

RESPONSE
of
Amadeus IT Group, S.A.
to
The European Commission's consultation on a possible revision of
Regulation 2299/89 on a Code of Conduct for computerised reservation
systems

27 April 2007

- [1] For some time, a revision of Regulation (EEC) 2299/89 on a code of conduct for computerised reservation systems ("the Code of Conduct") has been considered in the European Union. Throughout the process, Amadeus has participated in the debate and has expressed support for such a revision.
- [2] Amadeus welcomes the opportunity to submit its comments to the European Commission's Consultation Paper on the possible revision of the Code of Conduct. Amadeus applauds the Commission's considerable effort in providing a detailed picture of the current travel distribution market and its recent developments. The Consultation Paper illustrates the extent to which the current market conditions are radically different from those existing when the rules were introduced.
- [3] In this response, Amadeus will comment on each of the nine questions posed by the Commission's Consultation Paper. In its response to the first two questions, Amadeus will explain why deregulation of the market is imperative and justified by market developments. Amadeus will then comment on the specific issues raised in questions 3 through 9 of the Consultation Paper.

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?

A few remarks on the context

- [4] In 2005, the European Commission launched a "better regulation" campaign in the European Union. In a Communication entitled *Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment*, published on 25 October 2005, the Commission explained that the objective of the campaign was to achieve "the highest standards of law making respecting the principles of subsidiarity and proportionality". The Commission stated:

"Following these principles, the EU should only regulate if a proposed action can be better achieved at EU level. Any such action should not go beyond what is necessary to achieve the policy objectives pursued. It needs to be cost efficient and take the lightest form of regulation called for. In this respect simplification intends to make legislation at both Community and national level less burdensome, easier to apply and thereby more effective in achieving their goals."

- [5] In Annex 2 of the Communication, the Code of Conduct was listed as one of those pieces of legislation that should be revised in accordance with the above principles. The Code of Conduct was still on the list when the Commission updated its "Simplification Rolling Programme" a year later¹. The Commission noted that market conditions had changed since the introduction of the Code of Conduct and that competition would be enhanced if "more room" were given to market forces.

¹ See First progress report on the strategy for the simplification of the regulatory environment, 14 November 2006, COM(2006) 690.

- [6] The Consultation Paper describes in some detail the past decade's market developments affecting computerised reservation systems (CRSs), including the surge in Internet distribution and the growth of low-cost carriers. These market developments caused increased competition to CRS distribution and reduced use of CRS systems by airlines.
- [7] Along with decreased airline use of CRSs, airlines no longer appear to see a strategic interest in maintaining control over CRSs. Accordingly, the Consultation Paper observes that airlines have generally divested their controlling interests in CRS companies.²
- [8] When the Code of Conduct was implemented in 1989, CRSs were essential to the distribution of airline services. Today, however, many airlines successfully distribute their services without using CRSs. Low-cost carriers currently sell 95 % of their tickets outside of the CRS channel, and the traditional "full-service" airlines expect the share of tickets sold directly through their own websites to increase from 15,6 % in 2005 to 38,8 % in 2008³. The reason why many airlines still use CRS services today is therefore not that the service is essential to the distribution of their tickets, as perhaps it was in 1989, but because CRSs offer an efficient service that complements the other distribution channels that they use.
- [9] The US deregulation experience provides a number of indications as to how the EU market may respond if the Code of Conduct were repealed. The main elements are:
- Individual negotiations between CRSs and airlines have allowed the achievement of solutions tailored to each market player;
 - The development of solutions for travel agents adapted to the new market realities and tailored to their individual needs;
 - No significant anti-competitive behaviour by the market players has been reported.
- [10] Deregulation in the United States has, moreover, created a competitive imbalance between EU and US players. As a result of the Code of Conduct, Amadeus cannot offer the same flexible pricing in the EU that the US-based CRSs are able to offer in their home market.
- [11] It would be even more troublesome if EU airlines, despite continued regulation, adopted the same negotiating tools that were used last year by airlines in the deregulated US market. The technique is simple: if a CRS does not accept an airline's terms, the content distributed through that particular CRS will likely be fragmented and surcharged with an amount sometimes equal to the total cost of the CRS service. This of course causes the CRS provider to immediately face the risk of losing travel agent customers.

² As discussed in the Consultation Paper, three European airlines still hold a non-controlling minority interest in Amadeus. Currently, the majority equity interest in the company is in the hands of the UK private equity investors, Cinven and BC Partners.

³ See the AEA publication, *Source – market report quarterly*, Issue 2/2006.

The difference between the US and the EU markets is that while market forces now govern the market in the United States, the Code of Conduct prevents CRSs in the EU from negotiating individual deals. As a result, CRSs in the EU have no possibility of exercising any bargaining power to resist the pressure of the negotiating tools described above and may be forced to accept whichever demand the airline has.

- [12] In the United States, the recent negotiations between airlines and CRSs have led to booking fee reductions to airlines and so-called "opt-in programmes" offered to travel agents. The opt-in programmes consist essentially of a form of insurance to travel agents against surcharges and content limitation. In exchange for this, travel agents accept to pay a fee for each booking.
- [13] These developments have led to fundamental changes in the travel distribution market in the United States. These changes were intentionally provoked by the airlines who openly admit their objective of driving an increasing number of bookings away from the CRS channel in favour of their own direct distribution channels. Through content discrimination and surcharges, CRS distribution is therefore deliberately made less attractive.
- [14] In the EU, the first signs of a similar trend have appeared with the methods used by British Airways in its negotiations with CRSs providers in the beginning of 2007.

Amadeus' general position on deregulation

- [15] There is no debate over the fact that today's market context is very different from the situation in 1989 when the Code of Conduct was first adopted. Bearing in mind the Commission's own principles for simplified regulation (discussed above) and the maturity of the competitive travel distribution market, it is doubtful that the current marketplace still requires specific regulation of CRSs.
- [16] In addition, the current imbalance between the regulatory environments on both sides of the Atlantic harms the European airlines and Amadeus. Deregulation in the EU is thus imperative to restore competitive balance.
- [17] Amadeus is therefore in favour of repealing in full the Code of Conduct. Amadeus recognises that, in the US, deregulation has presented serious challenges to the CRS industry. Despite these challenges, deregulation will allow companies in the EU to respond to the new market context, spawned in particular by the surge of new technologies like the Internet. Thus, Amadeus believes that deregulation will ultimately make European companies stronger and more competitive.
- [18] Like all market participants, Amadeus would be able to identify certain provisions in the Code of Conduct, the retention of which would be to its advantage. Nevertheless, Amadeus will support full deregulation of the CRS sector and is concerned that a partial deregulation might create more harm than good. For instance, a partial elimination of the Code of Conduct's equal-treatment requirements could risk distorting competition more than it would promote it.

- [19] On the other hand, Amadeus recognises that the Commission, the Council and the Parliament may be tempted to adopt a phased approach to deregulation retaining certain regulation of the CRS market at least for some period of time. In that event, Amadeus will urge those institutions to carefully review the issues at stake and ensure that those are the issues addressed in such regulation. Indeed, the issues identified by the Commission in the Consultation Paper are valid questions and would, until recently, have been the main stakes of a Code of Conduct revision. Today, however, the marketplace has put other issues as well at the forefront of the debate. Surcharges, content fragmentation and discrimination of certain distribution channels are major issues today that are determining the future development of the market and could justify a regulatory response should a decision be made to retain any regulation.
- [20] Consequently, if the EU wants to retain regulation of the CRS market, these would be the issues on which the debate should be focused. Do we want a neutral CRS/travel agent channel to remain in the market and give it a chance to compete in travel distribution, or do we accept that biased, fragmented content gradually takes over an ever less transparent market to the detriment of consumers? If any regulation is needed today, these are the relevant issues that would need to be addressed.
- [21] In sum, Amadeus in principle supports full deregulation. Amadeus, however, does not support partial deregulation, or a provision-by-provision deregulation that may create more imbalances in the market (see more on this in Amadeus' comments to question 3, below). On the contrary, the aim of this revision is to restore balance between market developments and regulatory environment; and balance between EU and US market participants. Having said that, if any regulation is needed, it should address the real issues at stake in the current marketplace. These are not neutral display or MIDT, but rather the new business model that some airlines are defining for the rest of the industry, including discriminatory surcharges and content fragmentation. Regulation, if needed at all, will have to ensure a level playing field for all distribution channels.

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?

- [22] When the Code of Conduct was implemented in 1989, the European Commission had identified certain market conditions in the travel distribution market that required specific intervention. The Commission had noted that certain abuses in the market derived from two specific elements: CRSs were essential to the airline's travel distribution; and CRSs were controlled by airlines and could thus be used by those airlines to distort competition in the air transport services market.
- [23] It is clear today, that neither of those two conditions is any longer valid. CRSs are no longer the virtually exclusive channel for airlines to distribute their tickets and are facing serious competition from non-CRS distribution, notably from airline's direct distribution to consumers and from "direct-links" between airlines and travel agents (airline web-distribution for travel agents who will normally obtain a higher commission

for booking this way rather than using a CRS)⁴. At the same time, airlines have sold their controlling interests in CRSs, which in itself is also indication that airlines no longer view CRSs as key strategic components of the travel distribution chain.

- [24] The CRS sector is now part of a larger market for travel distribution that includes various forms of services, including airlines' direct web distribution and off-line direct distribution; travel agents' distribution using airlines' business-to-business booking websites; and on-line travel agents' distribution using simplified alternatives to the CRS systems (e.g. GNEs). All of these forms of distribution compete with CRSs.
- [25] The travel distribution market has thus changed dramatically since the Code of Conduct was introduced and is little different today from other markets with a variety of competing services. In addition, even though the share of CRSs distribution is still considerable in the total travel distribution market, this share has been decreasing consistently over the last five years and it is no longer appropriate to generally speak about CRSs as dominant market players.
- [26] It may be that certain companies in certain geographic areas have a significant market position, but this is certainly no different from situations observed in other markets and other sectors. Indeed, it is little different from parts of the United States where one CRS or another holds a large market share. To the extent that issues arise, this type of situation is properly addressed through the application of the EU's general competition rules, that provide adequate safeguards against potential abuse by dominant companies.
- [27] Given the above, Amadeus respectfully submits that the Code of Conduct was designed to address a market situation and specific competition concerns that no longer exist. Consequently, the current travel distribution market in the EU would be adequately regulated by general competition rules.

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)?

- [28] Article 10, as well as Article 3, Article 3a, Article 4 and other equal-treatment provisions of the Code of Conduct, prevents the market players from freely negotiating fees and other service conditions on a bilateral basis. The removal of those requirements in the United States has resulted in individual negotiations between the market players and in arrangements tailored to the economic and service needs of each party.
- [29] Amadeus notes that serious challenges to the CRS industry have accompanied the liberalisation of the market in the United States. However, Amadeus considers that a full deregulation of all the equal-treatment and other requirements of the Code of Conduct is the appropriate response to the evolving EU market and to US deregulation.

⁴ See ASTA's Technology and Web Usage Report 2006. This report shows that 91 % of agencies had made Internet bookings in 2006.

In addition, this approach would be compatible with the EU's stated interest in regulatory simplification (see Amadeus' response to question 1, above).

- [30] Certain market players may have a selfish interest in keeping in place one or the other of the Code of Conduct obligations. For example, Amadeus is aware that certain parties want to keep in place the parent carrier rules on the theory that these would be applicable only to Amadeus and to one or more of the airlines that holds an interest in Amadeus. Equally, Amadeus could be interested in maintaining, and maybe even reinforcing, the requirement that airlines shall provide full content to all CRSs on a non-discriminatory basis (see Article 4.1). However, considerations focused on the narrow interests of certain players would not ultimately benefit the industry and the market.
- [31] In sum, Amadeus supports the repeal of all the equal-treatment requirements of the Code of Conduct, including Articles 3, 3a, 4 and 10. However, as stated above, should a decision be made to retain some degree of regulation, Amadeus believes that any such provisions that are retained should be even-handed as between the different market players. Amadeus, accordingly, reserves its position in respect of the individual provisions, should the European Commission decide to not deregulate those rules as a package but to apply a provision-by-provision deregulation approach.

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?

On the definition of "parent carrier"

- [32] According to Article 2(i) of the Code of Conduct, a parent carrier is a carrier which *alone or jointly with others owns or effectively controls* a CRS. A carrier belonging to the same group of airlines as a parent carrier will also be considered as parent carrier.
- [33] At the moment, Amadeus is the only CRS in the EU with any airline shareholders. Air France-KLM owns roughly 23 % of Amadeus' parent company, WAM Acquisition S.A.; Lufthansa and Iberia each have shares of 11.5 %. The two UK private equity investors, BC Partners and Cinven, acquired in 2005 the majority of the shares in WAM Acquisition S.A. and these private equity firms effectively control Amadeus.
- [34] The definition of "parent carrier" has never been interpreted, whether by law or case law. The logical interpretation would be to use competition law principles, applicable to EU Merger Control cases, where *effective control* is a determining factor. Under these principles, no airline is a parent carrier because none controls Amadeus or any other CRS in Europe.
- [35] On the contrary, if a "parent carrier" is any airline that owns shares in a CRS regardless of the size of the interest, then even British Airways, through its minority share in Iberia, would be a parent carrier of Amadeus.

On the consequences of the parent carrier obligations

[36] The two main obligations imposed on parent carriers are the following:

- *Article 3a* requires that a parent carrier must provide a CRS, on request and with the same timeliness, with the same information on its schedules, fares and availability as that which it provides to its own CRS;
- *Article 8* prohibits that a parent carrier links certain conditions offered to travel agents (whether commissions, incentives or content) to the use of a specific CRS.

[37] The requirements of Article 3a have important commercial consequences for parent carriers who are forced to participate in all CRSs regardless of any commercial consideration to the usefulness and the value of the service. Combined with a potential elimination of requirements that booking fees be reasonable and non-discriminatory, this rule would be particularly harmful to parent carriers, as it would force parent carriers to accept whatever price terms are demanded by the non-owned CRSs with no possibility to negotiate.

[38] In addition to having to participate equally in all CRSs, parent carriers are in Article 8 prevented from applying different conditions to the content distributed through certain CRSs and not others.

Amadeus' position on parent carrier rules

[39] Amadeus considers that, whether or not they apply to Amadeus' airline shareholders, the parent carrier rules in their current form are disproportionate compared to their objective. This objective is to prevent discrimination against competitors by CRSs and their parent carriers. However, the rules do not limit themselves to preventing an abuse that, after all, is considered *potential*. In effect, they confer a very *concrete* and highly unjustified competitive advantage to those CRSs who do not have airline shareholders, while they unduly punish parent carriers compared to their competitors.

[40] Amadeus, therefore, submits that the Code of Conduct's parent carrier rules are too restrictive compared to their designed objective and should be repealed. They distort competition unduly between airlines that might be deemed to be parent carriers and other carriers and between those CRSs with airline shareholders and those without. In addition, given the current highly competitive travel distribution marketplace, the vibrant alternatives to CRSs for ticket distribution and, in particular, the lack of airline control of any CRSs, the need for such specific rules can no longer be justified. The objective that the "parent carrier" rules were intended to serve can be reached through market forces and careful enforcement of general competition rules.

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?

- [41] A rule precluding airlines from investing in CRSs would constitute a substantial and intrusive new form of airline regulation. With reference to Amadeus' comments to the parent carrier rules (previous question), such a proposal would be entirely disproportionate to the sought objectives and would be inconsistent with free market principles.
- [42] In addition, the suggestion would require the European Union to be prepared to enforce the measure against foreign investment in foreign companies, for instance the participation of a US airline in a US-based CRS, in a manner far more intrusive than the existing EU Merger Control rules. This makes the notion untenable in practice.
- [43] Amadeus respectfully suggests that the Commission abandon this controversial and unwarranted proposal.
- [44] Amadeus can neither see any reason why CRS providers should be subject to specific transparency rules that do not apply to other sectors. If such unnecessary requirements were nevertheless considered, they should not be limited to CRS providers but should apply equally to all distribution channels in order to not distort competition in the market.

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?

- [45] This provision in its current form lacks clarity with respect to the definition of "group of airlines" or "group of subscribers" and has consequently failed to have any practical effect. CRSs have, however, developed a range of products adapted to the different customers and group of customers. The sales of MIDT to groups of customers are thus a matter that is regulated by the market and there seems to be no reason why a CRS would refuse to sell such products, subject to commercial negotiations.
- [46] In the current marketplace, the provision does not seem to serve a practical purpose and Amadeus respectfully suggests that it be repealed in a revision of the Code of Conduct.

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

- [47] MIDT allow airlines to obtain key information about agency performance, market share, new potential markets, seasonal trends, high yield routes and partnership and alliance potentials. As a result, any company who so wishes may purchase MIDT from one or several CRSs and can build an extensive information database on all bookings distributed by CRSs.

- [48] The data, which relates to neither price nor cost, is made available on a monthly, weekly or daily basis. The monthly option is the one chosen by the vast majority of buyers. In practice, the data is not provided on a real time basis because its collection and collation will in any event take a number of days.
- [49] While larger carriers were the traditional purchasers of MIDT, CRSs have increasingly targeted smaller carriers for the sale of MIDT by offering new products especially by breaking down the MIDT into regional MIDT. This information, including travel agent information, is very important for smaller carriers' market analysis when considering entering new markets or increasing their services on certain routes by helping them identify the best agencies to cooperate with.
- [50] In the recent years, products similar to MIDT have been developed by other operators (e.g. big and worldwide travel agents such as American Express and/or on-line travel agents having direct connections with airlines). In Europe, IATA is already processing data providing information on actual sales that may be regarded as having a value similar to that of MIDT data (namely ticketing tapes) for sale to its members. Moreover, in the United States, each airline has access to Airlines Reporting Corporation ("ARC") data⁵ showing which agents sell the services of a specific carrier and how much each travel agent sells for that carrier.
- [51] Restricting the disclosure of travel agent information in the MIDT would render the product useless in many respects and would deteriorate its pro-competitive value. Furthermore, in order to not directly distort competition, such restrictions would need to apply to all providers of similar information, including non-CRS providers and providers based outside of the EU.
- [52] MIDT, in their current format, are a key instrument for airlines and are used for legitimate, pro-competitive purposes. No evidence of widespread abuse of MIDT has been presented, and there is no reason that general competition laws or other laws, cannot address any potential future abuses. Drawing on the US experience, Amadeus also notes that no abuse of MIDT has been reported following US deregulation, despite calls to limit MIDT access by some in the US during the deregulation process. The processing and distribution of MIDT is and will continue to be restricted by the EU's data protection rules – even after a possible repeal of the Code of Conduct.
- [53] Against this background, Amadeus respectfully submits that regulation of MIDT distribution is unnecessary in the present market context.

⁵ ARC COMPASS Data Retrieval System; see <http://arccompass.arccorp.com>. This information covers prices as well as tickets sold. It will provide this information with respect to the EU market to the extent that the tickets are sold by US based travel agents.

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?

[54] As observed by the Commission, the neutral principal display requirement has served its purpose and has efficiently prevented display bias in favour of certain carriers, but it is no longer relevant in the current marketplace. More often than not, travel agents immediately skip the principal neutral display offered to them by CRSs when they perform a search. Internet-based travel agents provide consumers directly with information on airline services without observing any display requirements. Many of the large travel agencies, although they use a CRS system, set up their own preferred display within the system, which will reflect not only the availability of air service but also other criteria such as air fare and preferred commercial agreements between agency and carriers. It is estimated that in excess of 20 % of CRS bookings are made through such agency-built availability screens. It should also be noted that the market has increasingly demanded fare-driven search tools which, by essence, do not meet the neutral availability algorithm requirements of the Code of Conduct.

[55] Significantly, however, the decreased use of the neutral display has not lead to any dysfunction in the market. Consumers continue to have the benefit of travel agents who compete with one another and who would not offer displays that they do not find useful or informative. For the same reasons travel agents will continue to require various forms of non-discriminatory display from CRSs. Amadeus therefore submits that were the neutral display rules eliminated, the content of CRS displays would remain disciplined by market forces, in addition to the constraints imposed by general competition rules. Displays that are unduly biased will not achieve market acceptance.

[56] Amadeus consequently takes the view that specific neutral display requirements no longer serve any sound regulatory purpose. Should the EU, nonetheless, decide to retain certain neutral display requirements, the specific display criteria would at a minimum need to be simplified and adapted to the market reality, notably the limited demand for such displays. In addition, if retained at all, such requirements should not apply only to CRSs, but should also be applied to all competitors to CRSs, including offline and online travel agencies; meta search engines (e.g. flightcomparison.co.uk); and all forms of GNEs (e.g. G2 Switchworks; ITA Software; Farelogix; Hitchhiker).

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?

[57] Amadeus welcomes the Commission's continuous efforts in the area of intermodality. Together with other market players, Amadeus is constantly exploring new opportunities to develop solutions that facilitate the distribution of intermodal and multimodal transport, including integrated ticketing systems.

- [58] Amadeus, however, does not believe that regulation is the solution to further progress in this field. Quite the contrary. More price freedom for booking fees will benefit further integration of rail transport in CRS services, as will gradual liberalisation of trans-European rail transport.
- [59] Amadeus will continue to work with the relevant market players to develop solutions that facilitate interoperability and is dedicated to cooperate with the European Commission on initiatives promoting the inclusion of rail services in CRSs. However, Amadeus respectfully submits that the Code of Conduct is not the appropriate legal framework for such initiatives.

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