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**Proposal for a regulation of the European Parliament and of the Council on a
Code of Conduct for computerised reservation systems**

IMPACT ASSESSMENT
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1. EXECUTIVE SUMMARY

Computerised Reservation Systems (CRSs) provide subscribers with instantaneous information about the availability of air transport services and the fares for such services¹. They permit travel agents, whether brick-and-mortar or on-line, to make immediate confirmed reservations on behalf of the consumer. There are currently four major CRS providers active on the European market: Amadeus, Sabre, Galileo and Worldspan (the two latter are currently merging)².

The Code of Conduct for Computerised Reservation Systems ("the Code of Conduct") was first established in 1989 with the adoption of Regulation 2299/89. At that time, the vast majority of airline bookings were made through CRSs. For air travel, consumers could practically only rely on one single information and distribution channel, the one constituted by CRSs and travel agents. In addition, most CRSs were owned and controlled by airlines. This combination of facts created particular risks of competitive abuse for which general competition rules were not sufficient and for which specific *ad hoc* rules in the form of a Code of Conduct were necessary. Given the complex and multi-national character of the CRS services and its support for the single aviation market, regulation on EU level has a value-added in this sector.

Changes in CRS technology and economics are gradually eroding the key features of the competitive landscape for which the Code of Conduct was designed. First, many airlines have divested their CRS ownership. Three of the four CRSs (Galileo, Worldspan and Sabre) no longer have any airline ownership, and three airlines only hold a minority share in Amadeus. Second, thanks to the development of alternative distribution channels, such as the airlines' Internet websites or their call centres, consumers have nowadays access to a multiplicity of information and booking channels for air transport services. About 40% of all airline tickets in the EU are booked via alternative channels and about 60% via travel agents and CRSs.

The Code of Conduct is increasingly ill-adapted to the changed market conditions and is creating economic inefficiencies: the Code's provisions increase the cost of CRS services (they represent on average about 10 euro per return ticket) and restrict the CRSs' flexibility to adapt their services to the specific needs of the airlines and the travel agents. Most importantly, the Code's non-discrimination requirement for booking fees stifles price competition, and the prohibition for airlines to differentiate content between CRSs significantly restricts their negotiating freedom. The ensuing lack of competition leads to higher CRS booking fees and creates a system of economic rents in favour of CRSs and travel agents, at the expense of airlines and their passengers.

¹ The companies providing CRS services also provide other IT services such as the management or "hosting" of the airlines' internal reservation and inventory systems when airlines decide to outsource this activity - this is important for example for the handling of Passenger Name Records (PNR). But they are not the only companies providing these services. The "hosting" of internal reservation systems is a strictly separate and distinct service to the CRS services. Regulation 2299/89 imposes the clear separation of hosting services from CRS services.

² See Annex I for more details about the CRS providers

Higher than necessary booking fees incite airlines to distribute an increasing share of their tickets via alternative distribution channels such as their own Internet websites, which are less costly and technically more flexible. Many low-cost airlines do not use the services of the CRSs at all and hence are not offered by many travel agents.

Furthermore, as CRS markets in other parts of the world have been deregulated, it is necessary to ensure that airlines and CRS providers from within and outside the EU compete on a level-playing field.

The public consultation has shown that most stakeholders are in favour of revising the Code of Conduct to adapt it to the present day conditions, but to keep key provisions ensuring the provision of neutral information to subscribers and safeguards against potential abuses in the presence of close links between air carriers and CRS providers.

In this impact assessment, two options for revision - partial and full deregulation - were compared to the base case of the status quo. The first option – partial deregulation - has been further sub-divided in three sub-options that differ with regard to the safeguard measures in case of close links between airlines and CRSs. All the options aim to increase the scope for competition in the CRS market:

- Option 0: status quo
- Option 1: partial deregulation
 - Option 1a: partial deregulation with control unbundling of the airlines and the CRSs;
 - Option 1b: partial deregulation with specific provisions for parent carriers;
 - Option 1c: partial deregulation without specific provisions for parent carriers;
- Option 2: full deregulation (abolition of the Code of Conduct).

The status quo has been rejected because the present Regulation's restrictions on pricing and negotiating freedom are having increasing negative effects, in particular in terms of high distribution costs. These costs induce airlines to redirect an increasing share of their sales via alternative distribution channels.

A full deregulation (option 2) has been rejected at the present state of the market. Many corporate travellers remain highly dependent upon the single distribution channel constituted of the travel agents and the CRSs. The same is true for travellers in Member States with low Internet penetration rates: less than half of the EU population has access to the Internet - which is the most important alternative distribution channel. This is different from the observed situation in the USA where 70% of the population has Internet access (with smaller differences between individual States than in the EU) and where Internet sales as an alternative to CRSs are more developed.

In these circumstances, the risks of competitive abuse are higher than in other economic sectors and the sole reliance on the general competition rules would not be sufficient, especially in case of close links between airlines and CRSs. In addition, certain market

behaviours of the CRSs (e.g. display bias) would be harmful to consumers even if they were not the result of a competitive abuse.

Regulation 2299/89 was earmarked for repeal in the Commission's strategy for regulatory simplification³. This impact assessment concludes that the particular characteristics of the market necessitate the maintenance of sector-specific rules, but that there is scope for simplification of the Regulation. For instance, the removal of some non-discrimination obligations will allow market participants to freely negotiate fees and content as a way to achieve efficiency in the sector on the basis of price and service quality. The impact assessment shows that option 1b offers the most favourable outcome in terms of increased competition, safeguards against competitive abuse, neutral, transparent and comprehensive information for consumers and the promotion of rail transport in CRS displays.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Organisation and timing

This impact assessment has been prepared by DG Energy and Transport (TREN) with the contribution of an Inter-services Steering Group in which the following Directorates General participated: the Secretariat General, the Legal Service, DG ECFIN, DG COMP, DG ENV, DG ENTR, DG SANCO, DG TRADE, DG JLS and DG EMPL.

Work on this impact assessment started in 2006 with the preparation of a consultation paper updating previous studies. In the first half of 2007, a public consultation was carried out. Immediately thereafter, the impact assessment report leading to the formal Commission proposal was prepared.

On 9th August 2007, the Impact Assessment Board received a preliminary draft of this Impact Assessment Report. The Board met on 29th August 2007 to review the draft and adopted its Opinion on 3rd September 2007. This revised Impact Assessment Report takes full account of the Impact Assessment Board's opinion throughout, namely on the following points:

- (1) The analysis of the emergence of alternative reservation opportunities and the resulting competition in this sector, taking into account the increasing penetration of internet access in Europe, has been further developed.
- (2) Simplification gains are demonstrated more clearly.
- (3) Interaction between air and rail travel information and reservation systems has been further considered and examined.

This proposal is part of the Commission's work programme under the following reference: 2002/TREN/29.

³ Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Implementing the Community Lisbon programme: a strategy for the simplification of the regulatory environment", COM(2005) 535, 25.10.2005, page 15

2.2. Consultation and expertise

The preparation of this proposal has been preceded by a public consultation in order to gather as many comments and suggestions as possible from the individuals and bodies concerned. This exercise respected the minimum standards for consultation of interested parties as defined in the Communication from the Commission of 11 December 2002 (COM(2002)704 final). This consultation exercise followed an earlier consultation carried out in 2002.

Stakeholders and stakeholder groups from the airline industry, the railroad industry, the computerised reservation systems, the travel agency industry and the consumers of air transport services were consulted in 2002. They were consulted on four multilateral consultation meetings that were respectively organised on 16 April 2002, 10 July 2002, 10 September 2002 and 16 December 2002.

In December 2002, the services of the Commission commissioned a study that was completed in October 2003. The full report of the consultant – the Brattle group and Norton Rose - has been published on the Internet at the following address: http://europa.eu.int/comm/transport/air/rules/index_en.htm.

The 2002 consultation and the study revealed important differences of view between stakeholders concerning the revision of the Code of Conduct. There was no consensus on the option recommended by the report of the Brattle group and Norton Rose. Therefore, the Commission did not immediately propose a revision of the Code of Conduct, but decided to further assess market developments.

An open internet consultation was carried out between 23 February 2007 and 27 April 2007. To this effect, the Commission services published a consultation paper that assessed data and information gathered from studies and from market participants (http://ec.europa.eu/transport/air_portal/consultation/2007_04_27_en.htm). The paper gave an overview of the most recent market developments, in particular the development of alternative distribution channels, the evolution of the control structure of the CRSs and the market liberalisation in the United States. It described the impact of these developments on the different groups of market participants. Finally, it asked a series of general and specific questions with regard to the possible revision of the Code of Conduct.

On 2 May 2007, stakeholders and stakeholders' organisations were invited to a meeting in Brussels in order to give a short overview of their contributions.

The Commission received 48 contributions, breaking down into the following groups:

- Air carriers and representative bodies: 18
- CRS providers and IT services providers: 5
- Consumer/ travellers and representative bodies: 9
- Travel agents and representative bodies: 10
- Rail transport sector: 1

- Other: 5

The consultation paper, a summary of the contributions and the (non-confidential) individual contributions can be consulted on the Commission's website:

http://ec.europa.eu/transport/air_portal/consultation/2007_04_27_en.htm.

The new consultation revealed that only very few stakeholders – among the airlines and the CRS providers – favour a complete abolishment of the Code of Conduct. Most stakeholders prefer to keep a Code of Conduct, but they favour a revision of the present Code in order to adapt it to the market developments by giving airlines and CRS providers more freedom to negotiate booking fees and fare content.

Travel agents fear greater pricing freedom and are in favour of amending the Regulation to ensure access to airlines' full content at no additional cost.

The consumers' organisations caution that a revision should be done very carefully in order to guarantee the provision of neutral and comprehensive information to consumers.

Most of the stakeholders have expressed a clear preference to keep the present rules applicable to parent carriers of CRS providers, i.e. the mandatory participation of parent carriers in all CRSs (article 4a of the Code) and the prohibition on linking incentives or disincentives to the use of a particular CRS (article 8).

3. PROBLEM DEFINITION

3.1. What is the issue or problem that may require action?

Origin of the Code of Conduct

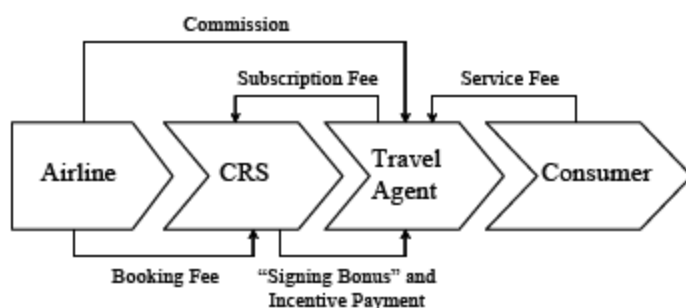
The Code of Conduct for Computerised Reservation Systems ("the Code of Conduct") was first established in 1989 with the adoption of Regulation 2299/89. At that time, the vast majority of airline bookings were made through CRSs and most CRSs were owned and controlled by airlines. It was felt that, in order to deal with the competition concerns and consumer protection issues arising in the supply chain of air transport products, an ad hoc regulatory framework was needed, instead of solely relying on the generally applicable provisions of competition law.

The Code of Conduct recognised that computerised reservation systems required a certain degree of regulation in order to ensure that all airlines enjoy the same level of access to travel agents and consumers. Similarly, travel agents and consumers needed to be protected against competitive abuse or other harmful market practices (e.g. display bias). The Code was established with the aim of improving transparency and preventing discriminatory behaviour both by the system vendors themselves and also by airlines, especially parent carriers of CRSs. On the one hand, system vendors were required to deal in an even-handed manner with all carriers and travel agents, while, on the other, parent carriers of a CRS were required not to favour that system over the others. The Code also imposed obligations in terms of neutral display in order to avoid discriminatory treatment of airlines on the system's displays.

Unintended effects of the Code of Conduct

The Code of Conduct proved successful in preventing abuses of market power. However, key provisions have had unintended consequences: most importantly, the Code's non-discrimination requirement for booking fees stifles price competition, because if CRS vendors provide a discount to one airline, they must provide it to all. Similarly, the prohibition for airlines to differentiate content between CRSs significantly restricts their negotiating freedom. The ensuing lack of competition sustains a system of economic rents in favour of CRSs and travel agents, at the expense of airlines and their passengers. It leads to higher CRS booking fees and incites airlines to distribute an increasing share of their tickets via alternative distribution channels such as their own Internet website.

The unintended effects can be better understood when considering the flow of payments in the CRS market that could typically be represented as in this figure⁴:



When a travel agency books a ticket using a CRS, the airline pays the CRS a booking fee. The booking fee is a flat charge per passenger per flight segment⁵. In order to capture all travel agencies, airlines need to participate in all CRSs. This gives the CRS providers significant bargaining power vis-à-vis the airlines.

Travel agencies pay a subscription fee to rent equipment from the CRS to which they subscribe. As travel agencies typically subscribe to only one CRS, the CRS providers compete to attract the travel agencies to their system by paying them incentives per segment booked on their system. For smaller agencies, the incentive payments can offset at least partially the subscription fee. But for larger travel agencies, which can generate substantial booking fee revenue, the CRSs effectively pay the travel agency to subscribe.

Because of this particular "two-sided" market structure, the CRS providers have more market power vis-à-vis the airlines than vis-à-vis the travel agencies. The dichotomy between both sides of the market is enhanced by the Code of Conduct: the prohibition of discounts to individual airlines effectively reduces even more the airlines' bargaining power and leads to a situation where overall booking fees are kept on a higher level.

⁴ Source: Brattle and Norton Rose report (see http://ec.europa.eu/transport/air_portal/internal_market/studies/index_en.htm).

⁵ The number of segments increases with the number of intermediate stops. For example, a one-way ticket Brussels - NewYork with stop-over in London contains two segments, a return ticket Brussels - New York via London contains four segments.

Increasing incentive payments to travel agents are then being financed by increasing booking fees charged to the airlines.

It is very difficult to quantify the financial flows in the airline distribution chain because most figures are protected by commercial secret. Therefore, the assessment is based on orders of magnitude reflecting the statistical uncertainties⁶. Booking fees charged to the airlines nowadays vary between 3.5 and 4.5 euros per segment booked (for the highest levels of service), depending on certain characteristics of the bookings (e.g. geographical location where the booking took place). For return tickets with an average of 2.5 segments per ticket, this amounts to a booking fee of between 8.7 and 11.2 euros per ticket. In the EU, more than 270 million segments were booked in 2006, amounting to the payment of booking fees for more than €1 billion from the airlines to the CRS providers.

The incentive payments paid by the CRSs to the travel agents vary according to the size and hence the bargaining power of the travel agent. While small travel agents receive none or only small incentive payments, big travel groups can obtain up to €2.5 per segment booked – above a certain threshold of minimum number of bookings on the system. The average incentive is of the order of €1.2 per booked segment.

The particular economics of this two-sided market, and the lack of competition in the upper part of the market (airlines – CRS), incite CRSs and travel agents to increase the incentive payments. At the end of the distribution chain, the consumer pays the air fare – which includes the increasing booking fees – and sometimes a service fee to the travel agent (which was introduced among other reasons to compensate for the reduction of commission payments from the airlines to the travel agents).

CRS rules across the Atlantic

The Commission notes that other regulatory authorities, namely Canada and the United States of America have recently reviewed their respective rules regarding computerised reservation systems. Both had a regulatory framework applicable to CRSs similar to Regulation 2299/89. In 2004, the US opted for a total liberalisation, whilst Canada opted for a partial de-regulation. However, the US administration retains its authority to pursue future regulatory or enforcement actions against airlines or systems that engage in anti-competitive practices. These regulatory changes reinforce calls for a revision of EU rules in order to establish a level-playing field for airlines and CRS providers across the Atlantic.

Calls for change

The public consultation has shown that there is no support for a status quo, i.e. maintaining the present Code of Conduct unchanged. The Code of Conduct is increasingly ill-adapted to the market conditions now prevailing and is having increasingly undesired effects. The detailed and prescriptive provisions of the Code of Conduct tend to significantly undermine the ability of undertakings in the market to adapt to constantly changing requirements and customer needs. In the present market

⁶ This problem was also encountered by the before-mentioned study by the Brattle group and Norton Rose.

conditions, the Regulation stands in the way of greater market efficiency. It keeps distribution costs at a higher level than necessary (booking fees are between 20 and 30% higher than under competitive conditions) and it stifles competition on quality and innovation. These inefficiencies are likely to have an impact on the competitiveness, the employment and the pace of innovation in the airline distribution sector.

3.2. What are the underlying drivers of the problem?

Since the adoption of the Code of Conduct, major developments have taken place, both from an economic and from a technological point of view, which have rendered the Code ill-adapted to today's market situation.

The most significant changes in this respect are the changing ownership structure of the CRS providers, the progress of direct distribution channels for air travel services and the regulatory changes on the other side of the Atlantic.

3.2.1 Change of ownership of the CRS providers

Today, the majority of airlines have divested from their participation in CRSs. Three out of four CRSs are now completely spun off (Galileo, Sabre and Worldspan). Only Amadeus keeps an airline ownership as it has three airlines as minority shareholders.

Most European airlines have also sold off their ownership of the National Marketing Companies (NMC) of the CRSs. These are companies – subsidiaries of the CRS or not – that market or promote the services of a particular CRS in given national markets. However, a few air carriers still have stakes in the NMC and some of them may be considered as parent carriers.⁷

It cannot be excluded that airlines may regain control of CRSs in the future, especially if they were no rules specific to parent carriers.

3.2.2 The development of alternative distribution channels

CRS services are an input to the retail sale of air travel. Three distinct entities sell air travel on a retail basis: (1) traditional “brick-and-mortar” travel agencies, including tour operators; (2) online travel agencies, including websites associated or not with brick-and-mortar agencies; and (3) airlines themselves, through their reservation offices, call centres and websites.

Whereas travel agencies sell tickets for travel on many different air carriers, carriers sell tickets only for their own flights and those of their alliance partners. Brick-and-mortar and online travel agencies are highly dependent on CRSs - to search for flight and fare information, book reservations, and manage client records and agency accounts. Airline distribution channels do not use a CRS to sell or book tickets.

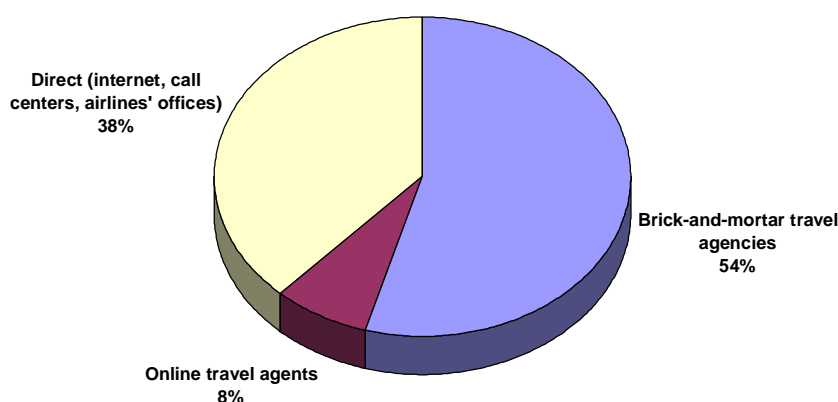
⁷ On this topic see also the Commission decision of 20 July 1999 on a procedure relating to the application of Council regulation (EEC) No 2299/89 (electronic ticketing), OJ L244 of 16.9.1999, page 56. The decision referred to a complaint by Sabre against Lufthansa and considered Lufthansa as a parent carrier of the national marketing company START Amadeus.

The development of the Internet significantly contributes to the increase of direct sales from the airlines to consumers. Internet penetration rates are increasing rapidly: almost half of the European households have access to the Internet (see Annex II). Online travel sales experience a tremendous development; in Europe they have increased by more than 30% in 2006 and are expected to grow by more than 20% in 2007. 56% of these sales concern air travel⁸.

Hence, the direct selling of air tickets by the airlines via their websites increases quickly. Low-fare airlines, that are taking a rapidly growing market share of air travel in Europe, almost exclusively rely on their website sales. At the same time, the "network carriers" have triggered a shift from their traditional distribution channels towards their websites in an effort to reduce their distribution costs in a context of high CRS booking fees, high fuel prices and mounting competition from low-fare airlines.

Estimates show that in 2005, direct (non-CRS) sales already accounted for about 40% of total bookings in the EU27.⁹

Market share of various distribution channels (% of number of bookings in EU27 in 2005)



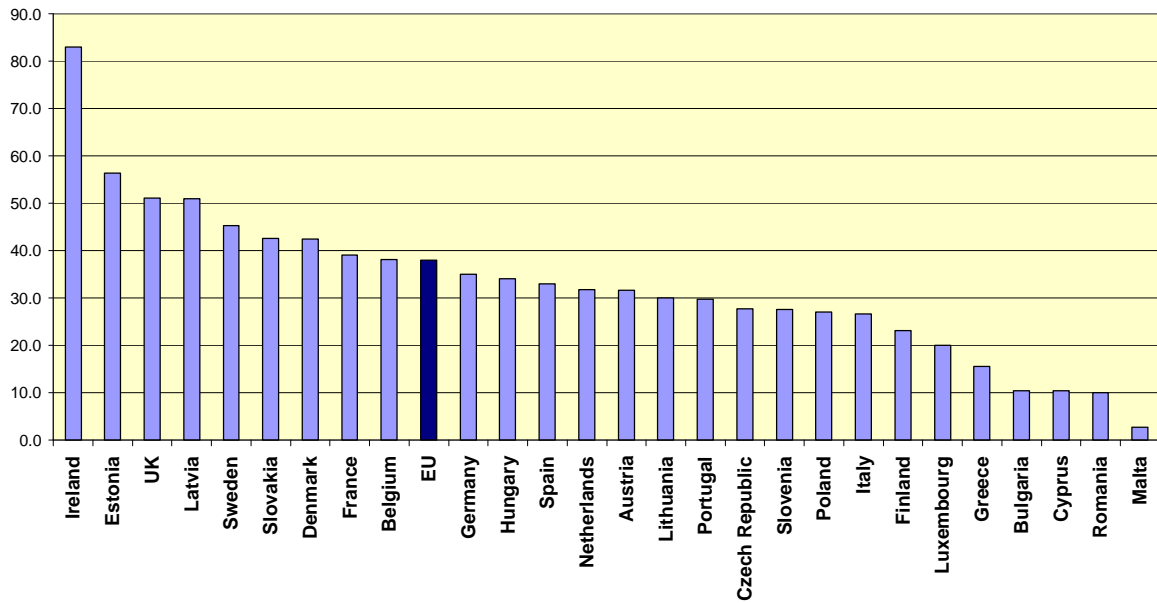
Source: Commission estimates

This figure varies quite a lot between Member States depending on the market share of the low-fare airlines and on the internet penetration rate in households and companies: direct distribution channels are best developed in Northern Europe, Ireland and the United Kingdom.

⁸ Trends in European Internet Distribution of Travel and Tourism Services, Carl H. Marcussen, Centre for Regional and Tourism Research, May 2007 (<http://www.crt.dk/uk/staff/chm/trends.htm>)

⁹ "Bookings" are to be understood as bookings made within the EU irrespective of the place of travel. Estimates of the share of direct and indirect bookings have been calculated on the basis of partial industry data, Internet penetration rates per country, low-fare airlines' market shares in each country and the share of direct distribution for the most important airlines active in each country.

Direct bookings per market in 2005 (% of number of airline bookings)



Source: Commission estimates

There is also variation between airlines. While the low-fare airlines distribute between 60 and 100% of their tickets via direct channels, this figure varies between 20% and 30% for most network carriers, although for some of them, the figure is above or below this bracket. For the latter, the proportion of direct sales is sometimes higher in their home markets – where these companies and their websites are generally well known – than in other markets.

It must be noted that data on the number of bookings may overstate the importance in terms of revenue of online agencies and airline distribution channels as a higher proportion of high-value tickets are being sold via indirect channels (business travel and complex itineraries). An AEA survey¹⁰ showed that while the network carriers in 2005 sold 16% of their tickets via their own websites, this only corresponded to 7.5% of overall sales revenue; 80.3% of sales revenue was still generated via travel agents.

These figures also show the importance to distinguish between the travel purposes: businesses travellers are more dependent on travel agents than leisure travellers as they typically depend on a specific brick-and-mortar travel agency to manage their travel-related accounts and to book complex itineraries and secure special fares. Leisure travellers are more apt to vary their distribution channel based on the nature of the trip. Especially leisure travellers with simple itineraries and Internet access more easily use online travel agencies or airline websites.

In many Member States, the Internet is now so widely available, including for private consumers and SMEs, that it has become a very attractive and potentially very efficient distribution channel. Therefore, the described developments are of importance to assess the market power of the CRS, generally and individually. Indeed, in terms of CRS

¹⁰ Association of European Airlines (AEA), "Source", AEA market research Quarterly, issue 2/2006

bookings only, the dominant position of some CRS providers in some national markets has not eased since the adoption of the Code of Conduct: Amadeus has a large market share in important markets like Germany, France and Spain and in some smaller markets. Galileo/Worldspan has large market shares in the United Kingdom and in some smaller Member States¹¹. However, when considering all airline bookings, including non-CRS bookings, these large market shares are reduced thanks to the development of the airlines' web sales.

3.2.3 Market liberalisation in North America

In 2004, the US Department of Transportation (DOT) decided to eliminate all the rules governing the computerised reservation systems. The rules were gradually phased out until 31 July 2004 when all remaining rules were lifted. However, the DOT retains its authority to prevent unfair methods of competition in the sale of air transport services and to pursue future regulatory or enforcement actions against airlines or systems that engage in anti-competitive practices. In May 2004, Canada opted for a partial, but still far-reaching deregulation of the CRS market.

Following the liberalisation, airlines and CRS providers were free to negotiate bookings fees and fare content. When contracts were up for renewal, the airlines and the CRS providers negotiated so-called "full-content" programmes, where airlines agreed to provide all (or nearly all) their fare content to the CRSs in exchange for booking fee reductions. It is estimated that this led to fee reductions in the range of 20 to 30%.

On the other side of the market, the travel agents were then given the possibility by the CRSs to "opt-in" into these full content programmes by paying an "opt-in fee" for each booking (which is deducted from their possible incentive payments). By "opting in", the travel agents are assured access to the airline's full content and that the airline will not impose a surcharge on tickets issued by the travel agents.

The reduction in booking fees has created an incentive for airlines to provide more fare content via the CRSs. It is encouraging to observe that even the low-cost carriers now make more use of the CRSs in the United States and hence can be booked via travel agents and not just on the Internet. The feared "content fragmentation" has not been observed on a general scale. Indeed, it was feared that the CRS deregulation would lead to airlines not offering the same content on each of the CRSs in which they participate. In that case, travel agents - and their customers - would not have had access to all the fares of all the airlines and may have been compelled to use more than one booking channel. But the market developments indicate that the deregulation has generally been translated into lower booking fees and incentive payments and not into content fragmentation.

Despite the great similarities between the US and the EU airline distribution markets, the results of the US deregulation must always be seen in the light of more advanced development of the alternative distribution channels in the USA. Internet penetration rates are significantly higher in the US than in Europe and also the development of

¹¹ Data on country-to-country market shares of the CRSs were provided to the Commission on a confidential basis and cannot be disclosed.

direct links between travel agents and airlines is more advanced on the other side of the Atlantic.

3.3. Who is affected, in what ways, and to what extent?

Four stakeholder groups can be identified as the most affected: airlines, CRS providers, travel agents and consumers of air travel services.

Airlines pay the CRS a booking fee whenever a travel agent books a ticket using the CRS. This amounts to between 3.5 and 4.5 euros per booked segment.

The CRS providers charge booking fees to the airlines and subscription fees to the travel agents. At the same time, they may pay incentives to the travel agents for each booking they make on their system. These incentive payments are of the order of 1.2 euros and vary with the amount of bookings an agent performs on a system.

The travel agencies are highly dependent on CRSs - to search for flight and fare information, book reservations, and manage client records and agency accounts. However, the airlines' strategies to avoid the CRS booking fees may lead to a reduction of the fare content they offer via CRS as opposed to their own Internet websites. This is particularly true for low-fare airlines that often do not use the services of a CRS at all.

The consumers – be they business travellers or leisure travellers – have the choice between different booking channels to acquire airline tickets, either via travel agencies, or directly from the airline (via its website, its call centre or ticket office). They are mainly interested in limiting the cost of the airline tickets and to have access to a neutral and transparent choice of travel options. They are the ultimate payers of the distribution cost, partly in the form of the booking fees which are integrated in the air fare, partly in the form of service fees to the travel agent.

3.4. How would the problem evolve, all things being equal? Should the EU act?

Without a change to the Code of Conduct, the problems identified in paragraph 3.1 will subsist and probably worsen:

Higher booking fees: the Code's non-discrimination requirements (with regard to booking fees, system access and fare content) considerably reduce the negotiating freedom of the airlines and the CRS providers. The ensuing lack of competition keeps booking fees at a higher level than under competitive conditions. The experience of North America – where the market economics are similar to Europe's – shows that there is room for a fee reduction of at least 20%.

Reduction of the fare content on the CRSs: higher than necessary booking fees induce airlines to redirect an increasing share of their sales via the alternative channels, in particular their Internet websites. The average cost per booking segment for bookings made via an airline's website is in the range of 1 to 5.50 euros. However, when assessing the airlines' incentives to steer booking traffic away from CRSs to their own websites, the most appropriate means of doing so is by looking at the marginal costs which are involved in such shifts. Once the initial investments have been made and the airline's website is up and running, the marginal cost of an additional booking is negligible, whereas the cost of an "additional" booking via a CRS includes the full

booking fee: the marginal cost of an airline's website is in the range of 0.20 to 2.00 euros, while – as mentioned before – the booking fees are in the range of 3.5 to 4.5 euros.

This cost difference is particularly important for the tickets with the lowest value, i.e. the economy, "non-flexible" tickets of the network carriers and most tickets of the low-fare carriers. For high-value tickets, like flexible business tickets on network carriers, the relative cost of the booking fee is far less important, and a switch to the airline's website is less likely as corporate travellers prefer to book via travel agents, and hence via CRSs. Without pricing freedom, the CRSs cannot adapt their pricing structure in order to apply targeted fee reductions on the low-value tickets and to effectively compete with the airlines' Internet websites. As a result, low-fare airlines often do not work with CRSs and network carriers try to redirect the bookings of low-value tickets to their websites.

In this context, travel agents may face mounting content fragmentation as not all the airlines' fare content would be available on the CRSs. Especially low fare classes and promotional tickets may be increasingly sold via the Internet. Consumers' interests could be hurt either by higher distribution costs or by incomplete fare information provided to them via CRS subscribers.

Barriers to innovation and quality: the detailed and prescriptive provisions of the Code of Conduct tend to undermine the ability of undertakings in the market to adapt to constantly changing requirements and customer needs. They stifle competition on service quality and discourage innovation. For example, the detailed prescriptions concerning the display of the travel options do not allow CRS providers to adapt the display to the specific needs of individual travel agents.

Barriers to market entry: a new CRS provider not only faces the high investment costs, but he also needs to attract a sufficient number of travel agents in order to present an interest to air carriers. The newcomer will have to offer the travel agents a higher incentive payment than the market incumbents. As the present market functioning favours higher (and even increasing) incentive payments, the present Regulation also hampers market entry.

The CRS services are regulated by Regulation 2299/89 establishing the Code of Conduct which gives the EU the exclusive competence in the matter. Therefore, a revision of the Regulation is the only means to change the legal framework of the CRS market. Given the detail and complexity of the current Regulation, and taking into account the developments listed in paragraph 3.2 above, the revision process should be carried forward under the principle of simplification, repealing those obligations or constraints that are no longer justified or that may even be having an undesired effect, and keeping those elements deemed to be justified to ensure the smooth functioning of the sector.

4. OBJECTIVES

The general objectives of the revision of the Code of Conduct are to ensure a level-playing field between the market participants, to reduce distribution costs and their

impact on ticket prices, to promote innovation, to offer adequate protection to consumers' interests and to promote inter-modal transport. This translates into specific objectives as shown in the table:

General objectives	Specific objectives
Ensure a level-playing field between market participants	<ul style="list-style-type: none"> - Fair and effective competition between airlines - Balanced bargaining powers between airlines, CRSs and travel agents
Lower distribution costs	<ul style="list-style-type: none"> - Enhance competition between CRS providers, especially with regard to airline participation
Promote service quality and innovation	
Protect consumers' interest	<ul style="list-style-type: none"> - Ensure the provision of neutral and comprehensive information on travel options - Ensure data protection
Promote rail transport and inter-modal transport	<ul style="list-style-type: none"> - Promote the display of rail services alongside air services on the CRSs
Simple and efficient legislation	<ul style="list-style-type: none"> - Simplify a complicated Regulation following several amendments - keep measures proportionate to the objectives pursued

Increased market efficiency and lower distribution costs will favour the competitiveness of the European aviation sector. The revision contributes to the objectives of the Lisbon strategy to strengthen the competitiveness of the European economy as well as the drive towards "better regulation".

5. POLICY OPTIONS

The previous analysis has shown that the Code of Conduct is increasingly ill-adapted to the market conditions now prevailing and that it is having increasingly undesired effects. In addition, the public consultation has shown that there is no support for a status quo, i.e. maintaining the present Code of Conduct unchanged.

Therefore, the status quo will be considered as "option 0" or the base case against which the other options will be measured. Two basic policy options have been studied in detail: full deregulation and partial deregulation, the latter with three "sub-options" that differ with regard to the safeguard measures in case of close links between airlines and

CRSs. All the options have in common that they aim to increase the scope for competition in the CRS market.

Travel agents and their representative bodies were hesitant with regard to more competition: their preference would be an obligation for air carriers to provide the full fare content to the CRSs at no additional cost. However, the Commission does not consider this measure as a valid policy option as it would run counter to consumer interests:

- By limiting the airlines' negotiating freedom, it would increase the CRSs' market power over the airlines and lead to further increases of the booking fees (which will finally be charged to the consumer).
- Today airlines can offer very low fares and promotional fares on their websites as its distribution cost is lower. If they were obliged to provide these "webfares" also to the CRSs, it is likely that they would have to increase the average level of these air fares to absorb the higher distribution cost.

Option 1: partial deregulation

Option 1 would not abolish the Code of Conduct, but maintain a modified Code. It would eliminate the non-discrimination requirements imposed on CRSs – i.e. article 10 of the Code of Conduct concerning the booking fees and article 3(2) concerning the distribution facilities - and allow participating air carriers to differentiate content between CRS providers (article 4). The two measures allow market participants to freely negotiate fees and content. The option takes account of the fact that market changes have improved airlines' market power vis-à-vis CRSs and that under these circumstances the restrictions of the Code on price setting – originally designed to protect the airlines – are now having counterproductive effects on the airlines' ability to negotiate with the CRSs.

It would be inappropriate to consider the possibility of just one of these two measures as this would create a distorted playing field:

- If airlines were allowed to differentiate content between the CRSs while the CRSs were not allowed to freely set the booking fees, the CRSs would not be in a position to respond appropriately to the increased market power of the airlines.
- If the airlines were not allowed to differentiate content between the CRSs (or even with other booking channels) and the CRSs were allowed to freely set the booking fees, then the market power of the CRSs would increase disproportionately. The CRSs would be able to charge unreasonable booking fees given the reduced risk of losing content from the airlines.

In addition, maintaining the non-discrimination requirement with regard to distribution facilities (article 3(2) of the present Code) would not be consistent with the removal of the non-discrimination requirement with regard to booking fees. Indeed, price freedom with regard to the use of the distribution facilities would contradict an obligation of

access to the distribution facilities on equal conditions. Where price freedom is established and where airlines are free to negotiate on fare content, it makes sense also to allow the negotiation on the use of the distribution facilities and of the system functionalities in order to allow CRSs to better tailor the systems to the specific needs of each airline.

By establishing pricing freedom, option 1 prefers general competition law (article 82 of the Treaty) over *ex ante* regulation (non-discrimination provisions) to address the potential for anti-competitive abuse of pricing. This policy choice reacts to the increasing enforcement cost of *ex ante* regulation – i.e. the increasing CRS booking fees and their negative impact on EU airlines' competitiveness and on air tickets paid by consumers - while the likelihood of anti-competitive behaviour via discriminatory pricing has reduced. Indeed, alternative distribution channels give the airlines the necessary market power vis-à-vis the CRS providers to counter abuses of the latter.

In the present market context, the prohibition of discriminatory pricing goes beyond its objective of avoiding market abuse. Discriminatory pricing does not necessarily reflect abuses of market power, but may be a way to achieve efficiency, for example by structuring booking fees to effectively compete with the Internet services on low-value air tickets and/or tickets with a simple itinerary. The *ex ante* rule of prohibiting these price policies altogether engenders a high cost in terms of inefficient use of the CRS capacities for the market segments most exposed to the Internet competition. Therefore, a return to market forces and general competition rules with regard to pricing would increase efficiency in the sector. Possible abuses can be monitored more easily by general competition rules given the declining likelihood of these abuses.

The Code of Conduct also applies to rail services that are integrated into an air transport CRS (it does not apply to "rail only" systems). It ensures that rail services are given a non-discriminatory treatment in the CRS. However, today's provisions with regard to non-discriminatory pricing lead to a de facto discrimination of rail services as they are charged the same booking fees although the average value of the tickets is smaller. By establishing pricing freedom with regard to booking fees, the proposal allows rail companies to negotiate booking fees which are better adapted to the value of their tickets and hence creates an incentive for rail companies to offer their services on the CRS systems, too. In this context, and as we will see below, the provisions with regard to parent carriers and display neutrality need also apply to rail services.

Option 1a: partial deregulation with control unbundling of the airlines and CRSs

The public consultation showed that those stakeholders that pointed to risks of competitive abuses mainly referred to CRSs controlled by air carriers. It was feared that a parent carrier could favour its CRS affiliate to the detriment of rival CRSs, and an airline-affiliated CRS could discriminate against air carriers that competed with its parent carrier(s).

Option 1a reduces the risks of competitive abuse by forbidding that air carriers may control CRS providers and vice versa. Control refers to the power to direct the commercial strategy of the owned entity, including, among other things, the formulation of a business plan, the appointment of senior managers and the ability to control the

board of directors. By unbundling the control structures of CRSs and air carriers, there is no further need to keep specific provisions with regard to parent carriers¹².

Option 1a does not aim at full ownership unbundling of airlines and CRSs. The option recognizes that the determining factor for the possibility of an air carrier to abuse a CRS is the concept of control. This way, companies in the airline industry remain free to invest in any other company, including CRSs, but as passive investors only.

The main changes compared to the status quo option are presented in the following table that also shows how the option would contribute to the simplification of the Regulation:

Proposed change of content	Proposed change with regard to Regulation 2299/89
Eliminate the prohibition on discriminatory booking fees or other forms of differential treatment of participating carriers by CRS providers	Delete Articles 3(2) and 10(1)(a)
Allow participating carriers to differentiate content between CRS providers	Delete Article 4
Abolish the existing specific rules with regard to parent carriers	Delete Articles 3a and 8
Forbid air carriers to control a CRS or a CRS to control an air carrier	Add a new Article

Option 1b: partial deregulation with specific provisions for parent carriers (mandatory participation rule)

The main changes compared to the status quo option are presented in the following table that also shows how the option would contribute to the simplification of the Regulation:

Proposed change of content	Proposed change with regard to Regulation 2299/89
Eliminate the prohibition on discriminatory booking fees or other forms of differential treatment of participating	Delete Articles 3(2) and 10(1)(a)

¹² The potential competitive risks of close links between air carriers and CRSs are highest when both, the CRS and the airline, have a dominant position in the same market – commonly known as "double dominance". But, according to most stakeholders, "double dominance" by itself does not pose excessive competitive risks in the absence of such close links. Indeed, airline control of a CRS significantly increases the likelihood that the CRS and the airline will cooperate to abuse their "double dominance". Without this control, "double dominance", especially in the context of the increasing competition from alternative distribution channels, does not pose a competitive threat that requires *ex ante* rules in addition to the general competition rules.

carriers by CRS providers	
Allow participating carriers to differentiate content between CRS providers	Simplify Article 4

These changes introduce freedom of negotiation over booking fees and fare content. In this context, air carriers - with some restrictions for parent carriers - and CRS providers can freely negotiate the content provided by the air carriers to the CRSs and the booking fees charged by the CRSs to the air carriers.

Option 1b would maintain an obligation for parent carriers to participate on equal terms in other CRSs than their own and the prohibition to offer incentives/disincentives to travel agents for the use of a specific CRS.

Option 1c: partial deregulation without specific provisions for parent carriers

Option 1c does not maintain any specific provisions with regard to parent carriers. It is built on the premise that the divestment of the airlines from the CRSs and the development of the alternative distribution channels are sufficient to sustain market forces that prevent competitive abuses.

The main changes compared to the status quo option are presented in the following table that also shows how the option would contribute to the simplification of the Regulation:

Proposed change of content	Proposed change with regard to Regulation 2299/89
Eliminate the prohibition on discriminatory booking fees or other forms of differential treatment of participating carriers by CRS providers	Delete Articles 3(2) and 10(1)(a)
Allow participating carriers to differentiate content between CRS providers	Simplify Article 4
Abolish the existing specific rules with regard to parent carriers	Delete Articles 3a and 8

This option would mainly keep basic rules with regard to neutral display and some restrictions with regard to the CRS contract provisions with travel agents and airlines.

Option 2: full deregulation

Under this option, the whole Regulation 2299/89 concerning the Code of Conduct would be abolished.

The main provisions that would be lifted compared to the status quo are described in the following table:

Proposed change of content	Proposed change with regard to Regulation 2299/89
Eliminate the prohibition on discriminatory booking fees or other forms of differential treatment of participating carriers by CRS providers	Delete Articles 3(2) and 10(1)(a)
Allow participating carriers to differentiate content between CRS providers	Delete Article 4
Abolish the existing specific rules with regard to parent carriers	Delete Articles 3a and 8
Abolish prescriptions with regard to display neutrality	Delete Article 5
Remove rules for CRS contract provisions with travel agents	Delete Article 9
Not impose the compulsory separation of CRS services from the hosting of internal reservation and inventory systems	Delete Article 4a(3)
Remove data protection measures and provisions regarding Marketing Information Data Tapes (MIDT)	Delete Articles 6 and 9a (e and f)
Remove the explicit reference to the possibility of inclusion of rail services in the principal display of CRS	Delete Article 21b

Additional measures

For option 1, the following additional issues have been examined:

- (a) The definition of a "parent carrier"
- (b) Simplification of the prescriptions for the principle display
- (c) Indication of all-inclusive prices in the principal display: under this option where a system vendor ranks travel options by fares, the fares shall be displayed inclusive of all applicable taxes, charges and non-avoidable airline fees.
- (d) Provisions with regard to Marketing Information Data Tapes (MIDT). Two issues were examined: the non-identification of the travel agents in the MIDT and provisions concerning the grouped purchase of MIDT.
- (e) Provisions regarding contracts between CRS system providers and subscribers

Measures (b) and (e) would contribute to additional simplification of the Regulation.

6. ANALYSIS OF IMPACTS

The analysis of the impacts has been divided into:

- Economic impacts on different stakeholders;
- Social impacts, concerning level and quality of employment in the sectors concerned.
- Environmental impacts (pollution, global warming, noise, etc).

The impacts of the two examined options (and the three sub-options) are assessed in comparison to the base case of the 'status quo'.

6.1. Economic impacts

6.1.1. Option 1: partial deregulation

Greater pricing freedom with regard to booking fees would enhance market incentives in the CRS market, allowing airlines to use their natural bargaining leverage and forcing CRSs to compete more aggressively for carrier participation on the basis of price and service quality. As effective booking fees¹³ and incentive payments are not published - they are part of the commercial agreements between the CRS providers, the airlines and the travel agents - and as the market has been subject to important changes in recent years, it is difficult to quantify the possible effects of price freedom on the financial flows in the CRS market. However, we do have confidential information on the booking fees and the incentive payments provided by market participants that allow estimating orders of magnitude.

Furthermore, information on the likely impacts on booking fees can be obtained by observing the market developments on the deregulated US market. Although the US market differs with respect to the EU market with regard to the advanced development of alternative distribution channels, the structure of the CRS market is similar to the EU market when considering the size of the market, the number of CRS providers, the relations between the various market participants and the regulatory rules that were formally applied. Four main lessons can be learned from this experience:

- (1) Lower booking fees: following deregulation, US airlines were able to negotiate reductions in the range of 20 to 30% on their booking fees (in most contracts, the reductions are progressive in time and hence further fee reductions are possible in the coming years). If we apply the lower range of 20% to European booking fees, than a reduction of the order of 0.7 to 0.9 euros per segment could be possible. This amounts to a total cost reduction in the range of 190 to 240 million euros for airlines operating in the EU.

¹³ "Effective" in the sense of including possible discounts on list prices

- (2) Lower overall distribution cost: in the USA, the highest fee reductions were obtained by the airlines that negotiated so-called "full-content programmes". In exchange for access to the full content of an airline, the travel agents were required to pay an opt-in fee¹⁴. This has been deducted from their incentive payments. Previous experiences with booking fee reductions in the US and in Europe¹⁵ indicate that CRSs absorb about half of these reductions and that the other half is transferred to the travel agents via lower incentive payments or via an opt-in fee. Competition between airlines and between travel agents (and between travel agents and other distribution channels) should impose sufficient market discipline to ensure that the consumer ultimately benefits from this reduction in a lower overall price paid.
- (3) Full content: in addition to the average cost reduction, pricing freedom also allowed CRS providers to target their price reductions on the lowest fare classes in order to compete with the low cost of the alternative distribution channels (such as the airlines' websites). Indeed, the US experience confirms this tendency. And the attempts by the CRSs to devise price schemes with the same objective in Europe – although very limited in scope because of the restrictions of the Code of Conduct – confirm that similar pricing policies could be expected in Europe. Hence, pricing freedom would allow the CRSs to compete with the Internet in attracting the low fare classes. The success of the "full content" programmes in the US – and even the participation of some low-fare airlines in the CRSs - confirms that this targeted pricing enhances the value of the CRSs for the travel agents and their customers. Lower booking fees entice airlines to provide more content via the travel agents and allow all consumers – including those without Internet access – to have a broader choice of travel options.
- (4) More quality and innovation: besides price competition, according to market participants, the US deregulation has also helped to increase the incentives for CRS providers and travel agents to enhance the quality of their services, for example by innovations with regard to system functionalities. The freedom to negotiate over prices, content and functionalities has spurred CRS providers to better adjust their services to the individual needs of the airlines and their subscribers. As for travel agents, already in the light of reduced commission payments from the airlines, they were able to prove to their customers that they can provide added-value in terms of travel advice that justifies a service fee. Travellers that benefit from high-quality travel advice and assistance from the travel agents seem not reluctant to pay a service fee. There is no reason to believe that this would be any different in Europe.

The removal of the non-discrimination requirement for booking fees is not expected to favour the big airlines. An airline's negotiating power vis-à-vis the CRSs depend on its need to participate in the system and not only on the volume of its bookings. Moreover, regional players should have significant bargaining power, because a CRS provider will

¹⁴ Opt-in fees are typically of the order of 0.8 US dollars or 0.6 euros per booked segment (at the average 2006 exchange rate). Opt-in programmes also made their appearance in Europe, but lead to lower fee reductions and lower opt-in fees than their American counterparts because of the restrictions imposed by the Code of Conduct.

¹⁵ See previously mentioned report by Brattle group and Norton Rose, page 29

be unable to gain subscribers in the region concerned if it cannot offer content from an important regional player.

In Europe, CRS pricing freedom will also have an impact on rail services: the abolition of the current rule of non-discriminatory fees that in practice imposes the same fees on railway bookings as on airline bookings, will allow the railway companies to negotiate fees with the CRSs that are better related to the price of the ticket. Indeed, as railway tickets are on average of less value than airline tickets, today's rule of non-discriminatory fees imposes proportionately higher fees on railway tickets and renders the CRS bookings less interesting for rail services. For example, booking fees that were proportional to the value of tickets would allow rail operators to offer their services on the CRS displays alongside air travel options without having to bear a disproportionate cost burden. It would raise travel agents' and consumers' awareness of this alternative transport mode.

In addition to the above-assessed impacts, the three sub-options of partial deregulation provide the following positive and negative impacts.

6.1.1.1 Option 1a: partial deregulation with control unbundling

Positive impacts

- Option 1a reduces significantly the risk of competitive abuse as the control of an airline over a CRS (or vice versa) creates the greatest incentive for such abuse. Passive investors in a CRS have not significantly more incentive to collude with the CRS than any airline with strong business links with this CRS.
- Taking account of the prohibition of effective control, the specific rules for parent carriers become irrelevant.

Negative impacts

- The option precludes the possible benefits of close links between airlines and CRSs, e.g. such links could allow lowering the distribution cost and the air fares as the airline receives the distribution services at cost price. Such links can result in consumer benefits, as long as the airline does not use its CRS to erect entry barriers or raise its rivals' costs.
- Airlines are among the likeliest investors in new market entrants. The prohibition of control reduces market entrants' possibility to find the necessary capital and support. Higher entry barriers also discourage innovation as new market entrants often introduce new technological features that are most likely to appeal to customers acquainted with the services that are presently available.
- As confirmed by most stakeholders, the specific obligations imposed on parent carriers were judged sufficient to deal with possible competitive threats. Therefore, the option would not pass the proportionality test, as the restrictions it imposes are disproportionate to the objective pursued. In addition, in the context of increasing significance of alternative distribution channels, the competitive risks decline over time and render this measure increasingly over-restrictive.

6.1.1.2. Option 1b: partial deregulation with specific provisions for parent carriers

Positive impacts

- This option addresses the potential for anti-competitive abuse by airline-affiliated CRSs by directly forbidding discriminatory behaviour by these CRSs and their parent carriers.
- In addition to reducing the risk of abuse, it creates an incentive for parent carriers to divest their ownership in the CRS, but without outright forbidding the investment in such systems.

Negative impacts

- Parent carriers are not on a level-playing field with other air carriers in negotiations with the CRS providers, creating a competitive disadvantage for these carriers. While under present regulations, parent carriers are assured not to pay higher booking fees than other air carrier, in a context of price freedom, because of the mandatory participation rule, the parent carriers would not be in a position to negotiate lower fees. However, this problem could be tackled by a rule imposing a ceiling on the fees that can be required from parent carriers¹⁶.

6.1.1.3. Option 1c: partial deregulation without specific parent carrier rules

Positive impacts

- Parent carriers and other air carriers would negotiate on a level-playing field with the CRSs.
- The basic rules in place prevent the most obvious competitive abuses such as display bias.

Negative impacts

- The elimination of the mandatory participation and non-discrimination requirements on parent carriers may raise concerns about the potential for anti-competitive conduct, if airlines had effective control over a CRS provider.

6.1.2. Option 2: full deregulation

Positive impacts

- The option would develop the full potential of a liberalised market by enhancing market incentives in the CRS market, allowing airlines to use their natural bargaining

¹⁶ In this context, another option would be to change the mandatory participation so that parent carriers are only required to participate on equal terms as in their own CRS in at least one other major CRS on their home market. It would improve the negotiating power of the parent carriers while keeping a safeguard against abuse. However, the option was not further developed in the impact assessment as it was felt that it weakened too much the purpose of the mandatory participation rule and did not fully preclude potential abuse.

leverage and forcing CRSs to compete more aggressively for carrier participation on the basis of price (booking fees) and service quality (including technological advances).

- The analysis done for option 1 with regard to the effects of pricing freedom also applies to this option. The same cost gains could be expected (except in the case of competition distortions). In the same way, pricing freedom would allow rail companies to negotiate booking fees which are better related to the (on average lower) value of rail tickets and would promote the integration of rail services in the CRSs' principal displays.

Negative impacts

- The elimination of the mandatory participation and non-discrimination requirements on parent carriers may raise concerns about the potential for anti-competitive conduct by parent carriers of a CRS provider.
- Option 2 would eliminate the level of protection for travel agents provided by the previous options (e.g. non-exclusive contracts) – especially the smaller ones - despite their continuing dependency on CRSs.
- Option 2 allows display bias and the best display positions could then be sold to the highest bidders. This could be to the detriment of services provided by smaller airlines and would bias the information provided to travel agents and their customers.
- Option 2 removes the compulsory separation of CRS services and hosting of an airline's internal reservation system. If the CRS system also serves as a parent carrier's internal reservation system, this carrier may enjoy a competitive advantage in respect of real-time up-dating of schedules, last seat availability and up-to-date information on fares. Furthermore, it may gain a privileged access to data on other carriers' bookings.
- Option 2 removes the specific data protection provisions of the Code. This is explained more in detail in section 6.6 of this report.

More generally, the option of full deregulation basically consists in considering the CRS market in the same way as other markets subject to general competition rules. However, there are market characteristics that justify withholding a sector-specific Regulation: an important part of air travellers are highly dependent upon the services of travel agents while the latter are highly dependent upon CRS services. Indeed, as seen previously, corporate travellers typically depend on a specific travel agency to manage their travel-related accounts and to book complex itineraries and secure special fares.

As recent surveys¹⁷ show that a growing proportion of business travellers book their travel online, the importance of CRSs is slowly reducing for this type of travellers, too. A growing proportion of business travellers chooses to self-book their trips on the Internet and the success of the low-fare airlines contributes to this evolution as more

¹⁷ American Express Business Survey 2006 – CWT Business Travel Indicator (January 2006)

and more business travellers find their way to these airlines (a recent study¹⁸ showed that business travellers make up to one fifth of their passengers). Still, the market power of CRSs in this market segment remains real as although more than half of European business travellers use online booking facilities, these are often bookings via the online facility of a specific travel agency and hence are indirect bookings (i.e. they are handled via a CRS).

As to leisure travellers, they do not always benefit from the same access to alternative booking channels, in particular with regard to the Internet. Internet penetration rates vary a lot between Member States. Half of the EU households currently have Internet access. This proportion ranges from only 14% in Romania to 80% in the Netherlands (see annex II). Furthermore, in terms of fast Internet connection, only 30% of EU households had a broadband Internet access in 2006. Although the Internet penetration in households is increasing at a high pace, at present, large parts of the population in some Member States are fully dependent upon travel agents for their airline bookings. This is quite different from the situation observed in the USA where 70% of the population has Internet access (with smaller differences between individual States than in the EU) and where Internet sales as an alternative to CRSs are more developed.

The household Internet penetration rates in Europe are not offset in practice by the presumably high (if not absolute) proportion of travel agents connected to the Internet, and thus able to access on behalf of their customers the alternative booking channels. Although the technological means exist to compare travel options across airlines' websites – indeed, the necessary software is offered on the market - the travel agents are reluctant to provide such services as they lack the economic incentive. As explained before, the particular economics of this market procure travel agents with incentive payments for bookings done on the CRS which they would lose if they booked on the Internet. Furthermore, the CRS often provides additional functions to the booking facilities¹⁹.

In the US, travel agents are also developing direct links with the airlines in order not to use the CRSs for booking; these practises are almost inexistent in Europe (the fragmentation of the European markets seems to stand in the way of the necessary economies of scale to develop these systems)..

Although the development of alternative distribution channels provides increasing market discipline on CRS providers, especially with regard to the booking fees, in the present state of the market, the risks of competitive abuse are higher than in other economic sectors and the sole reliance on the general competition rules would not be sufficient, especially in case of close links between airlines and CRSs.

¹⁸ No-Frills Airlines: Revolution or Evolution? A Study by the Civil Aviation Authority (UK), 2006

¹⁹ For instance there is the ability by the travel agent in the ticketing agency to handle an itinerary change once the ticket is booked. The CRS also notifies the agency immediately if there is a change in the flight schedule. Additionally, a travel agency may opt to add a “back office” accounting system to its CRS computer. This system maintains client records for billing purposes and keeps the agency’s accounts, which allows small travel agencies to operate with a lean staff and minimal paperwork

In addition, certain market behaviours of the CRSs (e.g. display bias) would be harmful to consumers even if they were not the result of a competitive abuse.

6.2. Social impacts

The present proposal for a revision of the Code of Conduct does not entail *per se* a social dimension. Indeed, the Code of Conduct aims, in parallel and without prejudice to competition law, at market efficiency within the distribution chain for air transport products. It is meant to ensure that no undertaking in the chain is capable of capturing excess profits in the long run and/or of distorting competition to its own advantage and to the detriment of consumers.

The three sectors concerned by the Code of Conduct are of quite different size and structure. The CRS providers comprise 4 companies and employ 26300 persons worldwide (only part of these employees are involved in the CRS services as these companies also provide other IT services). Only one of these four is headquartered in Europe (see Annex I). The 466 European airlines employ more than 420000 persons while the more than 62000 travel agencies active in the EU employ more than 475000 persons.

The revision of the Code of Conduct will have no significant impact on employment, even for small and medium-sized companies in the travel sector. The dynamics of the market, such as the development of alternative distribution channels, already explain the changes in the business model of travel agencies. The revision of the Code will have not affect these market dynamics (see section 6.5 for the impact on SMEs).

In general, it can be expected that greater negotiating freedom will improve the overall efficiency of the market, promote competition on price and quality and encourage innovation. This increased efficiency should translate in more output and employment and strengthen the competitiveness of the travel industry.

6.3. Environmental impacts

To the degree that (partial) deregulation of the CRS market results in a reduction in cost to the end consumer, it will also result in an increase in demand for travel. This extra travel demand will lead to increased environmental impacts, in particular greenhouse gas emissions, noise and air pollution. The level of increase is likely to be roughly proportionate to the increase in journeys (except if it translates into higher load factors).

However, there is also some potential for off-setting reductions in environmental damage that could arise through (partial) deregulation. CRSs are an efficient system to provide a comparison of different travel options in terms of travel time and distance. (Partial) deregulation would ensure that CRSs could attract more content from airlines and the rail sector that would allow subscribers and their customers to choose the most suitable travel option, also in terms of environmental impact.

In addition, a simplification of the very prescriptive rules with regard to CRS displays would allow CRSs to provide to subscribers (that wish so), a display that ranks flight options with regard to their environmental efficiency (e.g. on the basis of the shortest flight segments or even taking account of CO₂ emissions). However, the effect of these possibilities is likely to be limited, even if they are adopted by CRSs since price and

other journey attributes – such as travel time - are likely to be the major decision factors.

As we have seen, a further possible environmental benefit could arise from the abolition of the current rule of non-discriminatory fees that will allow the railway companies to negotiate fees with the CRSs that are better related to the price of the ticket.

Today, rail services are often offered in a separate display than the principal display. A better inclusion of rail tickets in CRSs' principal displays would promote the use of rail services as an alternative for short-haul air services especially where high-speed services exist. This could have a positive impact on pollution and greenhouse gas emissions from transport.

There remains uncertainty as to the magnitude of the increased demand for travel, of the consequent increased environmental impacts and of the potential offsetting reductions in impacts due to changes in behaviour. Behavioural changes are dependent either on the willingness of CRSs and airlines to make environmental information available as well as for customers to react to that information or on CRSs agreeing lower cost marketing of rail tickets and customers purchasing them in preference over air tickets. Even if CRS deregulation led to increased environmental damage, the magnitude of the impact is not known, but can be expected to remain limited in the light of the compensating effects.

6.4 Other issues assessed under option 1

6.4.1 The definition of a "parent carrier"

Article 2(i) of Regulation 2299/89 defines a "parent carrier" as "*any air carrier which directly or indirectly, alone or jointly with others, owns or effectively controls a system vendor, as well as any air carrier which it owns or effectively controls*".²⁰

The notion of control is the key criterion to determine whether an airline is a parent carrier of a CRS. The definition refers to two types of control, either via ownership, or via other means. The "or" in the phrase "owns or effectively controls" prevents that restrictions on direct control through ownership can be circumvented by indirect means.

As for the terms "alone or jointly with others", they specifically refer to the possibility of an airline individually holding a minor shareholding but, together with others, controlling the company. An air carrier that owns a minority participation in a CRS system vendor will be considered as a "parent carrier" if such participation confers individual or joint control over the CRS system vendor. Therefore, an air carrier holding significantly less than 50% of the capital of a CRS may still be a "parent carrier" if, alone or jointly with others, this participation confers it control over the CRS.

²⁰ Article 2(j) defines "effective control" as "*a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by: - the right to use all or part of the assets of an undertaking; - rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking.*"

In the public consultation, some stakeholders expressed their preference to extend this definition in order to cover all financial stakes in a CRS. These stakeholders wish that an airline with any ownership stake at any level in a CRS should be considered as a parent carrier.

Such an extension of the definition would be disproportionate to the objectives pursued. Indeed, the incentive for discriminating behaviour is strongest when the air carrier controls the CRS. The incentive for such action is less strong in case of minority participation without control. A modification of the definition in this sense is not justified at a time when increasing competitive pressure from alternative booking channels justifies the revision of other provisions of the Code of Conduct.

For example, if an air carrier with a financial participation of only 1% (directly or indirectly, and without control) was already considered as a parent carrier, the obligations imposed by the Code of Conduct on parent carriers would be disproportionate with regard to such minority participation. It would also create a competitive disadvantage for the CRS with an airline minority ownership but no control, as its competitors' bargaining power would be reinforced vis-à-vis these minority stakeholders.

Another issue concerning the definition of a parent carrier is the inclusion of rail-transport operators. Article 21b(4) of the present Code – which was added at the revision of 1999 - states that "*a rail-transport operator shall be deemed to be a participating or parent carrier, as appropriate, for the purposes of the code, insofar as it has an agreement with a system vendor for the distribution of its products through a principal display of a CRS or its own reservation system is a CRS (...).*" Indeed, should a rail-transport operator take the control of a CRS, there is a risk that it could favour its own (rail) services over the air services. Therefore, this inclusion of rail services is consistent with the objectives of the Code. Rather than having a separate article stating the inclusion of rail services, the revision of the Code presents a good opportunity to integrate article 21b into the other relevant articles of the Code, such as in the definition of a "parent carrier".

6.4.2 Simplification of the prescriptions for the principle display

Most stakeholders are in favour of maintaining neutral display provisions, but acknowledge that the provisions in the Code of Conduct (especially in the annex) can be simplified.

Most stakeholders have pointed to the risks that displays may be biased without neutrality requirements. Even in the absence of close links between airlines and CRS providers, the CRSs could be induced to sell or "auction" the best display positions to the highest bidders. In that case, displays would be biased in favour of big airlines that can afford to pay most to the CRS providers. Moreover, in case of parent carriers, the risk of abuses is highest via display bias. Travel agents also argue that the complete removal of the rules, although causing limited costs to CRSs, would force travel agents to acquire expensive software to render the information neutral.

In view of these risks, it seems appropriate to maintain some basic neutrality provisions while simplifying the prescriptions of the present Code of Conduct.

A simplification would help the CRSs to better adapt the displays to customers' needs and to better suit their specific situations, while still ensuring the neutral choice for the consumer. In this sense, the provisions imposing a particular ranking order on the flight options are not longer necessary as long as there are provisions that ensure that – whatever ranking criterion is chosen - the ranking would be neutral. Such rules would basically prohibit a ranking order to be based on any factor relating to carrier identity and would ensure the provision of essential information, such as for example the identity of the operating air carrier or stops en-route.

The Code of Conduct already imposes a neutrality requirement on travel agents using CRS systems, be they on-line or brick-and-mortar agents. Despite calls by some market participants for specific regulation of Internet-based distribution systems, the Commission does not consider such regulation necessary or appropriate. Unlike travel agents, who have a long-term relationship with CRS systems, consumers who use the Internet travel sites can easily switch among websites to compare. Furthermore, Internet websites of airlines are clearly identified as such and consumers are aware that they will not offer the services of their competitors. Moreover, the regulation of such websites could discourage the development of the most promising alternative distribution channel that helps to dilute the CRSs' market power.

6.4.3 Indication of all-inclusive prices in the principal display

In its proposal for a Regulation on common rules for the operation of air transport services in the Community (COM2006/396), the Commission has proposed that air fares have to include all applicable taxes, charges and fees in order to promote price transparency. Indeed, the publication of fares that exclude taxes, charges and even fuel surcharges has become a widespread practice that hampers price transparency.

In order to allow travel agents to correctly provide this information to the consumers, it is necessary that a display ranking based on travel price should be based on fares inclusive of all unavoidable taxes, fares and fees to be paid to the airlines. Otherwise, a ranking based on fares exclusive of certain surcharges would incite airlines to move part of the ticket price into these surcharges in order to obtain a better ranking on the CRS display, thereby biasing the information provided to the travel agent and its customers.

6.4.4 Provision of Marketing Information Data Tapes (MIDT)

MIDT are a useful tool for airlines in terms of network planning as they allow airlines to better adjust their offer to the demand of air services. In order to avoid that privileged access to these data by some airlines would affect competition in the air transport sector, the Code of Conduct contains provisions that ensure the non-discriminatory access for all airlines. In the context of the revision of the Code of Conduct, two related issues have been assessed: in addition to not disclosing the identity of corporate users, should the identity of the travel agents not also be concealed in the MIDT? And are the present provisions with regard to the grouped purchase of MIDT still pertinent?

6.4.4.1 Non-identification of the travel agent in the MIDT

The possession of the commercial information of the travel agents enhances the airlines' bargaining power vis-à-vis the travel agents by giving the airlines significant information advantage over the travel agents. An airline may even use the information

to determine which travel agents have been selling tickets on a competitor and then pressure the agents into cutting back their bookings on rival airlines (e.g. via specific incentive schemes). Such practises may transform a travel agent from a neutral seller's agent to a direct distribution agent for a particular airline – very much to the disadvantage of the unaware consumer.

Positive effects

- By eliminating travel agent identifiers from MIDT, airlines cannot pressure travel agents to reduce rival bookings. This option would contribute to a neutral and transparent choice by consumers.
- Even without the travel agent identifiers, the data remain useful for the purpose of network planning as they allow airlines to adjust their offer to the demand of air services.

Negative effects

- The value of MIDT is reduced, with a negative income effect on the CRSs and on other companies that process MIDT for airlines.

Overall, it can be expected that the positive effects of the measure outweigh the negative effects. Indeed, the possibility for airlines to control travel agents' sales undermines other measures of the Code of Conduct aiming to ensure the provision of neutral information to the consumers. As airlines keep the possibility to use MIDT for network planning, the MIDT keep real value for them, also in the absence of travel agent identifiers.

6.4.4.2 Grouped purchase of MIDT

The provisions of the Code of Conduct with respect to the grouped purchase of MIDT have remained without effect in practice as a "group of airlines" was not clearly defined. The provisions mainly aimed at enabling the access to the data by regional airlines and by travel agents. However, nowadays the CRS providers offer MIDT subsets that are tailored to the specific needs of smaller airlines and travel agents. Furthermore, the value of MIDT data tends to diminish over time as an increasing proportion of airline bookings are made via alternative booking channels and do not appear in the MIDT. For these reasons, the provisions with regard to the grouped purchase of MIDT have become superfluous and can be removed from the Code of Conduct.

6.4.5. Provisions regarding the contracts between CRS system vendors and subscribers

The present Code of Conduct contains provisions that regulate the contracts between the system vendors and the subscribers (mostly travel agents).

This concerns for example the non-discrimination provisions with regard to the supply of the distribution facilities (article 9) and to the fees charged to subscribers (article 10(1b)). The usefulness of such provisions is questionable given that the present Code allows the free negotiation of the incentive payments to the subscribers and that these often are more important than the subscription fees charged to the subscribers. In the context of establishing pricing freedom in the sector, it makes sense to remove these

provisions, too. The counter-weighting obligations imposed on subscribers in Annex II can then also be removed: with greater negotiating and pricing freedom, the use of the distribution systems by the subscribers can also be determined by the market participants.

The Code also contains rules that ensure that system vendors cannot impose unreasonable contract provisions, such as for example exclusive contracts (article 9(2)), or rules that give travel agents a greater opportunity to switch systems within a reasonable time period, such as the right to cancel their contracts on short notice after the first year (article 9(4)). In option 1, it would be useful to retain these rules to protect travel agents which are very dependent on CRS services, especially the smaller travel agents.

But given that the vast majority of the CRS bookings are made by big travel agencies (or groups) with considerable bargaining power over the CRSs²¹, the possibility for such groups to renegotiate their contracts every year gives them additional market power that may help them to secure higher incentive payments that exert upward pressure on the booking fees - at the expense of the airlines and their customers. For these large travel agencies, the protection of the Code is not only unnecessary, but it also seems excessive in the present market context. Still, it may be useful to maintain rules that are specific to small travel agents, in order to protect them from being locked into long-term contracts. The application of such provisions could be limited to independent subscribers employing fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed €10 million²².

6.5. Impact on small and medium-sized enterprises (SME)

- It is feared that the proposed (partial) deregulation of the CRS market could have some indirect impact on the small and medium-sized companies, especially among the travel agencies. Larger travel agents are in a better situation to negotiate with the airlines and with the CRS (e.g. incentive payments and commissions) and to benefit from economies of scale. However, the following elements counter-weigh these negative effects:
 - The sector is already experiencing significant changes due to the competition from direct distribution channels. With the development of the Internet, the travel market is evolving quickly²³. As the airlines' dependency on travel agents diminishes, they have significantly reduced their commission payments to the travel agents. Travel agents have already reacted by diversifying their offer, striving to offer value-added compared to Internet services and developing a revenue model based on service fees. The

²¹ The three top travel groups perform more than 47% of total bookings. The "TOP10" of the travel agencies perform more than 65% of total bookings.

²² This definition is consistent with the Commission Recommendation 2003/361/RC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

²³ The sale of all kinds of travel products (flights, hotels, package tours, car rentals, etc.) over the Internet is growing strongly: Internet sales increased by 34% in 2005 and represent 10.3% of the overall travel market. See "Trends in European Internet Distribution of Travel and Tourism Services", Carl H. Marcussen, Centre for Regional and Tourism Research, April 2006 (<http://www.crt.dk/uk/staff/chm/trends.htm>)

revision of the Code of Conduct would not alter the direction or the pace of these market changes. Indeed, already today, bigger travel agents have an advantage over smaller ones as they can negotiate more favourable market terms with the CRSs, e.g. higher incentive payments.

- As price freedom with regard to booking fees would create the economic incentive to provide more fare content via the CRSs, travel agents would also be better armed to compete with the alternative distribution channels. This is especially true for the SMEs for which the cost of investing into multiple-channel software is proportionately higher than for big travel agencies.
 - In option 1, the above-discussed option of non-identification of the travel agents in the MIDT would reinforce the bargaining power of the travel agencies vis-à-vis the airlines.
 - In option 1, the above-discussed option of retaining provisions allowing small travel agents to cancel their contracts on short notice after the first year would further protect these agents in their relations with the CRSs.
- There is a likely impact on small airlines in relation to display bias. If provisions with regard to display neutrality were removed (as in option 2), then small airlines – in particular market entrants - could encounter more difficulties obtaining favourable positions on the display if these positions were "auctioned" to the highest bidder. Basic rules with regard to principal display neutrality can maintain the level-playing field between big and small airlines.

6.6 Protection of personal data

The Code of Conduct contains specific provisions with regard to the protection of personal data. These provisions were introduced into the Code of Conduct in 1993 and in 1999. It must be noted that the Code only applies to CRS services and to data processed by CRSs. It does not apply to data collected via direct bookings (e.g. on the airline's Internet website) and to data concerned by other IT services provided to airlines, such as for example the "hosting" of the airlines' internal reservation and inventory systems when the airlines decide to outsource them.

Indeed, a CRS is a distribution channel for air carriers and other suppliers of travel products. Air carriers provide CRSs with flight schedules, fares, availability and other information. The CRS publishes this information to travel agents and other subscribers who can simultaneously search for flight information. But an air carrier also uses an internal airline reservation system to manage its own reservation data which comes from various sources, such as its own website, call centres and travel agents connected to a CRS. The main purpose of the internal system is to provide the air carrier with its own internal record management facility. An air carrier can own and operate this system internally or it can choose to outsource the function to one of the many service providers that offer that service (which then "hosts" the airline's system). Although some companies providing CRS services may also provide these other services, too, they are not exclusive providers nor are they then acting as CRSs with that regard. Data contained in a CRS and data contained in an internal reservation system are

separate and distinct as they stem not only from two different sources, but also include different content.

The Code's data protection provisions concern the CRS services only. Directive 95/46/EC *on the protection of individuals with regard to the processing of personal data and the free movement of such data* has a much wider coverage as it concerns all personal data collected by airlines, irrespective of the booking channel.

Still, the data protection provisions of the Code of Conduct present a value-added with regard to a simple reference to Directive 94/46/EC. A Regulation allows a consistent application of data protection rules across the EU. This is important given the transnational character of the CRS business (data processing units of a same CRS may be located in different Member States) and the difficulty to determine who is the "data controller". A Regulation also ensures a consistent application of data protection rules to CRSs located outside the EU, but offering their services in the EU (they could be subject to potentially 27 different, although harmonised, national data protection legislations not being implemented in an identical way throughout the Community, as in that case it is the location of the "means" of processing – the subscriber's computer terminal - that is used as a criterion for determining the application of national legislation transposing Directive 94/46/EC). This explains why the current Code of Conduct for CRS contains specific provisions implementing the rules of the Directive to the sort of data processing being carried out by CRSs. These advantages would be lost in option 2 when the whole Regulation would be abandoned. Within option 1, it would be useful to clarify the data protection provisions and to consolidate them into a single and separate article.

6.7. Administrative costs

The simplification of the Regulation should also be seen in the light of possible administrative costs that it imposes on businesses. Administrative costs mean the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their activities either to public or to private parties²⁴.

Although the present Regulation already causes very limited administrative costs, a revision of it could reduce them even further.

- The Code's prescriptions with regard to billing seem not to go beyond the usual information provided on bills. The rules can be simplified, but the simplification will have a very limited effect on businesses' administrative costs.
- The Code imposes an annual audit on the CRS providers in order to monitor the compliance with specific provisions of the Code, such as the separation of CRS and hosting services (an audit costs each CRS of the order of € 70,000 to €100,000 per year). Experience has shown that these audits are mainly useful in the context of specific concerns, e.g. following a complaint. In order to reduce the administrative cost, it can be envisaged to remove the annual obligation of the audit.

²⁴ "Measuring administrative costs and reducing administrative burdens in the European Union", Commission Working Document, COM(2006) 691 final, 14.11.2006

- For public authorities, in this case the European Commission that has the exclusive competence, the very detailed and prescriptive Regulation causes additional costs in terms of compliance monitoring. A (partial or full) deregulation would reduce these costs.

7. COMPARING THE OPTIONS

The following table summarizes the economic, environmental and social impacts of the four options studied.

Impact table synthesis

Options	1a	1b	1c	2
Economic impact				
Competitiveness of EU companies	+ Improves international competitiveness of EU companies - Restrictions on investment	+ Improves international competitiveness of EU companies	+ Improves international competitiveness of EU companies	+ Improves international competitiveness of EU companies
Competition in the internal market	+ Reinforces competition between CRSs and contains risk of competitive abuses	+ Reinforces competition between CRSs and contains risk of competitive abuses	=/- Reinforces competition between CRSs but there is a higher risk of competitive abuses in case of close links between CRSs and airlines.	=/- Reinforces competition between CRSs but there is a higher risk of competitive abuses in case of close links between CRSs and airlines.
Operating costs and conduct of business	+ Reduces cost of distribution to airlines and consumers			
Administrative cost on business	=/+ Reduces costs linked to provisions on billing and annual audits			
Innovation and research	+ Increased competition between CRSs will stimulate the introduction of new technologies and products			
SMEs	=/- may reduce incentive payments of the CRS systems to travel agents (this mainly concerns the bigger agents); travel agents partly compensate via customer fees + Hidden travel agent identifier reinforces travel agent's negotiating power + more airline and rail content in CRS	=/- may reduce incentive payments of the CRS systems to travel agents (this mainly concerns the bigger agents); travel agents partly compensate via customer fees + Hidden travel agent identifier reinforces travel agent's negotiating power + more airline and rail content in	=/- may reduce incentive payments of the CRS systems to travel agents (this mainly concerns the bigger agents); travel agents partly compensate via customer fees - higher risk of competitive abuse may reduce choice of CRS in some markets + Hidden travel agent identifier	=/- may reduce incentive payments of the CRS systems to travel agents (this mainly concerns the bigger agents); travel agents partly compensate via customer fees - higher risk of competitive abuse may reduce choice of CRS in some markets + more airline and rail content in CRS

		CRS	reinforces travel agent's negotiating power	- risk of display bias
			+ more airline and rail content in CRS	- removal of protection of travel agents from unreasonable contract provisions
Consumers and households	+ Reduced distribution cost should reflect in air fares = Display provisions continue to protect from display bias	+ Reduced distribution cost should reflect in air fares = Display provisions continue to protect from display bias	+ Reduced distribution cost should reflect in air fares = Display provisions continue to protect from display bias. -/= In case of competitive abuse by parent carriers, consumers' choice would be reduced.	+ Reduced distribution cost should reflect in air fares - Absence of display provisions may favour display bias -/= In case of competitive abuse by parent carriers, consumers' choice would be reduced.
Social impact				
Employment	The employment impact is expected to be minimal: = the consolidation process in the travel agent sector is already on-going. Regulatory changes in the CRS market will have a relatively limited effect and are not expected to change the trend of consolidation. +/= if reduced distribution costs favour travel by air and rail, it may stimulate employment in the transport sector.			
Personal data protection	= Continued protection of personal data	= Continued protection of personal data	= Continued protection of personal data	=/- Only the provisions of Directive 94/46 would apply: risk of inconsistent application across MS
Environmental impact				
Air quality	+ The revision of the Code of Conduct (under all options) will facilitate the inclusion of rail services among the air services present in the CRS displays. A higher use of rail services may contribute to reduced environmental impact in terms of pollution and greenhouse gas emissions which are usually higher in aviation. However, they may have a negative impact on land take.			
Climate				
Mobility and use of energy				

The impact of the various options on the specific objectives is summarized in the following table.

Impact on specific objectives

Specific objectives	1a	1b	1c	2
Fair and effective competition between airlines	++ All airlines (EU and non-EU) will be treated equally.	++ Airlines (EU and non-EU) compete on a same level. The possible advantages of close links between airlines and CRSs are compensated by safeguards.	=/- All airlines (EU and non-EU) are treated similarly. However, parent carriers of CRSs may gain advantages.	=/- All airlines (EU and non-EU) are treated similarly. However, parent carriers of CRSs may gain advantages
Balanced bargaining powers between airlines, CRSs and travel agents	+ Rules make room for the natural bargaining power of the market participants and re-balance the travel agents' position with regard to the CRSs and airlines (MIDT)	+ Rules make room for the natural bargaining power of the market participants and re-balance the travel agents' position with regard to the CRSs and airlines (MIDT).	=/- Rules make room for the natural bargaining power of the market participants and re-balance the travel agents' position with regard to the CRSs and airlines (MIDT). But risk of competitive abuse by parent carriers.	=/- Absence of rules makes room for the natural bargaining power of the market participants, but does not fully rebalance the travel agents' position. There is a risk of competitive abuse by parent carriers.
More competition between CRS providers, especially with regard to airline participation	+ Free negotiations on fees and content; but the restrictions on airlines' investments may reduce the possibility of market entrants to find the necessary capital	++ Free negotiations on fees and content (except for parent carriers)	+/- Free negotiations on fees and content. But close links between CRS and airlines could lead to competitive abuses.	+/- Free negotiations on fees and content. But close links between CRS and airlines could lead to competitive abuses.
Neutral and comprehensive information for consumers	+ Neutral display is ensured and due to lower distribution cost there may be more content on CRSs	+ Neutral display is ensured and due to lower distribution cost there may be more content on CRSs	=/- Neutral display is ensured and due to lower distribution cost there may be more content on CRSs. But there is a risk of competitive abuse by parent carriers	- Due to lower distribution cost there may be more content on CRSs. But display bias in favour of the most offering airline is possible. In addition, there is the risk of competitive abuse by parent carriers
Ensure personal data protection	= Current specific provisions on data protection are maintained.	= Current specific provisions on data protection are maintained.	= Current specific provisions on data protection are maintained.	=/- Only the provisions of Directive 94/46 would apply: risk of inconsistent

				application throughout Member States due to complexity of CRS operations.
Promote display of rail services on CRSs	+ Thanks to price freedom, rail operators may negotiate booking fees in relation to the value of the tickets.	+ Thanks to price freedom, rail operators may negotiate booking fees in relation to the value of the tickets.	+/- Thanks to price freedom, rail operators may negotiate booking fees in relation to the value of the tickets. Risk of competitive abuse by parent carriers	+/- Thanks to price freedom, rail operators may negotiate booking fees in relation to the value of the tickets. Risk of competitive abuse by parent carriers
Simple and efficient legislation	=/- Simplification of part of the Code of Conduct, but over-regulation with regard to investment in CRSs	+ Simplification of the Code of Conduct	=/- Simplification of the Code of Conduct, but effectiveness reduced because of potential risks of competitive abuse	=/- Abolition procures maximum simplification, but potential risks of competitive abuse

From the above analysis, it can be concluded that, considering the market conditions today and in the coming years, option 1b presents the most favourable combined outcome of the options considered. Indeed, its economic impact is more positive than for the other options while the social and environmental effects are comparable.

Option 1b best reaches the objectives set for the revision of the Code of Conduct:

- It ensures increased competition between the CRS providers that will lead to lower distribution costs for airlines and consumers.
- Safeguards in case of possible close links between CRS providers and airlines ensure that the level-playing field between the market participants is maintained.
- Option 1b meets consumers' interest by contributing to reduced distribution costs while ensuring the provision of neutral and transparent information.
- Option 1b simplifies the existing legislation avoiding unnecessary regulation but by effectively reducing the risk of competitive abuses.
- Option 1b promotes inter-modal transport by allowing CRS providers to offer competitive booking fees to the rail industry.

In addition to these elements, in option 1b the European regulatory regime for CRSs would approach existing regimes in third countries and thereby ensure a level-playing field for EU and non-EU market participants alike.

It must be stressed that option 1b is the most adequate option in the present market conditions and taking account of the probable market evolution in coming years. The increasing competition from alternative distribution channels may render many if not all

of its provisions superfluous at a certain point in time in the next five to ten years. Following the US experience with deregulation, it can be expected that the full effects of this partial deregulation in the EU will become visible two to three years after its entry into force, when all contracts will have been renewed. It is therefore advisable to closely monitor market developments and to regularly assess the continued need of the Code of Conduct in the future.

In terms of simplification of legislation, the following table shows the changes advocated by option 1b in combination with the additional measures examined in section 6.4:

Proposed change of content	Proposed change with regard to Regulation 2299/89
Eliminate the prohibition on discriminatory booking fees or other forms of differential treatment of participating carriers by CRS providers	Delete Articles 3(2) and 10(1)(a)
Allow participating carriers to differentiate content between CRS providers	Simplify Article 4
Simplify display rules	Simplify Article 5 and Annex I
Remove the non-discrimination provisions with regard to the supply of the distribution facilities and to the fees charged to subscribers.	Delete Articles 9(1), 9(3) and 10(1)(b) and Annex II
Remove provisions with regard to the grouped purchase of MIDT	Delete Article 6(1)(v)
Indication of all-inclusive prices when using fares as ranking criterion	Add a provision
Non-identification of the subscriber in the MIDT	Add a provision

The removal or simplification of numerous Articles leads to a significant simplification of the Regulation that can be enhanced by a redrafting that ensures a transparent and simple presentation of the Code's provisions.

8. MONITORING AND EVALUATION

The Commission will continuously monitor the developments in the airline distribution market and evaluate on a regular basis the impact of the changed legislation.

More specifically, the Commission will observe market developments with regard to the following issues:

- Evolution of distribution costs, taking account of CRS booking fees and of service fees charged by airlines and travel agents;
- The further development of alternative distribution channels - in particular the Internet - and the competitive pressure they exert on distribution costs and on the neutrality of travel choices proposed;
- The evolution of ownership structures and links between CRS providers, airlines and travel agents;
- The specific situation of SMEs in the air transport and airline distribution market.

The conclusions of the impact assessment are based on today's market situation. The rapid development of the alternative distribution channels may lead, in the short to medium term, to a competitive market environment where the specific rules of the Code of Conduct are no longer needed.

Experience shows that the effects of a change in the regulatory framework of the CRS take three to five years to materialise. Therefore, the Commission proposes to draw up a report on the application of the Regulation and on possible further revision of the Code of Conduct, within five years after the entry into force of the new Code.

ANNEX I

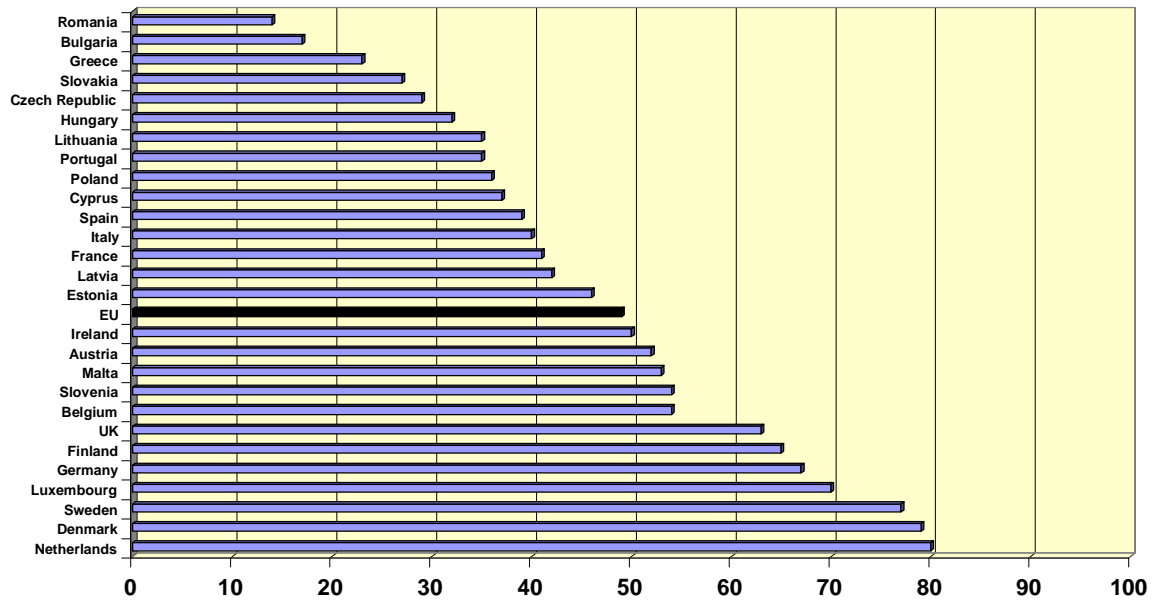
Companies providing CRS services in the EU (2006 data)

	Amadeus	Sabre	Travelport	Worldspan
Headquarters	Madrid, Spain	Southlake (Texas), USA	Parsippany (New Jersey), USA	Atlanta (Georgia), USA
Main owners	- BC Partners and Cinven (53%) - Air France (23%) - Lufthansa (11%) - Iberia (11%)	- Silver Lake Partners - TPG	The Blackstone Group	On-going merger with Travelport
Turnover	€2.7 billion	€2.2 billion	€2.1 billion	€0.76 billion (2005 data)
Employees	7600	9000 (of which 1600 in the CRS Sabre Travel Network)	8000 (of which 2000 in the CRS Galileo)	1700
Subscribers (travel agencies)	84000	50000	49000	14000
Participating airlines	485	440	425	420
Nb of bookings in the EU (segments)	155 million	34 million	61 million	21 million
EU market share (bookings)	57%	12%	23%	8%
World market share	31%	29% (includes partnership with Abacus)	24%	16%

Source: Company Internet websites + Commission data

ANNEX II

Proportion of households with Internet access (2006)



Source: Eurostat

ANNEX III

Travel agencies and tour operators: number of enterprises

	2003	2004	2005
Belgium	1284	1229	1223
Bulgaria	1045	1047	n.a.
Czech Republic	6141	6396	n.a.
Denmark	499	574	627
Germany	8818	8904	n.a.
Estonia	245	272	n.a.
Ireland	n.a.	n.a.	320
Greece	n.a.	n.a.	n.a.
Spain	7529	972	n.a.
France	4763	4882	n.a.
Italy	10115	10499	n.a.
Cyprus	734	488	n.a.
Latvia	288	310	n.a.
Lithuania	255	260	n.a.
Luxembourg	104	n.a.	n.a.
Hungary	1728	1782	1799
Malta	n.a.	n.a.	n.a.
Netherlands	2160	2160	n.a.
Austria	1691	1484	1518
Poland	4951	6120	n.a.
Portugal	1066	1164	1484
Romania	1385	1721	n.a.
Slovenia	414	419	n.a.
Slovakia	223	274	n.a.
Finland	885	928	n.a.
Sweden	2587	2686	n.a.
United Kingdom	6580	6552	n.a.

Source: Eurostat

ANNEX IV

Travel agencies and tour operators: number of persons employed

	2003	2004	2005
Belgium	8370	7977	8214
Bulgaria	5188	5501	n.a.
Czech Republic	12452	13253	n.a.
Denmark	5411	5778	6326
Germany	61934	61373	n.a.
Estonia	1541	1697	n.a.
Ireland	n.a.	n.a.	6262
Greece	n.a.	n.a.	n.a.
Spain	47358	50868	n.a.
France	45035	41249	n.a.
Italy	42830	43363	n.a.
Cyprus	2703	2584	n.a.
Latvia	1321	1647	n.a.
Lithuania	1810	1958	n.a.
Luxembourg	669	n.a.	n.a.
Hungary	6024	6014	6008
Malta	n.a.	n.a.	n.a.
Netherlands	21947	22670	n.a.
Austria	12789	12187	12276
Poland	16725	18679	n.a.
Portugal	7862	8276	8941
Romania	5515	6408	n.a.
Slovenia	2336	2318	n.a.
Slovakia	2520	2093	n.a.
Finland	5093	4980	n.a.
Sweden	12440	12052	n.a.
United Kingdom	136665	134752	n.a.

Source: Eurostat

ANNEX V

EU airlines (first half 2007) – source: Airclaims

	Number of airlines	Number of employed persons
Belgium	13	4005
Bulgaria	14	1493
Czech Republic	7	5487
Denmark	10	3242
Germany	48	57761
Estonia	6	576
Ireland	8	7038
Greece	20	8281
Spain	45	34864
France	34	78375
Italy	37	16531
Cyprus	6	2021
Latvia	6	1144
Lithuania	7	834
Luxembourg	4	3690
Hungary	8	3124
Malta	4	1883
Netherlands	12	41124
Austria	20	11081
Poland	10	4540
Portugal	14	8251
Romania	5	3438
Slovenia	3	592
Slovakia	5	278
Finland	7	10345
Sweden	30	2637
United Kingdom	83	83160
TOTAL	466	420276

ANNEX VI: main provisions of Regulation 2299/89

System vendors:

- Participation must be available on a non-discriminatory basis (art. 3.2)
- CRS display must be non-discriminatory and according to Code's detailed prescriptions (art. 5)
- Marketing Information Data Tapes (MIDT) must be available on a non-discriminatory basis (art. 6)
- Subscriber contracts must be fair and equitable (art. 9)
- Fees must be non-discriminatory, cost-reflective and the same for the same level of service (art. 10)
- Must protect personal data (art. 6)

Participating carriers:

- Data which they decide to submit to a CRS must be accurate, non-misleading, transparent data and no less comprehensive than for any other CRS (art .4)

Parent carriers:

- Cannot refuse to provide a CRS with same content as its own CRS and cannot refuse bookings from another CRS with equal timeliness as its own CRS (art. 3a)
- Cannot reward subscribers for using a particular CRS (art. 8)

Subscribers:

- Must use neutral display (art. 9a)
- Cannot manipulate data in a discriminatory or misleading manner (art. 9a)

Rail:

- A system vendor may decide to include rail services in the principal display (art. 21b)
- Rail services will be treated like flights in the CRS (art. 21b)

ANNEX VII: main references

- *Study to assess the potential impact of proposed amendments to Council Regulation 2299/89 with regard to computerised reservation systems*, the Brattle group and Norton Rose, October 2003; see http://ec.europa.eu/transport/air_portal/internal_market/studies/index_en.htm.
- *Consultation paper on the possible revision of Regulation 2299/89 on a Code of Conduct for computerised reservation systems*, European Commission, February 2007; sees http://ec.europa.eu/transport/air_portal/consultation/2007_04_27_en.htm.
- *Summary of the contributions received by the Commission following the open consultation on the possible revision of Regulation 2299/89 establishing a Code of Conduct for Computerised Reservation Systems (CRS)*, European Commission, May 2007; see http://ec.europa.eu/transport/air_portal/consultation/2007_04_27_en.htm.
- Association of European Airlines (AEA), "Source", AEA market research Quarterly, issue 2/2006.
- *Trends in European Internet Distribution of Travel and Tourism Services*, Carl H. Marcussen, Centre for Regional and Tourism Research, May 2007 (<http://www.crt.dk/uk/staff/chm/trends.htm>)
- *Computer Reservation Systems (CRS) Regulation; Final Rule*, US Department of Transportation, January 2004, <http://www.dot.gov/affairs/Computer%20Reservations%20System.htm>
- *Regulations Amending the Canadian Computer Reservation Systems (CRS) Regulations*, Canada Gazette, Vol. 138, No 5, May 2004, <http://canadagazette.gc.ca/partII/2004/20040507-x/html/sor91-e.html>