

ARTICLE 29 Data Protection Working Party



Brussels, 11 December 2013

International Air Transport
Association (IATA)
33, Route de l'Aéroport
PO Box 416
1215 Geneva 15
Switzerland

Subject: New Distribution Capability

Dear Mrs de Smet and Mr Leopold,

Following our previous letter of April 23rd, the Article 29 Working Party (WP29) decided to start an assessment of the likely impacts of the New Distribution Capability (NDC) project in terms of privacy and data protection, since this new system will change the way flight tickets are offered to travelers by using new ways of processing potential customers' personal data.

The New Distribution Capability landscape seems to be based on knowing in advance who is making a search request irrespective of the distribution channel being used, allowing in that way airlines to determine what product offer would be returned in response after considering the attributes that have been sent in the request. That would entail a major change with respect to the current model based on the availability of searchable information on available seats with different fares without the need to request personal information in advance to the offer.

IATA's Resolution 787 deals with the business process description comprising authentication, shopping and change processes. Authentication and shopping processes are conceived as a dialogue generated from a direct or indirect distribution channel to one or more airline rules engines to request a product offer from carriers and will allow such carriers to respond with offers based on the information included in the request. The structure of the requests would include but not being limited to the data needed to identify who is making the request as well as data to identify on whose behalf the request is made. In the latter case, the Resolution foresees the process of data related to name, age and marital status, contact details, frequent flyer number of profile number, customer type, travel history, nationality, shopping history as well as previously purchased services. Once provided such information, airline engines might respond with a set of tailored offers draw up according to the information sent.

The process as described might represent a major change with regard to the current airline ticket purchasing model based on offers that are made available through Global Distribution Systems or through airline websites as previously described. In both cases there is no usually prior request of personal data even though it is possible to get more detailed / personalized

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

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

Website: http://ec.europa.eu/justice/policies/privacy/index_en.htm

offers when a customer authenticates to the airline. In both cases we also are in presence of a “one to one” relationship (customer to GDS or customer to airline) whether, in the case of NDC, “one to many” requests (customer to several airlines through an intermediary) might be the usual case. In any case, the Resolution does not explicitly refer to the need for a change in data processing practices.

The reaction of IATA with regard to the concerns expressed by other institutional and market stakeholders has been relying on two main points. On one hand, IATA has been insisting on the idea that the NDC project is only developing a standardized way for industry software developers to structure data that might be used during the shopping and booking process, also recognizing that following that way – the data standard – account should be taken on the need to avoid constraints that would make compliance more difficult. On the other hand, IATA stresses that the system will preserve the consumer’s choice not to provide any more personal information during the shopping process than they do today and, at the same time, will ensure that nothing in the standard data format will hinder the design of software fully complying with privacy regulations.

IATA has been also insisting on the idea Resolution 787 is aimed just to develop an XML-based standard data model for data exchange between airlines and travel agents. However, it is arguable to consider that a data model can be built without taking into consideration specific business requirements informing the structure of the model. That said, the XML data model currently published by IATA¹ covers creation and managing of traveler profiles – personal or professional ones – associated to travel agents, containing personal information that can be used to feed other transactions related to shopping, pricing and reservation management.

With regard to the possible impact on privacy and data protection rights, first thing to say is that any kind of assessment is right now certainly limited in absence of relevant information related to the practical implementation of this new system². However, on a first insight, the following considerations can be made taking into account the available information:

- The amount of personal data to be requested must be proportional to the purpose of the processing. In a first insight, what can make the difference in this case could be the price formation processes. If systems based on the NDC business model, as some stakeholders consider, aim to build tailored price offers based on customer information, a certain amount on data would be needed, regardless other considerations, as opposed to the current practice based on predefined fares mainly related to objective criteria like availability of seats, travelling days, early purchase, etc. that usually does not require any sending of personal data for the search. In any case, there are doubts whether – considering the categories of data listed in Resolution 787 – the amount of data requested might be considered proportional according to the declared purpose.
- According to article 7 of Directive 95/46, personal data shall only be processed under at least one of the legal grounds listed in that article. One of the applicable grounds could be Article 7(b) – performance of a contract – but this in principle could be only applicable when requesting a specific offer from a specific airline, since it could be covering processing that

¹ Developed by the Open Axis Group, can be find in <http://www.iata.org/whatwedo/stb/ndc/xml/Pages/functions.aspx>

² There are apparently a few pilot projects currently running but there is no information on the responsible entities and on the possible application to such projects of EU data protection law

takes place prior to entering into a contract. In the case of a general search request not limited to a specific airline, it is questionable whether the same reasoning may be applicable. In the case of consent, account should be taken on the need to ensure that is given freely, unambiguously and expressly. Critical factors in this case would be, first, to ensure the absence of significant negative consequences if the individual does not consent as well as the quality and accessibility of the information provided in order to get the consent. As mentioned before, the possibility of the customers being “pushed” to use authenticated requests if they detect that offers resulting from anonymous searches are unbalanced in terms of higher fares and less information when compared with the authenticated ones cannot be ruled out.

- In the current model, agents using a GDS are considered data controllers³ for the personal data collected in the course of the activities for the purpose of making reservations or issuing tickets for transport products. With the new model, there could be a substantive increase on the role played by the airlines during the booking process. On one hand, they could be in the position of defining the scope and means of the data processing; on the other, it would be possible that the ownership of some elements – notably the Passenger Name Record (PNR) linked to a booking – could be transferred from the GDS to the airlines. In both cases, airlines could be deemed data controllers.
- In absence of more detailed information, it seems that the booking process would be moving from a one to one transaction model – customer-GDS or customer-airline – to a one to many model – customer to a group of airlines serving the same route – implying that all the airlines would be processing the data included in the authentication request. That said, it should be consider the possible outcome of this practice in terms of further data processing, data retention, information to the customer and possible transfers to third countries outside EU.
- Last, but not least, data collection and processing practices associated to the implementation of the NDC initiative in its full potential could lead to discriminative practices derived from profiling. In that sense, possible discrimination practices could emerge from the fact that a particular customer not included in an airline database because his / her choice is to remain anonymous and, for that reason, higher fares are offered, or, alternatively, different fare offers derived from deciding that all customers with a particular attribute have to pay more than those not presenting the same characteristic. In that sense, it has to be taken into account that, even in presence of a legitimate data processing according to art. 7, data collection and data processing need to be in line with art. 6 in terms of necessity and proportionality. This potential drawback, even though is not exclusive to NDC initiative, can represent a serious risk in terms of protection of data protection rights.

As said above, any kind of assessment at this stage could be lacking relevant information on the practical implementation. For that reason, the Working Party is submitting jointly with this letter a set of questions (in annex) in the aim of obtaining relevant information that might help us to finalize our assessment.

³ Article 11 Regulation 80/2009

The Working Party would like to thank you in advance for your support, and trust that this collaboration will prove mutually beneficial. In the same line, we would like to invite you to send your responses to the questionnaire preferably not later than the end of January 2014. In the same way, you are also invited to present your conclusions on the questionnaire at the upcoming meeting of the BTLE subgroup in March 2014.

Yours sincerely,
On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman

Annex

Questionnaire on NDC

I. Introductory questions

- a. Could you please describe in detail to whom – different stakeholders in the market – is addressed this new program and in which way would be affected current data processing practices?
- b. Are you envisaging full adoption of this model within the market or could it be case for different models – with different data processing models – sharing the market ecosystem. If the latter were the case, are you preventing in your work the need for a transitional system or for the development of gateways supporting exchange of data between systems implementing NDC / other models?
- c. Do you have a forecast on the expected customer data flows derived from the adoption of this model?
- d. Have you carried out an initial assessment on the impact on privacy and data protection rights derived from the adoption of this model? If it is the case, is your assessment taking into account different legal regimes and the different requirements for transferring personal data among different jurisdictions?

II. Purpose of the processing:

- a. What are the results you expect airlines could achieve by processing these data?
- b. Is this model intending now, or in the future, to reuse the data for other purposes?

III. Data processed:

- a. Please list the categories/types of data that will be processed with as much detail as possible and explain why you specifically need each of them.
- b. Which of these categories/types of data will be mandatory and which ones will be facultative?
- c. Are any of these categories/types of data "sensitive data", relating for instance to health problems, religion (meal preferences)?
- d. Do you intend to process data the data subject is not aware of (cookies, IP tracking, previous consultations, device fingerprinting data).

IV. Retention period

- a. How much time do you intend to store the data? Will you store specific categories of data longer than others?
- b. Could you give justifications for the retention periods chosen? In other words, why do you need to store them for this period of time and not less?

V. Consent

- a. How will consent to the processing be given by the data subject?

- b. Will data subjects have a choice to carry out an anonymous search and if so, will they suffer a disadvantage from such a choice meaning that the offer made will not be as interesting as if they had given their personal data?

VI. Profiling

- a. Will the offer be a result of fully automated processing or will there be human intervention?
- b. What could be the expected set of criteria taken into account to make an offer?

VII. Information and user rights

- a. How do you expect informing data subjects about the processing carried out, including as regards the processing of which the data subject may not be aware of?
- b. Do you intend to flag to the clients which data is mandatory and which is facultative?
- c. Do you intend to be transparent on the abovementioned criteria used as a ground to make the offer, i.e., to tell clients about the logic behind the profiling?
- d. How do you see the model can help / facilitate the exercise of users' rights, notably access to information, object and erasure?

VIII. Confidentiality and security

- a. Who will get access to the data given by the data subject within the airlines?
- b. How do you foresee the data processing being secured?
- c. The model as described implies an exchange of information between airlines: through which network will this exchange or communications take place? An existing one? A new one? How will it be secured?
- d. Where will the data be stored? What do you expect on the security measures implemented?
- e. Will the data given by the data subject be interconnected to data potentially already known by the airline on him (PNR data, loyalty card data and reduced mobility passengers data)?

IX. Privacy by design

- a. Are you using for the development of the model privacy by design techniques, in particular privacy impact assessments?
- b. Are you recommending, developing or offering support to the stakeholders embracing NDC on the use of this techniques, including PIA's and Privacy by default

X. Test Pilots

- a. Are you currently running out pilots programs or testing the practical implementation of the NDC model?

- b. Could you please provide detailed information on the current pilots or testing programs are you developing in collaboration / partnership with other actors?
- c. Are you including in the developing / evaluation of this programs privacy and data protection aspects?
- d. Are you currently developing pilot programs in the EU? If it is the case, could you confirm that the National DPA involved has been contacted on the issue?

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