancillary products at an (often hidden) mark-up to unsuspecting customers without our authorisation ("**Unauthorised Intermediaries**").

¹<https://www.ryanair.com/ie/en/corporate/terms-of-use>

²<https://www.ryanair.com/content/dam/ryanair/2018/customerservicefaq/legal2019/Licence%20Agreement%20July%202019.pdf>

Preventing online exploitation of consumer behaviour

Q 46 Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

It is abundantly clear that passengers are not aware of the deceitful behavioural techniques deployed by Unauthorised Intermediaries including their efforts to masquerade as Ryanair, and in particular their application of massive (often hidden) mark-ups on our fares.

This is clear from passengers' own testimony. In this regard, we refer to the following short 2 minute videos where we asked passengers who had recently booked through an Unauthorised Intermediary for feedback on their booking. In particular, we asked these passengers if they were aware of the hidden charges associated with their booking:

- (1) <https://twitter.com/Ryanair/status/1326176764696145920> the passenger confirmed *"no one ever wants to be charged extra for anything ever so I'm unhappy"*.
- (2) <https://twitter.com/Ryanair/status/1321821503625854978>. the passenger confirmed *"I wasn't aware Kiwi can charge that money...I didn't know that they took any fees off of the flights or anything"*.

Furthermore, transcripts of our customer chat further demonstrate the consumer confusion caused by Unauthorised Intermediaries. The chats referenced below (see also **Annex 1**) represent a small sample of the common issues encountered by our customer service team. We would be happy to provide further examples if it would be of assistance. In summary:

- (1) Due to the deceptive conduct of Unauthorised Intermediaries, passengers do not realise that Ryanair does not have any commercial relationship with Unauthorised Intermediaries. For example, see chat 1 where the passenger states *"I thought you were in partnership with Kiwi, if I knew I wouldn't have done it through them"*.
- (2) Passengers do not know that Unauthorised Intermediaries provide Ryanair with fake passenger contact details. For example, see chat 2 where a passenger is confused as to why there is no booking under their email, and states *"why does ryanair has not sent me (sic) an email for the flight information"*. Our agent explains that emails are sent to the email address provided at the time of booking.
- (3) Passengers do not know that Unauthorised Intermediaries provide Ryanair with fake passenger payment details. The consumer detriment caused by this practice has been brought into focus during the pandemic by the issues caused for airlines processing refunds due to the involvement of Unauthorised Intermediaries (see below for further detail). For example, see chat 3. When our agent advises the passenger of the last 4 digits of the card to which his flight was refunded, and which was used to make the booking, the passenger replies *"I only have one card. So its not possible"*.
- (4) Passengers are unaware that they might be unable to book additional Ryanair services, such as special assistance options, directly from Ryanair. For example, see chat 4 where the passenger cannot pass security checks and therefore cannot book special assistance options. The passenger provided a negative customer rating and noted *"the agent was perfectly fine. The policy to NOT deal with my query could be addressed"*.
- (5) Passengers do not realise they are not paying the true Ryanair fare, and are often confused as to why they cannot receive a refund from Ryanair in respect of the intermediary fee(s) which Ryanair did not receive, and has no visibility on whatsoever (i.e. the hidden mark-ups applied by Unauthorised Intermediaries). For example see chat 5 where the passenger states *"please explain to me why you refund only 78.53 Euros to me? I payed [sic] 167..."*

Despite our best efforts, there are currently no technical defences to effectively block Unauthorised Intermediaries from screen-scraping our website and making unauthorised bookings. For example, we have invested heavily in defence software known as “Shield” – a complex proprietary anti-screenscraping application. However, while “Shield” can help us to identify Unauthorised Intermediary bookings post-booking (by analysing multiple technical factors), due to the sophistication of the bots used by Unauthorised Intermediaries may still circumvent Shield’s defences by imitating a normal customer (slowing down “clicks” to human pace, etc.).

We also invest significant resources in highlighting to our passengers the risks associated with booking through Unauthorised Intermediaries. For example, we have created a price-checker tool where customers can find the true Ryanair fare for their booking.³ This tool went live in Apr 2021 and has already been used successfully by thousands of customers who are curious to better understand the hidden mark-ups which they have paid. We also have a web page dedicated to educating our passengers on common issues associated with Unauthorised Intermediaries.⁴ In addition, we regularly post useful information regarding Unauthorised Intermediaries on our social media platforms. Further, we have trademarked a “verified” seal⁵ which assures customers that they are booking directly with Ryanair.

Finally, we are currently pursuing several complex litigation matters against the most formidable screen-scrapers across Europe, including in France, Italy, Switzerland, Ireland, Poland, Czechia and Germany, as well as the United States. We have recently obtained a number of successful outcomes, in particular in Germany and Czechia, where the Courts are acknowledging the detriment being caused to consumers by Unauthorised Intermediaries publishing misleading information regarding our policies, prices, etc. We will be happy to provide further information on these judgments if that would be of assistance.

Q 47 Do you think government or regulators should do more to address (a) ‘drip pricing’ and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

The parasitic business models of Unauthorised Intermediaries are firmly rooted in the deception and exploitation of consumers. In particular, the Government’s interest in “drip-pricing”, “subscription traps”, and “fairness by design” are very relevant to the anti-consumer practices commonly deployed by Unauthorised Intermediaries.

The best way to demonstrate the “drip pricing” techniques used by Unauthorised Intermediaries is by completing a test booking. In the following link, you can view a live comparison which we made of a test booking completed on the Ryanair website, versus the website of an Unauthorised Intermediary (click here: <https://ryanairlabs.sharefile.com/share/view/s9c923346b33a4db6815a06bd98c7c07a>). As the video highlights, passengers are being charged extortionate mark-ups on the true Ryanair air fare and ancillary services, without any notice or explanation. The intermediary fees being levied are unavoidable and foreseeable at the time of publication of the prices displayed, because these fees represent a fundamental element of their business model. As such, intermediary fees should be displayed clearly at all stages throughout the booking process, not just at a final stage, and customers should not have to proactively search for the applicable fees to discover the extent of the intermediary fees that they are paying (which is often the case).

We have enclosed screenshots at Annex 2, highlighting examples of the most common anti-consumer practices deployed on the UK websites of the most prolific Unauthorised Intermediaries. If further screenshots would be of assistance please let us know:

³ <https://www.ryanair.com/ie/en/price-checker>

⁴ <https://www.ryanair.com/ie/en/refundfaqs/screenscraperbookings>

⁵ <https://www.ryanair.com/ie/en/Verified-Seal>

1. **Example 1:** Unauthorised Intermediaries engage in drip pricing by concealing their surcharge on the Ryanair air fare and displaying an artificially inflated Ryanair baggage fee (including their surcharge). The intermediary fees of the Unauthorised Intermediaries are concealed from the outset. (See **Screenshots A – E**)
2. **Example 2:** Unauthorised Intermediaries mislead passengers in relation to ancillary services e.g. assistance options and luggage availability. (**Screenshot F**)
3. **Example 3:** Unauthorised Intermediaries engage in unfair commercial practices with unsubstantiated statements (**Screenshots G**)
4. **Example 4:** Unauthorised Intermediaries have been known to deploy “subscription trap” tactics by duping customers into signing up for a “prime” subscription which auto-renews at a cost to the consumer. (**Screenshots H**)
5. **Example 5:** Unauthorised Intermediaries’ websites generally give the impression to consumers that they are an authorised distributor of Ryanair and permitted to market and sell Ryanair flights.

As the Consultation paper suggests, these are practices which are likely to breach the CPRs. Specifically, we note the anti-consumer practices of Unauthorised Intermediaries mentioned above, represent breaches of at least the following provisions of the CPRs:

- practices that contravene the requirements of professional diligence and that materially distort (or that are likely to do so) the economic behaviour of the average consumer with regard to the product (Regulation 3(3) of the CPRs);
- the provision of false, misleading or confusing information to consumers that is likely to cause the average consumer to take a transactional decision he/she would not otherwise have taken (Regulations 3(4)(a) and 5 of the CPRs);
- failure to give material information, hiding it, or providing it in an unclear, unintelligible, ambiguous or untimely way that is likely to cause the average consumer to take, or which makes it likely they will take, a different decision as a result of the information provided (Regulation 4(4)(b) and 6 of the CPRs); and
- the provision of false and misleading information, and the omission of material information (Regulation 6 of the CPRs).

In addition, the failure to advertise the true Ryanair fare at every stage of the booking process, represents a breach of Article 23 of the EC Regulation 1008/2008 (the “**Regulation**”) which has been implemented into UK law by virtue of the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018.

Flight Safety, Security and Public Health Concerns

The most troubling issue for Ryanair, however, is the failure of Unauthorised Intermediaries to provide genuine contact and payment details for the passenger at the time of booking. Furthermore, the Unauthorised Intermediary will typically fail to inform consumers either during the booking process or in their terms and conditions incorporated into the booking, that the passenger’s direct contact and payment details will not be provided to the airline. While this conduct is obviously in breach of Regulation 6(3) of the CPRs, as this is a seriously misleading omission of material information that an average consumer needs in order to take an informed transactional decision, the practical implications (including safety concerns) of this conduct are more pressing.

Where Ryanair is not provided with the passengers correct contact details, Ryanair cannot communicate with its passengers directly, especially in the case of flight changes or cancellations which can result in exceptional inconvenience to passengers. Moreover, the inability to communicate with passengers raises flight safety, security and public health concerns for Ryanair, who are obliged to ensure passengers are on notice of, and have confirmed compliance with required safety, security and public health protocols, including those set out by the ICAO Technical Instructions, Regulation (EU) 2015/1998, and the EASA/ECDC Covid-19 Aviation Health Safety Protocol. Further, the provision of payment details belonging to the Unauthorised Intermediary (rather than the customer) prohibits Ryanair from processing any valid refund claims directly to its passengers as required by Regulation (EC) No 261/2004 (see further detail below).

These practices of Unauthorised Intermediaries have been causing serious disruptions and inconvenience to customers, as well as significant reputational damage to airlines, especially in the Covid-19 pandemic context, where flight changes, cancellations and refund requests have become exponentially more frequent.

Tackling non-compliance on refunds

We further note that non-compliance on refunds is under consideration, in particular, the Consultation refers to issues arising in connection with Unauthorised Intermediaries such as LoveHolidays, Lastminute, Virgin Holidays, TUI UK refusing to refund customers for flight disruptions arising during the pandemic.

Ryanair is obliged to pay refunds directly to the passenger (not the unauthorised intermediary) within 7 days.⁶ Obviously we cannot comply with this obligation where do not have direct payment and contact details for the passenger.

This requirement has been confirmed in a letter from the Irish Commission for Aviation Regulation to Ryanair which stated "*...Regulation 261 is written such that the airline vindicates the passenger's rights directly with the passenger... This applies even when the bookings of the flights were made by travel agents and tour operators.*". In addition the Danish Civil Aviation Authority recently wrote to Ryanair noting "*According to Article 5(1)(a), it is the operating air carrier who is responsible to offer the passengers assistance in accordance with Article 8, when a flight is cancelled. In Article 8 it is stated that passengers shall be offered the choice between a reimbursement of the full ticket price or a re-routing of the flight. When Ryanair Limited has refunded the ticket price to an online travel agent, Ryanair Limited has not fulfilled their obligation to the passengers in accordance with Article 5(1)(a) and Article 8.*"

Unfortunately, on a number of occasions where we have issued refunds to the payment details used for bookings made via Unauthorised Intermediaries, the refund did not reach the entitled passenger as the relevant Unauthorised Intermediary refused to forward the refund to the passenger (see a sample of customer complaints at Annex 3). In order to minimise the inconvenience caused in such cases, we have successfully developed two separate processes (Customer Verification and Letter of Authority) that enable cash refunds to passengers without the risk of funds being delayed, interfered with or misappropriated by Unauthorised Intermediaries. Following our recent dialogue, the EU CPC Network have endorsed these efforts and acknowledge that passengers who have "*booked their flight through an intermediary and have difficulties getting reimbursement from the intermediary can turn to the airline and request to be refunded directly*".

While we have invested significant resources developing these consumer protection measures, clearly the Unauthorised Intermediary should be required to provide genuine contact and payment details for passengers to airlines at the time of booking. Without prejudice to our position that Unauthorised

⁶ Regulation 261

Intermediaries are not entitled to re-sell our flights, at a minimum, we call on BEIS, the CMA, and other consumer protection enforcers, to ensure genuine passenger payment and contact details are provided at the time of booking. We also welcome the CMA's efforts to secure formal commitments from a number of Unauthorised Intermediaries to provide refunds without undue delay to customers.

Conclusion

A considerable number of UK consumers are affected by the illegal actions of Unauthorised Intermediaries, and it follows that tackling their unlawful practices should be a matter of priority for the Government. We call on the Government to investigate and take prompt action to bring to an end these anti-consumer practices in order to protect the collective interests of UK consumers. In the meantime we will continue to raise awareness on the dangers of booking via Unauthorised Intermediaries on our website and other social media platforms, and actively encourage our passengers to book direct.

Should you require any further information please do not hesitate to contact me.



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