



Brussels,

Mr Edward Hasbrouck

By e-mail: edward@hasbrouck.org

Subject: Complaint against Sabre, Travelport and Amadeus on an alleged infringement regarding Regulation (EC) 80/2009

Letter rejecting your complaint

Dear Mr Hasbrouck,

- (1) I am writing to you in connection with your complaint of 28 February 2017 sent to the European Commission (the “Commission”) against Sabre, Travelport and Amadeus regarding an alleged infringement of Regulation (EC) No 80/2009 (hereby the "Code of Conduct")¹. I also refer to the Commission’s letter of 18 June 2019 informing you of the Commission’s intention to reject the complaint and your reply of 8 August 2019 to this letter.
- (2) The Commission has examined the allegations made in your letter of 28 February 2017 and your reply of 8 August referred to above.
- (3) I now wish to inform you that, for the reasons set out below, the Commission considers that there are insufficient grounds for acting on your complaint and that, accordingly, has decided to reject your complaint, pursuant to Article 16(3), 2nd subparagraph, of the Code of Conduct.

1. FACTS

- (4) On 28 February 2017, you sent a complaint to Mr Nemitz, Directorate-General for Justice and Consumers, the Commission, against Sabre, Travelport and Amadeus relating to their alleged breach of the Code of Conduct. You confirmed the terms of your complaint in an email dated 24 April 2017 sent to Mr Dussart, Directorate-General for Mobility and Transport, the Commission.
- (5) On 18 June 2019, the Commission sent a letter informing you of its preliminary conclusion that there are insufficient grounds to act on your complaint pursuant to Article 16(3) of the Conduct of Conduct. The Commission also informed you of a possibility to launch a complaint pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection

¹ Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0080&from=EN>

of natural persons with regard to the processing of personal data and on the free movement of such data (“GDPR”) to a relevant supervisory authority.

- (6) On 8 August 2019, you provided your views on the Commission’s letter of 18 June 2019.

The complaint

- (7) In your complaint of 28 February 2017, you alleged that three CRS providers, namely Sabre, Travelport, and Amadeus, breach data protection rules by making personal data available to anyone who has the name of the traveller in a "passenger name record" (PNR) and the "record locator" assigned by the CRS.
- (8) You explain that a PNR is identified in a CRS by a record locator. A record locator is an alphanumeric or alpha code, typically 6 characters in length, used to access a specific record. You claim that it is easy to get hold of a record locator to access personal data since it is printed (or encoded in unencrypted bar-code format) on boarding passes, baggage labels, and itineraries.
- (9) You explain that with a PNR and record locator anyone can access personal data through public websites operated by each of Sabre (VirtuallyThere.com), Travelport (ViewTrip.com) and Amadeus (CheckMyTrip.com). You consider that record locators do not comply with commercial norms for passwords or for measures for data protection and that personal data can be accessed from anywhere in the world and for whichever purpose.
- (10) In your opinion, as stated in your complaint of 28 February 2017, Amadeus, Sabre and Travelport infringe Article 11 of the Code of Conduct that requires that “*technical and organisational measures shall be taken ... to ensure that personal data are only accessible for the specific purpose for which they were collected.*” You added that this alleged violation of the Code of Conduct makes it impossible for any airlines, travel agency, or tour operator that uses any of the three CRSs to comply with its data protection obligations.
- (11) You therefore requested that the Commission exercises its powers under Articles 13 to 16 of the Code of Conduct to impose appropriate measures and financial sanctions on each of Amadeus, Sabre and Travelport.

Pre-rejection letter

- (12) By its letter dated 18 June 2019 (“pre-rejection letter”), the Commission informed you that it intended to close your complaint. The Commission reached the preliminary conclusion that, on the basis of the information in its possession, there are insufficient grounds for acting on the complaint. In particular, it opined that the facts presented in your complaint dated 27 February 2017 do not concern a situation in which a system vendor violates Article 11(10) of the Code of Conduct, nor do they concern other rules contained in Article 11 of the Code of Conduct. The Commission left open a possibility that the described conduct may infringe the general data protection rules as spelled out in the GDPR, stressing that these rules are not covered by the Commission’s powers under the Code of Conduct.

Your observations on the pre-rejection letter

- (13) You challenged the Commission’s preliminary conclusion in your observations of 8 August 2019. You claim that the Commission made a factual error by not recognising that Amadeus, Sabre and Travelport each operate databases as CRSs and as hosts for airlines. You explained that the primary basis of the system vendors’ liability is their failure to protect personal data and that any interconnection between databases, which you allege for the first time only in your reply to the pre-rejection letter, is “*one source (although not the only one) of the problem*”.

2. THE APPLICABLE LEGAL FRAMEWORK

- (14) Article 13 of the Code of Conduct provides that the Commission upon finding an infringement of the Code of Conduct may require that the entity concerned brings such an infringement to an end. It follows that, under the Code of Conduct the Commission has the competence to require the relevant entities to remedy such an infringement only when the infringement concerns the provisions of the Code of Conduct.

- (15) Article 11(10), which you quote in your complaint and which you consider that Sabre, Travelport and Amadeus infringe, provides that:

"Where a system vendor operates databases in different capacities such as, as a CRS, or as a host for airlines, technical and organisational measures shall be taken to prevent the circumvention of data protection rules through the interconnection between the databases, and to ensure that personal data are only accessible for the specific purpose for which they were collected."

- (16) That provision forms part of Article 11 of the Code of Conduct which contains various provisions on the processing, access and storage of personal data collected in the course of the activities of a CRS.

3. ASSESSMENT OF THE COMPLAINT

- (17) Article 11(10) of the Code of Conduct referred to in your complaint deals with a situation in which a system vendor operates databases in different capacities such as a CRS or a host for airlines. The aim of this provision is to ensure that data protection rules cannot be circumvented through interconnections between these databases.

- (18) In your letter of 8 August 2019, you argue that, to the extent Article 11(10) compels system vendors “to ensure that personal data are only accessible for the specific purpose for which they were collected”, it establishes a requirement independent from the requirement contained in the same provision, regarding “measures” intended to “prevent the circumvention of data protection rules through the interconnection between the databases”. That independent requirement, you argue, is triggered each time “a system vendor operates databases in different capacities, such as, as a CRS or as host for airlines”, within the meaning of Article 11(10). You also explain that each of the CRSs concerned by your complaint operates databases both as a CRS and as a host for airlines and that they have violated that independent requirement, in the way described in your complaint submitted on 28 February 2017.

- (19) The Commission does not share the interpretation of Article 11(10) set forth in your letter of 8 August 2019. The requirement “to ensure that personal data are only accessible for the specific purpose for which they were collected” is merely intended to render more specific the obligation to take appropriate measures so as to prevent the circumvention of data protection rules through interconnection. It clarifies the result to be achieved through the measures system vendors are bound to adopt, to the effect that personal data can only be accessed and used for the specific purpose for which they were collected.
- (20) This interpretation is confirmed by the legislative history of the Code of Conduct. The report of the European Parliament through which the insertion of (what became) Article 11(10) had first been suggested confirms that that provision has to be seen as a whole and whose (single) aim is to reinforce “the Chinese wall between CRS and hosting activities”².
- (21) Therefore, the finding of a violation of Article 11(10) always requires that, absent the required technical and organisational measures, data protection rules may be circumvented through an interconnection between databases.
- (22) The allegations you make in your complaint of 28 February 2017 do not refer at any point to a possible interconnection between databases, let alone to a possible circumvention of data protection rules that would be due to such interconnection.
- (23) In your observations of 8 August 2019 on the Commission’s pre-rejection letter, you argue that each of the CRSs concerned by your complaint operates databases both as CRS and as a host for airlines. At one point, you seem to imply, without however stating this nor giving any indications or details, that such databases are interconnected. Moreover, you do not describe any situations where, absent appropriate measures taken by the system vendors concerned, data protection rules, including on access, are liable to be circumvented through any such interconnection between databases.
- (24) The only concrete problem identified in your complaint dated 28 February 2017 and indeed in your observations on the Commission’s pre-rejection letter, is in fact linked to the allegation that Amadeus, Sabre and Travelport do not protect personal data against unauthorised access, rendered possible through the use of the record locator. Any issue of this kind, however, would be unrelated to the terms and purpose of Article 11(10) of the Code of Conduct.
- (25) The Commission concludes that there are no indications that Article 11(10) of the Code of Conduct has been infringed.
- (26) As regards the possible infringement of other provisions of Article 11, none of the specific provisions contained in that Article on the processing, access and

² Report of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on a Code of Conduct for computerised reservation systems, 10 June 2008, A6-0248/2008, amendment 39, available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2008-0248+0+DOC+XML+V0//EN>

storage of personal data by CRS applies to the situation described in your complaint.

- (27) The Commission does not exclude that the situation described might raise issues of security of the processing of personal data. This matter is however not regulated in the Code of Conduct, but rather in the GDPR³. The GDPR provides rules on the secure processing of personal data, in particular in section 2 in Chapter IV.
- (28) Without prejudice to the powers of the Commission as a guardian of the Treaties, the monitoring and enforcement of the application of the GDPR falls under the competence of the national supervisory authorities (see Article 51 of the GDPR).
- (29) Chapter VIII of the GDPR contains rules on the possibility to lodge a complaint with a supervisory authority (in particular in the Member State of the complainant's habitual residence, place of work or place of the alleged infringement). Chapter VIII of the GDPR also contains further remedies available to an aggrieved person.
- (30) It would in the first place be for the competent supervisory authority to assess whether the situation you described indeed complies with the GDPR rules on security of personal data.
- (31) In view of the above, you may consider launching a complaint pursuant to Article 77 of the GDPR to a competent supervisory authority. A list with the contact details of all the national data protection supervisory authorities in the EU is available at: https://edpb.europa.eu/about-edpb/board/members_en.

4. CONCLUSION

- (32) In light of the points set out above and having taken due account of the arguments made in your complaint and your letter of 8 August 2019, the Commission considers that there are no indications that the CRS providers (Sabre, Travelport, and Amadeus) infringe Article 11 of the Code of Conduct.
- (33) The Commission therefore concludes that there are insufficient grounds for acting on your complaint pursuant to Article 16(3) of the Code of Conduct and therefore rejects this complaint.

5. PROCEDURAL COMMENTS

- (34) In accordance with Article 263 TFEU, an action against this Decision to reject your complaint may be brought before the General Court of the European Union.
- (35) If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform Mr Richard Caine (richard.caine@ec.europa.eu). Please identify clearly the

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1) ("GDPR").

information in question and indicate why you consider it should be treated as confidential.

Yours sincerely,

[e-signed]

Henrik HOLOLEI