27 April, 2007

European Commission
Directorate-General for Energy and Transport
Office DM24 5/98
B-1049 Brussels
Belgium

By Email and Facsimile

Dear DG-TREN,

Consultation Paper on the Possible Revision of Regulation 2299/89 on a Code of Conduct for Computerised Reservation Systems

Please find below the response of bmi to the Commission's Consultation Paper on the possible revision of the CRS Code of Conduct:

General Level

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?

In our opinion, as a medium sized carrier bmi would prefer to see the current Code of Conduct updated and revised as opposed to complete abolition to ensure that stakeholders are offered a degree of protection and certainty from the threat of any potential abuse of a dominant market position in the ever-changing global distribution system landscape.

bmi firmly believes it is unhelpful and unfavourable to purely rely on national/European competition law in an attempt to curb anti-competitive behaviour.

Competition law is not a particularly strong deterrent and the repercussions and punishment is often delivered far too long after an infringement has taken place for the enforcement to have any real effect.

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bmi is also concerned by the increase in the GDSs incentive payments to their subscribers, which in turn have led to higher booking fees for airlines.

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?

As indicated above in response to Question 1, bmi is not convinced that competition law acts as an effective deterrent, and therefore the added protection afforded to stakeholders by a revised Code of Conduct should be maintained as an additional guarantee against potential abusive practices.

Specific Level

Q3. Would the air transport distribution market – including small and medium sized companies involved in the market – be ready for the introduction of greater pricing freedom (such as through the removal of the rules of non-discriminatory fees given in Article 10)?

In terms of Article 10, 1(a), bmi's considers it is essential that the essence of the current Regulation is retained or revised to ensure legislative protection against potential abuse by system vendors in respect of their billing mechanisms and responsibilities towards users covered by this Article. As a mid-sized carrier, we have concerns that prices could increase disproportionately or indeed unfairly if the wording was to be removed.

bmi agrees that Article 10, 1(b), could be removed from Article 10 as the definition of GDS incentives as a "distribution cost" has been an invitation to the GDSs to impose cost-related price increases.

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?

On balance, as a mid-sized carrier, bmi believes that the obligations imposed on parent carriers should be retained to protect against any future developments where a dominant home market carrier may create a new GDS.

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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.

bmi consider that it should be possible for airlines to invest in CRS providers as long as they do not own a controlling stake in any CRS organisation and there is a level of transparency that allows other users to see what the level of involvement is to ensure the avoidance of anti-competitive practices.

Q6. Are the provisions given by Article 6 of the Code of Conduct to make the data from Marketing Information Data Tapes (MIDT) available to groups of airlines and subscribers still pertinent in the present market context?

bmi believe that the legislation around Article 6 should be revised to allow smaller and mid-sized carriers to be able to purchase MIDT as a group. At present bmi finds the cost too prohibitive so any revision that allows smaller airlines to benefit from MIDT, whilst still affording protection for passengers would be welcomed.

Q7. Should travel agents' identities no longer be revealed in the MIDT?

bmi feels that travel agents' identities in MIDT data should be retained to ensure adequate transparency.

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 favour a simplification or removal of these prescriptions, could they – where possible – quantify the reduction in administrative costs that such a regulatory change would induce?

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bmi feels very strongly that the neutral display should be retained in any revised Code of Conduct and that no exchange, monetary or otherwise, should be allowed to take place in order to secure a preferable slot on the screen.

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?

Any attempt to promote greater penetration of rail services in the CRSs should be balanced with ensuring there is a level playing field between the different transport modes.

Yours sincerely,

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