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European Commission
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By email to tren-consultation-crs@ec.europa.eu

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Dear Sirs

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

ABTA is the largest UK travel trade association and represents the interests of over 1,300 travel agents (with some 5,900 outlets throughout the UK) and 840 tour operators, including both large and small companies, who between them are responsible for over 90% of holidays and a significant percentage of air tickets sold within the UK. Members are part of groups themselves owning airlines.

Generally, ABTA supports the comments submitted by ECTAA, the Group of National Travel Agents' and Tour Operators' Associations within the EU.

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?

ABTA feels it is important to understand the current situation in the EU regarding the participation of carriers in the CRS. At the time of the 2003 Brattle Group and Norton Rose report, commissioned by DG TREN, Amadeus was controlled by Air France, Iberia and Lufthansa. Whilst their holding has decreased since 2005, they still have a 46.4% share of Amadeus' capital and thus a large influence in its governance. The conclusions of the Brattle report are still valid regarding the risk of anti-competitive abuse which is strong whatever the type of link between the affiliated CRS and carriers, as long as this link provides for redistribution of profits, particularly when the affiliated CRS and airline have significant market shares in a given market. By its own admission, Amadeus has a 62.4% market share in Western Europe and 66.2% in Central, Eastern and Southern Europe. In France, Germany and Spain, Amadeus holds a dominant position with up to 90% market share. In the UK, Amadeus hosts the British Airways platform. The fact that Air France, Iberia and Lufthansa are part of different alliances is immaterial in the context of the European air transport market which remains fragmented.

The US deregulated CRSs, but the main CRSs there are independent of airlines and market based mechanisms can provide benefits because of the size and volume of the market. Further, the airlines' divestment from CRSs was a condition of deregulation and the US Department of Transport retained the right to regulate CRSs and would do so again if certain past practices, particularly on display, were reactivated. Following deregulation in the US, the airlines used a proposed \$3.50 transaction fee, as well as the threat of removal of content, to force travel agents (CRS subscribers) into accepting contractual changes. Agents had little choice but to accept this so as not to pay the \$3.50 transaction fee, but they did have to accept a reduction of up to \$0.80 per transaction in incentives. Because travel agents operate on very low margins, many agents had to reassess their revenue models leading to modification of their customer fee structure. ASTA (the American Society of Travel Agents) is not aware that any CRS gained a competitive advantage over any other based on the difference between the US and European regulatory approaches to CRSs.

Over the last few years, some airlines have been stripping out the lower fares from CRSs and only making them available online on their own websites. Other airlines have continued to include them in the CRS, thus offering full inventory content to agents, but at an additional charge to agents which can be as much as £3 per sector (per British Airways' recent announcement if agents do not opt in to their CRS's arrangements, or if they are not in place which is currently the case for Amadeus subscribers). If they do not have access to full inventory, agents are obliged to use different distribution channels to provide a complete range of choice to customers thus increasing the cost of access to a transparent and complete offer.

Airlines now compete increasingly with travel agents in the distribution of passenger air transport services and impose conditions on use of CRS fares. This encourages consumers to buy tickets on the airlines' individual websites rather than through the neutral CRSs.

Travel agents being required to pay a transaction fee for some CRS fares comes on top of reducing airline commission. Commission has reduced steadily from 9% in 1998 (in the UK) and now stands at 0% for many of the major carriers. Further, incentive payments made by CRSs to agents are decreasing and the cost of CRS to agents will inevitably start to outweigh the credits with the result that some travel agents, the majority of whom are SMEs, will abandon use of CRS in favour of buying through airlines' own websites thus reducing the customer's choice, transparency and non-discriminatory access to fares. In any event, travel agents will have to pass on the cost to the customer as they can no longer absorb the fees and air fares have not necessarily been reduced in proportion.

In summary, ABTA believes that the repeal of the CRS Code of Conduct would be harmful for most players in the air transport supply chain, including travel agents and passengers. ABTA calls for a revision of the Code of Conduct to address the following issues:

- Access to fares without discrimination based on the distribution channel and in particular, access in all CRSs to airlines' full content at no additional cost.
- Maintenance of specific rules on the participation in all CRSs of airlines that are affiliated to a CRS.
- Removal of travel agents' identification from MIDTs.

The initial aim of the EU CRS Code of Conduct was to achieve undistorted competition between air carriers and between CRSs, thereby protecting the interests 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 few years, the Internet has developed greatly and it now provides a partial alternative to CRS. We do not agree to the suggestion that the Internet provides neutral and unbiased information. In reality, consumers will not be aware if providers display biased or incomplete information, given the large number of air carriers

(traditional scheduled, no frills and charter), and the variety of itineraries and the number of different fare classes, tariffs, special offers, etc. Further, airlines routinely exclude taxes, fees and charges from prices advertised on the Internet in a way which could mislead consumers therefore it is not a neutral and fair medium for the sale of tickets.

The entire set of rules deemed necessary when CRSs were the paramount distribution channel cannot be simply repealed because a partial alternative has developed. For some the Internet is not an option; many consumers do not have access and therefore rely heavily on CRSs, via agents, for access to air transport products. Corporate customers/travel management companies require access to CRS for neutral and transparent displays to fulfil their detailed requirements. Further, some new rules need to be introduced in order to address the effects of the development of distribution outside the CRS, and in particular to ensure that consumers are not discriminated against based on the distribution channel. Lastly, we believe it is essential to introduce provisions to ensure access to airlines' full content at no additional cost in a revised CRS Code of Conduct.

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?

ABTA believes that the incentive for competition abuse linked to the use of CRSs remains important:

- the CRS market will be further concentrated by the merger between Travelport and Worldspan.
- Amadeus has a dominant position in 15 of the EU Member States and is very dominant in nine of those countries.
- Travel agents rely heavily on CRSs to provide a neutral service to customers, and the majority of agents subscribe to only one CRS.

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)?

All travel agents selling air tickets, from the small high street agents to travel management companies, consolidators and online agents, are highly dependent on CRSs and could not cope with the removal of non-discriminatory provisions in the Code of Conduct, given the very limited number of CRSs in the EU and the fact that one CRS dominates the market which, in turn, is greatly influenced by three airlines with dominant or significant positions in their own countries.

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

ABTA is therefore against the introduction of greater pricing freedom in the CRS regulations and advocates 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. This is essential for the survival of the 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?

ABTA has the following concerns in the absence of specific rules applicable to affiliated airlines and CRSs. If flexibility is introduced in contracts between EU carriers and CRSs, national carriers would be in a position to drive down their charges to CRSs using their home market sales volume as leverage. National carriers are already using access to their internet fares in this manner reinforcing their position in their home market. More flexibility in CRS contracts would further reinforce their leadership or dominant position. This would create serious problems particularly in France, Germany and Spain, where one CRS is dominant. Agents would be forced into using Amadeus if they wished to have full access to the national carrier's fares and inventory, leading to a monopolistic situation where CRS costs would increase and alternative choices for travel agents would decrease to the disadvantage of the end consumer. A CRS is dependant upon the participation of the dominant national carrier, and should that carrier, and possibly others in the same alliance, choose to make their inventories available only through their own CRS, other CRSs would quickly be ousted. This would result in prices increasing for consumers.

ABTA believes that the Brattle report's identification that the mandatory participation of parent carriers to all CRSs is essential is still relevant. As long as airlines continue to hold shares in a CRS, rules on the mandatory participation of those carriers in competing CRSs should not be removed.

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?

ABTA advises against any provision of MIDTs that identify the customer or travel agent.

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

ABTA believes 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.

MIDT data covers not only sales of all airlines operating in a specific market but more importantly, sales made by all travel agents. Travel agents are identified in MIDTs by their IATA numeric code. The four CRSs in the EU make MIDTs available to airlines against payment, in accordance with Article 6.1 (b) of the Code of Conduct. An airline thus gains sight not only of its competitors' sales but also those of individual travel agents. They will have a complete

breakdown by destination, airline and fare class. Following a complaint by a corporate client resulting in DG TREN's 2002 decision, this also included the identification of travel agents' implants/corporate accounts with their own IATA numeric code in MIDTs. This places the agent in an invidious position in their commercial negotiations with the airline by significantly reducing their bargaining power. It allows airlines to impose incentive schemes on agents and require that the agent refrains from selling tickets on their direct competitors on given routes. This was demonstrated by the Commission decision of 14 July 1999 on Virgin Atlantic Airways vs British Airways, which illustrated the devastating effects of the commercial policy of a carrier in a dominant position on a given market. This might not have occurred if the airlines had not been in possession of the MIDTs. The privileged access of airlines to this information distorts competition because it increases their advantage over travel agents. DG TREN was cognisant of this important competition concern when it informed all interested parties in November 2002 that the revision of the Code of Conduct would address this problem. The Brattle report also concluded that the exchange of detailed MIDT data appeared fundamentally harmful to competition.

ABTA strongly advocates the amendment of 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, is removed from MIDTs. In addition, Article 6 should include provisions preventing a system vendor from requiring acceptance in their subscriber contracts of disclosure and/or sale of agent data to carriers and/or other commercial entities.

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?

ABTA considers 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. 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. Agents need to have neutral and complete information so would either have to invest in systems to bypass CRSs or pay to use new systems possibly developed by CRSs to re-neutralise information. In any event, the end customer would have to pay more in order to benefit from the transparency that was previously provided under the CRS Code of Conduct.

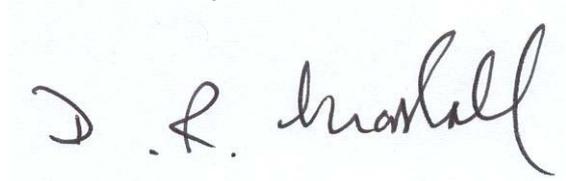
ABTA therefore recommends maintaining the principle of neutral display in a revised CRS Code of Conduct. It is important to note neutrality of display is linked to the issue of access to airlines' full content. Indeed, information cannot be considered to be neutral if it excludes a significant part of 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 could be removed. For example, the requirement to provide the identity of the operating carrier in Article 9a (d) could be removed, as this is now regulated 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?

This depends entirely on the different rail market. In some markets, it is not necessary to introduce greater pricing freedom because the rail companies generate a large volume of sales through their own sales points (ticket machines and via the Internet). In other markets, there are already sufficient services available in CRSs.

Thank you for taking our comments into consideration.

Yours sincerely

A handwritten signature in black ink that reads "D. R. Marshall". The signature is written in a cursive style with a large, looped 'M'.

David Marshall
Head of Policy & Communications