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Perceptions of Low Cost Carriers' Compliance with EU Legislation on Optional Extras

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Abstract Low cost carriers (LCCs) market their flights as low cost and so, aim to garner as much additional revenue as possible from ancillary services such as baggage and priority boarding. The airlines therefore encourage purchase of these services by their customers. As a result of this and other practices by airlines, the European Union has introduced legislation to deal with various areas of concern in order to protect the consumer. Airlines have responded to the legal requirement that all optional extras should only presented to the consumer on an 'opt-in' basis by using 'grey' Web design patterns such as the 'must-opt' presentation of optional extras, whereby the user must choose to accept or reject the item before continuing with the interaction. This study examines user perceptions of the level of compliance of two airlines with the relevant European legislation.

1   Introduction

As the base price of flights has reduced, airlines are improving their revenue through ancillary services. At the same time, the European Union and other governments are regulating the industry in order to protect the consumer from inappropriate commercial practices. This regulation has resulted in some airlines finding innovative ways to ensure the consumer will at least consider purchasing some of these ancillary services while still remaining compliant with the legislation. This paper examines user perceptions of the level of compliance of two Irish airlines with the relevant European legislation.

2   Literature Review

2.1 Low-Cost Carriers' Influence within the Airline Industry

The airline industry has evolved through three "waves of dramatic change", which not only restructured the industry, but also radically affected consumers' travel

behaviour (Rubin and Joy 2005:215). The first wave was deregulation from the late 1970s through to 2000s; the second wave was consolidation during the late 1980s; and the third wave of change is evident by the market power wielded by low-cost carriers (LCCs), which has instituted changes to the industry's ticket purchasing, route patterns and competitive structure (Graham and Vowles 2006; Rubin and Joy 2005).

Advances in technology have revolutionised the marketing, selling and procurement of tickets through the Internet. The prevalence of LCCs has been a catalyst for the development of "low-cost airports and of low-cost airport facilities in general" (de Neufville 2008:37). This collection of changes to long-standing aviation practices has resulted in a sharp focus on operation costs. The LCCs healthy financial performance is largely attributed to improved cost savings rather than differences in revenue management practices (Shumsky 2006). The LCCs' impact on altering consumers' price expectations is significant. Consumers "have widely changed their buying criteria, preferring price and convenience over extensive connectivity and seamless travel" (Franke 2007:24). Thus, cost reduction is believed to have become a permanent requirement for profitable airlines (Doganis 2006).

2.2 Ancillary Revenues and Regulation

LCCs' commitment to cost reduction means they examine every function to eliminate those considered superfluous or to charge for them separately as ancillary services. To bolster profit, LCCs have become adept at generating ancillary revenues such as baggage fees, now the largest single source of extra fees (Harteveldt and Stark 2010). Airlines have also partnered with third party vendors add ancillary revenue generated through car rental and hotel bookings (Sorensen 2011). During 2009, ancillary revenues accounted for 22.2% of Ryanair's total revenue, and 14.4% of Aer Lingus's total revenue (Amadeus and IdeaWorks 2010). Global airline ancillary revenues for 2010 were estimated at €18.5 billion, which represents a 68% increase from 2009. It is anticipated that airlines will grow their sales of ancillaries appreciably, which are expected to increase by 300% to €74.8 billion in the next few years (Amadeus and IdeaWorks 2010).

In an effort towards greater price transparency, the US Transportation Department is requiring airlines to release more detailed information on ancillary fees. In 2011, the US Bureau of Transportation Statistics will publish these 'airline-imposed fees' to address concerns of "corporate travel managers and consumer groups [who] have been complaining that all the new fees - including those for checked bags, priority boarding and in-flight food and drinks - have made it increasingly difficult to calculate the real costs of travel" (Sharkey 2011:1). Similarly, hidden costs and the exclusion of charges that are unavoidable is becoming an increasingly contentious issue that has attracted the attention of EU bodies. The

European Consumer Centres Network (ECC-Net 2010) recognises the information airlines provide on different price elements is incomplete.

The EU Commission co-ordinated the airline ticket selling investigation under the auspices of Consumer Protection Co-operation Regulation, which had came into force in 2006 (ECC-Net 2007). The investigation identified the most common unfair practices related to price indications, availability of special offers, and contract terms. With respect to clear pricing, the Commissioner directed airlines to give a clear indication of the total price, including taxes and booking/credit card fees in the headline price first advertised on a Website, rather than at a late stage in the booking process. Accessibility of special offers was of particular concern, as in many cases these offers were not available or extremely limited. Other unfair practices were found to include mandatory insurance attached to an offer, or where consumers were required to explicitly opt-out of insurance or other optional services (e.g., priority boarding and seat selection). Failure to comply with the report's recommendations may result in legal action or closure, as well as being 'named and shamed' for failing to bring their Websites in line with EU law. It is this last recommendation on optional services that is the subject of this study.

The European legislation governing airlines' price information are Articles 5-7 of the Unfair Commercial Practices Directive and Article 23(1) of Regulation 1008/2008. The key provisions on how optional services should be presented to the user frames the research objectives of this study. The implications to the consumer of these pieces of legislation in relation to optional services are as follow:

- All optional extras must be communicated in a clear, transparent and unambiguous way at the start of the booking process.
- All optional extras should only be accepted by the consumer on an 'opt-in' basis.
- An airline may not engage in aggressive commercial practices (e.g., using harassment or coercion) that significantly cause a consumer to make a transactional decision that he would not have taken otherwise.

Thus, we derive three research questions to test.

- RQ1: At the start of the booking process were all optional extras communicated in a clear, transparent and unambiguous way?
- RQ2: Are all optional extras presented as opt-in options?
- RQ3: Did users feel harassed or coerced into choosing optional extras during the booking process?

2.3 Opaque Web Design

With respect to the operational management of LCCs, securing resources and developing competences in managing e-business tools have become crucial (Nucciarelli and Gastaldi 2008). The LCCs' adoption of technology in areas such as electronic ticketing and dynamic pricing has become an important component in offering consumers more efficient flight options. Yet despite these advances, it appears a number of LCCs use their information systems in a conflicting manner when managing customer interactions. The Websites for many LCCs smoothly engage and facilitate customers through the self-service process to commit users to purchase tickets. However, once users move beyond the 'committal' point (i.e., after they have chosen where and when they wish to travel and have received an initial quote), the Websites appear more opaque. Research on this phenomenon has found significant disquiet amongst users (Torres et al. 2009).

2.4 Defining Opt-in and Opt-out

Rather than the more usual opt-in/opt-out mechanisms used to offer ancillary services, airlines are using a new approach, referred to here as a 'must-opt' selection. In this format, the user must explicitly accept or reject the service before continuing with the interaction. According to Wiktionary, opt-in means "Of a selection, the property of having to choose explicitly to join or permit something; a decision having the default option being exclusion or avoidance" whereas opt-out means "Of a selection, the property of having to choose explicitly to avoid or forbid something; a decision having the default option being inclusion or permission". Based on the first part of these definitions, the airlines' must-opt optional extras are both opt-in and opt-out as the user must choose to participate if they wish to do so and if they do not. However, based on the second part of the definitions, the must-opt can be seen as neither opt-in nor opt-out, since the default option is to prevent the user from continuing until they either accept or refuse the option.

3   Research Methodology

Verbal protocols involve a typical user thinking out loud while carrying out representative tasks on a system. While carrying out the tasks, the participants explain what they are doing and why (Monk et al. 1993). This verbalisation aids in understanding the user's attitudes towards the system to identify aspects of the design that are problematic for the user (Benbunan-Fich 2001; Holzinger 2005). One of the main strengths of this technique is "to show what the users are doing and why they are doing it while they are doing it in order to avoid later rationalizations" (Nielsen 1993:196). The role of the evaluator is to support the participants by prompting and listening for clues rather than taking over or giving instructions (Shneiderman and Plaisant 2010). Therefore, it is important to ensure the prompts

used do not distort or invalidate the user's dialogue. Developing prompts that facilitate in the collection of the type of data needed and using them at appropriate times will help to ensure this (Cotton and Greasty 2005). In this study verbal protocols were used to determine the opinions of 20 typical users on how compliant two airlines, Aer Lingus and Ryanair, are with the European legislation regarding the sale of flights using the Internet. In a previous study (Torres et al. 2009:306) a participant stated: *'there will always be regulation, but [LCCs] will always find a way around it'*. This study is interested in determining the truth or otherwise of this statement.

4 Findings

4.1 RQ1: At the start of the booking process were all optional extras communicated in a clear, transparent and unambiguous way?

There was unanimity that neither airline was in compliance with the provision that at the start of the booking process all optional extras should be communicated in a clear, transparent and unambiguous way. At the flight selection screen with Ryanair, the message "Optional charges such as administration and checked baggage fees are not included" appears immediately beneath the total flight cost. Despite its proximity to the flight cost most did not see the message. Participants broadly found this message unhelpful in clarifying specific optional charges. Nine other optional charges or services are not mentioned. A 'detail' link invokes a pop-up window where fees (not optional extras) are explained. Some participants thought the pop-up acceptable in presenting detail of optional charges, others felt the information value was lost, so extensive and superfluous was the content. With Aer Lingus, no indication other than a handling charge was displayed on the initial selection page. Even that was at the bottom of the screen and grayed out, making it difficult to see. On the next screen many participants expressed severe annoyance that the total flight price had changed with the addition of a Handling Fee that was wholly unexplained. Many felt optional extras were introduced incrementally so that the price would change gradually and users would be less likely to back out of the process. In this regard, participants felt such design to be deliberate.

4.2 RQ2: Are all optional extras presented as opt-in options?

4.2.1 Case 1: Ryanair

On Ryanair this question dealt with the 'Services' pages and generated enormous confusion, ignominy and anger. Ten decisions on optional extras (see Table 1) had to be negotiated (travel insurance being presented for decision twice). Seven of them are what the authors described earlier as 'must-opt' because while neither an opt-in nor opt-out decision, a forced interaction is required. On Ryanair, the mechanism for enforcing a must-opt is a pop-up error window when the 'Continue' button is pressed detailing the option that has not been selected. Barring Terms and Conditions, no indication is given that any must-opt demands an interaction on the part of the user. The remaining three options (i.e., baggage, sport equipment and special assistance) are opt-in and can be by-passed without any required interaction. In general, participants were unclear and wary about the nature of options and spent some time reading them in order to avoid choosing them. At the outset participants were asked what they understood by an opt-in and opt-out selection. Nearly all defined opt-in and opt-out in a way that was consistent with the definitions in the literature review. There was clarity and satisfaction amongst participants that the bag option was actually opt-in. Priority boarding presents the first must-opt decision point. Five participants felt it was actually an opt-in decision, but as their comment was queried, they began to contradict their initial view. More felt it was either opt-out or at least forcing them to make a decision, coming close to the definition earlier that opting-out was explicitly choosing to avoid or forbid something. Others felt confusion about the exact nature of the interaction with comments like: *"it's making me choose"*; *"it's forcing me to make an option"*; and *"it's making me read through it."* In summary, there was unease at the design of priority boarding and the predominant view was that the option was either not in compliance with the law or not in compliance with the spirit of the law.

Travel insurance caused a great deal of resentment and anger amongst participants. The design is at first curious and ultimately devious. The user is invited to buy travel insurance but not with Yes/No radio buttons or a check box, rather a drop down list with the default option to "Please select a country of residence", a supposition that the service has already been chosen. Users were drawn to the alphabetically-ordered drop down list to look for an avoidance mechanism. About half way down, between Latvia and Lithuania was a 'country' called "No Travel Insurance Required." Most did not notice the line beneath the drop down list that informed participants that "If you do not wish to buy insurance select No Travel Insurance in the drop down menu." This feature was described in trenchant terms by participants such as: *"it's buried into the drop down list"*; and *"this should be illegal!"* It drew a torrent of adjectives such as: underhand, sneaky, aggressive, extremely dodgy, tricky and deceptive. Participants wholly agreed the design was intentional and was not in compliance with the legislation. For the SMS optional extra, presented with two unchecked radio buttons, there is no indication that it bears any cost. Identified by several participants as a useful feature, none, however, felt the charge appropriate. While in fact a must-opt, several felt it was opt-in, some that it was opt-out and others that it was neither opt-in nor opt-out. Participants did not express strong emotions on compliance – although more felt it was not compliant.

Table 1. Ancillary Services Categorised

Option present- ed as:	Airline			
	Ryanair		**Aer Lingus**	
	Option	**No.**	**Option**	**No.**
Opt-in	Baggage Sports equipment Special assistance	3	Flex fare (1) Flex fare (2) SMS confirmation Special assistance Voucher Baggage Extra baggage weight Sports equipment Lounge	10
Opt-out	-	0	Mailing List	1
Must-opt	Priority boarding Travel insurance (1) SMS confirmation Ryanair approved cabin bag Terms and conditions Travel insurance (2) Hertz Rent-a-car	7	Terms and conditions Travel insurance Parking	3

The approved Ryanair cabin bag elicited a great deal of emotional reaction. Participants felt most charitably that it was marketing gimmickry and at worst pushy and aggressive marketing. What seemed to annoy them most was that it was delaying and distracting marketing in the middle of the booking process. A few felt it gave the impression it was an official cabin bag. On sports equipment and special assistance, general comments were benign and participants quickly realised they were genuine opt-in decisions. Ryanair use a must-opt check box for Terms and Conditions, which is a widely used convention in transactional activity and for registration purposes.

There was surprise and annoyance when a pop-up page reminds the user to make selections on the must-opt decisions that were overlooked: *"it is making me read all the options"*; *"[it] didn't say it was compulsory to answer travel insurance"*; *"you should not be forced to decide."* A further inconvenience for users is that going back a screen involves re-entering all decisions except the passenger's name. On declining the must-opts and choosing 'Continue' on the main services page, a pop-up must-opt decision for travel insurance appears. Users are implored to "Wait!" and asked if they are prepared to take the risk of not taking out travel insurance. Most felt the reminder was pushy and not in compliance as an opt-in decision. Two felt it helpful to be reminded to check they have travel insurance. Once the much smaller 'no thanks' button is clicked participants may proceed.

The second service page is devoted wholly to selling a Hertz rent-a-car. The first reaction of participants was about the presumption of having the first named traveller pre-selected as the main driver and one of three cars highlighted, suggesting it has already been chosen. One commented *"Oh my God – it looks like they rented a car for me!"* At this point participants were becoming irritated and exhausted, one wearily commenting that there's *"a lot of reading to make sure I don't miss something."* Participants felt such heavy selling was inappropriate in the middle of the process of booking a flight and that it would be better placed after the flights were reserved. The general view was that it was non-compliant.

4.2.2 Case 2: Aer Lingus

On Aer Lingus, users navigate through four screens that deal with the booking process up to card payment. Fourteen decisions on optional extras had to be negotiated (see Table 1). Of these, three are must-opt, one opt-out and the remainder opt-in. Participants defined the concepts of out-in and opt-out consistently with the definitions in the literature review.

The 'flex fare' optional extra (i.e., offering free date changes and lounge access) on the first page was agreed by participants to be opt-in. Some felt it a bit pushy as it was directly embedded within the booking process. On the next page the user encountered another invitation to choose a flex fare for each leg of the journey. It was not immediately obvious to participants that this was the same flex option from the previous screen. Many felt irritated they were expected to consider the option twice. At the end of the page, Aer Lingus also use a must-opt check box for Terms and Conditions to confirm they are read.

Participants all agreed that SMS was opt-in and there were no significant issues. They felt it consistent with their definition at the outset. One reported *"it's opt-in, that's the default. You have to knowingly choose it."* It was also positively noted by several that the price of an SMS was shown before it was selected. Participants felt the mailing list opt-out option to be very unclear and 'tricky' since previous optional extras were opt-in. Several expressed dissatisfaction with the way it was designed, immediately beneath the SMS option in lighter grey text, and headerless. Three opt-in options (frequent flyer, special assistance and voucher submission) follow that are easily by-passed by participants. These drew no comment.

Most participants felt baggage was compliant as it was a clear opt-in decision. However, in order to see the price participants had to click a drop down list. It was mentioned that this was still preferable to Ryanair's design whereby the bag needed to be selected before a price appeared. In this regard it was deemed compliant. Travel insurance is presented in a most confusing manner and invoked some annoyance amongst participants. The amount appears pre-selected in a right hand column but not included in the total price, further down the page. In fact two Yes/No options appear with un-checked radio buttons (thus a must-opt.) There

was a lot of disagreement on how to actually describe the decision. While few believed it was opt-in, participants were fairly evenly split as to whether it was opt-out, neither or that they remained unsure. Many changed their minds during the interaction. The confusion was even more exaggerated than in the case of Ryanair because the cost is pre-selected alongside other charges to date. Participants dealt with opt-in lounge access speedily. Parking was presented as a must-opt selection, displayed identically to the travel insurance. Thus the cost was shown in the right hand side of the page as if it had already been selected. By the time participants dealt with the task of contemplating parking, many were weary. They felt once again they had to read the text carefully to avoid the charge and then had to tell Aer Lingus they did not want it. Some felt it was presumptuous to ask them about parking. When asked why it and travel insurance were designed in this way, one participant cynically observed *"they prioritise what they want to sell and then choose different technology [to sell it]."* On compliance, participants were generally of two views on Aer Lingus's travel insurance and parking options: that they either wholly contravene the legislation or it is designed to get around it.

4.3 RQ3: Did users feel harassed or coerced into choosing optional extras during the booking process?

4.3.1 Case 1: Ryanair

Decisions on baggage, SMS, sports equipment and special assistance presented no real problems. There were, however, a few concerns over priority boarding – namely the way in which it was phrased and presented. The inclusion of the option to purchase a Ryanair approved cabin bag was far more problematic. Participants felt it inappropriate and out of place, describing it as pushy and annoying. A couple felt some coercion in having to ensure that their bag would be acceptable to Ryanair. With travel insurance, when presented with the design described earlier where the option to avoid insurance is half way down a drop down list, many of the participants were annoyed and felt that it was not an acceptable way to design the interaction. Several felt it harassing and deceptive. On declining travel insurance the pop-up reminder was widely cited by participants as aggressive and by many as coercive and harassing. Strong emotions were also evinced on the design and colour choices that suggested danger or risk for users declining travel insurance. Participants agreed Ryanair were non-compliant on this question.

The Hertz rental page was deemed distasteful by most participants. Views ranged from considering it pushy but compliant, to aggressive and non-compliant, to extremely aggressive and non-compliant. Comments included *"a little bit aggressive and harassing at this stage"*; *"this is aggressive selling. It's moving towards coercion. [They] pre-selected my name!"*; *"[it's] aggressive marketing. It's definitely non-compliant"*; and *"it's pushy, aggressive, in my face."*

4.3.2 Case 2: Aer Lingus

Generally, the participants felt Aer Lingus was more compliant than Ryanair. Most felt Aer Lingus's site was not usually harassing or coercive. However, there were real areas of concern. The first appearance of the flex fare was thought acceptable. However when it appeared for the second time, most thought it was pushing the boundaries of compliance, rather than being non-compliant *"(it's) pushy. A bit aggressive, borderline compliant"*; *"it's designed to be close to the border of coercive. Still it is pushing it."* Some felt the must-opts (insurance and parking) with Aer Lingus were borderline compliant, while others that they were outright non-compliant. The pre-selected nature of the cost was thought to be pushy at least and at worst aggressive: *"they are hoping people will take it. It's a little aggressive"*; *"it's designed to just meet the terms of the legislation."* Others complained about the use of the must-opt design of these optional extras, one declaring: *"it's aggressive. I shouldn't have to tell them I don't want it."*

5   Discussion and Conclusions

No participant believed either of the airlines to be compliant with the requirement to communicate all optional extras in a clear, transparent and unambiguous way at the beginning of the process. It would appear that airlines have blatantly ignored this legal obligation as outlined in the EU legislation (European Union 2005; 2008) governing airlines price information in order to maintain the perception that flights are low cost for as long as possible into the booking process. By preventing the user from realising the true cost of the flight until late in the interaction making comparisons across airlines is more difficult. It is therefore less likely that users will reverse out of the process having invested heavily in time and emotional capital.

The findings are conclusive that all optional extras are not presented as opt-in decisions to users. A key finding in this study is that a novel device, 'must-opts', has been deployed and that it may circumvent the legislation. As noted earlier, must-opt decisions are both opt-in and opt-out and are also neither opt-in nor opt-out. Strictly speaking a user does not need to read opt-in or opt-out decisions. This is most decidedly not the case with a must-opt decision. A user may not proceed (e.g., to the next screen) without having made a selection. Failure to do so means you enter an endless loop until you comply. The burden of a must-opt is that you are forced to engage intellectually and mechanically with the Web page. Must-opt decisions apply pressure on users to take seriously the option placed before them. In some cases this approach is justifiable, such as the requirement that users read terms and conditions of a 'contract'. The must-opt is clever – it does not pre-select an option for a user, so ostensibly it is not an opt-out optional extra. More importantly for the airline, it does not allow the user to lazily scroll through unwanted services seeking the continue button and an exit from the page. It presents a

juncture in the workflow of the transaction where a user is forced to select either service inclusion or service exclusion. At the outset participants in this study were clear about their definition of opt-in. However, this understanding often changed during the verbal protocol session, sometimes shifting towards an acceptance of must-opt as a characteristic of the opt-in process. This uncertainty surrounding users understanding of choice led to confusion, wariness and frustration. In addition, Ryanair presenting the must-opts in a variety of design forms added to the confusion. The reason for this design is unclear, but poor systems development practices would be the most innocent. Given that both LCCs are aware of certain industry conventions, such as enforcing users to agree that terms and conditions have been read, means the LCCs fully understand what a must-opt construct is designed to do. However, as ancillaries increase their contributions to the airlines' bottom-line (Amadeus and IdeaWorks 2010), we can expect them to continue to find creative ways to circumvent the ethos of the legislation.

Participants were mixed in their opinions as to whether the airlines were using harassment or coercion in order to convince them to purchase optional extras. Most issues arose around the must-opt selections. Participant views ranged from deeming them pushy to harassing and non-complaint. While insurance on both Websites is presented as a must-opt, participants responded more negatively to Ryanair's handling of the option. Re-presenting the option again after users have clearly made a decision questions the merit of their action rather than pointing out something they have overlooked. The offer of parking on Aer Lingus can be seen as similar to the offer of car hire on Ryanair in that both are tangential to the task of booking a flight. However, even though Aer Lingus use the must-opt feature for parking, the reactions of the respondents were not as negative as they were for car hire on Ryanair. This reaction is presumably because, although both use a must-opt selection, Aer Lingus present it in a more muted way. It is simply presented as an option in the flow of the purchase rather than a full-blown, separate window on Ryanair in bold black and yellow.

This study set out to explore user views on whether two Irish low cost carriers were acting in good faith in implementing consumer protection legislation. The European Commission had recognised new technologies were being used to nudge consumers to behave in a way that airlines wished. While ancillaries have become an essential and growing component of airlines' revenues, it should be expected they are implemented in such a way that consumers do not perceive them as a barrier to securing flights. Although regulations specifically recommend optional charges be accepted on an opt-in basis, the airlines in this study may have found a technological by-pass of the regulations – the must-opt construct. This approach and the ambiguity of the definition of opt-in and opt-out decisions allow airlines to exploit the legislation to serve their own ends. The airlines' lack of full compliance with EU legislation suggests forthcoming EEC-Net reports are likely to reiterate the same recommendations (EEC-Net 2010). The game of catch-up between regulation and technology continues – back to the drawing board for researchers and legislators.

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