

COMMENTS TO CONSULTATION PAPER ON THE POSSIBLE REVISION OF REGULATION 2299/89

ITA SOFTWARE, INC.

ITA Software is a provider of IT services to the travel industry. While the bulk of ITA Software's customers, and its business activities, are in North America, ITA Software services European customers as well and is actively seeking to expand its presence in European markets. ITA Software's product suite includes QPX, its pricing and shopping engine; DACS, its availability management system; as well as 1U, its distribution system; and ITA's new airline reservation and departure control platform. As an IT services provider, ITA Software depends on access to high-quality data relating to, among other things, fares, schedules and seat availability. While ITA Software's customers represent all segments of the travel industry, including agencies, GDSs and other service providers, airlines have traditionally comprised the core customer base, and much of ITA Software's technological focus has been on developing solutions for airlines.

With this background, and having played a role in the negotiations that followed the 2005 deregulation of CRSs in the United States, ITA Software believes that in the long run the competitive landscape in the European markets will be best served by eliminating the Code of Conduct competition rules. The experience of the United States market has shown that there is a likelihood that when presented with alternatives, the airlines will negotiate with the CRSs to achieve more favorable pricing (and/or other terms). The existence of an open playing field, where all players are free to bargain with all providers for the various services that they offer, should allow a small and less-established participant like ITA Software to present airlines and other potential customers with truly competitive alternatives. If the airlines have access to these competitive alternatives, ITA Software believes that the net effect on the ultimate consumer will be pro-competitive as well.

However, the realities of the European market today show that while deregulation might be appropriate at some point in the future, the regulations are very much necessary today. The major US carriers had, by the time deregulation occurred, not only eliminated their equity ownership of the CRSs but also had substantially lessened the extent of their commercial involvement with the CRSs they formerly owned. In Europe, by contrast, the parent carriers have lowered but not by any means eliminated their ownership of Amadeus. Of equal significance, the carriers continue to have deep commercial, technical and political connections with Amadeus. The existence of these interrelationships has resulted in the exclusion of other providers – whether the other major CRSs, or other IT providers such as ITA Software – from access to information, and therefore to consumers, in Europe. This situation has served to perpetuate the overwhelming dominance of one company in a marketplace that rationally ought to be served by a greater number of providers. An increase in providers would almost certainly result in greater competition.

Without the protection of the regulations embodied in the Code of Conduct, it is not at all clear that providers other than Amadeus will have a pathway to gaining full access to data and to European markets. ITA Software believes that unless there were clear evidence that the close connections between Amadeus and the parent carriers were no longer a blocking factor in other companies' ability to gain access to data and markets, the regulations should be maintained as the most effective means of providing open access. The objective of the regulations should be to facilitate the creation of competitive alternatives; requiring parent carriers and CRS systems to grant access, including to non-traditional service providers such as ITA Software, is likely to result in the creation of such alternatives.

Certain elements of the Code of Conduct are, in ITA Software's view, particularly important to maintain: prohibitions against exclusionary behavior on the part of system vendors toward other systems, and the parent carrier restrictions. Section 3(b) of Article 3 (prohibiting a system vendor from making it a condition of participation in its CRS that a participating carrier not participate in another system), and Section 2 of Article 9 (prohibiting a system vendor from preventing a subscriber from using another system) are particularly important to a small, new entrant like ITA Software. The established CRSs have a strong vested interest in keeping new entrants out of the market, and can use their many existing commercial relationships with airlines or agencies to induce them, or require them, not to do business with companies like ITA Software. This is a particular danger when a different, disruptive commercial model is offered by the new entrant. These provisions of the Code of Conduct make it more difficult for the established players to foreclose the advent of new participants, and new competitors, to the marketplace. As such, they are clearly conducive to a pro-competitive environment.

The parent carrier restrictions are also absolutely necessary, and should be maintained notwithstanding the Commission's determination with respect to any other regulations. Of central and critical importance in the discussion of the parent carriers is the subject of data. Because, as noted, the large European carriers still play a significant ownership and control role in Amadeus, and because through its hosting relationship with these carriers Amadeus is also in a unique position with regard to data, Amadeus is able to control critical availability and other data for its hosted carriers. Its ability to withhold or discriminate in the distribution of that data results in an anti-competitive advantage in the distribution business as well as other areas of IT. As a small and (relative to the larger CRSs) new entrant to the airline IT business, ITA Software has had to work very hard to gain access to the data streams that the established CRSs enjoy in the United States – but ultimately, it has succeeded in gaining this access. By contrast, the experience of ITA Software in obtaining data from European (Amadeus-hosted) carriers has been consistent: ITA Software has been almost completely unable to obtain quality data on the parent carriers. ITA Software's ability to provide IT services to airline and agency customers, and thus to provide a viable and pro-competitive alternative to the large providers, depends in no small measure on its access to quality data. The poor access that ITA Software has had to data on the Amadeus carriers has had the predictable effect on ITA Software's customers of making it difficult for them to compete fairly in

European markets. Thus Amadeus and the parent carriers have continued to control not only the European market for CRS services, but also the access of providers in other markets that need access to such data to sell tickets on European carriers. In the US as well as in Europe, the effect of this lack of access to quality data has clearly been anti-competitive. When no competitor other than Amadeus is able to offer high-quality data on the parent carriers, then other competitors are effectively foreclosed from the market and competition suffers. Maintaining parent carrier restrictions would at least keep this situation from worsening; in fact, ITA Software supports stricter regulation and enforcement of the data obligations of airline-owned CRSs in an attempt to foster freer competition. To clarify, ITA Software does not believe that airlines' ability to invest in CRSs need be circumscribed, or that existing ownership in CRSs need be divested; only that if and when such investment occurs at a material level, the affected CRS should be obligated to offer fair and non-discriminatory treatment – including data access – to other participants in the distribution business.