



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.3: Consumer protection

ACHIEVING COMPATIBILITY IN CONSUMER PROTECTION REGULATIONS

(Presented by the United States of America)

EXECUTIVE SUMMARY

This working paper provides a brief overview of significant U.S. consumer protection regulations on advertising, disclosure of fees, disclosure of code-share partners and changes of aircraft, post-purchase price increases, refunds, overbooked and cancelled flights, tarmac delays, mishandled baggage, responses to consumer complaints, and accommodation of passengers with disabilities.

A growing number of States have adopted consumer protection regulations. While this trend has clearly benefited passengers, it has also increased concerns about overlapping regulatory requirements. The United States believes that greater regulatory compatibility would be desirable for both users and service providers. States can promote regulatory compatibility by direct contacts and cooperation, and ICAO could materially assist by developing appropriate guidance material.

Action: The Conference is invited to:

- a) endorse the conclusions presented in paragraph 3; and
- b) adopt the recommendations presented in paragraph 4.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 In general, U.S. law prohibits unfair or deceptive practices or unfair methods of competition in air transportation or the sale of air transportation (49 U.S.C. 41712). It also prohibits discrimination in airline service on the basis of disability. The United States Department of Transportation (DOT) adopts and enforces consumer protection and civil rights regulations, which are found in Title 14 of the Code of Federal Regulations (CFR).

2. U.S. DOT CONSUMER PROTECTION REGULATIONS

2.1 **Price transparency and advertising (14 CFR 399.81, 399.84)** – Under “full-fare” advertising rules, advertisements marketed to U.S. consumers for air transportation within, to, or from the U.S. must state the entire price for air transportation to be paid by the consumer, including all taxes and mandatory charges. Advertisements may separately state a breakdown of taxes and individual charges, but the total price must be more prominently featured than taxes and charges. Advertisements may display the fare for each way of a round-trip ticket (where round-trip purchase is required), but the round-trip purchase requirement must be prominently displayed. Such a fare may not be labeled “one way” under any circumstances. In internet advertisements, additional services may be offered, but only on an opt-in basis. These rules apply to direct U.S. and foreign air carriers, indirect air carriers, their agents, or ticket agents, when advertising for air transportation, tours, and tour components.¹ In addition, air carriers may not advertise on-time performance unless the advertisement indicates the basis of the calculation, the time period covered, and the city pairs or percentage of flights included in the calculation.

2.2 **Disclosure of baggage fees and ancillary fees (14 CFR 399.85)** – U.S. and foreign air carriers with web sites marketed to U.S. consumers must promptly and prominently disclose (1) for at least three months, any increases in baggage fees or changes to free baggage allowances, and (2) all fees for optional services (including baggage charges and items such as upgrades, meals, and drinks) in a single place, accessible through a prominent link on the home page of the web site. On carrier or ticket agent web sites marketed to U.S. consumers, the same screen that displays a fare quotation for a specific itinerary selected by the consumer must clearly and prominently disclose that additional baggage fees may apply, and where that information may be found. If a consumer buys air transportation to, from, or within the U.S. from such a site, the electronic ticket confirmation must list the free baggage allowance for the flight, and any fees for first and second checked bags and carry-on bags.

2.3 **Disclosure of code-share partners and changes of aircraft (14 CFR Parts 257 and 258; 49 U.S.C. 41712(c))** – Before a consumer buys tickets for air transportation to, from, or within the U.S., airlines and ticket agents must disclose whether the flight is operated by a code-share partner. The disclosure must include the corporate name of the operating carrier and all names under which it conducts business. This rule applies to verbal, written, and electronic offers to sell tickets for air transportation. The code-share disclosure must appear on the first display of web sites following a search of a requested itinerary in an easily-visible format. Airlines and ticket agents must also disclose en-route aircraft changes. This rule applies to scheduled domestic flights and international flights to/from the U.S.

2.4 **Post-purchase price increases (14 CFR 399.88, 399.89)** – Sellers of air transportation may not increase the price of any fare or fee relating to scheduled air transportation, a tour, or a tour component if the consumer has already paid the full amount. This prohibition applies not only to the price of the ticket but also to the baggage charges that traditionally have been included in the price of the ticket. Price increases due to increased government-imposed taxes or fees are permissible after purchase, but only if the consumer was provided notice of the potential price increase, and consented in writing before completing the purchase. Where the consumer has made only partial payment, sellers may increase the price of the air transportation and related ancillary products and services before final payment is made, but only if the consumer was first provided notice of the potential price increase, and consented in writing prior to making any payment. These rules apply to any seller of air transportation within, to, or from the United States, or of a tour, or a tour component.

¹ A “tour” is a combination of air transportation with ground or cruise accommodations. A “tour component” is an element of a tour (e.g., a hotel stay) that must be purchased with air transportation.

2.5 **Refunds (14 CFR 250.5(f); 259.5; 374.3; 12 CFR 226(e)(1))** – If a refund is due on a credit card purchase, the carrier must transmit a credit statement to the card issuer within 7 days. If a refund is due on cash or check purchases, the carrier must provide the refund within 20 days of receiving the request. Where a consumer is voluntarily or involuntarily denied boarding, the carrier must refund all fees for ancillary services that are not available on the alternative flight. The carrier must also refund passengers the baggage fee charged if the bag is lost.

2.6 **Overbooked flights (14 CFR Part 250)** – Airlines must first solicit volunteers before involuntarily denying boarding to confirmed passengers. Airlines may determine what incentives to offer passengers to voluntarily give up their seat. For incentives in the form of vouchers for future free or discounted transportation, the airline must disclose in advance all material restrictions on such vouchers.

2.7 Airlines must establish written priority rules and criteria for involuntarily denied boarding and must furnish them to all passengers who are involuntarily denied boarding.

2.8 Passengers involuntarily denied boarding need not be compensated if they are re-routed on comparable transportation that is planned to arrive no later than one hour after the originally scheduled arrival time. Otherwise, passengers must be compensated as follows:

- a) for alternate transportation planned to arrive within 2 hours of the scheduled arrival of the original domestic flight (within 4 hours for foreign flights), the passenger must be compensated 200% of the fare, including taxes and mandatory fees, up to a maximum of US\$650;
- b) if alternate transportation is not provided within the timeframe described above, the passenger must be compensated 400% of the fare, including taxes and mandatory fees, up to a maximum of US\$1300.

2.9 The amounts are periodically adjusted for inflation. Unless otherwise agreed to by the passenger, denied-boarding compensation must be provided in cash or an immediately negotiable check, on the day and place that boarding was denied. These rules apply to all airlines operating domestic flights and international flights originating from the U.S., on flights using aircraft with a designed seating capacity of 30 or more seats.

2.10 **Delayed and cancelled flights (14 CFR 259.8)** – Airlines must inform passengers of a “change in status” of a flight (i.e., a cancellation, diversion, or delay in the planned operation of 30 minutes or more). Where the flight is to take place within seven days, airlines should provide this information within 30 minutes of becoming aware of it. If the flight status change takes place outside of this seven-day time period, the notification must be timely. This rule applies to all U.S. and foreign airlines providing scheduled flights to, from, or within the United States on at least one aircraft with 30 or more seats.

2.11 Failure of airlines to re-route passengers or to provide refunds and additional compensation in the event of significantly delayed or cancelled flights may violate 49 U.S.C. § 41712 as an unfair and deceptive practice based on the facts and circumstances of the delay. To the extent airlines make commitments to passengers in their contracts of carriage or otherwise regarding compensation or amenities related to delays or cancellation, 49 U.S.C. § 41712 requires that carriers comply with those commitments.

2.12 **Lengthy tarmac delays (14 CFR 259.4)** – U.S. and foreign airlines operating at least one aircraft with a designed seat capacity of 30 or more must develop a contingency plan for lengthy

tarmac delays. They must coordinate their plans with all U.S. airports they serve and with designated federal officials at those airports. While on the tarmac, airlines must provide operable lavatories and adequate medical attention if needed. Every 30 minutes, airlines must provide status updates to passengers delayed on the tarmac. Airlines are required to provide food and water for passengers after a delay of two hours. Subject to limited safety and security exceptions, airlines must provide passengers with an opportunity to deplane before three hours for domestic flights, or before four hours for international flights delayed on the tarmac of a U.S. airport.

2.13 **Mishandled baggage (14 CFR Part 254)** – For domestic flights, airlines must cover all reasonable, actual, and verifiable expenses related to baggage loss, damage, or delay up to at least US\$3,300. This rule applies to any air carrier providing charter or scheduled passenger service in domestic air transportation, on flights where any segment thereof used aircraft with a maximum capacity of over 60 seats. For international flights to or from the U.S., the liability limits of the Montreal Convention apply to luggage that is lost, damaged, delayed, or pilfered. Under the Montreal Convention, each passenger may claim up to 1,131 “special drawing rights,” currently about US\$1,700. These amounts are periodically adjusted for inflation.

2.14 **Responses to consumer complaints (14 CFR 259.5; 259.7)** – U.S. and foreign airlines operating at least one aircraft with a designated seat capacity of 30 or more must adopt a consumer service plan on issues such as baggage handling, refunds, and notification of delays. Airlines must also designate an employee responsible for monitoring effects on passengers of flight delays, cancellations, and tarmac delays. Airlines must disclose the mailing and electronic addresses of their consumer-complaint department on web site and e-ticket confirmations. Airlines must acknowledge a complaint within 30 days and provide a substantive response within 60 days.

2.15 **Accommodating passengers with disabilities (14 CFR Part 382)** – The DOT regulation implementing the Air Carrier Access Act requires U.S. and foreign air carriers to provide assistance and accommodations to passengers with disabilities with respect to enplaning and deplaning, service animals, access to aircraft, and access to services provided on aircraft and in relation to air travel. The regulation also requires airlines to provide training to their personnel and to ensure the availability of Complaint Resolution Officials (CROs). This rule applies to all flights operated by U.S. air carriers, and all flights to and from the U.S. operated by foreign air carriers. Certain sections regarding accommodations in ground operations also apply to indirect air carriers, such as public charter operators, if they provide facilities or services to passengers. This rule does not apply to charter flights operated by a foreign air carrier from a foreign location to the U.S., and returning to a foreign location without picking up any passengers in the U.S. In keeping with the Department’s commitment to giving due consideration to foreign law where it applies, the Department’s disability regulation contains a conflict of laws waiver provision. A foreign carrier may apply to the Department for a waiver if a foreign legal requirement conflicts with a given provision of a Department rule.

3. CONCLUSIONS

3.1 As noted in WP/5 and WP/15, a growing number of States have adopted airline passenger consumer protection regulations. While this trend has clearly benefited passengers, it has also increased concerns about overlapping regulatory requirements of various States. The United States believes that greater regulatory compatibility would be desirable for both users and service providers. States can promote regulatory compatibility by direct contacts and cooperation, and ICAO could materially assist by developing appropriate guidance material. While a “global code of conduct” for service providers or States would be overly ambitious, a set of general core principles could be helpful.

4. **RECOMMENDATIONS**

4.1 The following recommendations are proposed for adoption by the Conference:

- a) States should encourage airlines to consider adopting customer service commitments;
- b) States should consider adopting consumer protection regulations;
- c) States should cooperate to seek compatibility in their respective consumer protection regulations;
- d) ICAO should collect and disseminate the airline passenger consumer protection laws and regulations of States; and
- e) ICAO, with the assistance of experts from interested States and stakeholders, should develop a set of general core principles on airline passenger consumer protection.

— END —