European Commission
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By e-mail TREN-CONSULTATION-CRS@ec.europa.eu and regular mail.

Subject : **Consultation Paper on the possible revision of Regulation 2299/89 on a Code of Conduct for computerised reservation systems - Questions to Stakeholders**
Ref:

Question 1

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?

No, there is no need for the sector specific competition rules as imposes by the Code of Conduct.

Question 2

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?

The context under which regulation was implemented to govern the GDS – Airline relationship was the complete or partial ownership of airlines in the GDS on a global front. In Europe, a code of conduct (Regulation 2299/89) has first been adopted on July 24, 1989 and amended from time to time. The main objective of such regulation was to reinforce non biased competition conditions between GDSs and airlines. This was done with the interest of the consumers and the travel agencies and non GDS ownership airlines in mind. Over time all GDSs have captured the largest part of the value created in the airline distribution chain. Airlines had and have no influence whatsoever on the level of fees charged to them by GDSs as well as on the level of incentives paid by GDSs to travel agents so as to increase their market share.

In the past decade Airlines have divested from their controlling participation in GDSs and Amadeus remains the only GDS with airline minority financial participation. The US Authorities have decided in 2004 to deregulate (although with very limited sunset clause) the GDS market. This has opened the possibility for airlines to lower their distribution costs by leveraging with the GDSs the possibility to limit the content offered as well as to further develop their direct sales.

The current EU vs US difference in regulation has led to a competition bias in favour of US carriers that were able to capitalize the benefits of liberalization on their home markets while European carriers were at a disadvantage as the low level of presence on the US market did not allow them to negotiate advantageous fees with the GDSs. Today, Europe remains the only market that is strictly regulated putting European airlines at a competitive disadvantage vis-à-vis the rest of the airline community.

KLM, in concert with Air France, strongly believes that the present Code of Conduct is no longer required and that its abolishment would finally equally submit the different actors of the distribution value chain to market forces, with in the end the customers benefiting from the lower distribution cost

Furthermore, the main reason that had once led to the introduction of the Code of Conduct is obviously no longer valid. Three out of the four main GDSs active in Europe have no airline participation whatsoever. Amadeus has only minority participation in its capital by three European airlines since two independent investment funds have gained joint control over it

(decision of the Commission dated March 16, 2005) and run the business to the best of their financial interest.

KLM sees no reason why a sector specific regulation would be needed as any possible further evolution in the control of one or the other GDSs will have to be reviewed and authorized by the European Competition Authorities. KLM believes that the general competition framework dealing with abuse of dominant position and agreements between companies is sufficient to guarantee an efficient market functioning.

KLM supports Air France in its position that it could not support any revision of the Code of Conduct imposing specific constraints that would both severely impede its ability to distribute tickets to the travelling public in the most efficient and less costly manner and distort its competitive situation vis-à-vis its main European competitors.

Question 3

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)?

The non-discriminatory fees rule forced all airlines to accept regular fees increases imposed by the different GDSs on an annual basis with no option to negotiate. These fees have been largely used by the GDSs not to improve the quality of their services but rather to provide incentives to travel agencies so as to develop or protect the market shares of the GDS. The annual increases and the bundled and/or unbundled pricing structure could not be justified against cost and price indices in comparable IT and Services industries.

KLM recognizes that maybe not all airlines (including ourselves) will equally gain in the same proportion should these non-discriminatory fees rules be removed. Sofar no US airline has publicly complained since deregulation has taken place in the US market, concluding that all have benefited from the deregulated relationship with all the GDS.

We believe that there are relevant gains for small or medium-sized carriers from the removal of such rules, as for example strong “regional” or “low cost” carrier will be in a much better negotiating position vis-à-vis the GDSs.
“Regional” carriers as an example are generally strong on their home market with limited exposure outside - they may even afford not to be distributed in all GDSs.
This is not the situation of network carriers with worldwide operations. We can not afford not to be distributed in all GDSs in all markets, and distribution outside home market represents a large share of total activity. We must realise that there will be a continued dependency of global airlines on GDS even if the direct online distribution of the airline has reached its maturity share

Question 4

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?

According to our insights no airline exercises control over GDSs . The GDS are totally free to run their businesses in their best financial interest. The initial objective of the Code was to prevent abusive behaviours by parent companies. The latest changes of ownership and control structures of the GDSs are an additional guarantee that there are no such risk of abuse. Consequently no specific obligations imposed on airlines participating in the capital of a GDS are needed.

Question 5

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?

KLM is of the opinion that airlines like any other investor should remain free to invest in GDSs like in any other business activity of its choice without specific sector regulation and that the general competition framework dealing with abuse of dominant position and agreements between undertakings is the best way to guarantee an efficient market functioning.

Large Travel Agents or any other entity active in an adjacent market (be it horizontal or vertical) could for example decide to invest in a GDS. Furthermore, Sabre Holdings for example is owning and controlling Lastminute.com, Travelport has the same type of relations with ebookers. We see no compelling reason why vertical integration between airlines and GDS should be regulated while other types of concentrations would not. This would in any case certainly not be proportional to regulate only certain types of integrations.

Finally, we consider that there is no need to address *ex ante* such situations as any change of control of a GDS active on the European market will be subject to prior approval of the European Competition Authorities. This is the case with the current merger procedure in the case Worldspan/Galileo.

Question 6

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

With reference to the current article 6 of the code of conduct, the term ‘groups of airlines’ lacks any definition. This weakness has been used in the past by GDSs as an excuse not to sell MIDTs to airline groupings (Alliances for example). Consequently, we strongly feel that a definition for the term ‘groups of airlines’ should be included and would propose that it covers both a concentration in the sense of Regulation 139/2004 or a multilateral branded Alliance.

Question 7

Should travel agents’ identity no longer be revealed in the MIDT?

The inclusion of agent's identity in the MIDT gives an element of transparency which is an essential requirement in the functioning of a proper market. Furthermore, GDS booking data supports the deployment of a more effective airline sales organization which benefits through reduced airlines distribution cost (cost-effective sales organization) and stimulates better services or lower prices to customers. Finally, travel agents are overall more concentrated than the airline business (especially in the business travel) and the lack of such sales information for airlines would lead to even more strengthening of travel agents' position with less transparency for airlines. In this respect, we see no reason why agent's identity should not continue to be available.

Furthermore, the Consultation paper of the Commission seems to imply that the inclusion of the travel agents' identity in the MIDT could influence the design by airlines of incentive schemes that would entail loyalty rebates which would tie travel agents to a dominant airline. In this respect, KLM respectfully submits that any such issue has to be dealt separately from a Code of Conduct that is meant to deal with the use of CRSs. Furthermore, we believe that any party suspecting an infringement of article 82 should address the issue directly with the Commission but that it would be against the principle of proportionality to deprive market participants of this essential element of transparency.

Question 8

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?

KLM is in favour of a maximum liberalisation of the present Code of Conduct.

However, we believe that maintaining rules that would ensure that CRSs offer a principal display based on the principle of neutrality (Best Elapsed Time) are in the best interest of the travelling public as it favours a greater transparency. The criteria of Annex 1 of the Code of Conduct may nevertheless be considered as being overly prescriptive and could be simplified. We are however not in a position to quantify the reduction in administrative costs.

Question 9

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?

It is to be expected that greater pricing freedom with regard to booking fees could have as a consequence that rail companies can negotiate interesting deals with CRSs allowing them to find this distribution channel more attractive.