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Points for attention with regard to price transparency enforcement in the travel sector

This document is addressed to all providers and intermediaries in the travel sector, on the internet as well as in physical shops. All transport providers are therefore concerned, as well as providers of accommodation and travel organisations. The term provider in this document will include all those parties.

Introduction and objectives of this document

On 1 April 2013, the Netherlands Authority for Consumers and Markets (ACM) was founded. This new regulator is the result of the consolidation of the Netherlands Consumer Authority (CA), the Netherlands Competition Authority (NMa) and the Netherlands Independent Post and Telecommunication Authority (OPTA). The activities, which includes the enforcement of price transparency in the travel sector, of the three separate organisations is continued by ACM.

In the 2012-2013 agenda of the CA, 'Untransparent prices in the travel industry' was identified as priority. It appears that during the booking of airline tickets and other holiday products, such as the renting of holiday homes or the booking of journeys, these services can often not be purchased for the price they are advertised at. During the booking process, extra costs are presented, such as booking costs or obligatory laundry charges, as a result of which the price for which the consumer thought he could travel can become (much) higher. In some cases, extra services or insurances which are not obligatory are already ticked in the boxes by the provider, as a result of which extra costs are added unnoticed. Often, the real costs of the booking only become known at the end of the booking process, whereas the consumer was initially 'lured' with a much lower price.

In recent years, the CA has looked into the presentation and composition of prices in the travel sector. For this purpose, it has, for example, analysed indications from various sources, read decisions by the Dutch Advertising Code Committee and conducted research into the presentation of prices of travel offers on the internet. The CA has established that there is insufficient price transparency and, in particular, that this lack of clarity is caused by two essential aspects of the offers:

- there are additional costs that are unavoidable but are only stated with the offer at a later stage;
- the use of 'opt-out' by providers: 'choice' options that have been ticked in advance, which the consumer then has to actively untick.

It still appears too often that the offer concerned cannot actually be booked for the advertised price. At a later stage, various costs are added to the offer price, under varying names such as administrative costs, booking costs, reservation costs, customer services tax, administration charges, ticket fee and airline fee. Consumers are unable to book offers without paying these extra costs.

This does not only result in considerable confusion among consumers but is also in violation of the rules. These commercial practices are therefore a thorn in the eye of ACM. ACM wants consumers to be better informed about the price of the standard offer. This means that it must be clear on

time what is included in the offer and that the presentation of the price is complete and transparent. In addition, any additional options for consumers, as well as the costs thereof, must be made clear and transparent at the beginning of the booking process.

The above has prompted ACM to once again draw attention to five important aspects with regard to price transparency. These points for attention are central in the enforcement efforts in the travel sector. ACM is calling on providers to take the rules to heart. Providers who comply with these points for attention will, with regard price transparency, in principle not have to deal with enforcement by ACM.

The Netherlands Authority for Consumers and Markets supports the system of self-regulation. These points for attention are therefore not intended to push the Travel Offers Advertising Code (*Reclamecode Reisaanbiedingen*) aside. The points for attention have been formulated to make clear the ACM's focus with regard to price transparency. The Netherlands Authority for Consumers and Markets offers providers a guideline to see if their commercial practices are in line with consumer protection laws.

This document will firstly state the importance of price transparency and, for information purposes, a legal context will be outlined, where the role of the current system of self-regulation is also discussed. Subsequently, the five points for attention are described and explained. Various organisations in the travel industry have been consulted prior to the creation of this document.

Importance of price transparency

The Netherlands Authority for Consumers and Markets finds price transparency in the travel sector important. Untransparent prices negatively affect consumers and markets.

An important consequence of untransparent prices is that it is difficult for consumers to compare prices. As a result of this, search costs for the best offer become higher and consumers will compare offers less often than in a transparent market. In the absence of a complete prices, consumers cannot make well-informed decisions about their purchases.

Furthermore, consumers appear to become less price-sensitive the further they are in the booking process. At a certain point, consumers simply wish to complete the order, also because a lot of time has already been invested into finalizing a selected booking by going through the accompanying process. Search results on various comparative websites are based on advertised prices. Consumers focus on the offer price and search for the offer with the lowest price. To be able to appear as attractive and cheap as possible in the comparisons, providers have the tendency to add unavoidable price elements later in the booking process to make the offer price appear more attractive. Chances are high that consumers who initially chose a certain offer, will stick with that offer, even when costs are added to it.

In addition, the Netherlands Authority for Consumers and Markets finds it important that consumers can trust the offer they see and will receive whatever was promised to them in the offer. Furthermore, it is important that, after their booking, consumers are not 'accidentally' bound to an extra product or service, because this was ticked in advance. This results in unnecessary harm to

consumers whose interests ACM seeks to protect. Consumer confidence in the travel sector may also be jeopardized because of these practices.

By dealing with the outlined lack of clarity, ACM wishes to ensure that providers in the travel sector make their prices more transparent and easier to compare with other offer prices, so that consumers can actually make good choices and play their role in the market properly. Furthermore, ACM wishes to create a level playing field in which all providers comply with the same rules, and where providers that evade the rules no longer have any advantages.

Legal context

The Netherlands Authority for Consumers and Markets has been charged with the enforcement of compliance by businesses with general consumer-protection laws and regulations. This used to be the duty of the CA. The most important duties in this context are dealing with collective violations of consumer law and raising awareness among consumers of their rights and obligations. It does so by using its various powers to conduct investigations into violations and to force businesses to comply with the law. At the same time, it gives practical advice to consumers about their rights and obligations through consumer information portal ConsuWijzer.

A complete overview of the regulations that it enforces can be found on the website of ACM (www.acm.nl). This document explains a number of aspects that are particularly relevant with regard to price transparency in the travel sector.

Regulation 1008/2008

Regulation 1008/2008 of the European Parliament and Council of 24 September 2008 (hereafter: the Aviation Regulation) contains 'common rules for the operation of air services in the Community'. Oversight on compliance with the obligations with regard to transparency of passenger rates included in Article 23 of the Aviation Regulation is included in the Dutch Act on Enforcement of Consumer Protection and therefore falls under the oversight of ACM. Article 23 of the Aviation Regulation contains a number of information obligations that must be observed when offering prices for airline tickets (passengers and freight rates).

Pursuant to Article 23, final prices of airline tickets must be made clear immediately. This means that, at all times, the total price, including taxes, duties, surcharges and payments, must be immediately stated (at the beginning of the booking process and, for example, also in advertising statements). Additionally, certain tariff elements, as listed in Article 23, must be specified. Also, the conditions applicable to the tariff must always be stated (for example: the offer applies 'only this week'). Furthermore, optional surcharges may not be offered by means of an 'opt-out' system (by means of 'boxes ticked in advance').

Unfair Commercial Practices Act

The Dutch Unfair Commercial Practices Act is included in book 6 part 3A of the Dutch Civil Code. A business practice refers to all activities that are directly concerned with the promotion, sale or delivery of a product or service to consumers. Business practices may not be misleading or aggressive. It is also misleading to leave out information, such as stating prices in which not all (additional) costs are set out. In addition, a selling practice may not be in breach of 'good

corporate behaviour'. If it is, however, and consumers are unable to make a well-informed decision because of this, then this selling method is or may be unfair.

New Consumer Protection Directive

Directive 2011/83/EU concerning consumer rights must be implemented by 13 December 2013. This Directive will lead to a number of changes in the Dutch Civil Code, some of which are particularly relevant for the assessment of price transparency in the travel sector. It concerns the following provisions.

Preamble (38) of the Directive reads: 'It must be stated clearly and legibly on websites where business is conducted, no later than at the start of the ordering process, whether restrictions apply to the delivery and which payment methods are accepted.'

Article 19 of the Directive sets out regarding payments for the use of payment methods, that this payment may not exceed the costs for the trader as a result of the use of this method.

Article 22 of the Directive sets out regarding extra payments: 'Prior to the consumer being bound by the agreement or the offer, the trader will ask for the express permission of the consumer for each extra payment beyond the payment that has been agreed for the contractual primary obligation of the trader. If the trader has not acquired the express permission of the consumer, but has deduced this permission from the use of standard options that the consumer must reject to avoid extra payment, then the consumer has the right to repayment of these amounts paid.' Therefore, no express consent from the consumer can be deduced from the use of standard options the consumer must reject.

Travel Offers Advertising Code

The travel sector has, in the context of self-regulation, made specified arrangements for advertising. These arrangements have been laid down in the Travel Offers Advertising Code, which as a special advertising code forms part of the Dutch Advertising Code. The Travel Offers Advertising Code applies to advertising statements and invitations to purchase focussed on the Dutch market concerning travel services.

ACM is of the opinion that the Travel Offers Advertising Code plays an important role in the protection of consumers. In principle, any violations of the rules of misleading advertising are dealt with by the Advertising Code Authority. According to the Travel Offers Advertising Code, prices are correct if all fixed and unavoidable costs are included.

The individual decisions of the Advertising Code Authority help define the commercial practices of providers in the travel sector. ACM wishes to see a structural change in conduct in the travel sector with regard to price transparency. The sector has stated it will take into account the nuances that ACM sets out in this document in its revision of the Travel Offers Advertising Code. This way, we all work together to protect consumers and to offer the market a level playing field.

With this document, the Netherlands Authority for Consumers and Markets outlines, by means of five specific points for attention, the conduct it wishes to see in the travel sector and where transparency of prices is concerned. By applying these points for attention, providers in the travel

sector can ensure that, in principle, they will not be subject to enforcement by the Netherlands Authority for Consumers and Markets.

The five points for attention for maintaining price transparency in the travel sector

The Netherlands Authority for Consumers and Markets has formulated five points for attention for providers in the travel sector.

1. The price as presented in the advert is the price for which the offer can be booked.
2. All fixed and unavoidable costs will be included in the advertised price.
3. All variable unavoidable costs, and their amount, will be presented immediately with the advertised price in a transparent manner.
4. Optional elements will be announced in a clear and transparent manner at the beginning of each booking process.
5. Optional elements will not be ticked in advance.

Points one, two and three relate to *additional costs*. Points four and five relate to *optional elements*. Both aspects will be explained in more detail below.

Additional costs

- 1. The price as presented in the advert is the price for which the offer can be booked.**
- 2. All fixed and unavoidable costs will be included in the advertised price.**
- 3. All variable unavoidable costs, and their amount, will be presented immediately with the advertised price in a transparent manner.**

Price

The price the provider advertises, for example, in newspapers and magazines or which he places on his website or through social media must be the price for which that specific offer can actually be booked. If there are important restrictions attached to the offer, for example that they only apply on Wednesday or only in the middle of the week, then these (restrictive) conditions must be immediately made clear to the consumer.

Unavoidable costs

The price as presented in the advert will be the total price of the booking, unless the consumer consciously and actively chooses for optional elements. This means that it must be possible to actually book the advertised offer at the advertised price. The advertised price therefore will contain all unavoidable costs. Unavoidable costs that are variable will be presented at a single glance in a clear manner with the advertised price, for example, directly below or next to it. Consequently, the consumer has an immediate total view of all unavoidable costs. These costs will in principle be presented to the consumer as transparently as possible. In other words, the consumer must be able to immediately determine what the total amount will be.

Unavoidable costs are all costs which are attached to the purchase of the offer as presented and which the consumer cannot avoid. If these costs are a fixed amount per person, then this amount must be included in the advertised price. If these costs are variable - for example per booking - then it must be clearly and immediately stated with the advertised price which variable unavoidable costs will still be added as well as the amount of these costs or, if this is not possible, the manner in which the consumer can rebook.

Charged booking costs (in practice also referred to as reservation costs, administrative costs or suchlike) are usually unavoidable. Depending on the manner in which the price of the offer is presented (per person or per booking), this amount for booking costs must be included in the price or visible at a single glance with the advertised price. If it concerns a fixed amount that is added to the advertised price, then this must be directly included in the price.

Costs for the contingency fund that are known in advance must be stated in time.

Transaction costs are the costs the provider charges for a specified payment method. The amount of the transaction costs often depends on the chosen method of payment. If all payment methods result in extra costs, then it must be stated immediately with the advertised price that these costs are still to be added and how high these costs at least will be. If these costs are charged per person, then these must already have been included in the advertised price. If a payment method that is free of charge forms part of the options, then this does not have to be done. Please note: the payment method free of charge must be a realistic alternative for Dutch consumers. Creating a method that is free of charge, solely to be able to advertise with a lower price, while Dutch consumers do not, or hardly, make use of this method is not enough a reason for not including the costs for payment. In this case, the additional costs of a regular payment method must be included in the advertised price. The free of charge method may be presented as a possible saving, provided that this is made clear and understandable.

Avoidable or unavoidable?

Costs that are avoidable (optional) do not have to be directly included in the advertised price. This must concern costs that are actually avoidable. This means that it is not sufficient for a provider to only offer a theoretic possibility to avoid specified costs in order to keep these costs outside his offer price. It must concern a realistic option to avoid the costs, which also can actually be used in practice by a substantial number of consumers and without extra costs. The fact that a consumer who books with the same provider for the 10th time possibly gets a reduction or does not have to pay booking costs, does not affect the above rule. These are exceptions whilst the advert reaches the wider public.

Optional elements:

4. Optional elements will be announced in a clear and transparent manner at the beginning of each booking process.

5. Providers in the travel sector will not tick optional elements in advance.

Transparency

Optional elements form an addition to the offered travel service. The additions are not obligatory or necessary for the purchase of the travel service. A consumer has the choice to accept or reject this additional service and it is precisely this choice he must make actively and consciously.

If the provider chooses to offer elements of the travel service as optional, then he will have to be clear which elements are included in the basic price and which are not.

In this context, the quantity of information which the provider can offer should depend on the medium he chooses. For example, an advert in a newspaper can contain less information than a website. Still, it must also be evident from the advert where the consumer can find this information, for example by reference to a website. These optional elements must be clear prior to the start of the booking process so that the consumer can also include the costs of these optional elements. The booking process starts when the consumer has made the choice for a specified journey and then proceeds to book the journey concerned.

Clarity about the contents of the offer

It is important that the provider is clear about the contents of his offer from the very beginning. It should be made clear to the consumer what he can expect on the basis of that offer for this price. For example, there is a shift in the aviation market from offers that include checked baggage to offers that are no more than a 'basic flight rate' that only include hand luggage.

In these situations in particular, where the consumer can no longer expect the same from the different offers which he sees, it is important that it is clear what the offered rate covers. In other words, clear information must be provided about the fact that only hand luggage is included in prices of the provider and what the costs will be if the consumer wants to bring more baggage. Exactly what the consumer can expect on the basis of the offer is also important.

Boxes cannot be ticked in advance

In case of the opt-out variant the provider ticks the offered optional elements in advance. The options are added in this manner as standard to the order/booking of the consumer. If the consumer does not wish to make use of (one of) the optional elements, then a (conscious) action is expected from the consumer: he must personally untick the options that were ticked by the provider. The consumer ought to, at all times, personally and consciously choose an additional option, all the more in the event that costs are attached to options ticked in advance. The provider may therefore not tick optional elements in advance.