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**Re: Public Consultation on the possible Revision of Regulation n° 2299/89 of 24 July 1989 on a Code of Conduct for Computerized Reservation Systems**

Datum  
24<sup>th</sup> April 2007

Ansprechpartner  
Olaf Collet

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Dear Mr. Laurent,

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we refer to your email from February, 23<sup>rd</sup> 2007 and would like to thank for the opportunity to participate in the consultation on the possible revision of the Regulation 2299/89 on a CRS Code of Conduct.

The DRV German Travel Association (Former: Association of German Travel Agents and Tour Operators) is the industry organization of the Tourism Industry in Germany. With about 5,000 members DRV represents more than 80% of the total turnover of travel agents and tour operators in Germany.

DRV is member of ECTAA, which actively co-operated with DG Transport on the two revisions of Regulation n° 2299/89 of 24 July 1989 on a Code of Conduct for Computerized Reservation Systems (hereafter the Code of Conduct), which occurred in 1993<sup>1</sup> and in 1999<sup>2</sup>. In the frame of a third revision of the Code of Conduct, the Commission has organized a comprehensive consultation process, in which ECTAA and DRV have been actively involved.

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<sup>1</sup> Council Regulation n° 3089/93 of 29 October 1993 amending Regulation (EEC) No 2299/89 on a code of conduct for computerized reservation systems, *O.J.*, L 278 of 11 November 1993, p.1.

<sup>2</sup> Council Regulation n° 323/1999 of 8 February 1999 amending Regulation (EEC) No 2299/89 on a code of conduct for computerized reservation systems, *O.J.*, L 40 of 13 February 1999, p. 1.

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Before we answer to the questions in the consultation paper, we will briefly recall here, what are the three major areas of concern of DRV and our members with the recast of the CRS Code of Conduct.

### **1. The sale of agents' data by CRSs to airlines (MIDTs)**

Article 6.1 (a) of the Code of Conduct strictly limits the disclosure of the personal data of the customer to the airline(s) performing transportation and the travel agent(s) having processed the booking. Article 6.1 (b) forbids marketing, booking and sales data made available, to include identification either directly or indirectly of, or personal information on a passenger or a corporate user.

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 14<sup>th</sup> July 1999 (Virgin/BA)<sup>3</sup>, 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 would not have occurred if the airlines had not been in possession of the MIDTs.
3. To the extent that airlines have these data at their disposal, they were able to impose substantial commission reductions to travel agents over the last 10 years.
4. 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. However, today large corporate customers continue to be approached directly by a number of carriers, with proposals, which tend to indicate that these airlines have a full and detailed picture of the corporate's air traffic.
5. Last but not least, airlines have over the recent years developed direct sales, notably through their own websites.

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<sup>3</sup> 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.

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.

As a consequence, Article 6.1 of the Code of Conduct, the aim of which was to ensure transparency and eliminate potential distortions of competition between parent carriers<sup>4</sup> and participating carriers, has caused considerable distortions in terms of normal play of competition between airlines and between airlines and travel agents. It should also be noted that since the adoption of that provision, the ownership of CRSs has evolved. Today, three out of the four CRSs do not have parent carriers anymore (Amadeus is the only CRS which has three airlines among its shareholders).

We insist on the need to ensure a level playing field between all players involved in the sale of air transport services. This will only be achieved by preventing the identification of travel agents in MIDTs. We thus strongly support the adoption of the necessary amendments of the Code of Conduct to protect the commercial data of travel agents.

In addition to the changes to article 6.1(b) of the Code of Conduct, CRSs should be prevented from imposing through contractual terms with travel agents, the disclosure of their data. We consider that article 6 must 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.

## **2. The mandatory participation of parent carriers**

Pursuant to Article 3a of the Code of Conduct, a parent carrier may not discriminate against a competing CRS by refusing to provide it with the same information on schedules, fares and availability

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<sup>4</sup> A parent carrier is an air carrier which directly or indirectly, alone or jointly with others, owns or effectively controls a system vendor, as well as any air carrier which it owns or effectively controls.

relating to its own air services as that which it provides to its own CRS or to distribute its air transport products through another CRS, or by refusing to accept or to confirm with equal timeliness a reservation made through a competing CRS for any of its air transport products which are distributed through its own CRS. The parent carrier shall be obliged to accept and to confirm only those bookings, which are in conformity with its fares and conditions.

Currently, Amadeus is still – now indirectly - partly owned by three airlines, namely Air France, Lufthansa and Iberia. It is established that Amadeus holds a dominant position on the three domestic markets of these airlines: France, Germany and Spain.

We have the following concerns about the possible removal of the mandatory participation of parent carriers in a revised Code of Conduct:

In the EU the market for air transport of passengers is partitioned in national markets, each of which is still under the leadership of a national carrier. If flexibility is introduced in contracts between EU carriers and CRSs, national carriers will be in a position to drive down charges to CRSs, by using their home market sales volume as leverage. National carriers are already using access to their internet fares in this manner. This behaviour reinforces national carriers' position in their home markets. Therefore, more flexibility in CRS contracts would further reinforce national carriers' leadership or dominant position.

In particular we believe that introducing flexibility for carriers, including parent carriers, in contracts with CRSs could create serious problems especially in France, Spain and here in Germany, where parent carriers may decide to conclude different agreements with 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 will lead to a monopoly situation where CRS costs will

increase and alternative choices for travel agents will decrease, to the disadvantage of the end consumer, as explain 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 sufficient volume in a specific market. On the other side, medium and small travel agents will be in a difficult position to compete, because they 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 parent carriers could choose to make their inventories mostly available trough CRS, which they actually or legally control, 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.
- Price 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 trough several CRSs.

We consider that as long as there are parent carriers, the mandatory participation of parent carriers should not be removed, at least in the three concerned European countries, in order to ensure that there will be room left for competition in markets where parent carries and/or their CRS are dominant.

In this respect DRV is supportive of concerns expressed by C-Fare-Coalition on this issue.

### 3. The access to fares

Last but not least, the issue of the access to fares is inseparable from any revision of the current rules.

DRV is not opposing a liberalisation of the current CRS rules, and we believe indeed that more flexibility is desirable. However, it has been observed in recent years that a number of airlines have taken the option to pull out of their CRSs offer a substantial portion of their fares, forcing the travel agents and travel management companies to carry out booking transactions through different channels, for instance CRSs but also the websites of the airlines.

If this trend would become widespread, this will simply mean that CRSs will become useless to travel agents, which will have to use multiple channels for their transactions. In the long term, there is a major risk that agents will no longer be able to operate as a neutral and impartial distributor, this to the detriment of the consumer.

Therefore, DRV strongly believes that airlines (except parent carriers) should have the ability to use the CRS(s) of their choice. However, once this choice has been made, the same airlines must make available all their fares in the CRS(s). which they have chosen. Failing to do this will ultimately deprive consumers from the benefits of the neutral and impartial distribution network of the travel agents.

### 4. Answers to the questions in the consultation paper:

#### Q 1

Question: **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?**

Answer: DRV considers the CRS Code of Conduct indispensable in order to ensure a neutral and unbiased display which allows travel agents to meet customers' requirements and a modification of CRS

Code of Conduct should ensure that the identification of individual travel agencies via MIDTs is not possible.

## Q 2

Question: **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?**

Answer: In view of the very limited number of market participants for CRS services, rules are not adequate as remedy or deterrent.

## Q 3

Question: **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)?**

Answer: Brick - and - mortar and online travel agencies are highly dependent on CRSs. In particular the MSEs are not in a position to cope with a situation such as the removal of the rules of non - discrimination (art. 1 (1.b)) in view of the very limited number of CRSs and the fact, - that in certain European Countries one CRS dominates the market.

## Q 4

Question: **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?**

Answer: A review is advisable with the view that in future investment of air carriers in CRS should not be subject to restrictions, as long as control of the air carriers over the CRSs is not legally or in practice possible.

#### **Q 5**

Question: **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?**

Answer: See Q4.

#### **Q 6**

Question: **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?**

Answer: No comment.

#### **Q 7**

Question: **Should travel agents' identity no longer be revealed in the MIDT?**

Answer: Any direct or indirect identification of travel agents via MIDTs must be rendered impossible. Such practice gives airlines an unfair and unacceptable advantage in their negotiations with travel agents and it leads to a detortion of competition (see also Q1).

**Q 8**

**Question:** 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?

**Answer:** The neutral display is indispensable for the customer oriented service of travel agents. To remove or simplify them would abolish or endanger the travel agents' ability to access the widest possible range of competing fares and conditions. The sequence of displays would either be dominated by the commercial interests of the CRS providers or the parent carriers.

**Q 9**

**Question:** 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?

**Answer:** We consider it unlikely, that greater pricing freedom would lead to an increase in demand in relation to rail transport. German Rail generates its demand to a high degree through own points of sale, ticket machines and via the internet.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Olaf Collet".

Olaf Collet  
Manager IT