

ARTICLE 29 Data Protection Working Party



Brussels, 26 September 2014

Ms Monique de Smet
IATA , Director MER, Brussels
By E-mail: DeSmetM@iata.org

Mr Michel de Blust
ECTAA, Secretary General
By E-mail: mdeblust@ectaa.org

Mr Christoph Klenner
ETTSA Secretary General
By email: cklenner@ettsa.eu

Dear Ms de Smet,

Dear Mr Klenner,

Dear Mr de Blust,

Following our initial decision of April 2013, the Article 29 Working Party (WP29) started an assessment of the likely impacts of the IATA New Distribution Capability (NDC) project in terms of privacy and data protection, since this new initiative seems to have the potential to change in several ways business processes commonly used to offer and sell flight tickets to travelers, including the development of new ways of processing [potential] customers' personal data. As part of this effort, a questionnaire was sent to IATA in December 2013, the response to which, jointly with the input offered by the European Technology & Travel services Association (ETTSA), the European Travel Agents' and Tour Operators Association (ECTAA), formed the basis for the meeting with the Borders, Travel and Law Enforcement (BTLE) subgroup of the Working Party that took place on 15 May. The WP29 would like to thank IATA, ETTSA and ECTAA for their contributions during the meeting and the written statements provided thereafter.

The responses sent by IATA as well as its public statements on the issue are founded on the idea that the NDC project is aimed only to develop a standardized way for industry software developers to structure data that might be used during the shopping and booking process. In that sense, IATA insists that the standard as such is not directly impacted by data protection and privacy regulations while recognizing that the data specifications included may allow other stakeholders to collect personal data. IATA has also pointed out that any development based on the new standard must respect the applicable data protection legal framework.

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental rights and Union citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No MO59 02/34

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

IATA has also emphasized that the new standard will provide more robust and reliable security standards compared with the existing systems. Moreover, features included in the standard like the possibility to disassociate personally identifiable elements from other components, to facilitate opt-in or opt-out with regard to specific data fields as well as others currently under study will, according to IATA, allow developers the greatest flexibility when applying “privacy by design” techniques. IATA did not address in detail other issues raised in the WP29 questionnaire because of the lack of information at this stage or simply because it has considered that they are outside IATA’s responsibilities at this point.

During the meeting on 15 May and in additional written statements following that meeting, ET TSA and ECTAA, representing important stakeholders in the travel business, however, have expressed their concerns towards NDC from the perspective of European data protection law. They judge that some of the elements of NDC require a more intense scrutiny from the data protection point of view, in particular with regard to the proportionality principle and legal ground for the processing. Concerns have been put also on the table with regard to possible impacts on data quality, controllership, transfers to third parties, information to the individual, exercise of individual’s rights and profiling practices resulting from the application of NDC. Also, references have been made to potential discriminatory practices in the process of price formation related to the amount of personal information provided in advance by the potential customer that could result in surcharges linked to anonymous ticket offer requests.

The Working Party notes that the United States Department of Transportation (DoT) has issued on 6 August a final order in response to the joint motion by IATA and the Open Allies for Airfare Transparency to approve, subject to specific conditions, IATA Resolution 787, in which NDC was agreed upon by its members. Subject to further specified terms and conditions, DoT approved Resolution 787 while emphasizing that the approval “is limited to the creation of an XML communications standard and that any future agreement among IATA member airlines regarding business models for the distribution of air transportation shall not be implemented without prior compliance with any applicable government approval or notification process” (p. 4 of the order).

In the view of the WP29, and quite apart from its impact on competition and consumers, the NDC initiative may result in a remarkable change in terms of personal data processing associated with operational practices in the air travel market. As the declared purpose of the processing is to present more information to consumers about available products and services in order to allow a better comparison of offers, the mechanics of the system will undoubtedly imply enabling multiple airlines to send responses to customer’s requests with offers fitting individual’s previously declared preferences. This will multiply data flows associated with the offering and purchasing process with significant impact throughout the market value chain.

In any case, given the current uncertainty on the way the NDC initiative will be developed and the absence of indications on market efforts focusing on practical implementations of this initiative at EU level, the WP29 is not in a position to adopt a formal opinion on the issue at this point. However, the WP29 considers, in the light of the analysis carried out, that the considerations made on possible impacts on privacy and data protection principles resulting

from this initiative included in our letter dated 11 December 2013 (in annex) remain fully valid and should be taken into consideration in subsequent steps of the project.

In the same vein, the WP29 would like to highlight that efforts to bring to the market new and more competitive services implying personal data processing must comply with European and national legal frameworks and ensure the effective exercise of individual's privacy and data protection fundamental rights. With regard to the concern that NDC could result in "the end of anonymous shopping", as expressed by ETTSA and ECTAA, the WP29 notes in particular that IATA, during the meeting on 15 May, in its written statement as well as in its joint application for approval of Resolution 787, has expressed "its intent to preserve anonymous shopping".

The WP29 will maintain NDC on its agenda and will closely follow the developments resulting from this initiative as well as from any other system of a similar nature. It would appreciate being kept informed on further developments on the project. The WP29 would also like to remind the interested parties that, in some Member States, national data protection authorities must be consulted before commencing any processing.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman

CC: Mr Claude Moraes, President of the Committee on Civil Liberties, Justice and Home Affairs
European Parliament

By e-mail: claude.moraes@europarl.europa.eu

CC: Mr Stefano Sannino, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Italy, Presidency of the Council of the EU

By e-mail: delegation.it@consilium.europa.eu

CC: Ms Françoise Le Bail, European Commission, Director-General for DG Justice.

By E-mail: Francoise.Le-Bail@ec.europa.eu

CC: Ms Susan L. Kurland, US-Department of Transport, Assistant Secretary for Aviation and International Affairs

By post: 1200 New Jersey Avenue, Se Washington, Dc 20590, USA.