



## **ECC-Net Study on Airlines' Currency & Payment Card Fees**

# **THE COST OF PAYING**

December 2011



The European Consumer Centres Network (ECC-Net) is co-funded by the European Commission's Directorate General for Health & Consumers and by the Member States, Iceland and Norway. This Study has been conducted by a Working Group composed of members of ECC Czech Republic, ECC Malta and ECC Poland, led by ECC Ireland.

Although this Study is intended to help policy makers and enforcement authorities to identify potential problem areas, as well as to assist them in determining compliance with or breaches of the current legal framework, the Study does not purport to establish such compliance or breaches. Rather its objective is to raise awareness and to identify general trends in the area examined and, for this reason, no individual airline is mentioned. The views and opinions expressed in this Study are those of the Working Group only and do not necessarily reflect the views of any contributor or co-financing organisations.

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# 1. Executive summary

## 1.1. Study objectives and scope

In view of the growing complexity built into the sale of flight tickets, otherwise presented as a straightforward booking process, this study intends to raise awareness primarily among consumers, enforcement authorities and policy-makers about the current state of play and emerging practices by examining two concrete elements in the said process: currency and payment card fees.

Given that most bookings today take place over the internet in a multi-currency environment where multiple methods of payment are used, airlines have to carefully and even strategically decide how and with whom they want to process payments. From a consumer perspective, accessibility, security and cost are undoubtedly factors that give an indication of the hygiene of the market.

Most consumers would probably expect airlines to facilitate payment in order to minimise the inconvenience of paying for their flights. However, practice does not always suggest this. In fact, even if most airlines do offer a wide range of payment options, this study confirms that the payment phase of the booking process is often designed to increase the airline's revenue stream. Whilst the average consumer, or certainly the frequent flyer, may be reasonably aware in this day and age of the exorbitant payment card fees imposed in recent years by many airlines, this study identifies the different modalities presented by the main European airlines<sup>1</sup>, assesses the level of compliance with the current legal framework, reveals new –perhaps emerging– practices which are unknown to most consumers (and even consumer organisations) and provides detailed information of the checks conducted and the evidence gathered, quantifying, where relevant, the cost for consumers.

Even if the amounts considered are, for the individual consumer, relatively small, this is by no means unimportant given the impact these practices may have on consumer confidence and, if the full picture is considered, on competition. Where there is evidence of practices that may contravene legislation, the study intends, in so far as this is possible, to draw recommendations to ensure compliance and contribute to the work undertaken by the relevant authorities to ensure that consumers are adequately protected and legislation enforced.

## 1.2. Study methodology

The main source of data for this study was obtained from the websites of the airlines checked<sup>2</sup>. The search was primarily conducted in March 2011, yet subsequent searches were carried out in May, June, July and October 2011. As regards the items checked, a questionnaire and guidelines prepared by the Working Group<sup>3</sup> were circulated among participating ECCs<sup>4</sup> with a view to capturing, analysing and measuring both quantitative and qualitative aspects of the booking process.

In order to keep a record of the information requested, participating ECCs were asked to take screenshots supporting their findings (*what, when, where*) with a view to facilitating the Working Group's analysis at a later stage. Conclusions were drawn based on the foregoing process, having regard to patterns found. Since the study does not purport to establish breaches or compliance by individual airlines, no individual airline is mentioned.

### ***Window shopping - No transaction completed***

- Although numerical results are based on factual findings, there were instances where it was not possible to contrast the information as no actual booking of flights took place.

### ***Framework for assessing results***

- The completed questionnaires were analysed along two broad themes: transparency during the booking process and level of compliance with the current legislation.

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<sup>1</sup> Community-licensed airlines exceeding one million passengers in 2010 in scheduled flights. This data was obtained in most cases from the airlines' own annual reports but in some cases the civil aviation authorities were consulted. The rationale behind this threshold is that on widening the scope it would not be practicable for ECC-Net, having regard to available resources, to examine all carriers licensed in Europe and, on the other hand, it was preferred to keep the focus on airlines whose websites are widely used by consumers across Europe to book their flights.

<sup>2</sup> Out of the 57 airlines meeting the criteria (see footnote No. 1) two websites were not checked as relevant bookings are redirected to other websites which were checked.

<sup>3</sup> The Working Group was composed of members of ECC Czech Republic, ECC Malta and ECC Poland, led by ECC Ireland.

<sup>4</sup> ECCs in Belgium, Denmark, Estonia, Italy, Lithuania, Luxembourg, Norway, Romania, Spain and Sweden. ECC Greece was also interested in the study but their office was unfortunately not operational when the questionnaire and guidelines were circulated.

### 1.3. Key findings

#### *Currency-related fees*

- 51% of the websites checked (28 airlines out of 55) allow the possibility of paying for the same flight in various currencies, even if this is not always the case for all routes and available currencies may be limited. Whilst this could be seen at first glance as greater choice for consumers, this may also lead consumers to incur –typically unknowingly– additional costs.
- Although currency-related charges may only be incurred in certain circumstances (e.g. a passenger whose outbound flight departs from a country with a currency other than his own) or depend on the choice of country or currency indicated by the person making the booking or, as the case may be, the currency of the account attached to the payment card used, research outcomes show that the charges imposed by certain airlines in such cases may be well above market exchange rates.
- In fact, exchange rates offered by major market players (e.g. Mastercard, Visa) rarely present significant differences between themselves (e.g. up to 1.61%)<sup>5</sup> and currency conversion fees levied by banks and cards issuers are typically in that region (1.50-1.75%)<sup>6</sup>. However, approximately one third of the sample (19 airlines out of 55) may charge consumers above those thresholds, in certain cases. Having regard to that group of airlines, approximately 50% may charge consumers in excess of 5% above market exchange rates for such transactions. In one case, the price increase was as high as 13.03% for simply selecting a different currency to complete the transaction. Having checked the websites concerned, it appears that consumers are vaguely informed, if at all, about these additional costs.

#### *Payment card fees*

- 47% of the airlines checked (26 out of 55) levy payment card fees on customers when buying flight tickets online. Whilst most airlines do offer the possibility to pay using payment methods that attract no fee, these payment methods are not always widely available, rendering unrealistic for many consumers the prospect of avoiding such fees.
- Having regard to the fees incurred by consumers where no “free-of-charge” payment option is used, the additional cost for an individual consumer to book a one-way flight with that group of airlines is, on average, €7.43. The same consumer booking a return flight would pay, if the same group is considered, €10.58. The fees for a return flight for two people, to give another example, would be €16.78. None of these three figures seems to bear a reasonable relationship to the costs actually incurred by the airlines when processing payments but it should also be noted that the most expensive airlines in these three categories impose fees raising to €16, €20 and €32, respectively, i.e. almost twice the average<sup>7</sup>.
- 73% of the airlines imposing payment card fees do not indicate the price supplement in a clear, transparent and unambiguous manner at the start of the booking process, as required by Article 23(1) of Regulation [EC] No. 1008/2008 on air services.

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<sup>5</sup> See table “Price variation vis-à-vis payments in EUR when another currency used to pay for the flight” in page 16 and last paragraph of the accompanying explanation.

<sup>6</sup> See first paragraph of page 18.

<sup>7</sup> In order to obtain these figures, all 26 airlines imposing payment card fees were checked and the amount of the fees levied if the seat cost €100 was considered. In practice, it should be noted that –for the purposes of this check– the cost of the actual flight is almost irrelevant given that 85% of the airlines checked impose fixed payment card fees, irrespective of the amount of the transaction. Moreover, most of the flights offered by the remaining 15% (4 airlines) are in range with the amount suggested.

## 2. Introduction

ECC-Net is a European network consisting of 29 European Consumer Centres present in all EU Member States, as well as Iceland and Norway. The network is co-funded by the European Commission's Directorate General of Health & Consumers, the EU Member States, and Iceland and Norway.

ECC-Net provides free information and advice on consumer legislation and assistance to consumers in the resolution of cross-border complaints and disputes. It also runs consumer awareness-raising campaigns and engages in the promotion of fair and efficient dispute-resolution mechanisms in Europe with a view to increase consumer confidence in the internal market without compromising consumers' health, safety and economic interests.

One of ECC-Net's specific objectives is the collection and analysis of information on consumer cases for statistical and policy-making purposes. This includes empirical research projects on cross-border consumer issues, as well as raising and responding to consumer policy issues, both nationally and at EU level.

### 2.1 Study context

Significant progress has been made in recent years towards improving price transparency in the air travel sector, although this has been accompanied by an increase of unbundled products, e.g. tickets are sold at a basic price and then a series of add-on services are offered, such as checked luggage, seat selection or on-board meals. Information sharing through the internet facilitates the proliferation of *à la carte* services, which may be beneficial for both consumers and industry but it has been observed that such cost structures may also include certain "additional services" which add little or no benefit at a cost. These "additional services" may not always be avoidable and the relevant information may not always be available or sufficiently transparent. Payment card fees are certainly an issue where there is room for improvement in most cases.

Selecting a currency during the booking process may also be an option but it has been observed that it is not always clear if such an option entails additional costs. Likewise, it appears that the currency exchange rates used by certain airlines are well above market rates. The lack of a uniform approach by airlines and the wide disparity in the fees levied and the degree of transparency warrants further research.

Whilst there are many instances in which the booking is completed through intermediaries, it has been preferred for the purposes of this study to first examine those airlines which sell tickets directly through their own websites.

#### 2.1.1. Currency-related fees

According to the definition of 'air fares' in Regulation [EC] No. 1008/2008 on air services, these are "the prices expressed in euro or in local currency to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services". Whilst most airlines display their airfares in the currency of the country of departure, practices vary from airline to airline. Some do not allow changes in currency whilst others provide for different options.

Multicurrency pricing allows customers to view prices and pay in one of the available currencies but the cost implications are not always clear. Dynamic currency conversion (DCC) converts the currency indicated during the booking process to the customer's account's currency when making payment. DCC provides customers with an exchange rate at point of sale instead of allowing the bank or the card issuer to make the currency conversion. The calculation of currency exchange is not computed by the payment card issuer but by the airline, through an intermediary, who can set the exchange rate, typically well above market rates.

It should also be noted that the foreign exchange market (forex or FX) determines the relative values of different currencies. Whilst the interbank market dominates this arena, central banks also play an important role. Forex fixing, for instance, is the daily monetary exchange rate fixed by the central banks and is used as a trend indicator. The European Central Bank's Euro foreign exchange reference rates, as well as Visa's and Mastercard's exchange rates were consulted during the check to make the necessary comparisons<sup>8</sup>.

### 2.1.2. Payment card fees

Payment card fees, where levied, vary from airline to airline and generally depend on the type of card used, although this is not always the case. Most airlines levying payment card fees impose a flat fee per booking, or even per passenger and flight sector, whilst others charge a percentage of the value of the transaction.

It has been observed that there are instances where there is no available option to escape these additional costs or the availability and/or convenience of free options are limited. Furthermore, the fees levied typically exceed the costs that airlines effectively incur when processing payments, as explained later. As a result, instead of simply defraying the costs of processing payments, many airlines inflate the final price via payment card fees instead of factoring processing costs into their fares. This practice may confuse and even mislead consumers, as it reduces transparency and their capability to compare the final price between airlines.

The CPC Report on Airlines' Taxes, Fees, Charges and Surcharges (November 2009)<sup>9</sup> indicates that *including operational costs in a separate charge also makes the cost of flying seem lower and the tickets seem cheaper for the consumer. This may give airlines with high supplementary charges an unfair competitive advantage.*

The Report concludes in section 7.2.1 that certain *services are in fact unavoidable and consequently must be correctly specified and included in the total price pursuant to Regulation 1008/2008 Article 23*, indicating that *if all methods of payment available to the consumer require the payment of an additional fee – for example a fee for using a credit card to pay for an air fare – the fee is not unavoidable and the cheapest option must be included in the air fare at all times.* The Report also recommends in section 7.3.2 *simplifying and standardising the price information provided to passengers to increase price transparency, contribute to fair competition, and reduce airlines administration costs by simplifying complex price structures.*

Airlines may argue that their payment card fees –otherwise referred to as handling fees or booking fees– include various operational costs (such as fraud management, currency management and overall administration) and not only the costs incurred as a result of the percentage deducted by the acquiring bank, which is typically made up of interchange fees (what the acquiring bank processing the transaction pays to the card companies) and the margin which is usually negotiated with the acquiring bank. It is however hard to satisfactorily justify why these other operational costs are not factored into airfares instead of charging them separately, given that payment cards fees further hinder price transparency, as consumers are generally unaware of the amounts charged to merchants for their use of payment cards and it is difficult to compare payment card fees between airlines.

Whilst interchange fee agreements remain a contentious issue which is being investigated by national authorities and the European Commission<sup>10</sup>, it is worth noting that Visa and Mastercard interchange fees are cost-based and much lower than what most airlines charge to consumers.

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<sup>8</sup> Daily rates were checked on [www.ecb.int/stats/exchange/eurofxref/html/index.en.html](http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html),

<sup>9</sup> Report available at [http://ec.europa.eu/consumers/enforcement/docs/airline\\_charges\\_report.pdf](http://ec.europa.eu/consumers/enforcement/docs/airline_charges_report.pdf)

<sup>10</sup> Inter alia, summary of Commission Decision in cases COMP/34.579, COMP/36.518 and COMP/38.580:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:264:0008:0011:EN:PDF>

Commission Decision in case COMP/39.398:

[http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39398/39398\\_6183\\_6.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_6183_6.pdf)

The French Competition Authority market-tests multilateral interchange fees:

[http://ec.europa.eu/competition/ec/brief/02\\_2011/fr\\_mif.pdf](http://ec.europa.eu/competition/ec/brief/02_2011/fr_mif.pdf)

The Polish Court of Appeals overrules judgment of the Court of Competition and Consumer Protection in interchange fees case:

[http://ec.europa.eu/competition/ec/brief/03\\_2010/pl\\_interchange.pdf](http://ec.europa.eu/competition/ec/brief/03_2010/pl_interchange.pdf)

## 2.2 Legal basis

Under **Directive 2005/29/EC on unfair commercial practices**<sup>11</sup>, a commercial practice is deemed to be misleading if the trader omits or conceals material information (e.g. the price or the manner in which the price is calculated) or provides material information in a manner that is unclear, unintelligible, ambiguous or untimely, or fails to identify the commercial intent of the practice, and such practice would be likely to cause the average consumer, in the context, to make a transactional decision that the average consumer would not otherwise make. In the context of online booking of flight tickets, it could therefore be argued that it is contrary to Community legislation to charge a higher amount on the basis of currency exchange rates if the consumer is not adequately informed about the cost implications of selecting (or not selecting) a different currency. Omitting relevant information regarding payment cards fees at the beginning of the booking could also be deemed unfair.

**Directive 93/13/EEC on unfair terms in consumer contracts**<sup>12</sup> states that a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. This includes terms which have the object or effect of irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract.

**Regulation [EC] No. 1008/2008 on air services**<sup>13</sup> recognises, without prejudice to the provisions regarding public service obligations, the right of Community air carriers (i.e. air carriers with a valid operating licence granted by a competent licensing authority of a Member State) to freely set air fares for intra-Community air services, provided that such air fares include the applicable conditions when offered or published in any form, including on the internet, and that the final price to be paid is indicated at all times, specifying the amount of air fare, applicable taxes, airport charges and other charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an 'opt-in' basis.

Therefore, it is contrary to Community legislation to add price supplements that are not communicated in a clear, transparent and unambiguous way at the start of any booking process. Such price supplements, if any, cannot be imposed on an 'opt-out' basis.

The Regulation also states that access to air fares available to the general public for air services from an airport located in the territory of a Member State, shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place of establishment of the air carrier's agent or other ticket seller within the Community. The availability of the payment card/s offered as 'free of charge' may have an impact on compliance.

If currency exchange fees are applied, these should bear relationship with the actual costs resulting from providing the additional service. Otherwise, it could arguably amount to unjustified discrimination on grounds of nationality or place of residence, especially if the provision in Regulation [EC] No. 1008/2008 is assessed in conjunction with the new **Directive 2011/83/EU on consumer rights**<sup>14</sup>, which prohibits fees that exceed the cost borne by the [airline] for the use of such means.

**Directive 2007/64/EC on payment services**<sup>15</sup> will also be considered in relation to currency transactions, the right to impose payment-related fees on consumers and the relationship between the fees imposed and the actual cost incurred by the airline.

Section 5 (Concluding remarks and recommendations) analyses in detail the specific provisions of the above mentioned legislation, having regard to the findings in section 4.2 (Summary of the results).

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<sup>11</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:EN:PDF>

<sup>12</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0013:en:pdf>

<sup>13</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:EN:PDF>

<sup>14</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

<sup>15</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:0036:EN:PDF>

### 3. Case studies

Although ECC-Net is certainly in a unique position to document consumer complaints, the subject matter of this study may well be a problem area which goes unreported, due to the relatively small amounts involved or simply because consumers do not always notice certain commercial practices.

In fact, even excluding complaints under the Montreal Convention (1999) for the Unification of Certain Rules for International Carriage by Air and Regulation [EC] No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, all ECCs consulted bar one noted that less than 5% of any other air travel-related complaints lodged with their offices involved disputes over currency conversions and payment card fees.

The only office registering more than 5% of such complaints reported less than 50 queries in the previous two years in relation to currency conversions. As regards complaints involving payment card fees, it was noted that these complaints were more frequent when these fees were first introduced, yet at present –even if the amounts have increased– complaints are less frequent, probably due to the fact that fees are more transparent and widespread across the sector. It could also be argued that consumers are more likely to complain when something goes wrong (e.g. flight cancellation or lost luggage) and the economic loss is higher than in relation to commercial practices or terms and conditions where the economic loss may be minimal on an individual basis, if at all perceived. Further information in this regard is provided in section 5 (Concluding remarks and recommendations).

In any case, we have included in this section four case studies for illustration purposes. Nevertheless, it should be stressed that this study primarily uses qualitative research as method of inquiry in order to gain an in-depth understanding of the subject matter, given that most information can be obtained from the airlines' websites during the booking process or in the terms and conditions, even if there are instances where the information may not always be easily accessible.

#### SUMMARY OF A COMPLAINT IN RELATION TO CURRENCY FEES (1)

A Hungarian consumer bought a return flight from Bratislava (Slovakia) to Trapani (Italy). The price was displayed in euro (351.44 EUR) at all times during the booking process. However, since the currency of the account attached to the consumer's Mastercard was Hungarian forint (HUF) and the airline in question operates a Dynamic Currency Conversion (DCC) scheme, the transaction was completed in HUF.

The consumer did not notice that by simply entering his credit card details this action triggered a change in the currency. The airline charged him 101,710.27 HUF, i.e. **8.21%** above the applicable Mastercard exchange rate on that day.

Having reviewed the booking process, it was observed that the original amount expressed in EUR remained after entering the credit card details but also an amount in HUF popped, in small characters and in the middle of the webpage. A link was also prompted for more information. In order to access that information it was necessary to click on the link so it was then possible to see the exchange rate offered by the airline and the possibility of opting out in order to be charged in EUR instead of HUF. The airline also informed that by opting out, the exchange rate was not guaranteed and that this could result in a significantly higher cost. Despite this information, a variation of 8.21% from one day to another is hardly to be expected. In fact, the consumer would have been better off paying in EUR, allowing his bank to apply the exchange rate and even a conversion fee on top in order to charge the resulting amount in HUF. Instead, assuming that the bank would have applied a 2% currency conversion fee, the consumer ended up **21.82 EUR out of pocket** as a result of the DCC applied by the airline.

It should also be noted that after closing the window prompted when clicking on the link provided, the said link was no longer available in the payment page, so that the information in question cannot be double checked.

When the consumer complained to the airline, the latter's response simply referred to their terms and conditions, stating that passengers who pay for their flights with a card billed in a currency other than the currency of the country of departure are charged in the currency attached to the card, inclusive of a 'foreign user' charge. No explanation of the meaning of this 'foreign user' charge was given. The terms and conditions do not elaborate further and simply indicate that it is possible to check the actual amount to be billed prior to payment.

## SUMMARY OF A COMPLAINT IN RELATION TO CURRENCY FEES (2)

An Irish consumer booked a return flight from Belfast to Palma de Mallorca. The price was displayed in British pounds (357.41 GBP). However, since the currency of the account attached to the consumer's Visa card was in euro (EUR) and the airline in question operates a Dynamic Currency Conversion (DCC) scheme, the transaction was completed in EUR.

The consumer did not notice that by simply entering his credit card details this action triggered a change in the currency. The airline charged him 452.98 EUR, i.e. **11.29%** above the applicable Visa exchange rate on that day.

According to the consumer, he did not select an option to be charged in EUR and even if he inadvertently did, he would still find this to be "gross overcharging" on the [airline's] part.

Having reviewed the booking process, it was observed that it was possible to change the currency during the booking process. Most likely, the consumer indicated to pay in EUR at that stage, so that the amount payable was displayed both in GBP and EUR. Whilst the amount in EUR was displayed on screen, there was no information regarding the exchange rate applied by the airline. The terms and conditions simply state that fares, taxes and charges are "payable in the currency in which they are published".

The consumer would have been better off paying in GBP, allowing his bank to apply their 1.75% exchange rate fee on top of the applicable exchange rate. Instead, the consumer ended up **38.85 EUR out of pocket** as a result of the currency conversion applied by the airline.

UK ECC contacted the airline in question but the latter simply argued that the consumer selected to pay in EUR, so that the currency was changed "at the exchange rate [the airline] was using on that day" and that the full cost breakdown box "had displayed this information clearly before [the consumer] completed the booking process". No refund was issued.

## TRANSCRIPT OF A COMPLAINT IN RELATION TO PAYMENT CARD FEES (1)

"I am making a complaint against [name of the airline]. Yesterday I booked tickets online. I went through the process of choosing dates of travel, baggage and seating. It was then time to pay so I came to the page where I fill out my credit card details. In clear bold writing I am told the total cost of flights and charges comes to 202 euro. I continue to fill out the credit card details and press the pay now button. I later realise on the confirmation e-mail that I have been charged 230 euro. I go back to [name of the airline's] website and go through the process of booking again to see how I missed this extra cost.

It is then I notice on the same page that I fill out the credit card details, written in tiny font and shaded in a box to the right of the credit card form the additional cost.

The positioning and hidden nature of this cost is incredibly deceitful. It is purposefully designed to not be clearly visible. Regardless of the fact that I was charged an absurd **28 euro** for using my credit card, which in itself cannot be justified, the way in which [name of the airline] has gone about making the extra cost very difficult to see is infuriating. I was left with the sick feeling of having been ripped off.

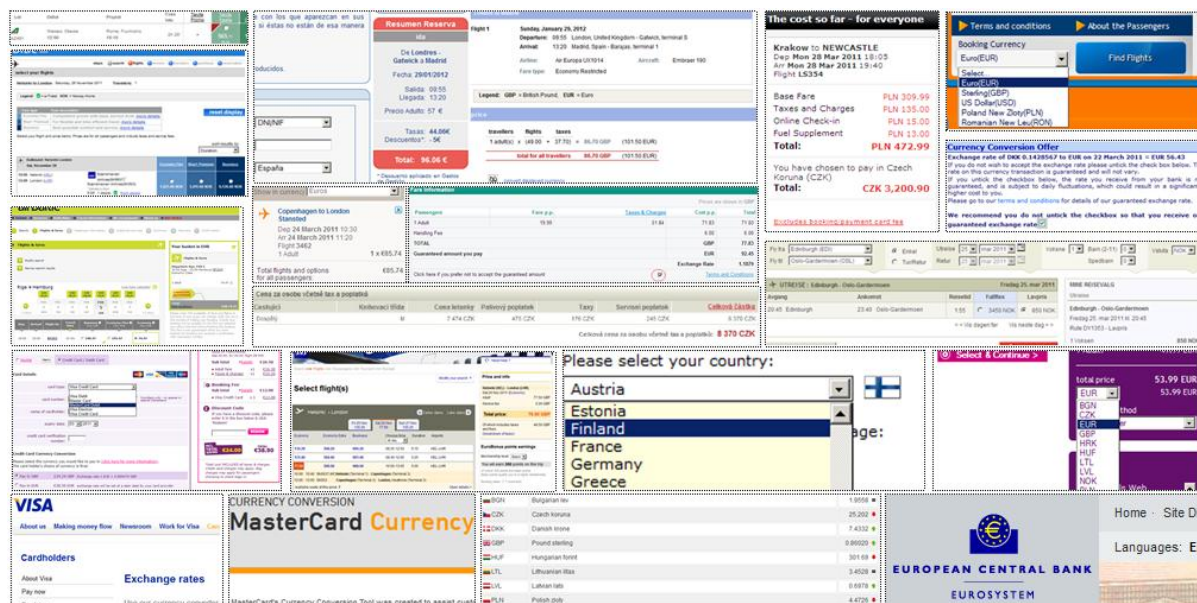
If I had known I was being charged this extra cost, I would have used another airline. It is unacceptable that this charge is not clearly visible, so people know the final cost."

## TRANSCRIPT OF A COMPLAINT IN RELATION TO PAYMENT CARD FEES (2)

"I am just interested to know why airlines can get away with charging an extra **48 euro** for buying 4 return tickets. They only give one other option. The only card that does not incur a charge is a visa electron card which is largely unavailable in this country. Even other debit cards will incur the same charge. "

## 4. Data aggregation and analysis

The following section intends to express, in a summary form, the information gathered in relation to currency and payment card fees, with a view to facilitate its analysis. Participating ECCs provided detailed information in the form of screenshots which enabled the Working Group to assess the different currency and payment options presented by each airline.



### 4.1 Information sources

The main source of data for this study was obtained from the websites of the airlines checked. Particular attention was paid to the possibility of selecting the customer's country before starting the booking process, as this could determine, in certain cases, the currency of the booking.

In those cases where it was observed that it was possible to pay with more than one currency for the same flight, screenshots showing the different values for the different routes and currencies were taken in order to compare those values, by applying the relevant exchange rates. The European Central Bank's Euro foreign exchange reference rates, as well as Visa's and Mastercard's exchange rates were consulted during the check to make the comparisons. Although the exchange rates consulted rarely present significant differences between them –as explained later–, rates were averaged for the purpose of comparing the resulting figure with the rate/prices offered by airlines, which in some cases presented significant departures from market rates.

As regards payment cards, special attention was paid to the stage and the manner in which the relevant information is displayed during the booking process. The actual costs for using cards which are not classed as free of charge and the manner in which the fee is calculated were also considered. Screenshots were again taken to support the Working Group's findings.

Airlines not offering the possibility of paying in different currencies or imposing any payment card fees have been excluded from the relevant tables.

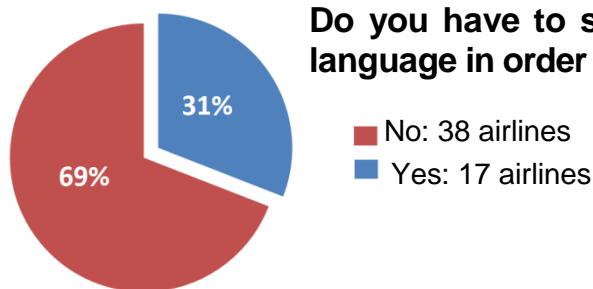
Although numerical results are based on factual findings, there were instances where it was not possible to contrast the information as no actual booking of flights took place. This proved to be a significant limitation when assessing whether a card issued in a certain country would be accepted to pay for a flight when a different country was selected and also in the context of dynamic currency conversion (DCC).

The information contained in the airline's terms and conditions was also checked to assess the quality of the information in relation to currency and payment card fees, where applicable.

The completed questionnaires previously checked by the Working Group were returned by participating ECCs, together with the screenshots taken. A summary of the information gathered and its analysis is presented in the next subsection of this study.

## 4.2 Summary of the results

As illustrated by the screenshots collated below, many airlines request customers to indicate their country and/or language before allowing access to the booking site. This study has thus considered this aspect as the starting point of research and formulated the following questions.



**Do you have to select a country or a language in order to access the site?**

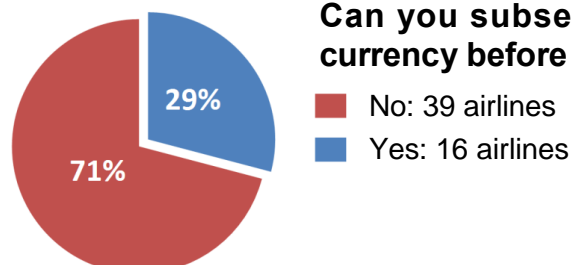
- No: 38 airlines
- Yes: 17 airlines

The answer to this question determines whether to conduct further checks changing the country or language selected in order to assess if this has an impact on the price or even the possibility of buying a ticket.

In any case, it was observed that 10 out of the 17 airlines requiring customers to select a country in order to access the site, display prices in different currencies depending on the country selected before accessing the booking site.

It is also worth mentioning –even if the issue exceeds the scope of this study– that a number of airlines charge different ‘service fees’, ‘passenger fees’ or ‘sales fees’ depending on the country or language (or local website, country of departure or residence) selected, resulting in different prices for the same flights. This practice may be in breach of Article 23 of Regulation [EC] No. 1008/2008. It should also be noted that during the preparation of this study, a judgment given by the Spanish Supreme Court (No. 886/2011, of 12<sup>th</sup> December 2011) ruled that it is an unfair contract term to impose additional charges in the form of service fees for issuing a flight ticket where the carrier is required to issue the ticket.

Out of the 38 airlines which do not require customers to indicate their country or language to access the booking site, 16 allow customers to change language but this is not a prerequisite to proceed, nor seems to have any impact on pricing.



**Can you subsequently change the currency before starting the booking?**

- No: 39 airlines
- Yes: 16 airlines

As indicated before, 10 airlines requiring customers to select their country before accessing the booking site proceed to display prices in the currency of the country selected, although not all countries/currencies may be available. All these 10 airlines allow customers the opportunity to change country again upon accessing the booking site. A further 6 airlines display prices in certain currencies if the relevant country/language/flag is selected. Only one of the above 16 airlines explicitly refers to currency.

Accordingly, even if changing currency before starting the booking process may be possible in a significant amount of cases, this option is rarely highlighted at this stage.

Airline	Do you have to select a country or a language in order to access the site?		Can you subsequently change the currency before starting the booking?	
	Yes	No	Yes	No
1		x		x
2		x		x
3	x		x	
4		x		x
5	x		x	
6		x		x
7		x		x
8		x		x
9		x		x
10	x		x	
11		x	x	
12		x	x	
13		x		x
14	x		x	
15		x		x
16	x			x
17	x		x	
18	x		x	
19		x		x
20		x		x
21	x			x
22		x		x
23		x		x
24		x		x
25	x		x	
26		x		x
27		x		x
28		x		x
29	x		x	
30		x	x	
31	x		x	
32	x			x
33		x		x
34	x		x	
35		x		x
36	x			x
37	x			x
38		x		x
39		x		x
40	x			x
41		x		x
42		x		x
43		x		x
44		x		x
45		x		x
46	x			x
47		x		x
48		x		x
49		x		x
50		x		x
51		x	x	
52		x		x
53		x	x	
54		x	x	
55		x		x

**If you cannot select the currency before initiating the booking, please check through the different technical steps during the booking process to see whether it is possible to change currency at a later stage**

Out of the remaining 39 airlines, 12 of them allow currency changes during the booking process: 6 of them after selecting the route in question and the other 6 just before paying.

Accordingly, if these 12 airlines are added to the 16 referred in question 2, it appears that just above half of the 55 airlines checked include the possibility of billing customers in a different currency, as indicated in the following graphic:



**If you cannot select the currency before initiating the booking, please check through the different technical steps during the booking process to see whether it is possible to change currency at a later stage**

Airline	It is not possible to change the currency in which prices are displayed or the currency in which the consumer's card will be charged.	It is possible to change currency in which prices are displayed or the currency in which the consumer's card will be charged <u>after selecting flights but before reaching the payment page</u>	It is possible to change currency <u>just before completing the booking (on the payment page)</u>
1	X		
2	X		
4	X		
6	X		
7	X		
8			X
9	X		
13	X		
15	X		
16		X	
19		X	
20	X		
21	X		
22	X		
23	X		
24	X		
26	X		
27	X		
28		X	
32			X
33			X
35	X		
36	X		
37	X		
38		X	
39			X
40	X		
41		X	
42			X
43			X
44	X		
45	X		
46		X	
47	X		
48	X		
49	X		
50	X		
52	X		
55	X		

Based on the information gathered from the relevant websites, it was observed that all the airlines that may allow the possibility of paying in a different currency have some information about currency available on their websites. However, research outcomes support the view that most of these airlines –in line with IATA’s recommended practice 1724 on conditions of carriage– simply advise that fares, taxes, fees and charges are payable in the currency of the country in which the ticket is issued, unless another currency is indicated by the airline before the time payment is made. It was further noted that only 4 out of the 10 airlines that may impose higher currency-related fees<sup>16</sup> make reference to the possibility of attracting currency-related fees and, even in these cases, the quality of the information in terms of content, timing and prominence would leave room for improvement.

One of these airlines states in the terms and conditions that passengers holding payment cards in a currency other than the currency in force in the country of departure shall make the payment in the currency for which the card is issued and shall also pay an additional charge. It then explains how the airline’s “internal exchange rate” is calculated.

Another airline states that if other currencies are accepted they will be “authorised to set the currency exchange rate taking into account the currency value on international markets and –if applicable– other additional objective criteria, such as handling fees.” There is no explanation, however, as to the calculation of such handling fees and it is not clear when they apply.

Another airline indicates, also in the terms and conditions, that passengers who pay for their flights with a card billed in a currency other than the currency of the country of departure will be charged in the currency of issue of the credit card, inclusive of a “foreign user” charge, indicating that it is possible to check the actual amount to be billed prior to payment being made. However, there is no reference as to how that “foreign user” charge is applied. The same airline only includes the actual amount to be billed once the payment card number is entered, but not in the “total cost” section –which remains in the currency originally displayed– but in a small font in the middle of the page (which is ostensibly less visible to the eye than the summary information column, where the total cost continues to be displayed in the currency originally indicated). Together with the amount in the small font, a link for more information is prompted. If the link is clicked on, the airline’s exchange rate is displayed in a dialogue box, yet it does not indicate that this rate is well above market rates; on the contrary, the advice given is that by not accepting the rate offered, this “could result in a significantly higher cost to you”. Consumers are urged not to untick the checkbox provided and it should also be noted that this is the only instance to opt-out from the rate offered as, once the dialogue box is closed, the link previously provided on the payment page is no longer available, so it is not possible to review the information again and/or to opt-out/opt-in.

The other airline in question offers information on DCC, explaining that the exchange rate is based on Reuters wholesale exchange rate plus an average margin of 3.5 percent, but also indicates that the resulting rate “may be more competitive than the rate offered by your card provider”.

These findings give rise to concern as the information may be insufficient and, in some cases, untimely and misleading.

The screenshot shows a payment interface with several key sections highlighted:

- 4.3 CURRENCY:** States that fares, taxes, fees and charges are payable in the currency of the country in which the ticket is issued, unless another currency is indicated.
- 4.3 CURRENCY (Detailed):** Explains that the exchange rate is based on the Reuters wholesale exchange rate plus an average margin of 3.5 percent.
- Payment options:** Shows 'Pay in LTL - LTL 254.09' selected, with an exchange rate of 3.4528.
- Dynamic Currency Conversion (DCC):** A section explaining that the facility is known as DCC and is based on the Reuters wholesale exchange rate plus an average margin of 3.5 percent.
- Exchange Rate Table:**

GBP	169.63
EUR	202.32
Exchange Rate	1.1926
- Multi-Currency Processing:** A section asking if the user would like to pay in a different currency.

<sup>16</sup> See the group of 10 airlines that may impose higher currency-related fees in the table of page 20, excepted airline No. 3 for the reason explained in table of page 1.

In order to gain a better understanding of the cost implications which may result from paying in one currency instead of another –where this is possible–, a number of routes were checked, taking note of the price of the same flight in various currencies. Although it would be possible to compare all available currencies against each other, setting aside the currency given by default, participating ECCs were not asked to carry out such a detailed search, having regard to available resources. Instead, only a small number of routes and currencies were checked as this study simply intends to show that the exchange rates offered by certain airlines may be significantly higher than market rates.

### Price variation vis-à-vis payments in EUR when another currency used to pay for the flight

Airline	Currency																			
	GBP		NOK		DKK		SEK		PLN		CZK		HUF		LVL		LTL		RON	
	Avg	Max	Avg	Max	Avg	Max	Avg	Max	Avg	Max	Avg	Max	Avg	Max	Avg	Max	Avg	Max	Avg	Max
3*	Even if in most cases prices are more or less the same, it transpired that in one of the routes checked the price difference of NOK, DKK and SEK against the EUR (approx. 135%) was not due to currency conversions but to other considerations linked to the country selected before starting the booking process																			
5*	0.89%	-0.43%	-	-	-	-	-	-	1.08%	-0.70%	-	-	-	-	-	-	-	-	-	-
8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.83%	0.83%	-	-	-	-
10	-4.18%	-4.32%	-5.54%	-6.53%	0.99%	1.02%	-2.16%	-2.17%	-	-	-	-	-	-	-	-	-	-	-	-
11	-	-	-0.10%	-0.70%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12	-5.30%	-5.59%	-	-	-	-	-	-	-0.62%	-0.65%	-	-	-	-	-	-	-	-	4.83%	5.07%
14*	-2.58%	-4.48%	-	-	-	-	-0.29%	-0.32%	0.43%	0.77%	-	-	-	-	-	-	-2.77%	-3.07%	-	-
16	-1.76%	-1.77%	-	-	-1.48%	-1.50%	6.15%	6.32%	-	-	-	-	-	-	-	-	-	-	-	-
17	-	-	-	-	0.30%	0.33%	-0.36%	-0.65%	-	-	1.45%	1.91%	-	-	-	-	-	-	-	-
18	-	-	-	-	-	-	-	-	-	-	1.43%	2.02%	0.67%	1.38%	-	-	-	-	-	-
19	-5.14%	-5.23%	-	-	-	-	-	-	-4.46%	-4.53%	1.19%	-0.51%	5.30%	5.70%	-	-	-	-	-	-
25	-1.22%	-1.38%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
29*	-	-	-1.27%	-1.40%	-	-	-0.68%	-0.70%	-0.74%	-0.75%	0.06%	0.08%	-1.00%	-1.62%	-	-	-	-	-	-
30	No European currencies available other than EUR, so no comparison with different currencies will be carried out																			
31	-0.30%	-0.77%	-	-	0.67%	1.53%	-	-	-	-	-	-	-	-	-	-	-	-	-	-
32	Prices displayed in the currency of the country of departure only but Dynamic Currency Conversion may apply, resulting in price increases of 4.38% on average																			
33	Prices displayed in the currency of the country of departure only but Dynamic Currency Conversion may apply, resulting in price increases of 6.08% on average																			
34*	-0.09%	-0.10%	-0.09%	-0.10%	-	-	0.67%	1.53%	-	-	0.12%	0.21%	-	-	-	-	-	-	-	-
38	Prices in the currency of the country of departure are cheaper than those where the customer selects another currency. In this latter case, the price increases 5.53% on average																			
39	Prices in the currency of the country of departure are cheaper than those where the customer selects another currency. In this latter case, the price increases 3.26% on average																			
41	Prices in the currency of the country of departure are cheaper than those where the customer selects another currency. In this latter case, the price increases 10.50% on average																			
42	Prices in the currency of the country of departure are cheaper than those where the customer selects another currency. In this latter case, the price increases 3.40% on average																			
43	Prices in the currency of the country of departure are cheaper than those where the customer selects another currency. In this latter case, the price increases 3.91% on average																			
46	-2.39%	-2.54%	-	-	-1.38%	-1.40%	-	-	1.56%	1.56%	-	-	-	-	-	-	-	-	-	-
51	-1.66%	-1.69%	-0.79%	-0.80%	-	-	-	-	-0.95%	-1.03%	-	-	-	-	-	-	1.68%	1.80%	-	-
53*	-0.02%	-0.02%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
54	-0.29%	-0.60%	-	-	0.01%	-0.29%	1.31%	1.82%	-	-	-	-	-	-	-	-	-	-	-	-
55	4.36%	4.47%	-	-	-	-	3.35%	3.40%	-	-	-	-	-	-	-	-	-	-	-	-

Avg = Average  
Max = Maximum  
In red, negative values

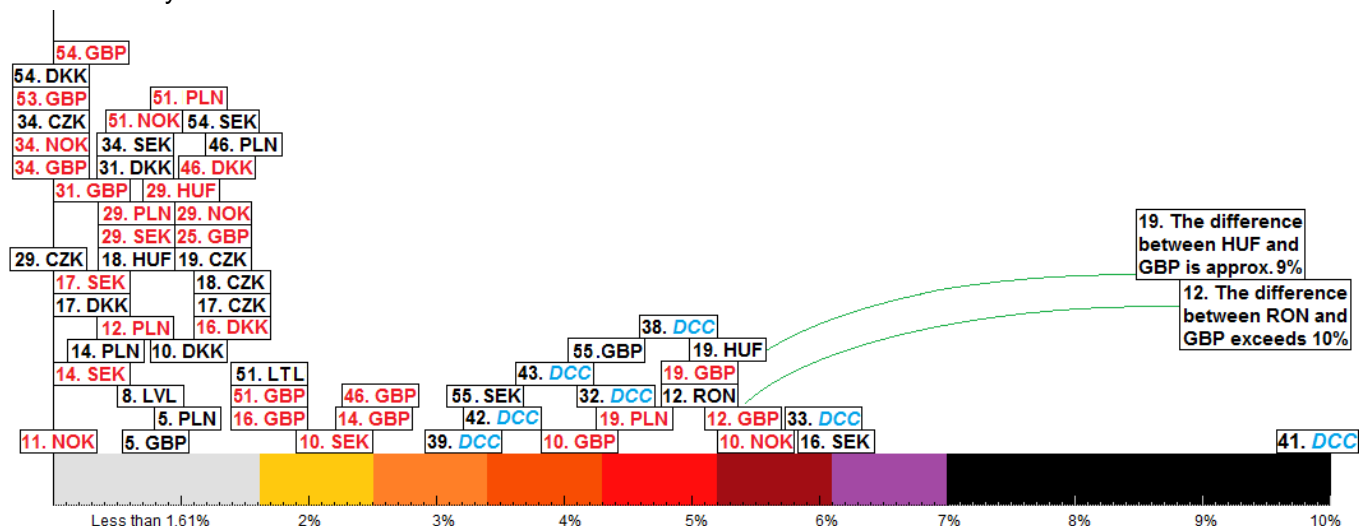
\* In addition to the price increase which may apply as a result of the currency selected, the amounts charged as 'service fee' may vary from country to country

The above table is not intended to precisely state the disparities between currencies or the convenience of using such or such currency instead of another, although it is clear in some cases that making a transaction in a given currency may have a significant impact on the price. The values only reflect the data gathered during the days in which the checks were carried out, having regard to a limited number of routes and currencies.

It should also be noted that in most cases –not always though– it is cheaper to buy tickets in the currency of the country of departure. As a result, whilst any advantage in this regard may be neutralised when buying tickets for a flight departing from a country with a different currency, average increases or decreases in the price cannot be considered as absolute values, particularly if only one currency is used for illustration purposes (the EUR in our example).

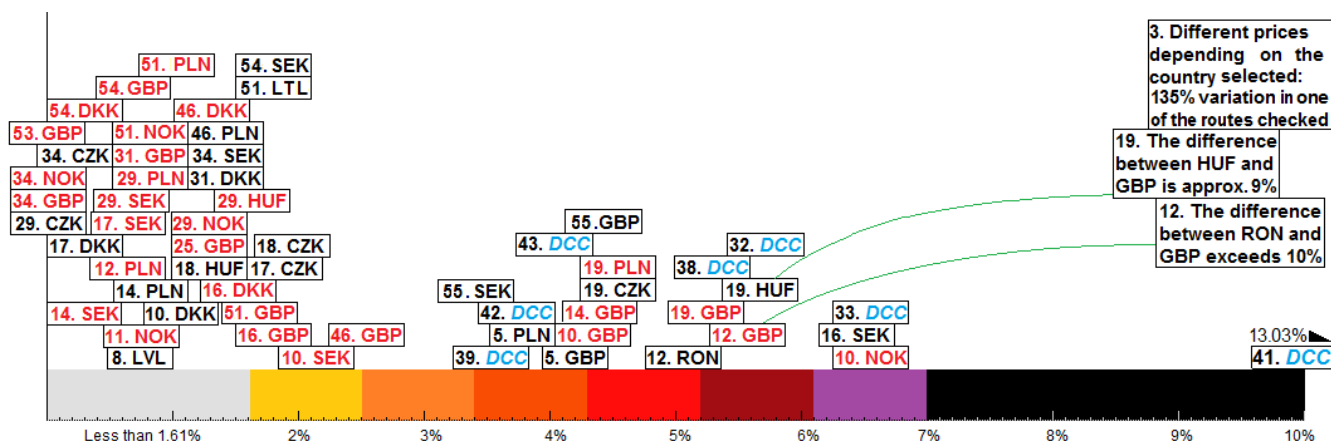
The purpose of the table is, therefore, to simply show in percentage points how prices can increase or decrease as a result of the currency of the transaction. To help with its interpretation, it should be noted that although the exchange rates consulted (ECB, MC and Visa) rarely present significant differences between them –with variations not exceeding 0.50% in most cases– it was observed that, on one occasion, the difference was as great as 1.61%. For these reason, even if results in this study have already been averaged and exchange rates variations are typically lower, it has been preferred to use this threshold, 1.61%, as the figure above which currency variations are deemed to be hardly justifiable.

It bears repeating that these considerations should also be taken on board when observing the following graphics, which are a summary of the table previously presented. It is clear that whilst most of the airlines checked appear not to take advantage of the currency exchanges, other certainly do.



Price difference depending on the currency selected (average values)

In red, negative values. In blue, Dynamic Currency Conversion (DCC)



Price difference depending on the currency selected (maximum values observed)

In red, negative values. In blue, Dynamic Currency Conversion (DCC)

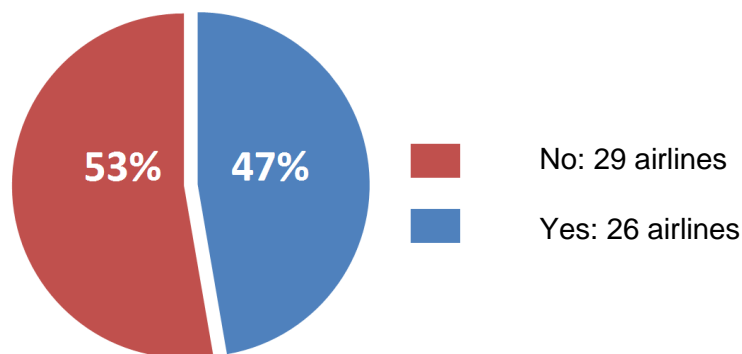
These graphics suggest that 19 out of the 55 airlines considered in this study or, in other words, about a third of the sample, may charge customers more than 1.61% above market exchange rates for allowing them to pay in another currency (or for simply having indicated such or such country at the beginning of the booking process, or having entered such or such card details just before completing the transaction). Having regard to that group of airlines, approximately 50% may be charging customers in excess of 5% above market exchange for such transactions. In one case, the price increase was as high as 13.03% for simply selecting a different currency to complete the transaction.

This practice is particularly worrying not only in terms of consumer economic detriment but also in terms of the quality of the information provided by the airlines concerned. Having checked the relevant terms and conditions and the information during the booking process, it is rarely indicated that transactions involving a different currency may attract fees well above what consumers would otherwise be charged (if at all) by their banks and card suppliers. In some cases, consumers are even lured into thinking that they are getting a better deal by paying in their own currency through the airline’s website instead of allowing their banks to convert the amount in the currency offered by default to the currency of the consumer’s account, as they are “informed” that their bank may charge a different, higher, amount and “advising” consumers that banks’ rates are not “guaranteed” as they are subject to fluctuations. Even if such statements may be factually correct, it could be argued that the overall presentation may be misleading pursuant to Article 6(1)(d) of Directive 2005/29/EC on unfair commercial practices, which refers to “the price or the manner in which the price is calculated, or the existence of a specific price advantage”.

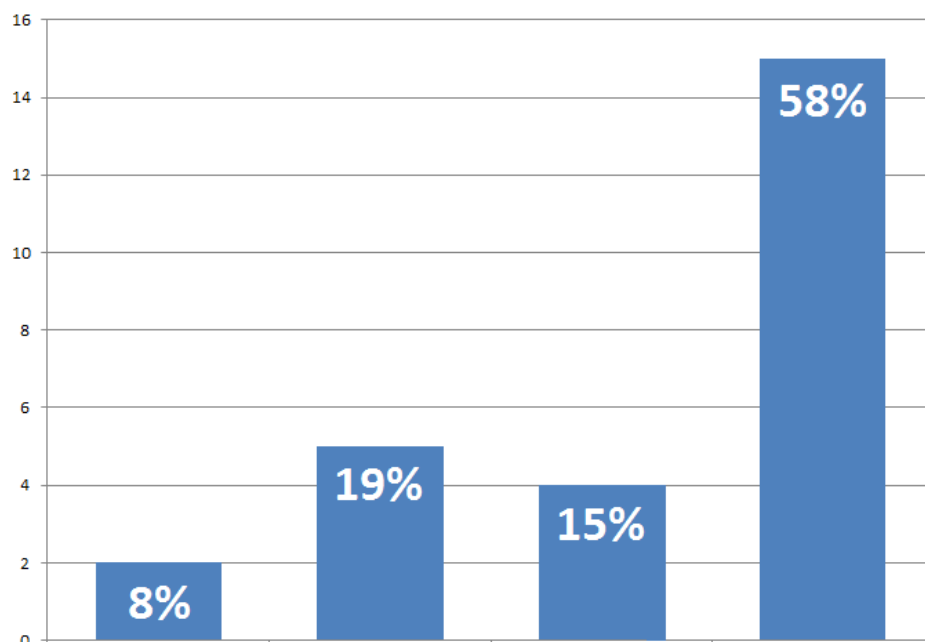
In relation to the above, it should be noted that based on the data provided by participating ECCs and the banks consulted, the currency conversion fee imposed by certain banks and card issuers for converting one foreign currency to the currency of the account attached to the consumer's card is typically in the region of 1.50-1.75%. These fees of course vary from card to card and from bank to bank, but are indicative, for the purposes of comparing charges (expressed as a percentage), of what consumers may typically expect to pay for buying products in a currency other than their own. Please note that the indicated amount is, coincidentally, close to the figure of 1.61% previously referred to.

The Working Group also observed that certain airlines' branded-cards significantly exceed the currency conversion charges imposed by most banks and card issuers. Due to time constraints, it was not possible to further consider these branded-cards but proper search and scrutiny in the near future is to be welcomed. In any case, the Working Group did consider the fees imposed by a significant amount of airlines for simply processing payments by consumers, as illustrated below;

### Is there any payment card fee imposed by the airline?



### If yes, please indicate at what stage the amount payable is made available to the customer:



Amount payable displayed at the very beginning of the booking process (step1) together with the airfare and the taxes & charges:

2 airlines

Amount payable displayed at the very beginning of the booking process (step1) but separated from the airfare and the taxes & charges:

5 airlines

Amount payable displayed in the middle of the booking process (not at the very beginning but before reaching the payment page):

4 airlines

Amount payable displayed at the very end of the booking process, even if –but not necessarily– the fee is referred to in other sections of the site, e.g. T&C:

15 airlines

## Please check whether the amount charge is...

- **Cost-based:** 2 airlines
- **Cost-based plus flat fee per booking:** 2 airlines
- **Fixed fee per booking:** 7 airlines
- **Fixed fee per passenger:** 7 airlines
- **Fixed fee per flight segment:** 1 airlines
- **Fixed fee per passenger and flight segment:** 7 airlines

## Supplementary information: the actual cost of paying using a card which is not listed as free of charge

In order to gain a better understanding of the amounts that consumers may end up *paying to pay* when using a payment card which is not classed as free of charge, the 26 airlines imposing payment card fees have been checked further, taking note of the sum payable if the following flights were to be purchased:

Cost of payment card fee for a flight of €100 per seat				
Airline	1 passenger one-way	1 passenger return	2 passengers one-way	2 passengers return
1	€7.50		€15.00	
2	€3.50	€7.00	€7.00	€14.00
6	€10.00		€20.00	
8	€5.00	€10.00	€10.00	€20.00
10	€5.00			
12	€8.00	€16.00	€16.00	€32.00
19	€8.00	€16.00	€16.00	€32.00
29	€5.25		€10.50	
32	€6.00	€12.00	€12.00	€24.00
33	€6.00	€12.00	€12.00	€24.00
34	€7.50 to €9.50		€15.00 to €19.00	
35	€6.00	€6.00	€12.00	€12.00
37	€5.25		€10.50	
38	€16.00		€20.00	
39	€8.00	€14.00	€14.00	€28.00
40	€5.25		€10.50	
41	€10.85	€14.66	€14.66	€29.32
42	€12.00	€12.00	€12.00	€12.00
43	€4.75	€9.50	€9.50	€19.00
44	€5.75	€5.75	€5.75	€10.00
47	€8.00			
48	€8.00			
50	€6			
53	€10.00	€20.00	€10.00	€20.00
54	€5.00	€10.00	€10.00	€20.00
55	€9.50			
<b>Average</b>	<b>€7.43</b>	<b>€10.58</b>	<b>€11.42</b>	<b>€16.78</b>

It should also be pointed out that –for the purposes of this check– it was almost irrelevant whether the cost of each seat was €100 or a higher or lesser amount, given that 85% of the airlines checked impose fixed payment card fees, irrespective of the amount of the transaction. Moreover, most of the flights offered by the remaining 15% (4 airlines) are in range with the amount suggested.

According to the information gathered, the cost for an individual consumer using a payment card not classed as free of charge to book a one-way flight with that group of airlines would be €7.43 on average. The same consumer booking a return flight would pay, if the same group is considered, €10.58. The cost of paying for a return flight for two people, to give another example, would be €16.78. None of these three figures seem to bear a reasonable relationship to the costs actually incurred by the airlines when processing payments but it should also be noted that the most expensive airlines in these three categories impose fees raising to €16, €20 and €32, respectively, i.e. almost twice the average.

It is worth noting that taking into account the operating revenue of UK airlines in 2009 (£17.8bn or approx. €20.72bn), the Office of Fair Trading estimated that British consumers spent around £300 million (approx. €350 million) on payment surcharges in 2010 in the airline sector alone<sup>17</sup>.

<sup>17</sup> Source: [www.offt.gov.uk/shared\\_offt/super-complaints/OFT1349resp.pdf](http://www.offt.gov.uk/shared_offt/super-complaints/OFT1349resp.pdf)

## 5. Concluding remarks and recommendations

The marketing of flight tickets and the structuring of the point of sale are understandably designed to influence consumers' behaviour. Within mainstream economics, consumers are modelled as acting in a rational way but, in practice, it is clear that consumers' behaviour is not always rational. In fact, behavioural, cognitive and social biases may lead to outcomes which are not optimal for consumers. According to the study "Pricing practices: their effects on consumer behaviour and welfare" (2010)<sup>18</sup>, *partitioning prices into a base price and surcharge can significantly increase consumers perceived value and purchase intentions for products, and can lower search intentions compared to combined pricing*. In addition to the difficulties in adjusting from the initial (lower) price, consumers seem to value a product more once they have already made the decision to purchase due to the 'endowment effect'<sup>19</sup>, the inertia introduced into the purchasing process or just because of the 'loss aversion'<sup>20</sup> associated with the time and effort committed to search for the flights before being hit with extra charges.

Consequently, even if accepted that certain commercial practices are capable of having such an impact on the average consumer as to influence transactional decisions, it is essential to establish whether the practices that are likely to distort consumers' behaviour are fair or not, depending on whether the consumer's ability to make an informed decision is impaired. In the context of additional fees that may be incurred as a result of paying in one currency or another or for using one payment card of another, we need therefore to refer to factors such as veracity, transparency and timing of the communication of the existence of additional price increments and how this affects the total price to be paid. The level of choice in order to avoid price increments should also be considered.

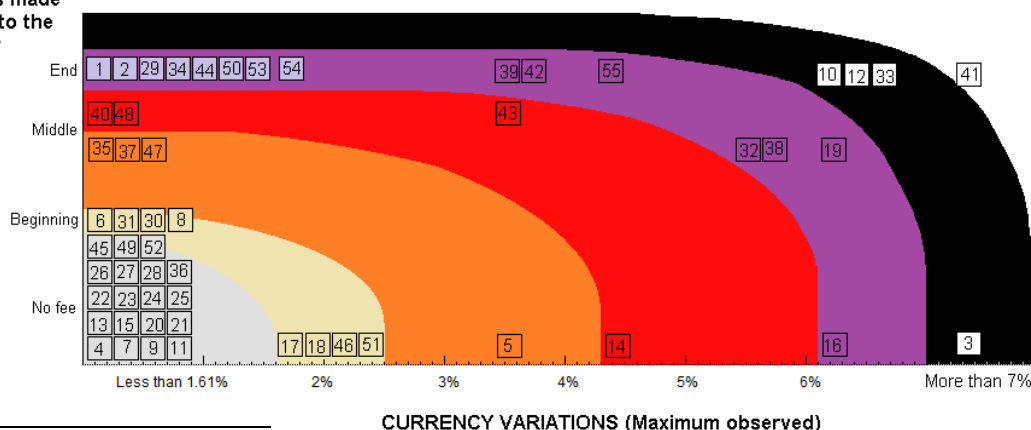
Having regard to the above, we conclude that hidden price increments and drip pricing tactics where consumers can hardly avoid price increments revealed late in the booking process should be deemed to be unfair insofar as this practice may lead consumers to spend more money than intended and makes it difficult to compare prices with other airlines. Such practices are a gateway to consumer detriment and damage consumer confidence and fair competition.

This study shows that consumers may unknowingly pay different amounts when paying for a flight with certain airlines using different currencies, where price increments may be well above market exchange rates. This study also echoes the call for a more fine-grained examination of the choice of payment methods offered to consumers in order to avoid additional price increments, as such a choice is certainly limited in many cases.

Consumers may be dissatisfied with the way they have been treated when such hidden or misleading, opaque and untimely price increments have been applied but their decision as to whether or not to complain may not only be determined by their degree of dissatisfaction but by other factors too, such as their perceived financial and psychological costs and benefits of making a complaint (e.g. economic detriment, opportunity to complain, knowledge of the process, perceived probability of a satisfactory outcome, personal characteristics and circumstances). There are also instances where price increments are not spotted by consumers and, expectedly, the unwary makes no complaint. In any case, as summarised in the table below, this study concludes that there is evidence suggesting that approximately 50% of the airlines checked could improve their level of transparency and compliance with the current legal framework:

### PAYMENT CARD

Stage in which the amount is made available to the customer



<sup>18</sup> Available at [www.ofc.gov.uk/shared\\_ofc/business\\_leaflets/659703/Advertising-of-prices/Pricing-Practices.pdf](http://www.ofc.gov.uk/shared_ofc/business_leaflets/659703/Advertising-of-prices/Pricing-Practices.pdf)

<sup>19</sup> Thaler, R. (1980), *Toward a Positive Theory of Consumer Choice*

<sup>20</sup> Kahneman, D., Knetsch, J., & Thaler, R. (1990), *Experimental Test of the endowment effect and the Coase Theorem*

This study therefore concludes that the current state of play leaves room for improvement, as consumers should be allowed to work out the price of their flights (airfare, taxes and charges) from the beginning of the booking process, without the need of going through the different technical steps of the booking until reaching the payment stage to check the final price. This is clearly spelt out in Article 23(1) of **Regulation [EC] No. 1008/2008 on air services**:

*The final price to be paid shall at all times be indicated and shall include the applicable air fare or air rate as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. /.../ Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an 'opt-in' basis.*

Accordingly, if price supplements are to apply as a result of paying in a different currency, this should not be imposed on an 'opt-out' basis and, in any case, communicated in a clear, transparent and unambiguous way at the start of any booking. This study shows that this is not always the case.

Similarly, if price supplements are to apply as a result of paying using a payment card instead of another, this should be communicated in a clear, transparent and unambiguous way at the start of any booking. As regards foreseeability, the check conducted shows that applicable fees can be calculated in advance as, in most cases, the amount charged by airlines is a fixed fee, i.e. it can easily be factored at the beginning of each booking. As regards unavoidability, the issue is more complex; whilst the use of cost-efficient means of payment benefits both traders, consumers and overall competitiveness, the check carried out suggests that airlines often fail to offer a variety (if any at all) of cost-efficient payment methods which are widely available to consumers, as a free option. Instead, it has been observed that there are many instances in which the airline's choice of free payment method is a card with limited functionality which may not even be available to all consumers. And in these instances, it would appear that the airlines in question are then *set free to set costly* fees if the most common payment methods are used.

Bearing the above in mind, it looks sensible to refer to Article 3(1) of **Directive 1993/13/EEC on unfair contract terms**:

*A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.*

Article 3(3) of the Directive refers to an indicative and non-exhaustive list of the terms which may be regarded as unfair. The list in question, contained in the Annex, includes in its section 1(i) *terms which have the object or effect of irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract.*

Article 6(1) requires Member States to *lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.*

Also in line with the above, Article 7(1) prescribes that the *Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.*

It should be noted that the Directive does not interfere with the essential obligations of the contract, such as the subject matter of the contract or the adequacy of the price, insofar as the terms are in plain, intelligible language. The formulation of a term imposing additional obligations (e.g. increased price) in order to pay for the service is therefore a crucial aspect in assessing the nature of the term. It could also be argued that terms imposing additional obligations, to the detriment of the consumer, in order to pay for the service are not necessarily related to the definition of the main subject matter of the contract nor to the quality/price ratio of the service, in which case the term may be subject to the fairness test, even if formulated in plain, intelligible language, if it is considered that shifting in a one-sided manner on to consumers the airline's cost of fulfilling its own legal obligations without bringing any service in return is deemed to be unfair. Furthermore, it should be noted that according to the ECJ ruling in case C-484/08, the Directive does not preclude national legislation which authorises judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price, even in the case where those terms are drafted in plain, intelligible language.

It bears repeating that even if these fees were deemed to be avoidable and fair, Article 23(1) of Regulation [EC] No. 1008/2008 still requires that *optional price supplements [to] be communicated in a clear, transparent and unambiguous way at the start of any booking process*. According to the check carried out, 73% of the airlines imposing so-called optional payment card-related fees do not indicate the price supplement in a clear, transparent and unambiguous manner at the start of the booking process. As regards currency-related charges, where applicable, consumers are often vaguely informed, if at all, about the price increment that may result from paying in a different currency.

Arguably, the only reason for certain airlines to continue operating in this guise is to conceal the final price in order to render headline prices more appealing, to trigger attraction in consumers, so that additional price supplements are only added once the consumer is already interested in a given flight. In fact, low headline prices are a very powerful hook and once the average consumer has decided to engage with a headline price, the probability is that the consumer will complete the transaction regardless of subsequent fees, as explained before. On the contrary, if all optional and non-optional items were to be indicated at the start of the booking process, headline prices would not be so attractive and/or there would be no reason to present inflated costs for optional items at that stage. There may be marketing considerations to support the current approach but legal considerations are equally important and should under no circumstances be overridden. In fact, in addition to the pieces of legislation previously mentioned, **Directive 2005/29/EC on unfair commercial practices** is eminently relevant; in particular, Article 7 refers to misleading omissions, which are those commercial practices that in the factual context, taking account of all their features and circumstances and the limitations of the communication medium, omit material information that the average consumer needs –such as the arrangements for payment, the price or the manner in which the price is calculated, or the existence of a specific price advantage– to take an informed transactional decision and thereby cause or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. It is also a misleading omission to hide or provide in an unclear, unintelligible, ambiguous or untimely manner the referred material information.

Furthermore, under Article 6, a commercial practice is regarded to be misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to, inter alia, the arrangements for payment, the price or the manner in which the price is calculated, or the existence of a specific price advantage, and in either case causes or is likely to cause the consumer to take a transactional decision that he would not have taken otherwise.

Under Article 5, unfair commercial practices (such as misleading omissions and misleading actions) are prohibited.

Back to Regulation [EC] No. 1008/2008, it should also be pointed out that under its Article 23(2), *access to air fares /.../ available to the general public shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place of establishment of the air carrier's agent or other ticket seller within the Community*. Leaving aside the issue of the seemingly discriminatory 'service fees' and fare differences depending on the country selected, as this is not the subject of this study, it should be noted though that if fares are offered in different currencies, it could be argued that consumers may be discriminated against if the exchange rates applied largely exceed market rates, particularly if the consumer is not given the opportunity to select the currency on an 'opt-in' basis. Discrimination may similarly occur if the payment cards accepted by an airline as its free of charge method are not widely available to consumers as a result of their nationality or place of residence. It has also been observed during the drafting of this study that certain airlines' branded-cards largely exceed market currency exchange rates (shifting information duties vis-à-vis consumers from the airline to the card provider) and are not available to all consumers as a result of their nationality or place of residence. Furthermore, if only branded cards are accepted as the free payment method, competition may be distorted. Due to time constraints, it was not possible to consider this issue in this study but further research is recommended.

**Directive 2007/64/EC on payment services** is also all relevant to the main themes considered in this study. In relation to payment card fees, Article 52.3 is particularly pertinent:

*The payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument. However, Member States may forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.*

The above provision envisages the suppression of the 'no surcharge rule' but allows Member States to forbid or limit the right to request charges, taking into account the need to encourage competition and the use of efficient means of payment. As indicated before, the check carried out suggests that airlines often fail to offer cost-efficient payment methods which are widely available among consumers, as a free option and, as regards the other options, the fees levied by most airlines do not appear to be competitive.

In theory, competition should significantly influence acceptance and surcharging decisions, as explained below:

- An airline that faces competition will be more likely to accept various payment cards.
- A payment card-accepting airline that faces competition will be less likely to levy unreasonable fees on customers.

In practice, the current state of play suggests that (1) the degree of competition in relation to payment cards is not satisfactory, or (2) competition over headline prices is so fierce that if certain competitors manage to cut their headline prices by hiding unavoidable fees, other players will follow suit in absence of adequate corrective measures taken by the relevant enforcement authorities. As a result, many airlines extract as much consumer surplus as possible at the payment stage, while airlines refraining from doing so are at a significant disadvantage vis-à-vis those airlines factoring in payment card fees at the very end of the booking process.

In relation to currency, Article 49 of Directive 2007/64/EC reads as follows:

1. *Payments shall be made in the currency agreed between the parties.*
2. *Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.*

*The payer shall agree to the currency conversion service on that basis.*

In the light of the findings of this study, it can be concluded that even if "all charges as well as the exchange rate to be used for converting the payment transaction" are disclosed, it is important to stress that the provisions of Directive 2005/29/EC on unfair commercial practices continue to be applicable, as indicated in Recital 22 of Directive 2007/64/EC, to ensure that airlines do not engage in misleading commercial practices. It is also our view that Regulation [EC] No. 1008/2008 on air services continues to apply, so that currency conversion services are not offered on an 'opt-out' basis. This study shows that this is not always the case.

The new **Directive 2011/83/EU on consumer rights** states, in article 19 that *Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.*

This provision is most welcome but, in practice, it may be extremely difficult to monitor compliance by enforcement authorities on a one-by-one basis.

In either case, present compliance with all the above pieces of legislation is, overall, far from satisfactory and it is no surprise that consumer organisations are calling for action. On 30<sup>th</sup> March 2011, the British consumer organisation *Which?* submitted a super-complaint<sup>21</sup> to the Office of Fair Trading about payment card surcharges in the passenger transport sector denouncing the lack of transparency, the lack of a reasonable, practical alternative to avoid fees and the disproportion between the fees and the estimated cost of processing payments. The Office of Fair Trading published its response<sup>22</sup> to the super-complaint on 28<sup>th</sup> June 2011 indicating that it considers that payment surcharges are most likely to result in consumer detriment where they lack transparency and where consumers lack a practical way to avoid the surcharge, as the surcharges reduce the extent to which consumers shop around and compare full price offers.

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<sup>21</sup> Under Sections 11 and 205 of the (UK) Enterprise Act, designated consumer bodies and specified sectoral regulators are enabled to submit "super-complaints" to the OFT in relation to a market feature, or combination of features, such as the structure of a market or the conduct of those operating within it, that is or appears to be significantly harming the interests of consumers.

<sup>22</sup> Available at [www.oft.gov.uk/shared\\_of/super-complaints/OFT1349resp.pdf](http://www.oft.gov.uk/shared_of/super-complaints/OFT1349resp.pdf)

The OFT set out a number of principles to reduce the harm arising from payment surcharges, prompting retailers to:

1. make headline prices meaningful for comparison purposes by not imposing surcharges for debit cards;
2. provide clear information on the surcharges/discounts that apply to different payment mechanisms, when first displaying prices on a website. For example a clear link ('one click') to a list of payment surcharges, where it is clear to consumers that they need to click on the link to obtain information on additional charges;
3. on all subsequent web pages, in close proximity to the total price, provide clear information on the surcharges/discounts that apply to different payment mechanisms or a clear link ('one click') to a list of surcharges/discounts that apply to different payment mechanisms;
4. provide clear information on the existence of payment surcharges which apply to other payment mechanisms within any adverts (including print, television, outdoor or other media channels) which refer to prices; and
5. ensure that consumers purchasing products by telephone or in-store are provided, in a clear and timely manner, with information on how their total cost will vary according to which payment mechanism they choose to use.

As part of the follow-up work to the super-complaint, the OFT launched a consultation which ran until 6<sup>th</sup> September 2011 and opened an investigation into airline payment card surcharges, requesting information from a number of airlines with a view to consider whether they are complying with consumer protection legislation. At the time of publishing this study the investigation is still on-going, yet the OFT has secured since a number of voluntary agreements from a number of airlines to improve the transparency of their payment and booking fees. It should be noted that the findings of this report are based on data gathered before such voluntary agreements.

### **Recommendations:**

- Airlines should under no circumstances design the payment phase of the booking process to arbitrarily increase the final price. Fees or surcharges as a result of currency exchanges or card payments should not exceed the cost borne by the airlines for the use of a given means of payment and, if allowed, should be notified clearly and transparently, in a prominent and unambiguous manner at the beginning of the booking process and in close proximity to the final price at all times, so that consumers can compare prices and make informed choices, avoiding costly surprises at the payment stage.
- Airlines should therefore indicate the final price at all times, including the airfare (comprehensive of all operational items) and all the applicable taxes and charges levied by third parties (i.e. government taxes and airport charges that are due per passenger flying) and surcharges levied by the airline which are unavoidable and foreseeable at the time of publication. It is recommended that the costs incurred by airlines when processing payments are considered as an operational cost to be factored into their airfares, at least when payment is to be completed by debit card. The current state of play suggests that many airlines, instead of promoting the use of efficient payment instruments, are actually inflating the final price by levying fees that exceed the costs effectively incurred by the airline. Furthermore, if a number of Member States choose to forbid or limit the right to request payment card fees, as per Directive 2007/64/EC, while other Member States do not avail of this option, this may distort competition in the airline industry and, therefore, a common approach is desirable.
- No price increments as a result of the consumer's nationality or place of residence should be allowed, including booking or service fees, whatever their denomination. Such discrimination should neither be allowed in cases where the consumer pays in a different currency at the suggestion of the airline nor in those instances where consumers from an EU/EEA country have no access or have limited access, as a result of their nationality or place of residence, to the method or methods of payment offered by an airline as 'free of charge'. If, by selecting a country/language/flag on the airline's website, the consumer may be charged in a different currency, this should be clearly indicated, including reference to the manner in which the price in the applicable currency is calculated.

- No dynamic currency conversion (DCC) should be offered on an 'opt-out' basis. Where allowed, on an 'opt-in' basis, it is recommended that the margin applied by the airline or payment intermediary is clearly disclosed to the consumer and expressed in either the currency which the consumer intends to use to complete the transaction or as a percentage of the total original price before applying DCC, taking into account applicable exchange rate used by the relevant payment card provider.
- In order to minimise unjust consumer detriment and to safeguard consumer confidence and fair competition, legislation should be complied with. Enforcement authorities should monitor the level of compliance by airlines in their jurisdiction, seeking voluntary compliance by airlines insofar as this is possible. In particular, the monitoring of currency-related options and relevant cost implications is recommended. In relation to payment card fees, it is further recommended to monitor the number of 'free of charge' payment options, the availability of the relevant payment options within the EU/EEA, the functionality of the said payment options, such as the possibility of using them to complete other transactions with other airlines/merchants, and the frequency in which the 'free of charge' payment options supported by an airline are withdrawn. When an airline neither complies nor undertakes to take the necessary steps to comply with legislation, enforcement measures should be considered and, when necessary, adopted.
- In the context of low-value, high-volume complaints, given the difficulties faced by consumers to pursue their individual complaints where the cost and effort largely exceed the value claimed, the role of the competent authorities is paramount to ensure that legislation is adequately complied with and enforced. Given the impact on cross-border competition of the practices referred to in this study, a pan-European approach is recommended. It should be noted that whilst Article 26(1) of Regulation [EC] No. 1008/2008 on air services requires Member States and the European Commission to cooperate in applying and in monitoring the application of the Regulation, and Article 24 requires Member States to ensure compliance with the rules set out in Articles 22 and 23 of the Regulation, there is no requirement to appoint a competent (licensing) authority in relation to these two articles, as required in the other chapters of the Regulation. This study therefore recommends the closing of any regulatory gap in this regard. One suggestion would be to include Regulation [EC] No. 1008/2008, or at least its Articles 22 and 23, in the annex of Regulation [EC] No. 2006/2004 on Consumer Protection Cooperation, pursuant its Article 3(a). The role of the European Commission and the competition authorities should also be considered. Enforcement mechanisms should also be supported by adequate Alternative Dispute Resolution (ADR) schemes, which could be used not only to settle individual complaints but also to eradicate certain practices which are found to be in breach of legislation.