

Consultation on Articles 19 and 22 Consumer Rights Directive

Submitted to the Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2.

Submitted by the Irish Internet Association, 157 Thomas Street, Dublin 8

Submitted on Friday 12th October 2012

Having read the Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights, the IIA, whose members include some of the business sectors specifically referenced within the consultation (Travel Companies, Travel Agents, Airlines), believe that the specific requirements and concerns of these businesses are best addressed by their direct representative bodies such as the ITAA (Irish Travel Agents Association). However, in so far as these directives also impact other eCommerce businesses that are more representative of general ecommerce traders we have answered the questions as posed in Annex 1 of the consultation.

In making this submission we have answered only those questions where we feel we are suitably placed to do so. Where they relate to other sectors we have not.

Question 1.

We are aware of these charges. We do not believe that this is a finite list of ecommerce traders who have fees in relation to payment type. The consultation report itself identifies certain ticketing and events sites that have a payment related charge. Also worth considering are some dating websites.

Also check out Bonkers.ie price comparison site which is the most comprehensive review of each of the utility companies pricing and terms comparison sites. It will identify any that are missing from Box1.

Question 7. Yes – these are broadly accurate

Question 8. Yes. I would go so far as to say that I see no reason why these charges should be considered for highlighting AT ALL when no other elements of cost of goods/services sold are likewise highlighted.

Question 9. No, I am not aware of any online traders who extract additional payments without consent. However, it could be argued that many attain consent when it is buried deep in T&Cs without the consumer necessarily being fully aware that they have given their consent – e.g. dating sites.

Question 10. No. I believe some of the airlines have practiced this in the past but I don't know if this is any longer the case (travel insurance and baggage). eCommerce traders more representative of IIA membership do not operate in this way as they tend most often to be single event payments of a physical good with no service 'add-ons'.

For a review of the types of user experiences with the effect of misleading consumers (if not necessarily the intention) then check out www.wiki.darkpatterns.org

Question 11. Agree with the exemptions

Question 12. Undecided

Question 13. It should operate along the principles of the Data Protection Commission which adopts a pragmatic and business/consumer balanced approach.

Question 14. The sanction for breaches of this directive should allow the NCA to apply for prohibition orders in extreme circumstance where the trader has continually breached the directive.

Question 15. Consumers should have course have the right to have payments refunded to them where there has been an obvious and deliberate breach of the directive.

Question 16. The onus of proof that they trader sought the consent of the consumer will be difficult to enforce. There are challenges to be considered such as user accessibility and user experience – e.g. is the website accessible to all consumers (visually impaired, colour blind etc..). While public buildings must by law be accessible for those with disability, there

is not such law to ensure that 'virtual buildings' (shops, travel agents, banks) etc. are accessible to people with disability. While a trader might well be able to prove that they have sought consent from 80% of the population, they might well not be able to do so for all.