IBERIA COMMENTS

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

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?

Iberia welcomes the Consultation Paper and the efforts of the European Commission to review the current code of conduct in the light of market developments.

Iberia believes that given the market and technology developments and the successful liberalisation of this market in the United States, there is no need for a regulation as the market is mature and therefore we support the abolishment of the Code of Conduct. There is a need for more competition among CRSs and the competition law in the EU is enough to deal with this market too.

The distribution market has seen important developments over the last years, from the introduction of new alternative distribution channels to the reduction of airline investments in CRSs to only minority ownerships. Therefore, the competitive situation for which the Code of Conduct was designed has changed.

In addition, the deregulation in the US since 2004 has led, as the Commission rightly points out, to changes in the market model and has had beneficial consequences such as *"…a reduction of the CRS booking fees in the US…"*, *"…in the range of 20 to 30%."*. The liberalisation of the CRS market in the US is also having an impact on the EU market, especially on the competitive situation of the European airlines with regards to their global US competitors, but also on the European CRS vis-à-vis the American CRSs. In Europe, CRS's costs continue to rise, for example for Iberia the average cost per reservation has increased 8% in 2006 compared to 2005. Given that airlines in an unregulated market, due to their ability to negotiate their conditions and prices, can reduce their distribution costs more than in a regulated market (as demonstrated in the US) then the EU based carriers have a competitive disadvantage compared to their counterparts based in US and the rest of the world. In summary, restoring the balance in this playing field should be the primary objective of the Commission's undertaking.

Q2. Given the described market developments, has the risk of market foreclosure not reduced and are general competition rules (Article 82 of the Treaty in particular) not a sufficient remedy/deterrent against these risks?

As mentioned before, Iberia considers that general competition rules are sufficient to prevent abuses of market dominance as in other sectors.

The CRS market is a global one; airlines and CRS compete on a global scale and the relation between them is governed by global contracts.

In the case of airlines, the potential power to exercise a hypothetical abuse, either due to a dominant position in the home market or as parent carriers, does not reflect reality as CRS's are global tools and airlines need them not only for their home markets but also to access the global market place. Strategically, network airlines cannot rely only on one CRS that has a strong presence in one market and is irrelevant in other markets. Airlines cannot favour one CRS against another, simply because the cost for the airline is higher than the benefit.

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)?

Iberia would accept the removal of article 10. The cost-relatedness of CRS fees is impractical to enforce and therefore useless for future reference. The current business model does not give transparency on costs to each party in the supply chain.

The fact that CRSs have been allowed to define incentives as "distribution costs", and use them to compete for travel agency share, has led CRSs to impose unreasonable fees, supposedly cost-related, that have led to price increases; this should be discontinued.

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?

The obligations imposed on parent carriers are not needed and should be lifted.

First, as explained before, parent carriers are not in a position to favour one CRS against another, simply because the cost would be greater than the benefit.

Second, it is not fair to treat parent carriers in a different way than other airlines that do not own or control a CRS, but could have more market power in their home market. These airlines, with a dominant position in their home market, could benefit one CRS in their home market, by simply not participating in the others. Certainly, in the contract with their preferred CRS, these airlines would obtain very good conditions for that CRS´s dominant markets, however, undoubtedly, due to having been discriminated against in the airline's home market, the competing CRSs would frustrate the global aspirations of these airlines in the parts of the world where they are the predominant CRS.

Third, if the EU CRS market is liberalised, but maintaining special rules for parent carriers, these airlines would be put in a position of competitive disadvantage vis-à-vis their European competitors. Parent carriers would be the only airlines that would not be permitted to negotiate with their service providers and could not optimise their distribution costs.

Nowadays, airlines may own shares in a CRSs the same as any other company may take a financial participation in any other purely for investment reasons. Currently Iberia has only an 11,682% indirect share on Amadeus through Wam Acquisition, and has no control over Amadeus nor determines its strategic or commercial policies, as the Commission states in its decision of 16/03/2005 on Case No COMP/M.3717 – BC PARTNERS / CINVEN/ AMADEUS. The presence of Iberia in Amadeus is a mere financial investment.

Finally, given that the definition of parent carrier in the Code of Conduct is originally based either on a majority ownership or on effective control (with a minority ownership), should the Commission decide to continue with a revised code governing "parent carriers", the definition should be clarified to avoid that minority shareholders that have a mere financial investment in CRSs are not damaged or discriminated against by that definition.

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 CRS's? Are specific transparency requirements needed for CRS providers that are not publicly listed on a stock exchange.

Airlines should be allowed to invest in CRS.

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?

Groups of airlines should be allowed to purchase MIDT for common processing.

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

We believe that agents' identities should continue to appear in the MIDT as this is an element of transparency which is an essential requirement in the functioning of the market.

The loss of business transparency could reduce the competition among airlines and the customers would be suffering from uncompetitive fares as the individual airline cannot properly tailor attractive fares, incentives or offers for their clients.

It should be noted too that the competitiveness of EU airlines, that would lose transparency on their home markets, vis-à-vis their US competitors, who would still access their home market's data, could be damaged. Furthermore, airlines' competitiveness vis-à-vis the few major agency chains would be jeopardised.

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?

If the provision of display neutrality is to be retained, Annex I must be simplified.

Furthermore, Internet displays and self-booking tools of agencies are biased, so, if the display neutrality is to be maintained, then it should be extended to all forms of distribution by third parties.

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 CRS's?

As a principle, we strongly believe that a level playing field between the different transport modes should always be ensured.

Greater pricing freedom could drive to a reduction in booking fees and therefore rail services could benefit from those reduced prices. That could help the sale of those rail services through CRSs.

Nevertheless, we do not believe that additional measures should be put in place to promote these sales through the CRSs. The market should function and it should be a decision of the rail operators to distribute their product through CRSs or not. Railways and air transport compete with each other and favouring one against the other would be seen as discrimination.

Furthermore, one important concern is that the inclusion of rail in CRSs would incur in development costs by the CRSs that would be passed on to the airlines and would put us in a situation of competitive disadvantage vis-à-vis trains.