



The European Consumers' Organisation

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**Consultation paper on
the possible revision of Regulation 2299/89 on
a Code of Conduct for computerised reservation systems**

BEUC's SUBMISSION

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BEUC represents 40 independent consumer organisations from 27 countries. On several occasions, we have commented on the proposals to modify the Code of Conduct for computerised information systems¹.

In our view, the risks which consumers will have to face as a result of scrapping the code still outweigh the (elusive) benefits which could in theory result from this. Therefore, we consider any review of the code of conduct with a great deal of caution. Our fears are only reinforced by the fact that the evolution of the market as analysed in the Consultation Paper rely partly at least on recent market trends for which a degree of uncertainty persists as regards the medium to long term developments.

Besides, the lessons of liberalisation of the CRS market in the USA can only be preliminary at this stage and might in any case not be directly applicable to the EU market situation, owing to the lack of integration of the EU market, and/or to the different market structures along the value chain at national level for instance.

We are sensitive to the argument that price competition is stifled as a side-effect of the current non-discrimination rule, reducing the potential amount of product innovation. At the same time, there are still potential competition problems, for instance in regions where a carrier has a dominant market position and partially owns the CRS or has a substantial degree of influence on its 'behaviour'.

Although Amadeus is no longer fully controlled by some of Europe's main carriers, the ownership structure does not guarantee fully independent commercial and strategic decisions. In regions where consumers rely heavily on brick-and-mortar travel agencies, i.e. regions with low internet penetration, and in regions where switching between CRSs is complicated, scrapping the Code without flanking measures could reintroduce the competition problems the Code was meant to address. For instance, more than 50% of European consumers do not have Internet access, and in 11 Member States fewer than 33% of them have access to the Internet.²

Q1. In the light of the described market developments, is there still a need for the sector-specific competition rules imposed by the Code of Conduct? Or should the Code of Conduct be revised or abolished?

Q4. Given the changes in the market and in the ownership and control structures of the CRS providers, are the specific obligations imposed on parent carriers still needed? Or should these obligations be reviewed or lifted?

Q5. Should airlines remain free to invest in CRS providers and control them or should there be rules that restrict the possibility for airlines or other sectors to control CRSs? Are specific transparency requirements needed for CRS providers that are not publicly listed on a stock exchange?

In our view, the focus should be on consumers' need to have access to objective information about competing offers on the market. Information has to pass through different stages and any consumer-centred approach should focus on three core objectives:

1. preventing as far as possible the filtering and manipulation of this information (full, unbiased, objective and transparent information);
2. minimising the impact on competition (least intrusive measures);

¹ 'BEUC's opinion on the proposal for a Regulation (EEC) on the Code of Conduct for computerised reservation systems (CRS) modifying Council Regulation EEC n°2299/89 of 24th July 1989 (COM(92)404)', BEUC/38/93 of 12th February 1993; Letter to DG TREN van Hasselt – computerized reservation systems, dfo/252/2004; Letter to Ms Despina Spanou/EC/Cabinet Kypiranou - Computerised Reservation Systems – concerns about proposed deregulation, EJA/005/2006.

² E-Communications Household Survey', Special Eurobarometer 249, July 2006. The eleven Member States are: 31% in Italy, 28% in Spain, 27% in Cyprus, 26% in Czech Republic, 23% in Poland, 22% in Latvia, 19% in Greece, 18% in Portugal and Hungary, 17% in Lithuania and 14% in Slovakia.

3. minimising the impact on prices, i.e. minimising the costs of obtaining and disseminating this information (efficiency).

Analyzing the market developments from this point of view, the spread of Internet usage allows airlines to post their offers directly on the web, which is one of the key elements of the operation (and success) of no-frills carriers. Direct booking is also progressing for traditional carriers, on the web as well as at airports or ticket offices. It is therefore fair to ascertain that the information and alternative booking options are out there and potentially available for both travel agents and to a certain extent consumers, in particular the ones with reliable Internet connections and the ability to do their own searches of many sites.

The limited extent to which consumers can assess whether the information they would obtain suffers from possible bias has also to be considered in that respect though, especially if they consult 'only' a limited number of websites, or if these websites are themselves 'biased'.

Owing to the unequal access to Internet across the EU, as well as to the fact that, as underlined in the Consultation Paper, some offers from traditional air carriers or no frills airlines might only be available/displayed online, the internet should at that stage at least be regarded as a complement, not as a substitute for the CRS. As underlined by the Communication Paper, these are alternative distribution channels.

Since consumers obtain information both from travel agents and direct booking sites, to minimise the costs to obtain information of consumers, CRSs should ideally contain all available information, low-cost carriers destination and prices included. Obviously, in such a situation, attention should be paid to preventing the possibility of filtering and manipulating this information.

As underlined in the Consultation Paper, in case the CRS rules are abolished, CRSs might tend to 'complete' the information they provide, if competitive conditions prevail. However, after the CRS deregulation in the US, 'there have been cases where CRS providers have biased their principal displays against a particular airline in order to force access to its entire fare content'³. Since Internet/direct booking cannot be at this stage at least be considered as a perfect substitute to CRSs, the extent to which 'competition between the different booking channels would contain this behaviour to an acceptable minimum'⁴ is far from ascertained in our view.

Also, if carriers have a say as how the CRS develops its commercial strategy, the risk of manipulation is still present. As such, the development of direct bookings through the internet has not changed the main reason of the existence of the Code of Conduct: carriers being able to influence, directly or indirectly, the commercial strategy of the CRSs.

As underlined in the Study to assess the potential impact of proposed amendments to Regulation (EEC) 2299/89 on a code of conduct for computerised reservation systems (CRSs) of October 2003⁵, airline-affiliated CRSs face different incentives than independent ones. Airline affiliated CRSs would have an incentive to increase booking fees, and also to bias their display. Higher booking fees are internal transfers for affiliates and the danger of losing clients would not be present. An airline affiliated CRS has also an incentive to increase its market power. The airline owner of a CRS could limit its participation in rival CRS to harm their competitive position, if there was not a mandatory rule in place.

Our Spanish member, CECU, informed us about a conflict between British Airways and Amadeus. British Airways, in trying to reduce the booking costs, has stated that it would pass on the higher fees in the CRS Amadeus to the travel agencies. Since British Airways has no stake in Amadeus, the increased costs are not off-set by increased revenues through the CRS.

Besides, it has been underlined in the Brattle Report that there is a risk for anti-competitive abuses as long as there is a link between the carriers and the affiliated CRS which allows for redistribution of

³ Consultation Paper § 87 p. 19.

⁴ Ibid.

⁵ Study to assess the potential impact of proposed amendments to Regulation (EEC) 2299/89 on a code of conduct for computerised reservation systems of October 2003, prepared for the European Commission Directorate-General for Energy and Transport by The Brattle Group and Norton Rose.

profits, especially when the carriers and the CRS considered have important market shares in the market considered, which is the case for Germany, France, and Spain (Lufthansa, Air France, Iberia and Amadeus being in such a position).

As far as the changes in the Canadian and American Codes are concerned, we find it somehow misleading to make a direct connection between the US legal situation and the need for EU carriers to have more flexibility in contracts with CRSs in the Community in order to maintain their competitive position. This does not seem to consider in depth the competition dimension of any extra 'flexibility' granted to EU carriers, and especially parent carriers, nor the public interest at stake.

We do not share the views that the existing Regulation is 'overly detailed, prescriptive and complex'⁶. There is still a need for sector-specific competition rules. In particular, safeguards to guarantee the neutrality of information should be reinforced (see our response to question 8 below).

Attention should also be paid to vertical integration/control of upstream or downstream markets by carriers, but also CRSs (online travel agencies) for instance, which would have an impact on the level of market dominance, but also the level of transparency (or bias of offers) for consumers. Consumer welfare should be a central concern in this analysis, and the focus should be on both short and long-term effects on consumers rather than merely on the form of a particular behaviour.

Q2. Given the described market developments, has the risk of market foreclosure not reduced and are general competition rules (Article 82 of the Treaty in particular) not a sufficient remedy/deterrent against these risks?

We foresee a number of potential problems with relying on ex-post control of abusive practices. For example, the definition of the relevant market to begin with might be contested: should the relevant market be restricted to distribution through CRS or should it include alternative distribution channels such as the Internet?

The development of the Internet as such is not a panacea for the competitive problems related the CRS. Internet should be regarded as a complement, not a substitute for the CRS. Ideally, consumers themselves should be able to access systems that provide (unbiased and comprehensive) travel information and be able to make their own bookings if they so wish. The prices displayed should be all inclusive (taxes, fuel surcharges, handling fees, etc.).

The provision of information through the Internet might increase market transparency, provided access to information is not restricted or biased. At the same time, besides the issue of access to Internet as such, a number of consumers might not be willing to use the Internet, although it is available to them, for fears of a lack of security of payments for instance.

Q8. Are the Code of Conduct's detailed prescriptions with regard to the principal display of a CRS still pertinent in the present market context? Are they still required to ensure a neutral choice? Or can they be simplified or removed? In case stakeholders favor a simplification or removal of these prescriptions, could they – where possible - quantify the reduction in administrative costs that such a regulatory change would induce?

In our view, the display requirement in Article 5 and Annex 1 should be read in parallel with the non-discriminatory access requirements in Article 9 since the aim of both articles is to provide consumers with unbiased and neutral information.

At the time of the 1999 amendment of the code, it was still seen as necessary to include additional requirements for travel agents to pass this information on to the consumer without manipulation or abuse. Under Article 9a of the Code travel agents are forbidden to manipulate the information provided to the consumer, i.e. to provide discriminatory, misleading or inaccurate information.

⁶ This is reported by the Consultation Paper as being reflective of a general consensus amongst stakeholders, consensus which we do not share.

Consumers also have the right to receive the information displayed to the travel agent, either directly from the computer screen or on a print-out.

Any change to Article 5 should guarantee a neutral principal display.

Q9. Would greater pricing freedom with regard to booking fees allow more rail services to be offered on the CRS displays? Do we need additional measures to promote the sale of rail tickets via CRSs?

Ideally, all means of transportation should be included in these systems.

In particular, if a consumer needs information about combined transportation, he or she should be able to get it. Rail services can also be seen as an alternative to air travel and this competition dimension should be reflected.

A solution could be to have booking fees set as a percentage of the price of the service offered. This would increase the competitive pressure and would allow the inclusion of railway and low cost carriers in the CRSs. The fact that market developments so far have not gone in this direction indicates the persistence of competition problems in these markets, since access to information and offers is biased to the detriment of the 'cheapest' alternatives.

END