Groupement des Unions Nationales des Agences et Organisateurs de Voyages de l'UE
Group of National Travel Agents' and Tour Operators' Associations within the EU

GUILD OF EUROPEAN BUSINESS TRAVEL AGENTS

ASSOCIATIONS INTERNATIONALES SANS BUT LUCRATIF

Ref: IL07-127/94133

By E-mail

To: European Commission
DG Energy and Transport
Office DM24 5/98
B – 1049 Brussels

Brussels, 27 April 2007

Re: Contribution to the consultation on the possible revision of Regulation 2299/89 on a Code of Conduct for computerised reservation systems

ECTAA, the Group of National Travel Agents' and Tour Operators' Associations within the EU, counts among its membership the national associations of travel agents and tour operators of 25 Member States, of the candidate countries and of Norway and Switzerland.

GEBTA, the Guild of European Business Travel Agents, represents the interests of travel management companies in Germany, Italy, the Netherlands, Portugal, Spain, Ireland and the United Kingdom.

All together, ECTAA and GEBTA represent the interests of about 80 000 businesses in Europe, where travel agents use computerised reservation systems (CRSs) to fulfill their customers' demands and distribute through this mean a large majority of air transport services.

On a 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?

ECTAA and GEBTA first consider important to provide additional comments to the market developments described in the consultation paper:

1. Evolution of airlines' market shares in CRSs

The consultation paper underlines that the level of participation of Air France, Lufthansa and Iberia in AMADEUS' capital has decreased since 2005. It notes in this respect that the 2003 Brattle Group & Norton Rose report commissioned by DG TREN on the revision of the CRS Code of Conduct, was produced at a time where Amadeus was controlled by those three airlines, whereas those airlines now hold minority but significant ownerships in Amadeus.

ECTAA and GEBTA wish to stress firstly that Air France, Lufthansa and Iberia still hold 46,4% of Amadeus' capital and that they have a large influence in the governance of Amadeus[1]:

- Their representative in the Board of Amadeus have the status of "Significant Shareholders'Directors", which is described in the Regulations of the Board of Directors[2] as representing "shareholders holding a stable stake in the Company that, regardless of the rights or not to hold office on the management board, is deemed sufficiently significant by the Board of Directors, bearing in mind the floating capital of the Company, to submit a proposal to the General Shareholders Meeting."
- they hold all the seats in the Nomination Committee within the Board and possibly two airlines have a veto right on the budget.

Secondly, the fact that the Brattle report was produced at a time when Air France, Lufthansa and Iberia held a majority of Amadeus' capital and that their participation has now gone down to 46.4%, does not in anyway affect the conclusions of the Brattle Group on the risk of anti-competitive abuses. The Brattle report identified that the incentive for abuse is strong whatever the type of link between the affiliated CRS and carriers, as long as this link provides for redistribution of profits[3], particularly when the affiliated CRS and airline have important market shares in a given market[4]. Precisely, in France, Germany and Spain, Air France, Lufthansa and Iberia respectively hold important or dominant positions, while Amadeus is very dominant with up to 90 % market share. We may note in addition that the fact that Air France, Lufthansa and Iberia are part of different alliances is indifferent in the context of the European air transport market which remains fragmented.

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[1] See http://www.amadeus.com/amadeus/x8131.html .

[2] See http://www.amadeus.com/amadeus/documents/corporate/Regulation%20of%20the%20Board%20-%20art.%201%20-%2041.pdf

[3] See executive summary of the Brattle report page viii: "*Absent regulation, the incentive to abuse market power would exist under almost any airline-CRS vertical arrangement, not just ownership. Thus, airline divestiture of CRS ownership does not eliminate the risk of competitive abuse if the two entities maintain a sufficiently strong relationship—particularly one involving redistribution of profits.*"

[4] See executive summary of the Brattle report page viii: "*The incentive would be greatest in those markets in which the parent carrier and the CRS a) both have a large share of their respective markets and b) are in a position to maintain or gain market power in the airline market, the CRS market, or both.*"

2. The liberalisation of the CRS market in the USA

The US have deregulated CRSs, but this was in a context where the main CRSs are independent from airlines, and where market based mechanisms can provide benefits because of the size and unity of the concerned market. In addition, airlines divestiture from CRSs is an important condition of deregulation in the US. In its note of 9 June 2003 to the US DoT, the US DoJ indicated that its recommendation to deregulate "*assumes that the recent divestiture* [of airlines from CRSs] *represent a permanent change in the ownership structure of the industry. DoT should therefore make it clear than any attempt at reintegration into CRS by airlines will be closely scrutinized by the appropriate enforcement agencies*".

Apart from the question of airline divestiture from CRSs, a decision of 22 November 2005 of the Court of Appeal of Columbia established that the US DoT remains competent to regulate CRSs again if necessary and that it would certainly do so if certain past practises, notably on display, were carried out by actors in the market.

Concerning the effects of the liberalisation of the CRS market in the US, notably on travel agents and passengers, the American Society of Travel Agents (ASTA) has provided the following comments: following deregulation in the US, airlines used their market power to force travel agent (CRS subscribers) to accept contractual changes that reduced their CRS incentives, when paid, by up-to $.80 per transaction. The airlines' announcement of $3.50 fees per transaction, as well as the threat of content fragmentation, were used as leverage by the airlines to force travel agents into accepting contractual changes to their CRS contracts. Because it would be nearly impossible for an agent to sustain the new fees, especially if content was limited, it has been reported that most CRS subscribers have accepted the airlines' conditions. With the acceptance of new CRS contract addenda, travel agents are exempt from the airlines' announced $3.50 per transaction fees. In return, agents have accepted an up-to $.80 per transaction reduction in incentives paid. The net effect is that the airlines have passed on up-to $.80 per transaction to travel agents, while they allege that the CRS cost is $3.50 per transaction. Because travel agents operate very close to the margin, the forced reduction of $.80 per transaction required many agents to reassess their revenue models and many have undoubtedly modified their customer fee structure. In this respect, it is worth noting that the GDS market in the US registered a decline of -0.7% in 2006, while it grew by +4,4% in Western Europe, +13% in Central Europe and +12% in Asia. There is no doubt that many subscribers were forced to shift their business through other channels. Besides, there has been no evidence that the airlines' lower GDS fees have gone back to the consumer in the form of lower fares or enhanced services.

Furthermore, ASTA is not aware that any CRS gained a competitive advantage over another based on the difference between the US and Europe regulatory approach to CRSs.

3. Market action on access to fares in Europe

A number of airlines have started some years ago to withdraw certain fares, in particular low fares, from all CRSs and to provide those exclusively in direct distribution. This policy exonerates the concerned fares from the transparency and neutrality safeguards put in place by the CRS of Conduct. Moreover, it obliges travel agents to consult various channels to provide a complete range of choice to customers and therefore it increases the cost of access to a transparent and complete offer.

Some airlines also attach preferential conditions to sales on their Internet websites compared to sales through the travel agent-CRS channel. The preferential conditions may be extra miles, upgrade for smaller fee, ticketing time-limits, shorter minimum stay, etc. While there were two judicial decisions in Belgium in 2001 sanctioning the exclusive provision of extra miles on the Internet websites of Sabena and Lufthansa, on the basis of Belgian commercial law regulating commercial practices between sellers, those practises have developed in many European countries. They create discrimination between direct distribution by airlines and distribution by travel agents. In this respect, it is important to consider that airlines now compete with travel agents for the distribution of passenger air transport services, and that the conditions to use CRSs that may be imposed by airlines, can play a role in this competition. Besides, those practises also encourage consumers to purchase their flights on mono-branded websites rather than through the neutral and comparative tool provided by CRSs under the Code of Conduct.

Most recently, a few airlines have started to charge extra costs on travel agents for access to fares through CRSs (British Airways, Brussels Airlines, Iberia). In the UK for instance, it appears that in order to have access to BA fares through Galileo, travel agents will have to pay extra 50p per segment, and £1 per segment for the cheaper fares. It is interesting to note the difference of treatment between cheap and other fares, which implies that the application of extra fees on travel agents does not only correspond to a transfer of CRS costs to travel agents but to an incentive for passengers to book directly on airlines' website for targeted products.

4. Evolution of payment flows between travel agents, CRSs, airlines and passengers

The payment flows described in paragraph 17 of the consultation paper have undergone deep modifications, following the change of travel agents' remuneration model since 1998, and could be even further modified with regard to the recent trend to make agents pay for access to fares through CRSs.

All airlines used to pay commission of around 9% to travel agents, because this had been prescribed by the IATA Passenger Agency Programme until the end of the nineties. The cuts to travel agents' commission were introduced in Europe from 1998 through 2005. Airlines put forwards that the booking fees that they paid to CRSs had increased and been used by CRSs to pay incentives to agents. In the Brattle Group report produced in 2003, it was found that the decrease by more than one half of agents' commissions had fully offset the increased booking fees paid by airlines to

CRSs (at a level of 4,39$ for 2.8 segment in 2002). Since 2003, travel agents' revenue from airlines have decreased by another half (0% commission is today predominant in the EU) and incentive payments from CRSs to agents have appeared to stop their upward trend and start to lower. However, it does not appear that the reduction of commission to agents resulted in a corresponding reduction of air fares. This could imply that agents' commission cuts were not a simple transfer of costs to travel agents, but also a price increase for the end consumer to the advantage of airlines.

As travel agents had to start applying service fees to passengers on air fares that had not gone down in proportion of agents'commission cuts, passengers underwent a price raise, which prompted them to buy tickets directly from airlines.

The reduction of costs for airlines enabled them obvisouly to invest in the development of reservation systems on their Internet websites, while having the advantage and security of a very cheap/free distribution network through travel agents. In regard of the claim that indirect distribution remains expensive for airlines due to CRS booking fees, it may be interesting to note that in comparison, we understand from one major airline that its cost for booking two segments through its website is around 12.5$.

Now, with the premise of market action on access to fares in Europe, we can observe that some airlines are in a position to use their market power to transfer certain parts of CRS costs to travel agents. As travel agents work on small margins, particularly so since the modification of their remuneration model, they would be likely to pass on this extra cost to passengers. In the case where the transfer of CRS cost from airlines to travel agents would not be accompanied by a corresponding lowering of air fares, passengers could again pay for a transfer of airlines' costs.

5. Consideration of services other than CRS services, provided by companies owning CRSs

In the consultation paper, it is indicated in the footnote 2 of page 3 that the companies providing CRS services also provide an increasing number of IT services such as the hosting of airlines' internal reservation systems, and that this issue will not be considered in the consultation paper because it is a distinct service from CRS services. While we agree that those services are distinct and that the hosting services are not covered by Regulation 2299/89, we think that the development of hosting service for airlines' internal reservation systems must be considered in relation with the change of market model that followed CRS deregulation in the USA and that is starting to appear in Europe. Under this change of market model, access to a transparent and complete offer of air transport services is subject to additional costs, either to access to full content through CRSs, or if possible to develop new technology in order to restore a transparent and complete access to the existing offer. We may underline the circumstance described in the consultation paper, that the EU market for air transport is in reality constituted of partitioned national markets, which hinders the economic feasibility of such technologies in Europe. However, if certain

actors were to have the economic capacity to develop new technology, the companies owning CRS, which in addition host airlines' internal reservation systems and have beside invested in the air transport distribution to end customers, would seem to be in the best position to do so. Travel agents that are not owned by a CRS would be in a much less favorable situation to invest in new technologies enabling them to bypass CRSs, firstly because travel agents work with low margins and secondly because they would have to create from scratch technologies to access directly to airlines' inventories.

In answer to question 1, ECTAA and GEBTA believe that the repeal of the CRS Code of Conduct will be harmful for most players in the air transport supply chain, including travel agents and passengers. ECTAA and GEBTA call for a revision of the Code of Conduct that would address the following issues:

- **Access to fares without discrimination based on the distribution channel and in particular, access in CRSs to airlines' full content at no additional cost;**
  This issue will be addressed under questions 1, 3, and 8.
- **Maintenance of specific rules on the participation in all CRSs of airlines that are affiliated to a CRS;**
  This point will be addressed under questions 2, 4 and 5.
- **Removal of travel agents' identification from MIDTs.**
  This point will be addressed under question 7.

The initial aim of the CRS Code of Conduct is indicated in the recitals of Regulation 2299/89, which acknowledge that it constituted a step towards achieving undistorted competition between air carriers and between CRSs, thereby protecting the interest of consumers. The CRS Code of Conduct therefore aimed at ensuring transparency and preventing discriminatory behaviour so that passengers could make an informed choice between existing products.

The CRS Code of conduct was introduced and revised at a time when CRSs were the paramount distribution channel for passenger air transport products. In the last years, Internet developed tremendously and now provides a partial alternative to the CRS distribution channel, which as described in the consultation paper, is only a valid option in certain countries, for certain products and for certain passengers.

In respect of the role Internet could play in a deregulated environment for distribution of passenger air transport services, we strongly disagree with the hypothesis exposed in §86 of the consultation paper that Internet could provide neutral and unbiased information on air travel opportunities, which is based on the assumption that consumers will avoid providers of biased information. In reality, consumers could not be aware if providers display biased or incomplete information, considering the large number of air transport providers (traditional airlines, low cost carriers, charters), the variety of itineraries between an origin and destination, the number of different classes, tariffs, special offers

and the modifications of those fares and offers several times a day due to the generalisation of yield management.

The whole set of rules that were deemed necessary when CRSs were the paramount distribution channel cannot be simply repealed because a partial alternative has developed on Internet, even if the latter has modified the bargaining powers between the actors in the market.

Firstly, some rules must be maintained for cases where Internet or direct distribution on Internet is not even an option or a satisfactory option. In this respect, the consultation paper shows that CRSs still intervene in the majority of ticket sales, that some products cannot be satisfactorily provided without a CRS, that half the EU consumers do not have home access to Internet and therefore rely heavily on CRSs for access to air transport products. In addition, some EU consumers and corporate customers prefer to have the benefit of the services provided by the CRS-travel agent channel. In respect of corporate customers, it should be noted that during the recent negotiations between British Airways and CRSs, the Business Travel Coalition wrote a letter[5] to British Airways signed by some 100 major corporate customers, who expressed a well-marked preference for distribution through CRSs and travel management companies, which is critical to the efficient functioning of modern corporate travel programmes.

For cases where direct distribution on Internet represents an alternative, to the extent that the passenger can find a product that fulfills its request in terms of origin, destination and schedule, the maintenance of rules is anyway required to ensure that passengers can still have at least the option of acceding to a neutral and transparent display of the existing air transport products fulfilling its detailed requests.

Secondly, some new rules have to be introduced in order to address the effects of the development of distribution without a CRS, and in particular to ensure, in line with the initial objective of the CRS Code of Conduct against discrimination, that consumers will not undergo discrimination based on the distribution channel.

The premise of such discrimination can be observed with the recent introduction of additional costs for access to fares through CRSs, compared to access through direct distribution on Internet. We believe that those market developments described in points 3 and 4 above are due to a change of bargaining power in the air transport distribution. Airlines have now gained important leverage with the development of direct distribution through their own websites. The consultation paper confirms this leverage for low cost airline that only use CRS for a small proportion of their bookings, but considers that network carriers are more dependent on CRSs, especially for business travellers (§40). The allegation in the consultation document concerning network carriers is infirmed by the latest market developments, which show that network carriers have today tremendous market power in their negotiations with CRSs, travel agents and corporate customers. In the UK, British Airways asked CRSs to review their pricing policy, backed by the arguments that it would charge €4.44 per segment to travel agents using a CRS with which BA would not have reached an agreement allowing it to become a BA preferred

[5] Available at the following link : http://businesstravelcoalition.com/advocacy/statements/131.htm

CRS. This argument raised important concerns among CRSs, the travel agents' community, and well as corporate customers. In particular, the Business Travel Coalition' letter to British Airways (see footnote n°5) expressed profound concerns that BA could impose costs already included in the price of tickets and thereby hamper distribution through CRSs, which is their preferred distribution method.

BA has finally reached agreement with three CRS, which avoids agents using those CRSs to pay the €4.44 charge per segment. However, those agents will have to pay a new fee of 50p or 1£ to book through those three CRSs.

Other network airlines have or are attempting to introduce the same policy. Under such policy, passengers will be discriminated, whether they prefer the CRS option when they have a choice between direct online distribution and CRS distribution, or in cases where the Internet option is not available or not satisfactory. In addition, if air fares are not reduced in proportion to the additional fees for access to fares, it will create an additional cost for the end customer.

The premise of market action on access to fares have therefore shown that airlines can use the threat of content fragmentation to impose conditions that penalise neutral and transparent distribution through CRSs, despite the opposition of CRSs, travel agents and customers. Whether some travel agents and CRSs may accept to pay additional fees to have full access to fares, or whether some may attempt to develop new technology to palliate fragmentation of content, customers will have to pay an additional cost to maintain the transparency and non-discriminatory access to fares which was previously provided by the CRS Code of Conduct. From the agent's side, number of SME travel agents will undoubtedly be driven out of the market. We may note in regard of developing new technology to palliate content fragmentation that CRSs, which have entered the distribution market, will be in the best positioned to do so.

In order to comply with the initial transparency and non-discrimination objectives which were pursued when the CRS Code of Conduct was introduced, we believe that it would be essential to introduce in a revised CRS Code of Conduct provisions to ensure access to airlines' full content made available to the traveling public, at no additional cost compared to content made available in direct distribution.

We understand that a rule imposing access to airlines' full content at no additional cost would limit airlines' bargaining power vis-à-vis CRSs. However in other situations where it is necessary that airlines contract with a neutral provider, like in the case of airport services for which airlines have to pay airport charges, the EU is planning to provide mechanisms to ensure transparency and non-discrimination in the relationship between airlines and the providers.

ECTAA and GEBTA strongly believe that access to airlines' full content at no additional cost is necessary to ensure that passengers do not have to bear so called cost transfers in the indirect distribution channels and to ensure that transparency and non-discrimination safeguards provided to all passengers in the 1989 CRS Code of Conduct, do not become an expensive option.

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?

ECTAA and GEBTA consider that the incentive for competition abuses linked to the use of CRSs remains important:

- the CRS market is an oligoply, which may be further concentrated if the merger between Travelport and Worldspan takes place;
- The CRS Amadeus has an overall market share of 66% in Europe, holds dominant positions in 15 countries in the EU Member States and has very dominant market shares in 9 of those countries. Besides, this CRS is largely influenced by three flag carriers (see more details under question 4);
- national markets remain fragmented and subject to dominance of one CRS and of an airline;
- travel agents still rely heavily on CRSs to provide a neutral service to customers, and most agents can subscribe only to one CRS for reasons of costs and efficiency;

ECTAA and GEBTA believe that ex post competition rules such as Article 82 of the EC Treaty are not appropriate for the following reasons:

- General competition rules are difficult to apply in an oligopolistic market;
- The provision of information on air fares is very technical and complex; since airlines have invested massively in yield management, they have developed continuous monitoring of tariffs and availability and they modify and upload tariffs in CRSs up to four times a days. On a global basis, this represents 180.000.000 tariffs that can be modified four times a day in CRSs. In the perspective of competition law, it is very difficult to detect infringements under general competition law in such a changing environment.
- The application of article 82 is subject to the "*Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty*" *(*OJ C 101, 27.4.2004, p. 65–77), which indicates that the European Commission has a margin of discretion to set priorities in its enforcement activity. This means that an undertaking filing a complaing under Article 82 has no insurance that the European Commission will act on the complaint. The fact that Article 82 may also be applied by national court or competition authorities in the framework of the competition authority network is not helpful, because in the sector of air transport distribution, the criteria determining the European Commission's competence, i.e. to affect competition in more than three Member States, is likely to be fulfilled.
- A legal action to sanction infringement of general competition is a long process. In the case of an abuse creating an increase of cost on an undertaking, the latter

could be driven out of the market in a very short time. This is particularly true for travel agents, which are mostly SMEs working on low margins.

- The size of the actors in the supply chain of passenger air transport services are very varied. While CRSs and some airlines are large undertakings, small airlines and most travel agents are SMEs. For SMEs, legal action under European competition law is extremely costly. Some undertakings on the market would therefore have more difficulty to ensure that they can perform their activities in a fair competition environment.

ECTAA and GEBTA therefore call for ex ante specific rules to ensure fair competition in the supply chain of passenger air transport services.

<u>On a more specific level</u>

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)?

Brick and mortar, as well as online travel agencies are highly dependent on CRSs. Travel agents, particularly SMEs, are not in a position to cope with the removal of non-discriminatory provisions in the Code of Conduct, considering the fragmented structure of the air transport market in the EU, the very limited number of CRSs, the fact that one CRS dominates the market in certain European Countries, and that a CRS is dominant in 15 European Countries and largely influenced by three flag carriers with dominant or significant positions in their home markets.

If flexibility is introduced in contracts between EU carriers and CRSs, national carriers will be in a position to drive down their charges to CRSs, by using their home market sales volume and the development of direct distribution as leverage. National carriers are already using access to their internet fares in this manner. This behaviour reinforces national carriers' position in their home market. Therefore, more flexibility in CRS contracts would further reinforce national carriers' leadership or dominant position.

It is also important to note that Article 10 of the Code of Conduct was invoked recently by travel agents in Scandinavia, when Amadeus, which is dominant in Finland, Sweden Denmark and Norway, was planning in 2006 to create a low fare module for SAS low fares, for which travel agents would have to pay additional € 2.50 per booked flight segment. Such cost increase would have created important difficulties to travel agents, in particular to SME's, that have recently changed their remuneration model and work on low margins. Scandinavian travel agents associations, supported by ECTAA, invoked an infringement of Article 10 of the CRS Code of Conduct. The booking of low-price tickets did not de facto differ in any way with respect to work from the booking of tickets at full-price. Nor did a link to the low fare module mean a higher level of service than that which previously applied for the reservation of low-price tickets (and which would have continued to apply for the reservation of full-price tickets). Nor was the low fare module a new system which had meant great costs for Amadeus to develop or purchase; it was

merely a collective designation for the reservation of SAS low-price tickets. The low fare module was eventually not put in place. Scandinavian travel agents would have had no other effective way than Article 10 of the CRs Code of Conduct to prevent this increase of subscription fee against no additional service.

Non-discrimination in pricing is also important in respect of CRS inventives paid to travel agents, which may contribute to distortion of competition due to differentiation between travel agents.

In any case, the issue is not only about non-discrimination in pricing but also about access to airlines' full content at no additional costs. In consideration of the effect of CRS liberalisation in the US and of the premise of market action on access to fares in Europe, with the development of a business environment where airlines could impose to CRSs and travel agents fragmentation of content or additional costs to benefit of the status of preferred CRS, content in CRSs could diminish, vary from one CRS to the other or be subject to irrelevant costs. This would hinder agents' capacity to find the flight that corresponds most to the customer's demand. For business travel agents, it would also hinder their capacity to fulfil the obligations fixed in their contract with their customer, and hinder the collection of information for their customers.

Considering that travel agents need to have access to complete and neutral information to provide added value to their customers compared to biased distribution channels, they would be under strong pressure either to pay additional fees for access to fares, to bear additional cost for multi-channel bookings or to invest in technology to palliate content fragmentation. Such investment would be difficult for travel agents, which have recently undergone a modification of their remuneration model and which are working on low margins, and impossible for an number of SMEs.

ECTAA and GEBTA therefore advise against the introduction of greater pricing freedom in the regulations on CRSs, and advocate in favour of access to airlines' full content at no additional cost, so that travel agents can continue to provide complete and impartial information to passengers and for the survival of small and medium sized travel agents.

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?

In consideration of the market developments described under point 1 of question 1, ECTAA and GEBTA have the following concerns in the absence of specific rules applicable to affiliated airlines and CRSs:

Introducing flexibility for carriers, including parent carriers, in contracts with CRSs could create serious problems especially in France, Spain and Germany, where parent carriers may decide to conclude different agreements with the other existing CRSs, giving AMADEUS an important competitive advantage and thereby strengthening its dominant position. Subscribers will then be forced to work with AMADEUS if they want to have full access to the national carrier's fares and inventory. This would lead to a monopoly

situation where CRS costs would increase and alternative choices for travel agents would decrease to the disadvantage of the end consumer, as explained below:

- The non participation of carriers in CRSs would prevent travel agents and consumers from having an easy access to a full-circle view of the available offers, and prevent travel agents from acting as independent advisors;
- In the framework of unbalanced competition between CRSs owned by airlines and other CRSs, large travel agents will be an important element for CRS to have sufficient volume in a specific market. On the other side, medium and small travel agents will be in a difficult position to compete, because their do not have the financial means to subscribe to several CRSs, even if this was necessary to provide customers with up-to-date information on all carriers offering fares on a given routing.
- With the current partitioning between national markets, a CRS is dependant upon the participation of the dominant national carrier. Considering that affiliated carriers could choose to make their inventories mostly available through their own CRS, because they are dominant in their home market, and because their CRS is also dominant on these markets, other CRSs could be quickly be ousted.
- Prices for consumers would tend to rise as a result of reinforced dominant positions, and of added costs such as the cost to have access to complete information through several CRSs.

ECTAA and GEBTA thus believe that the Brattle Group Report rightly identified that the mandatory participation of parent carriers to all CRSs is essential in particular in those markets where parent carriers are market leaders. We also believe that the mandatory participation of affiliated carriers should apply to markets where the owned CRS is leader.

Therefore, ECTAA and GEBTA consider that as long as some airlines hold market shares in a CRS, including in their national marketing companies, specific rules on the mandatory participation of the affiliated carriers in competing CRSs should not be removed in order to ensure that there will be room left for competition in markets where affiliated carriers and/or their CRS are leaders.

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?

While it may not be necessary to prevent airlines from investing in CRSs if there are adequate ex ante rules to prevent abuses when such investments exist, it may be advisable not to allow airlines to control CRSs.

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?

ECTAA and GEBTA advise against any provision of MIDTs that identify the customer or travel agent.

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

ECTAA and GEBTA consider that any direct or indirect identification of travel agents via MIDTs must be prohibited and made impossible. Such practice gives airlines an unfair and unacceptable advantage in their negotiations with travel agents and it leads to a distortion of competition.

Among the data entered into CRSs by travel agents in the course of their activity, CRSs have at their disposal, besides personal data, other data which are of major interest for airlines. These data, which are gathered in MIDTs (Marketing Information Data Tapes), relate to sales of all airlines operating on a given market but most importantly, to sales made by a travel agent on that same market. This is made possible because travel agents are identified in the MIDTs by reference to their IATA numeric code.

All four existing CRSs (Amadeus, Galileo, Sabre and Worldspan) make MIDTs available against payment to airlines, in accordance with Article 6.1 (b) of the Code of Conduct.

Most European or non-European airlines serving airports in the European Union acquire the MIDTs and process the data that they contain with a software that they have developed or purchased from the CRSs. Thanks to the processing of these data, an airline can have a comprehensive view of the sales of its competitors but also of the business of any given travel agent. The airline will have a complete breakdown of the travel agent's sales by destination, by airline and by fare class, all distributed in the travel agent's subsidiaries.

In other words, the MIDTs provided by the CRSs to the airlines make it possible to obtain a whole range of commercial information on a given travel agent, providing them with full details on the commercial policy of the travel agents.

This has a number of consequences:

1. It places the travel agents in a position of complete inferiority in their commercial negotiations with the airlines by significantly reducing their bargaining power, which in normal business relations rests upon a certain degree of uncertainty on the part of their negotiating partners, with regard to the economic reality of the market they intend to address.
2. It allows airlines to impose incentive schemes to travel agents and to require that the agent refrains from selling tickets on their direct competitors on given routes in order to obtain an incentive. One of the consequences was the Commission

decision of 14th July 1999 (Virgin/BA)[6], which perfectly illustrated the devastating effects of the commercial policy of a carrier in dominant position on a given market. The situation identified in the Commission's decision may not have occurred if the airlines had not been in possession of the MIDTs.

3. As explained in the consultation paper, to the extent that airlines have these data at their disposal, they were able to impose removal of commissions to travel agents over the last 10 years.

4. Considering the premise of market action on access to fares, without specific regulation, the next big issue of negotiation between airlines and travel agents will be conditions for access to fares. It would be crucial that airlines do not negotiate on the basis of complete knowledge of travel agents' sales.

5. Airlines were also using MIDTs to identify the traffic generated by a given corporate client through its implant or STP (Satellite Ticket Printer). This constitutes a clear violation of Article 6 of the Code. Following a complaint filed by a corporate client, DG TREN took a decision in 2002, which forbids the identification of travel agents' implants in MIDTs.

6. The competition between airlines and agents for the distribution of air transport has become intense since 2003. Travel agents do not have access either to this information on other travel agents, nor to equivalent information on the distribution activities of airlines. The privileged access of airlines to this information distorts competition because it increases their advantage over travel agents. In this respect, the MIDTs give them a considerable competitive advantage against travel agents, and in particular since they combine the possession of MIDTs with the IATA resolution 898a, which obliges agents to identify online bookings from offline bookings.

Considering that the identification of travel agents in MIDTs raises important competition concerns, DG Transport informed all interested parties in November 2002 that the revision of the Code of Conduct would address this problem. The Brattle Group report also concluded that the exchange of detailed MIDT appears fundamentally harmful to competition. Indeed, detailed information on production, sales and market shares, or aggregated information enabling the identification of an individual undertaking's figures, especially if exchanged in a highly concentrated market, are considered business secrets[7]. The ECJ and the Commission have consistently stressed the importance of competitors acting independently.

ECTAA and GEBTA strongly advocate to amend Article 6 of the CRS Code of Conduct to provide that any information enabling the direct or indirect identification of travel agents, or their implants, must be removed from MIDTs. In addition, ECTAA and GEBTA consider that Article 6 should include provisions preventing a system vendor from requiring acceptance in their contracts with subscribers of disclosure and or sales of agents' data to carriers and/or other commercial entities.

[6] Decision of the Commission of 14 July 1999 (case COMP IV/D-2/34.780 Virgin/British Airways), *OJ*, L 30, 04.02.2000, p. 1-24.

[7] Cobelpa/VNP, 8 September 1977, *O.J.* L 242/10; Flat glass (Benelux), 23 July 1984, L 212/13 §45; UK Agricultural Tractor Registration Exchange, 17 February 1992, *O.J.* L 68/19 § 35

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?

ECTAA and GEBTA consider that the principle of neutral display is indispensable in order for customers to continue to benefit from neutrality and transparency in the distribution of air transport services.

Airlines have invested massively in yield management, which has resulted in some 180.000.000 tariffs being modified four times a day. The CRS Code of Conduct brings some transparency in this changing environment, notably through obligations on neutral display, which facilitate research by travel agents of the flight that corresponds most to the customer's demand.

Travel agents do not have the financial means to create a system that can analyse and replicate conversely the yield management systems of each airline. This is true for all sizes of travel agents. This impossibility is reinforced by the reduction of agents' margin with the change of agents' remuneration from airlines' commission to customer fees and with the competition exercised by airlines on the distribution market. Without neutral display in CRS, the sequences of displays in CRSs would either be dominated by the commercial interests of the CRS providers or of the affiliated carriers.

If CRS display was deregulated, information would therefore be provided in a less neutral manner in CRSs. Considering that agents need to have neutral and complete information to provide added value to their customers compared to biased distribution channels, either travel agents will have to invest in systems to bypass CRSs, with no guarantee of achievement or profitability, or they will have to pay to use new systems possibly developed by CRSs to re-neutralise information. The likelihood of this scenario is backed by the high prices paid recently by investors to purchase CRSs (Worldspan, Sabre). CRSs are also developing their presence in the distribution market, where they could have facilities to compete with independent travel agencies in a deregulated framework. In any case, the final consumer would have to pay more in order to benefit of the transparency that was previously provided under the CRS Code of Coduct.

ECTAA and GEBTA therefore recommend maintaining the principle of neutral display in a revised Code of Conduct on CRSs. It is important to note that the issue of neutrality of display is linked to the issue of access to airlines' full content. Indeed, information cannot be considered effectively neutral if it excludes a significant part of existing products.

As long as the principle of neutral display is clearly and effectively provided, some of the detailed prescriptions currently provided by the CRS Code of Conduct may be removed. We may note in particular that the requirement to provide the identity of the operating carrier in Article 9a (d) should be removed, because this issue has been since then regulated in detail by EC Regulation EC 2111/2005 on the establishment of a Community

list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier.

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?

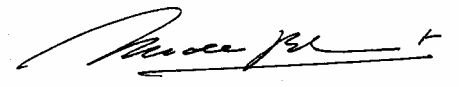
The answers seem to depend on national railway markets.

In some markets, it seems that it is not necessary to introduce greater pricing freedom, because the railway undertakings generates a high degree of sales through their own points of sales (ticket machines and via the Internet).

In some markets, it is considered that there are already sufficient systems available in CRSs.

We remain at your disposal if you require any further information.

Kind regards,



Michel de Blust
Secretary General