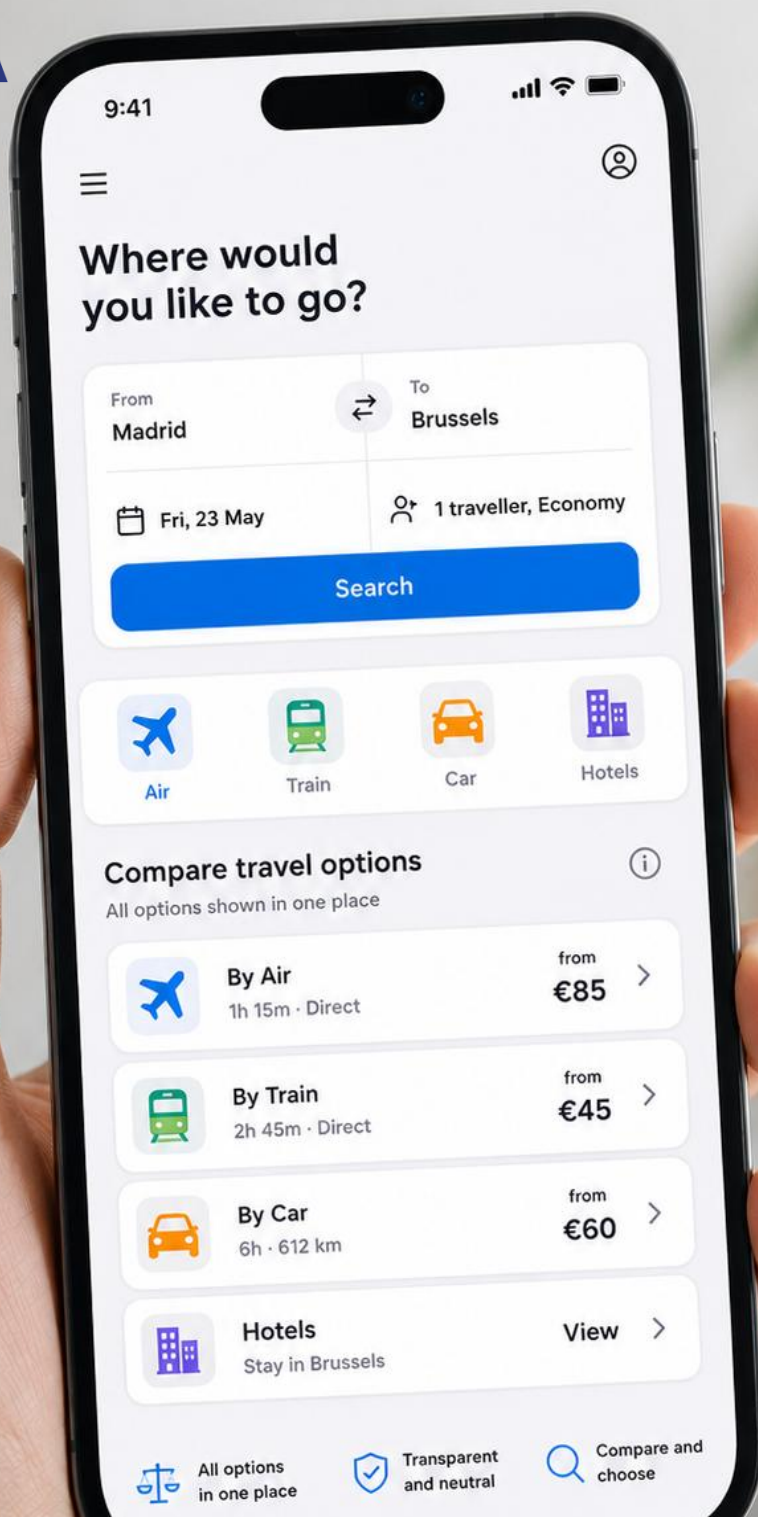




PASSENGER PACKAGE

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Executive Summary

ECTAA, the European Travel Agents' and Tour Operators' Associations, represents the interests of travel intermediaries and distributors across Europe, including travel agents, tour operators, online travel agencies and other travel service providers active in the sale and servicing of transport and travel products.

In the proposed "Passenger Package" consisting of three different pieces of legislation, the above-mentioned intermediaries and distributors are called MDMS, online ticketing service (provider), ticket vendor or tour operator. For easier reading and understanding we will use the term "independent travel intermediary".

Independent travel intermediaries are the backbone of a competitive transport and travel marketplace, resulting in choice and attractive prices for consumers. They are not merely resale channels. They perform a pro-competitive function by enabling consumers to compare transport products across brands, modes, fare families, ancillary combinations and servicing conditions in one place, including in cross-border and multimodal journeys that single operators have limited incentives to optimize. Access to comprehensive transport content is a necessary foundation and independent intermediaries cannot compete effectively without it.

A strong independent distribution layer **benefits consumers in multiple ways**:

- **It widens comparison** by bringing together competing operators and modes in one interface, including offers consumers may not otherwise search for individually.
- **It disciplines suppliers** because transparent comparison increases **pressure on price, service quality**, conditions, and ancillary offers.
- **It supports resilience** because intermediaries **help consumers** rebook, compare alternatives and obtain servicing **during disruption** across multiple suppliers.
- **It enables innovation**, including **multimodal comparison, customer-specific ranking, and sorting tools** that vertically integrated operators may have weaker incentives to provide.

ECTAA welcomes the European Commission's Passenger Package and, in particular, its original idea of **facilitating sustainable multimodal travel, improving consumer choice and transparency, and making transport distribution more competitive and innovative**. This is what's clearly stated in the "context of the proposal":

This proposal is intended to address the lack of transparency, unfair conditions and uneven playing field in the digital passenger transport ticketing market, on all MDMS active in aviation, rail, road and waterborne transport. In turn, it will improve the functioning of the ticket distribution market, thereby ensuring travellers can find all options available, including multimodal ones. As a result, the competitiveness of the transport services market will also improve.

ECTAA further agrees with the Commission's recognition that fair, reasonable, and non-discriminatory (FRAND) conditions are necessary where unequal bargaining power exists. However, applying these principles exclusively to rail and certain MDMS providers ignores the realities in other areas like the aviation sector.

There are serious concerns about whether the proposed rules – notably the Regulation on Multimodal Booking (RMB) and the Rail Ticketing Regulation (RTR) – will therefore achieve the original objectives in a balanced, effective and mode-neutral way. Important aspects of the current proposals risk weakening, rather than strengthening, independent travel distribution.

ECTAA's concerns focus on three main areas:

- **Lack of multimodal approach with inconsistent application of FRAND logic across modes, with critical gaps for aviation and other indispensable transport operators.** This is completely incompatible with a “multimodal” idea.
- **Overly prescriptive and limiting “neutral display” obligations for independent travel intermediaries** that go beyond existing horizontal EU rules. This will risk undermining viable distribution models, less differentiation and innovation in distribution and also less customers seeing relevant options. A clarification is needed that “Packages” as per Directive 2015/2302 including multiple transport operators are not in scope of the RMB.
- **A hosting obligation in the RTR that risks reinforcing the market power of incumbent railway undertakings' own platforms,** rather than fostering a genuinely competitive and diversified ticketing ecosystem. Already dominant rail distribution platforms will become super platforms gathering all data and will leave no space for independent travel intermediaries – with the respective impact on prices and choice.

If the core issues in the Passenger Package remain unresolved, negative effects will be the result. Independent travel intermediaries will increasingly receive incomplete or degraded content, be restricted in what alternative options they can show while facing compliance obligations that direct channels do not bear. They will be less able to invest in innovation, servicing and multimodal products; **consumers would then face less effective comparison, weaker price competition, more fragmented booking journeys and fewer genuinely neutral pathways across transport modes.**

Regulatory consistency and FRAND across mode

ECTAA welcomes the Commission's recognition that **fair, reasonable and non-discriminatory (FRAND) conditions may be necessary where unequal bargaining power exists** between market participants and where one party controls access to content or distribution channels that are essential for effective market participation. That logic is applied in the proposals to rail operators (RTR) and B2B MDMS providers (RMB), on the basis that certain actors may impose unfair commercial conditions because they control indispensable inputs or bottlenecks. **For independent travel intermediaries, access to airline content is often equally indispensable** because an independent travel intermediary cannot compete effectively without access to **must-have air content**, either in a market or on certain routes. The relevant question is not whether airlines compete among themselves, but whether independent travel intermediaries depend on access to airline content and other transport operators' content in order to compete effectively; for ECTAA, the answer is clearly yes.

If independent travel intermediaries cannot obtain indispensable transport content on FRAND terms, consumers will see fewer comparable offers, weaker multimodal solutions, less innovation in ranking and servicing, and ultimately higher search costs **and higher end prices**. Access to airline content is not always fair, complete or non-discriminatory. **Airlines increasingly decide which content, fare classes, ancillary services and servicing functionalities are made available through independent travel intermediaries and on what technical or commercial terms**, with the result that independent travel intermediaries do not always have access to the same content available through airline websites (which are out of scope for neutral ranking criteria). Consumers may therefore be unable to compare the full range of products and fares available in the market when using independent travel intermediaries, undermining transparency and choice. This obviously results in higher prices for consumers.

The growth of NDC and direct-connect models has further increased airline control over downstream distribution. Airlines now exercise greater control over which content is available, through which channels, with which functionalities, and under which technical and commercial conditions, strengthening the case for safeguards that ensure fair access – access to all relevant content including ancillaries on FRAND terms. Over the past two decades, airlines have also progressively reduced or eliminated traditional commission payments while continuing to rely on independent travel intermediaries to generate demand, market their services, invest in booking technology, assist consumers during disruptions and support multimodal travel solutions. In ECTAA's view, **the absence of meaningful remuneration does not indicate a well-functioning market**; it rather shows that suppliers controlling indispensable content can transfer distribution costs onto independent travel intermediaries while continuing to benefit from the services they provide.

Independent travel intermediaries are especially valuable for consumers and competition where one operator or airline group holds must-have content in a given national market or on specific routes. In those cases, the competitive constraint on

independent travel intermediaries does not come from whether airlines compete somewhere in Europe in the abstract, but from whether the independent travel intermediaries can credibly serve customers in its target market without access to the indispensable content.

Consolidation and increasing market power in aviation mean that an increasing number of airlines and airline groups are indispensable for independent travel intermediaries in their respective home markets. Must-have airlines content is not limited though to large airlines only. Finnair content is must-have content for independent travel intermediaries and consumers in Finland. The same is true for KM Malta Airlines in Malta, Aer Lingus in Ireland and SAS in the Nordic markets just to name a few beyond the obvious ones of Lufthansa in Germany, Air France in France or Iberia in Spain.

The same logic also applies to non-EU carriers where their services are materially indispensable for effective comparison and booking on particular city-pairs or market segments to, from or within the Union. Any future FRAND obligation should therefore apply by reference to market power and indispensability in the relevant market, not by reference to the carrier's place of establishment.

The recent antitrust case by the Italian Competition Authority against Ryanair illustrates how dominant air carriers can exploit these asymmetries to impose unfair commercial conditions on independent travel intermediaries.

Despite these realities, the RMB and RTR proposals apply FRAND obligations only to rail undertakings and certain MDMS providers while ignoring indispensable transport operators outside rail, particularly in aviation. ECTAA considers that this approach is neither mode-neutral nor consistent with the Commission's own reasoning on dependency, bargaining power and control over essential content. The rationale for applying FRAND principles to rail operators and B2B MDMS providers applies equally to aviation and other strong transport operators, and FRAND safeguards should therefore extend across all modes especially as the original intent was a "multimodal" approach.

There is no indication of a market failure in the independent MDMS market and still this is the only focus of regulation in the RMB proposal. **At the same time, transport operators with market power prevent independent travel intermediaries from access to content on FRAND terms.** Other modes than rail are nowhere addressed in the RTR or RMB though – an important missing piece for a multimodal approach. The necessary inclusion of other transport modes and especially air in the scope of content sharing obligations on FRAND terms would address the actual source of dependency experienced by independent travel intermediaries: inability to compete effectively if indispensable must-have fare content, ancillaries, servicing functions or booking access are withheld or degraded in neutral channels – all to the detriment of a well functioning marketplace, competition and consumers.

We further call on the Commission to monitor distribution practices of strong transport operators (especially air) in the form of a market study on access to fare content, ancillary parity, servicing functionality, commission evolution and surcharge practices to gather

further evidence. Concerning the scope of the RMB, a clarification is needed that “Packages” as per Directive 2015/2302 which may include multiple transport operators are not considered “transport services” and thus not in scope.

Neutral display obligations and content access

ECTAA supports the objectives of facilitating multimodal travel and improving transparency for consumers, including clear disclosure of ranking parameters and paid prominence. However, the **proposed neutral display obligations** for independent travel intermediaries **raise serious concerns regarding proportionality, evidential basis, economic impact and practical enforceability**.

Current EU rules already contain safeguards to ensure transparency and fairness. The Unfair Commercial Practices Directive prohibits misleading practices and requires disclosure of sponsored content. The Platform-to-Business Regulation requires disclosure of the main ranking parameters and of the role of remuneration. The Digital Markets Act addresses self-preferencing by dominant gatekeepers. None of these instruments prescribes how private undertakings must rank products or services or defines a single “neutral” ranking methodology.

By contrast, the RMB proposal introduces prescriptive rules on the criteria according to which transport offers must be displayed, limits the use of different ranking criteria or sponsored placements within default search results and imposes specific requirements on “neutral” displays and rankings for independent travel intermediaries. In ECTAA’s view, this moves from transparency-based regulation into direct regulation of ranking methodology without robust evidence of market failure among independent travel intermediaries. This also differs strongly from the originally under MDMS discussed “mandatory filter options”. The **Impact Assessment** relies largely on stakeholder concerns and examples that primarily relate to self-preferencing by transport operators controlling their own distribution channels, rather than systematic manipulation by independent travel intermediaries. It **does not provide quantitative evidence showing that independent travel intermediaries systematically distort rankings or that commercially influenced rankings** create significant consumer harm that could not be addressed under existing rules.

Moreover, independent travel intermediaries can only rank, display and combine offers to which they have technical and commercial access. Especially **strong airlines increasingly restrict independent travel intermediaries’ access to complete fare content, fare classes and ancillary services**, including through direct-connect and NDC-based models. **Rigid display rules for independent travel intermediaries, without any corresponding obligation on transport operators to provide all relevant content** (including ancillary services) on FRAND terms, **will not create genuine transparency. What is the benefit of a neutral ranking if there is only limited content to be ranked?** A distributor cannot identify or display the cheapest or most suitable fare

in the market if it does not have access to all fares and relevant data in the market, and this problem becomes even more acute in multimodal travel where there may be an almost unlimited number of itinerary combinations and dynamic, increasingly personalized pricing.

ECTAA further warns that excessively restrictive rules on sponsored products in default search results could undermine the economic sustainability of independent travel intermediaries. In aviation in particular, many independent travel intermediaries have to rely on alternative revenue streams such as advertising, sponsored placements and value-added services because airline commissions have largely disappeared. **If sponsored products can no longer appear in default search results and lose much of their value, one of the few remaining sources of remuneration for independent travel intermediaries** will be reduced, potentially weakening the indirect distribution market, reducing investment and ultimately affecting consumers' ability to compare different transport options. Overly rigid ranking methodologies will also prevent innovation and differentiation and risk putting independent travel intermediaries at a disadvantage compared with direct channels of transport operators.

There is a lively competition between independent travel intermediaries. Every independent travel intermediary aims to provide the most relevant content to its customers in order to stay competitive. **Using machine learning and historical booking data allows to provide rankings beyond the prescriptive criteria proposed in the RMB, but which are relevant for their customers.** A transfer connection via airport A for example may be five minutes faster or five Euro cheaper while a connection via airport B may have resulted in less delays in the past and higher customer satisfaction. A default "best" ranking beyond the strict neutral criteria which do not cover this case has therefore a good reason to exist. The strict limitation to a fixed set of neutral ranking criteria in default displays will prevent independent intermediaries from showing relevant rankings based on transfer-quality and multimodal comparison tools that support the Union's sustainable mobility objectives.

If an independent travel intermediary however provides totally irrelevant default "best" ranking filled with advertisements and content that is ranking high while not relevant for many customers, these customers will simply avoid such a travel intermediary, which is easily possible due to competition amongst independent travel intermediaries.

ECTAA therefore believes that the **Regulation should follow the established EU approach based on transparency, disclosure and fair competition allowing for innovation and a lively independent travel intermediary market for consumers rather than imposing prescriptive ranking obligations that create legal uncertainty and disproportionate compliance burdens for independent travel intermediaries.** Independent travel intermediaries are the backbone of a competitive marketplace resulting in choice and attractive prices. Damages to the independent travel intermediary market will always result in less offers and higher prices for consumers!

ECTAA would like to also highlight one specific aspect that needs to be further evaluated in relation to the **interplay between the future air passenger rights and the RMB**. According to the agreed revision of air passenger rights, there is a requirement to always display the air fare inclusive of carry-on luggage at the outset of the booking process. At the same time there is the proposed neutral ranking. When it comes to price however, the lowest price with or without carry-on luggage differs. One airline with the cheapest “naked” fare with a personal item only is not always the cheapest airline including a standard carry-on luggage. Depending on the lowest price with or without carry-on luggage, the ranking will therefore need to be different. Which airline offer will need to be shown on top of the ranking based on “lowest price”? The one with the lowest “naked” fare or the one with the lowest carry-on fare? This **raises the question how the “carry-on inclusive price” requirement from the air passenger rights Regulation would interfere with a price ranking as per neutral criteria proposed in the RMB**. If the RMB retains a price-based ranking criterion, the legislative text would need to specify e.g. that, for air services, the relevant comparable price for default ranking is the publicly available fare inclusive of the carry-on allowance that must be displayed at the outset under the air passenger rights framework.

The requirement to always display the air fare inclusive of carry-on luggage at the outset of the booking process tries to achieve more transparency for consumers and enable them to immediately compare like for like. This is however also a strong argument for a wide content sharing obligation from airlines to independent travel intermediaries. **Only if all content including all public fares and ancillaries is shared with independent travel intermediaries will result in true transparency for those looking for naked fares only, those looking for prices including carry-on luggage and those looking for prices including check-in luggage.**

Hosting obligation in the RTR and risks to multimodality

ECTAA supports the objective of improving the visibility of new entrant railway undertakings and expanding consumers’ access to rail products. However, the proposed hosting obligation for indispensable railway online ticketing service providers raises serious concerns because it may further entrench the market power of vertically integrated incumbents rather than foster a genuinely competitive and diversified ticketing ecosystem. Network effects will work against independent travel intermediaries.

By requiring dominant railway undertakings’ own consumer platforms to host competitors’ products, the Regulation risks consolidating those platforms as the primary or **default gateway for rail distribution** in each national market. Incumbent railway undertakings already benefit from strong brand recognition and very large customer base on their proprietary websites and apps, and the Commission staff working document accompanying the proposals describes these channels as indispensable for rail passengers. Making them the mandatory host for competitors’ products will further increase their relevance, traffic and data advantages.

If more and more content is channeled through incumbent platforms by regulatory design, independent travel intermediaries will find it increasingly difficult to reach scale, justify investments in innovation and maintain viable business models. This may accelerate concentration at distribution level: indispensable incumbent platforms gain even more traffic and data, while neutral, multi-operator and multimodal independent travel intermediaries lose competitiveness. Over time, the hosting obligation will therefore undermine innovation and multimodality, making it harder for new operators, niche services and genuinely multimodal platforms to emerge and compete on the basis of better functionality, customer service or sustainability-based comparison tools.

The hosting obligation could thus unintentionally recreate in rail the very imbalance it seeks to address: a small number of vertically integrated operators controlling both the operation of services and the main digital channels through which those services, including those of competitors, are sold.

ECTAA considers that the **goal of making all operators' rail products**, including those of new entrants, **visible and bookable across multiple channels can already be achieved through** strong FRAND access obligations for railway undertakings vis-à-vis independent B2B and B2C MDMS (**sharing obligation**). If railway undertakings are required to provide full content and data access to independent travel intermediaries under FRAND conditions, they will be able to display and combine rail offers from all operators without further reinforcing incumbent-controlled channels. The sharing obligation under FRAND terms will enable a strong distribution of railway new entrants by a range of independent travel intermediaries and thus be sufficient.

It is important that FRAND-based sharing obligations must be implemented as quickly as possible and must be enforceable in practice, not only in theory. This could be addressed either by inserting clear cross-modal sharing obligations on FRAND terms in the RMB, which is already conceived as a multimodal instrument, or by openly transforming the RTR into a broader ticketing regulation across transport modes.

Any sharing obligation should require content to be made available in a processable, standardized and well-documented format, so that independent travel intermediaries can use it without disproportionate technical investment. At the same time any content sharing framework should include appropriate safeguards for confidential business information, cybersecurity and compliance with data protection law.

Key recommendations to EU legislators

To protect consumer choice supported by a strong and competitive distribution marketplace, ensure real marketplace transparency and support sustainable multimodal travel, **ECTAA urges co-legislators to consider the following adjustments to the Passenger Package:**

- **FRAND obligations beyond rail:** FRAND principles must apply consistently across all transport modes. Any indispensable transport operator should be mandated to establish commercial distribution agreements with independent travel intermediaries on fair, reasonable and non-discriminatory terms, including appropriate remuneration.
- **Widen content-sharing obligations:** Introduce explicit content-sharing obligations for “must-have” transport operators beyond rail so that independent travel intermediaries receive fair, complete and non-discriminatory access to all fares, inventory, ancillary services and servicing functionalities in a standardized and processable format. FRAND content-sharing agreements should be implemented fast and must be enforceable.
The necessary mode neutrality can be achieved by either by placing crossmodal FRAND sharing obligations in the RMB or, by converting the RTR into a broader “ticketing regulation”.
- **No hosting obligation in RTR:** Delete the hosting obligation for indispensable railway online ticketing service providers. The visibility and bookability of all operators’ rail content can be achieved through comprehensive FRAND data-sharing and commercial access obligations from railway undertakings to independent travel intermediaries.
- **Ensure transparent but flexible ranking:** Maintain the EU’s established approach based on transparency and disclosure of ranking parameters and paid prominence, rather than prescribing a single “neutral” ranking methodology. Ensure that rules do not deprive independent travel intermediaries of legitimate revenue streams or prevent innovation in multimodal comparison and user-centric services.

Conclusion

Independent travel distribution is itself a source of competition, consumer welfare and multimodal innovation. ECTAA supports the Passenger Package, but considers that important elements of the current proposals should be revised to ensure that the objectives are achieved in a balanced, effective and mode-neutral way. **By extending FRAND and content-sharing obligations to all must-have transport operators, revising overly prescriptive neutral display rules and deleting the hosting obligation in the RTR, the EU can secure a genuinely competitive, innovative and consumer-centric European mobility market** in which independent travel intermediaries can deliver real transparency and choice for consumers.

ECTAA Members

