



C-FARE's Response to the European Commission Public Consultation on the Possible Revision of Regulation 2299/89 on a Code of Conduct for Computerised Reservation Systems (CRS)

The document includes the general comments of the Coalition for Fair Access to Reservations in Europe (C-FARE) on the EC's Consultation Paper and provides C-FARE's response to the specific questions put to stakeholders by the Commission. C-FARE's members have responded to the consultation individually in greater detail.

General Comments

C-FARE believes that Europe's dominant CRS is not sufficiently independent from air carriers to permit full deregulation at this time:

- The Consultation Paper minimises the extent to which airlines are able to exert influence over Amadeus. The ownership arrangements that the three airlines have in Amadeus in addition to their shareholdings – including a veto over budget decisions and nominations to the board, neither of which are mentioned in the Consultation Paper at all – are significant.
- Aside from the issue of influence, the paper ignores the financial incentives for Amadeus-owning airlines to favour Amadeus, or for Amadeus to favour those three airlines. Lufthansa, Air France and Iberia possess significant economic incentives to favour Amadeus and to insure that it will be the only system used by travel agents in certain markets.
- US deregulation only took place after US airlines had completely divested their interests in Galileo, Sabre and Worldspan. The prerequisite for deregulation of CRSs in the U.S.A., cited by both the U.S. Department of Transportation and Department of Justice, was the total divestiture of the U.S. CRSs from the airline owners.

Therefore, the underlying economic incentives that motivate airline owners of CRSs to misbehave remain and the EU still needs a minimal set of clear, bright-line rules to constrain parent carriers' bad behaviour that everyone in the industry knows is inevitable as long as there is airline ownership of CRSs.

C-FARE's Recommendation

CRS rules were introduced in the EU – as in many other jurisdictions worldwide – to protect against the competitive abuses that arise when airlines own CRSs. The ownership link creates both the means and economic incentive to bias the system to sell air tickets of their airline owners. Abuse of this position can take several forms, many of which are difficult to detect and deprive consumers of access to the best fare and route options, ultimately driving up prices. Therefore, the core protections of the Code continue to serve as a crucial *ex ante* instrument to ensure that consumers can obtain access to the best available flights and fares irrespective of which CRS is selected by their independent travel agent.

Coalition for Fair Access to Reservations in Europe
Secretariat: c/o APCO Europe, Rue du Trône 130, B-1050 Brussels
Tel. 02-645-9833, Fax 02-645-9812
www.c-fare.org

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As outlined below, in our response to question one, C-FARE suggests a pragmatic solution to the ongoing debate over reform of EU rules governing CRSs: the elimination of all the rules of the Code, except for the core protections against parent carriers' abuses, and the insertion of a 'sunset clause' that would result in full deregulation when the market conditions are right, that is, when all EU-based airlines have completely divested themselves of any financial interest in a CRS.

Response to questions in the Consultation Paper

For convenience we have repeated the EC's questions below and follow each question with C-FARE's response.

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?*

We believe the EU still needs a minimal set of clear, bright-line rules, as imposed by the EU's Code of Conduct, to constrain the kinds of anti-competitive behaviour that all in the industry know is inevitable for as long as there is airline ownership of CRSs.

There is a serious risk that full deregulation would not move the industry toward a more competitive structure, but rather would recreate the conditions that led to the current regulations.

We suggest, therefore, that prudent liberalisation should proceed in stages:

1. The elimination of most of the provisions of the Code, including the provisions that regulate pricing of CRS services to airlines.
2. The retention of core protections for so long as there are airlines in Europe which remain owners of a CRS.
3. At such time as all EU-based airlines have entirely divested their interests in a CRS the entire Code should automatically "sunset".

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?*

We disagree with the fact that the Consultation Paper downplays the extent of the market power of Amadeus and its airline owners in Europe and does not address the threat of a double dominance in several national markets of airlines and an airline-owned CRS, which creates a particular potential for market foreclosure both for rival airlines and rival CRSs.

Under such conditions the principal elements of the Code continue to make a strong, positive contribution to consumer protection. There is still a need for an effective *ex-ante* instrument to deter anti-competitive behaviour because the retrospective application of EU competition rules remains insufficient in itself as an effective deterrent against abuse.



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)?*

Yes, we believe that the EU market would benefit from greater pricing freedom, including the repeal of article 10 rules, but only in the event that the core safeguards of the Code, such as mandatory participation by parent carriers, the prohibition on parent carriers tying travel agency commissions to CRS choice, airline-owned CRS screen bias protections and the prohibition on functionality discrimination by parent carriers, are maintained for as long as airlines continue to own stakes in a CRS. If these core rules are maintained, greater pricing freedom could be established immediately.

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?*

Since the Brattle Group report of October, 2003, Amadeus's airline owners continue to exercise ownership and influence of that dominant European CRS. As such, it is critical that certain core obligations imposed on parent carriers remain in place. However, the important changes in the industry since the rules were initially adopted justify a review and a lifting of many rules that have outlived their usefulness – including the pricing rules mentioned in our response to Question 3.

The Consultation Paper minimises the extent to which the parent carriers are able to exert influence over Amadeus. Contrary to the Consultation Paper's assertion that "their (the airlines') say over Amadeus has been significantly reduced", the ownership arrangements that the three airlines have in Amadeus – veto over budget decisions and nominations to the board, neither of which are mentioned in the Consultation Paper at all – are significant.

Moreover, financial investors BC Partners and Cinven rely entirely on the active marketing support and continued supply of fare and inventory by Amadeus' three airline owners for the success of their investment in the CRS.

Aside from the issue of influence, the paper also ignores the key question of financial incentives for Amadeus-owning airlines to favour Amadeus, or for Amadeus to favour those three airlines. In a letter to the U.S. Department of Transportation in December 1999, when the U.S.-based CRSs were still owned by U.S. airlines, a lawyer for Amadeus stated: "It is the airline's financial interest that carries with it the incentive to distort CRS competition in the air service markets in which the airline is dominant, regardless of the airline's ability to exercise influence over the CRS in which it has an ownership interest [...] of 5% or more." The three parent carriers have an ownership interest in Amadeus today that collectively exceeds 46%.

For these reasons the specific obligations imposed on parent carriers are essential and must be retained to safeguard competition.



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?

C-FARE takes no position on whether airlines should be legally allowed to invest in or control CRSs.

Where airline ownership or influence of CRS providers exists *ex-ante*, sector-specific regulatory safeguards are necessary to constrain the kinds of anti-competitive behaviour that are inevitable, but only for as long as airline ownership of CRSs continues.

In the absence of public disclosures, the Commission must have a reliable means of determining the extent of airline ownership in a 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?

C-FARE has not taken a position on this issue and will not do so.

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

C-Fare takes no position on this issue.

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?

It is in the interests of the consumer that travel information provided by CRSs is free from bias and is provided in a fair and non-discriminatory manner. In the current context in the EU, travel agencies depend on access to unbiased information, thereby enabling them to make the lowest fares and best routing options available to business and leisure travellers alike. C-FARE's individual members have commented in greater detail in their own submissions on the specific changes which could be made within this rule.

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?

We believe that allowing CRSs such pricing freedom would facilitate the integration of more rail services into CRS displays and be a positive development for consumers.