



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

**Proposal for a regulation of the European Parliament and of the Council on a
Code of Conduct for computerised reservation systems**

SUMMARY OF THE IMPACT ASSESSMENT

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1. INTRODUCTION

This document summarizes the impact assessment report that describes the problems encountered by the present regulatory framework of computerised reservation systems in the air transport sector and analyses the various policy options to handle these problems.

Computerised reservation systems (CRSs) provide their subscribers with instantaneous information about the availability of air transport services and the fares for such services. They permit travel agents, whether brick-and-mortar or on-line, to make immediate confirmed reservations on behalf of the consumer. There are currently four major CRS providers active on the European market: Amadeus, Sabre, Galileo and Worldspan (the two latter are currently merging).

2. REGULATION 2299/89 AND THE CHANGING MARKET CONTEXT

The Code of Conduct for Computerised Reservation Systems ("the Code of Conduct") was first established in 1989 with the adoption of Regulation 2299/89. At that time, the vast majority of airline bookings were made through CRSs. For air travel, consumers could practically only rely on one single information and distribution channel, the one constituted by CRSs and travel agents. In addition, most CRSs were owned and controlled by airlines. This combination of facts created particular risks of competitive abuse for which general competition rules were not sufficient and for which specific *ad hoc* rules in the form of a Code of Conduct were necessary. Given the complex and multi-national character of the CRS services and its support for the single aviation market, regulation on EU level has a value-added in this sector.

Changes in CRS technology and economics are gradually eroding the key features of the competitive landscape for which the Code of Conduct was designed. First, many airlines have divested their CRS ownership. Three of the four CRSs (Galileo, Worldspan and Sabre) no longer have any airline ownership, while three airlines only hold minority shareholdings in Amadeus. Second, thanks to the development of alternative distribution channels, such as the airlines' Internet websites or their call centres, consumers have nowadays access to a multiplicity of information and booking channels for air transport services. About 40% of all airline tickets in the EU are booked via alternative channels and about 60% via travel agents and CRSs.

The Code of Conduct is increasingly ill-adapted to the changed market conditions and is creating economic inefficiencies: the Code's provisions increase the cost of CRS services (they represent on average about 10 euro per return ticket) and restrict the CRSs' flexibility to adapt their services to the specific needs of the airlines and the travel agents. Most importantly, the Code's non-discrimination requirement for booking fees stifles price competition, and the prohibition for airlines to differentiate content between CRSs significantly restricts their negotiating freedom. The ensuing lack of competition leads to higher CRS booking fees and creates a system of economic rents in favour of CRSs and travel agents, at the expense of airlines and their passengers.

Higher than necessary booking fees incite airlines to distribute an increasing share of their tickets via alternative distribution channels such as their own Internet websites, which are less costly and technically more flexible. Many low-cost airlines do not use the services of the CRSs at all and hence are not offered by many travel agents.

Furthermore, as CRS markets in other parts of the world have been deregulated, it is necessary to ensure that airlines and CRS providers from within and outside the EU compete on a level-playing field.

3. PUBLIC CONSULTATION

An open internet consultation was carried out between 23 February 2007 and 27 April 2007. To this effect, the Commission services published a consultation paper that gave an overview of the most recent market developments, in particular the development of alternative distribution channels, the evolution of the ownership and control structure of the CRSs and the market liberalisation in the United States.

On 2 May 2007, stakeholders and stakeholders' organisations were invited to a meeting in Brussels in order to give a short overview of their contributions.

The Commission received 48 contributions, individual of from their representative bodies, from air carriers, CRS providers and IT services providers, consumer/ travellers, travel agents and rail operators.

The consultation paper, a summary of the contributions and the (non-confidential) individual contributions can be consulted on the Commission's website:

http://ec.europa.eu/transport/air_portal/consultation/2007_04_27_en.htm.

The public consultation has shown that most stakeholders are in favour of revising the Code of Conduct to adapt it to the present day conditions, but to keep key provisions ensuring the provision of neutral information to subscribers and safeguards against potential abuses in the presence of close links between air carriers and CRS providers.

4. THE POLICY OPTIONS

In this impact assessment, two options for revision - partial and full deregulation - were compared to the base case of the status quo. The first option – partial deregulation - has been further sub-divided in three sub-options that differ with regard to the safeguard measures in case of close links between airlines and CRSs. All the options aim to increase the scope for competition in the CRS market:

- Option 0: status quo
- Option 1: partial deregulation
 - Option 1a: partial deregulation with control unbundling of the airlines and the CRSs. The option forbids air carriers to control CRS providers and vice versa;

- Option 1b: partial deregulation with specific provisions for parent carriers of CRSs. The option would maintain an obligation for parent carriers to participate on equal terms in other CRSs than their own and the prohibition to offer incentives/disincentives to travel agents for the use of a specific CRS.
- Option 1c: partial deregulation without specific provisions for parent carriers of CRSs;
- Option 2: full deregulation (abolition of the Code of Conduct).

5. COMPARISON OF THE POLICY OPTIONS

The status quo has been rejected because the present Regulation's restrictions on pricing and negotiating freedom are having increasing negative effects, in particular in terms of high distribution costs. These costs induce airlines to redirect an increasing share of their sales via alternative distribution channels.

Greater pricing freedom with regard to booking fees would enhance market incentives in the CRS market, allowing airlines to use their natural bargaining leverage and forcing CRSs to compete more aggressively for carrier participation on the basis of price and service quality. Lower booking fees entice airlines to provide more content via the travel agents and allow all consumers – including those without Internet access – to have a broader choice of travel options.

But a full deregulation (option 2) has been rejected at the present state of the market. Many corporate travellers remain highly dependent upon the single distribution channel constituted of the travel agents and the CRSs. The same is true for travellers in Member States with low Internet penetration rates: less than half of the EU population has access to the Internet - which is the most important alternative distribution channel. This is different from the observed situation in the USA where 70% of the population has Internet access (with smaller differences between individual States than in the EU) and where Internet sales as an alternative to CRSs are more developed.

In these circumstances, the risks of competitive abuse are higher than in other economic sectors and the sole reliance on the general competition rules would not be sufficient, especially in case of close links between airlines and CRSs. In addition, certain market behaviours of the CRSs (e.g. display bias) would be harmful to consumers even if they were not the result of a competitive abuse.

Regulation 2299/89 was earmarked for repeal in the Commission's strategy for regulatory simplification¹. This impact assessment concludes that there is scope for simplification of the Regulation, but the particular characteristics of the market necessitate the maintenance of sector-specific rules. The impact assessment shows that

¹ Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Implementing the Community Lisbon programme: a strategy for the simplification of the regulatory environment", COM(2005) 535, 25.10.2005, page 15

option 1b offers the most favourable outcome in terms of increased competition, safeguards against competitive abuse, neutral, transparent and comprehensive information for consumers and the promotion of rail transport in CRS displays.

6. ADDITIONAL MEASURES

For each of the retained options, the following additional issues have been examined:

- (1) With regard to the definition of a "parent carrier", the impact assessment concludes that there is no need for change.
- (2) The impact assessment advocates the simplification of the prescriptions for the principle display while maintaining safeguards to ensure the neutral display of travel options.
- (3) In line with the Commission proposal for a Regulation on common rules for the operation of air transport services in the Community (COM2006/396), where a system vendor ranks travel options by fares, the fares should be displayed inclusive of all applicable taxes, charges and non-avoidable airline fees.
- (4) With regard to Marketing Information Data Tapes (MIDT), the identity of travel agents should no longer be revealed. But there is no need to keep specific provisions concerning the grouped purchase of MIDT.
- (5) Provisions regarding contracts between CRS system providers and subscribers: in the context of a partial deregulation, many of these rules can be removed or simplified. However, a protection against unreasonable contract provisions should be maintained, in particular for the smaller travel agencies.