

**Mid-term evaluation of Regulation
80/2009 on a code of conduct for
computerised reservation systems
and repealing Council Regulation
2299/89**

Final Report

September 2012

Prepared for:

European Commission
DG MOVE
27, rue de Mot
Brussels
Belgium

Prepared by:

Steer Davies Gleave
28-32 Upper Ground
London SE1 9PD

+44 (0)20 7910 5000

www.steerdaviesgleave.com

DISCLAIMER

Our work has been performed and this report has been produced for the European Commission for use in relation to its study into the Mid-term evaluation of Regulation 80/2009. Neither our work nor this report is intended to be relied upon by third parties. To the fullest extent possible, SDG excludes any liability to third parties in respect of this report.

This analysis is based on data supplied by our client/collected by third parties. This has been checked whenever possible; however Steer Davies Gleave cannot guarantee the accuracy of such data and accepts no liability to third parties for any inaccuracies.

CONTENTS

1	EXECUTIVE SUMMARY	1
	Background.....	1
	Market Analysis.....	1
	Key issues relating to the operation of Regulation 80/2009	4
	Developments outside the EU.....	6
	Stakeholder Consultation	7
	Conclusions and Recommendations	9
2	INTRODUCTION	13
3	RESEARCH METHODOLOGY	15
	Objectives	15
	Methodology	15
	Data collection	15
4	MARKET ANALYSIS	19
	Background.....	19
	Evolution of the global air travel distribution market.....	20
	Market share of the CRS companies and CRS concentration	22
	Internet penetration	22
	Cost of CRS participation	24
	CRS and airline market shares	26
	Online travel agents in Europe	28
	Price differentiation.....	30
5	OVERVIEW OF THE AIR DISTRIBUTION INDUSTRY	35
	Current business models	35
	Recent developments	42
6	KEY ISSUES RELATING TO THE OPERATION OF REGULATION 80/2009	51
	Neutral display	51
	Unbundling and ancillary services	53
	Intermodality	56
	Personal data	59
	MIDT	59
	Parent carriers.....	60
7	DEVELOPMENTS OUTSIDE THE EU	61
	The USA	61

Final Report

Canada	63
Japan.....	64
China	64
Brazil	66
8 STAKEHOLDER CONSULTATION	67
Airlines and their representatives	67
Travel agents	70
CRS Providers	73
Consumers.....	76
Technology companies	77
9 CONCLUSIONS AND RECOMMENDATIONS	81
Framework for assessment	81
Review of Regulation.....	82

FIGURES

Figure 1.1	Traditional Airline-CRS-Travel agent relationship.....	3
Figure 4.1	Global airline sales (as a percentage of total sales)	20
Figure 4.2	CRS bookings of alliance passengers	21
Figure 4.3	CRS air bookings and Share in Europe (2008).....	22
Figure 4.4	Households that have Internet access at home, EU27 Member States, 2008	23
Figure 4.5	Development of households that have internet access at home in a selection of member States (2002-2010).....	24
Figure 4.6	CRS Provider Average Booking Cost Trend	25
Figure 4.7	Market share of Major Airline groups, 2011	28
Figure 5.1	Traditional Airline-CRS provider-Travel agent relationship.....	35
Figure 5.2	Travel agency functions.....	36
Figure 5.3	Direct connect integration	43
Figure 5.4	Google Flight Search screen shot (Dallas-Seattle).....	44
Figure 5.5	Kayak search for Copenhagen-Clermond-Ferrand itinerary.....	47
Figure 5.6	Dohop search for Copenhagen-Clermont Ferrand itinerary	47
Figure 6.1	Operating ban illustration	52
Figure 6.2	Airline shares of ancillary revenues.....	53

TABLES

Table 3.1	Bibliography	15
Table 3.2	Stakeholders that participated in the study	17
Table 4.1	Booking fee per segment (2010)	25
Table 4.2	Segmentation of airline sales, 2010	27
Table 4.3	CRS market shares in Europe	27
Table 4.4	OTA penetration in Europe (% of Bookings)	29
Table 4.5	OTA ownership	29
Table 4.6	Price differentiation analysis	30
Table 4.7	Opodo service charge	34
Table 5.1	Airline sales policy differences: CRS and online distribution channels	41

APPENDICES

- A STAKEHOLDER QUESTIONNAIRES
- B GLOSSARY

1 Executive Summary

Background

- 1.1 Computer Reservation Systems (CRS) were originally developed by the airlines to provide a single interface for the subscribers (i.e. the travel agents). CRSs allow travel service providers (airlines, car rentals, hotels, etc.) to distribute their travel content to travel agents and ultimately to end-customers, or, seen from another perspective, to allow travel agents to access and book travel products for their customers. Originally controlled by the airlines, their ownership structure gave the carriers an incentive to engage in display bias in favour of their own content.
- 1.2 The CRS Code of Conduct of 1989 (Regulation 2299/89) was originally intended to impose obligations on the CRS to prevent parent carriers benefiting from preferential treatment in the operations of the CRS, to the detriment of consumers. Given the complex and multi-national character of the CRS services and its support for the single aviation market, regulation at an EU level has a value-added in this sector.
- 1.3 The 1989 Code of Conduct was increasingly ill-adapted to the changed market conditions and was creating economic inefficiencies and was revised in 2009 through Regulation 80/2009. Even though the revised Code of Conduct is relatively recent, many technological and marketing changes have happened and therefore the objective of this study is to check whether the Code of Conduct would need revision in some areas.
- 1.4 The objective of this evaluation as set out in the Terms of Reference is:
 - To check whether the Code of Conduct would need revision in some areas.
 - To collect data and examine a series of questions that will allow the Commission to re-evaluate its previous findings and conclusions ex-post.
- 1.5 The research methodology that has been used in this mid-term evaluation of Regulation 80/2009 is based on an approach combining a desk and web-based research, stakeholder consultation, and an international comparison.
- 1.6 In agreement with the Commission a programme of stakeholder consultation was defined in line with the scope of the study, and budget made available. Discussions were sought and where possible held with CRS Providers and their industry representative bodies, airlines (major and smaller carriers) and their representatives, other transport providers, travel agents / tour companies and their representatives, technology companies (other than CRS providers) who focus on search and booking tools and consumer organisations.

Market Analysis

- 1.7 The evidence suggests that globally the share of direct sales (i.e. by airlines directly to customers, not involving a travel agent), has significantly grown between 2008 and 2011. These sales are predominantly using airline websites. SITA's IT Trends Report of 2011 indicates that 2011 was a turning point with direct sales channels accounting for more than half of airline ticket sales. SITA estimates that this trend will continue for the foreseeable future.

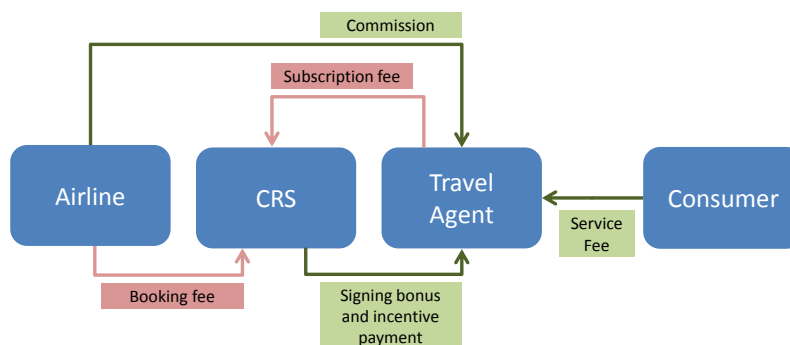
Final Report

- 1.8 Examining the market shares of the CRS providers in the EU shows the importance of Amadeus and to a lesser extent Travelport and Sabre. In 2010, in 14 out of 27 Member States, one CRS handles more than 70% of indirect bookings (i.e. bookings not made directly with the airline, whether online or offline).
- 1.9 According to information provided by three European and one North-American based network airlines, the average CRS booking fee in 2010 was in the range of €3.70 to €5.20 per segment. This is broadly consistent with information from one CRS provider, which indicates that the average booking fee for its top three EU and top two US airline customers was €3.61 in 2010. The airlines and CRS providers strongly disagree about how CRS charges compare with the costs of other distribution channels. Airline stakeholders considered that CRS fees were much higher than the fees incurred for use of other channels, including their own websites. CRS providers reject this comparison, stating that it is not comparing like with like, and that the figures quoted for non-CRS transactions do not capture the full cost, including overheads.
- 1.10 Regardless of the validity of this comparison, an indication of the range of distribution costs for airlines using different distribution channels can be obtained by considering selling costs per passenger segment on LCCs. EasyJet, for example, sells the vast majority of its seats through its own website and, based on its published 2011 Annual Report had “selling and marketing costs” per passenger segment of €2.36 in 2010 (based on exchange rate of £1 = €1.25).
- 1.11 While it is not possible from publicly available data to identify the exact composition of the selling and marketing costs in easyJet’s Report, it is reasonable to assume that selling and marketing costs include the full costs of distribution, including the operation of easyJet’s website, as well as other activities such as advertising. Based on this assumption, easyJet’s cost of sale per passenger segment (€2.36), is lower than the corresponding cost of sale for network carriers using CRSs, which includes CRS usage fee (estimated to be in the range €3.60 to €5.20 per passenger segment based on information provided by stakeholders). This comparison is not like-for-like since network carriers, who tend to use CRSs, offer more complicated itineraries than LCCs (who generally only allow point-to-point journeys) and need to reach wider sections of the market than LCCs, in particular corporate and other travellers using travel agents, so it does not demonstrate that CRS providers offer lower value. However, it does indicate that, for some market segments, lower cost distribution mechanisms are available than those currently provided by CRSs.

Current Business Model

- 1.12 The current air distribution market consists principally of three major groups of stakeholders - airlines, travel agents and distribution technology providers including CRS providers - with complex commercial interactions, rather than a “linear” industry where business relationships are conducted on a one-to-one basis.
- 1.13 The traditional market structure between the CRS and the airlines is presented below:

FIGURE 1.1 TRADITIONAL AIRLINE-CRS-TRAVEL AGENT RELATIONSHIP



Source: *Impact Assessment, 2007*

- 1.14 Travel agents use CRSs for a variety of reasons: the CRSs provide the travel agent with the technology enabling them to conduct a single search to access hundreds of airlines' inventories (as well as hotels and other travel products) and display the information in a format that is understandable by the agent and, ultimately, by the customer. The CRS allows the agent to book and ticket complicated itineraries involving, if required, more than one airline. When the customer books his or her travel, the airline pays a fee to the CRS which in some cases gives a share of this fee to the agent. CRSs often also provide the equipment and/or software that the travel agent uses for its front office (the booking of the customer travel requirements) and back office tasks such as accounting systems, airline billing and settlements, customer relations, etc.
- 1.15 Because of the complexity of these systems as well as the staff training required to run the systems, most travel agents rely on only one CRS provider - according to the American Society of Travel Agents at the end of 2009, 86% of travel agents in the US use only one CRS - and tend only rarely to change CRS provider: the same source quotes that in the USA in seven years only 15% of agents have changed CRS provider. The nature of the travel agent - CRS relationship is an area of dispute in the industry, with airlines suggesting that travel agents are locked into CRS relationships, whereas CRS providers state that there are a significant number of large travel agents which use multiple CRS providers, including 24 out of the 25 largest European agents. The true situation is unclear, with some stakeholders stating that travel agents often have a secondary CRS provider as a backup system rather than as a principal provider.

Full Content Agreements

- 1.16 Full content agreements (FCAs) are commercial contracts between the CRS providers and the network airlines, which, broadly stated, require airlines to give all of their fare content to the CRS Provider across all geographic markets, subject to any exceptions which may be negotiated (whether in terms of fare content or geographical coverage), in return for receiving a discount on booking fees. The implication of such agreements is that airlines cannot reserve certain special (i.e. low) fares exclusively for either their own or other distribution channels, except where such negotiated exceptions apply. Where there is a requirement in such a contract, or in the related participating carrier agreement (PCA), that the CRS provider is offered the same fare content as is offered to other CRS providers, this is known as a "parity" or "most favoured nation" (MFN) clause. It should also be

noted that some FCAs also contain clauses which restrict the CRS provider from discriminating between airlines in respect of the commercial terms offered or of the incentives paid to travel agents. FCAs are renegotiated regularly and the terms reflect the commercial positions of the respective parties at the time of such renegotiation.

- 1.17 While freely entered into by both parties, the rationale for agreeing to FCAs and their impact on the market is, stakeholder comments suggest, strongly disputed by CRS providers and travel agents on the one hand and airlines (supported by new technology providers) on the other. CRS providers and travel agents consider that FCAs, by ensuring that all fares are available in CRSs, enable consumers readily to compare all fares in the market, allowing travel agents to provide a direct consumer benefit which would otherwise be lost. Airlines consider that FCAs (and MFN/parity clauses) effectively constrain their ability to negotiate freely with other distribution channels, thereby reducing the incentives for innovation in distribution and preventing lower fares being offered through lower cost distribution channels.

Technological developments

- 1.18 Online travel agents (OTAs) such as Expedia or Opodo provide flight search and flight booking facilities. Their revenues are generated primarily through booking fees, supplemented through advertising sales. Meta-search engines (MSEs), such as Kayak, Skyscanner, Swoodo provide flight search but not flight bookings: to purchase a ticket, the user must click a link to an airline or OTA website. Meta-search engine revenues are generated via advertising sales and referral fees collected from the airline or online travel agency websites. Google has now also entered this market.

Direct Connect

- 1.19 A Direct Connect is an alternative for the agents to sell tickets without a CRS, directly linking the travel agent to the airline's booking system; it is only accessible to travel agents and not to customers. American Airlines and Lufthansa offer Direct Connects which the airlines state offer travel agents similar information to a CRS at much lower cost. These claims are disputed by CRS providers, who consider that the functionality is different and that, while costs may be lower for airlines, additional costs are incurred by travel agents due to the requirement to use different systems.

Key issues relating to the operation of Regulation 80/2009

Neutral Display

- 1.20 Regulation 80/2009, Article 5 specifies the rules concerning neutral display of search results by the CRSs in Article 5. The data provided by the participating carriers must be displayed in a neutral and comprehensive manner and without discrimination or bias. The criteria used for ranking shall not be based on the carrier identity and be applied on a non-discriminatory basis to all participating carriers.
- 1.21 While on-line travel agents (OTAs), and indeed brick and mortar travel agents, are obliged by the Regulation to display information derived from CRSs in a neutral fashion, this does not apply to information derived from other sources. Direct

Connects and Meta-search engines (MSEs) are under no obligation to display flight information according to the rules of Regulation 80/2009.

- 1.22 This means that currently in Europe, not all flight information is displayed in a neutral manner. The impact on the customer is therefore potentially significant, particularly on leisure consumers who are more likely to use OTAs and MSEs than corporate travellers. The fact that no leisure travel focused consumer organisation contacted chose to take part in the stakeholder consultation may indicate that this is only a minor problem. However it is also possible that consumers are not aware of the potential biases in these displays. In any case, consumers are able freely to switch between different OTAs and MSEs and it could therefore be argued that the forces of competition are likely to prevent any significant disadvantage to consumers from any biases in the displays provided by these distribution channels.

Unbundling and ancillary services

- 1.23 Unbundling the passenger air transport service has become an important trend in the aviation industry globally. Ancillary services, such as seat reservation, checked baggage or meals were always included with the air fare previously, but now an increasing number of airlines charge passengers for various extra services. While most low cost carriers have traditionally relied on unbundling and ancillary revenues, network carriers have now increased their revenues in this area, but they remain nonetheless small for European based network airlines (up to 5%).

Should all avoidable fares be displayed by the CRS?

- 1.24 It is clear that it is in the interest of the travel agents to be able to display, inform and book unbundled services. However, in the view of the Institute of Travel & Meetings, currently they can only do this with “*enormous difficulty, adding significantly to purchasing and processing costs, and causing major problems for data visibility. The relative simplicity of travel purchasing has been compromised*”¹. CRS providers also strongly support this view that they should be able to display all elements of fares, including those sometimes considered as “unavoidable”. For example they consider that a baggage fee should be seen as unavoidable part of the fare in the case of a family travelling on an international flight. The consumer organisation participating in the study advocated for all fare conditions and additional charges (i.e. for ancillary services) to be available on one screen.
- 1.25 In contrast, the airlines generally disagree with avoidable elements of fares being displayed on CRSs. For example, in the case of baggage charges, the airlines consider that it is a passenger choice and hence avoidable and thus does not need to be included in the fare displayed by the CRS: clearly, the inclusion of a baggage charge would raise the apparent price on the CRS display. Where such discretionary charges are not available through the CRS, but the services are required by the end-customer, travel agents are required to access airlines’ own systems, providing an opportunity for the airline to achieve a stronger relationship with the end-customer.

¹ ITM, *The Collapse of Simplicity?*, June 2011

Are CRS able to display all fares?

- 1.26 In short, the answer to this question seems to be that they can, provided that the airlines give them all the fares and that the CRS provide a sufficient level of functionality. In support of this, one CRS provider indicated that it had agreed deals to display ancillary service information with carriers representing about half of its European bookings. There are a number of issues about the technical solutions which may explain why some stakeholders think that the CRS cannot display all fares, whereas the CRS providers state the opposite.

Developments outside the EU

- 1.27 We have investigated the regulatory situation in the USA, Canada, Brazil, China and Japan. These countries vary in the extent of their regulation: the USA has been unregulated since 2004, Canada retains partial regulation but is comparatively freer than the EU, and Japan and China, whilst not specifically regulated, remain difficult markets for western CRSs to operate in. This Executive Summary only considers the case of the USA. It should be noted that the structure of the US and EU markets is different (for example the airline industry is more concentrated in the US), while the different regulatory frameworks mean that market players operate under different incentives, so that there is no automatic “read-across” to Europe from the US experience, which may be of limited relevance.
- 1.28 The deregulation of the US CRS market occurred in 2004; however the US Department of Transport (DOT) has retained its authority to prevent unfair methods of competition in the sale of air transport services.
- 1.29 In recent years, the American market has been the precursor of significant changes like those witnessed later on in Europe. There has been a steep increase in the popularity and use of OTAs and meta-search engines. Airlines, desiring to use alternative distribution mechanisms, have also been at the forefront of developing Direct Connect portals which they have encouraged travel agents to use, sometimes in replacement of and others in parallel to GDS services. Currently 76% of travel agencies still use a CRS, and CRS providers continue to play an important role in the market even if their market share has reduced². There have been a number of lawsuits, lodged in 2010 and 2011, between airlines and CRS providers, and the US Department of Justice is investigating the operation of the market.
- 1.30 In November 2010, following unsuccessful contract negotiations, American Airlines (AA) notified Orbitz that it was terminating their relationship and “de-listing” AAs fares from Orbitz’s system, following which Travelport sued AA for breach of contract. In April 2011, American Airlines sued Travelport and Orbitz for anti-competitive and exclusionary acts and practices, alleging Travelport had in effect abused its monopoly power in the industry to penalise American Airlines for developing and using Direct Connect technology that travel agents (both online and offline) could use to check and make ticket bookings, bypassing the CRS systems. In June 2011 a court order reinstated American Airlines tickets on Orbitz, where they remain at the time of writing.

² American Society of Travel Agents (ASTA), 2010 GDS report

- 1.31 In 2011 the US Justice Department brought a civil action against Google Inc. regarding their proposed US\$700m takeover of ITA, a provider of an independent airfare pricing and shopping system including the QPX system which is used by some of the most popular online travel engines, including Orbitz, Kayak, Bing Travel, etc. The Department of Justice alleged that Google's takeover of ITA breached US anti-trust laws as the proposed merger gives Google the means and incentive to use its ownership to disadvantage its flight search rivals (following the launch of Google Travel) and thus result in reduced quality, variety and innovation for consumers of comparative flight searches.
- 1.32 The civil action taken by the US Department of Justice against Google was resolved and Google completed its takeover of ITA earlier in 2011. Google modified the conditions of its takeover to include concessions regarding the on-going provision of airfare pricing and shopping systems to Google's rivals, such as Kayak or Orbitz. The civil actions involving the airlines and CRSs remain on-going at the time of writing (January 2012).
- 1.33 In May 2011 the US Justice Department began its own investigation into whether airline flight and fare information distributors are stifling competition and violating Federal antitrust laws. They have contacted stakeholders such as American Airlines, Sabre, Delta Airlines, and Travelport.

Stakeholder Consultation

Airlines and their representatives

- 1.34 The views summarised here are significantly more representative of the network airlines as only a limited number of low-cost airlines have been willing to take part in the consultation. Overall the views of the airlines regarding the current Regulation differed and, whilst some stated that it was "*well-drafted*", others felt that some changes related to regulatory measures might be necessary concerning data ownership and to prevent abuse of market position by CRS providers, as these carriers considered that the current Code is ill-adapted to the current evolution of the distribution and IT sector.
- 1.35 Some airlines felt that the existing provisions of the Code needed to be enforced more effectively and consistently. They also advocated that only when such enforcement has taken place would the question of whether additional changes are necessary be able to be meaningfully evaluated.
- 1.36 Airlines agreed that a regulation of the neutral display is in the interest of the consumers. However one airline thought that self-regulation would be better adapted than the present Regulation.
- 1.37 All network airlines consulted shared the view that they had little choice but to participate in all CRSs, even in their home markets: they do not view participation in one CRS as substitution for participation in another CRS, and thus thought that CRS providers continue to have strong market positions at regional level. They perceive that CRSs are "*essential*" for network and leisure carriers to ensure that the airline products can be distributed at the other end of the route, and with CRS companies concentrated by geography, airlines felt that it gives CRS a strong commercial position enabling them to contract terms that airlines would otherwise not agree to. One airline noted that CRSs are particularly important in countries

with a low internet penetration rate. A low cost carrier noted that its business model differs significantly from network carriers, with less dependency on indirect sales, as did its distribution requirements. This LCC had tickets available on two CRSs only, with plans for a third.

Travel Agents

- 1.38 All travel agents consulted thought that CRSs continue to be the best solution for online and off-line travel bookings, by maintaining a centralised connection to virtually all airlines, while facilitating agents' front and back office operations and promoting the efficiency of business customers' travel policies. However agents noted the pressure from the airlines to move to direct connect services as well as multi-sourcing gaining in importance in the last five years and is putting additional workload on travel agents for the booking processes and back office coordination. One agent noted that in spite of a developing usage of the internet by travel agents for multi-sourcing, this had not been translated into a decline in CRS usage. For the agents, one central point of access for the data is preferable and this is how they hope the market will remain in the future.
- 1.39 Agents shared the view that the Code of Conduct is useful and necessary, with a majority indicating that it needed enhancing in the area of MIDT and travel agent identification. Another key issue for the travel agents and TMCs³ is the risk of display bias on meta-search engines and airline direct connect portals: they state that *"since CRSs are the only distribution channel ensuring neutral and transparent comparison guaranteed by specific legislation, limitations to the use of CRSs are to the detriment of consumers"*.

CRS providers

- 1.40 All CRS providers agree that the Code serves a purpose and that the Code should be retained: it is *"appropriate"* and *"promotes competition"*. The CRS providers recommend some changes given the changes that have taken place in the distribution industry.
- 1.41 Because the CRS providers are subject to legal requirements to provide a neutral channel of distribution and a means of objective price and availability comparison, this has safeguarded choice and transparency for the consumers. For this reason, CRS providers feel that their importance to consumers and travel agencies has not changed over the last five years.
- 1.42 However CRS providers feel that their role as neutral and unbiased providers of travel information is threatened by the trend by airlines to withhold certain ancillary fee information for unbundled services for which extra fees must be added on the price displayed in CRSs and thus having a negative impact on transparency.
- 1.43 All the CRS providers consulted strongly disagreed with claims made by airline stakeholders during our consultation exercise that the commercial position of CRS providers effectively compelled airlines to participate in all CRSs and to agree contract terms which they would not normally accept (for example in Full Content Agreements). In contrast, the CRS providers stated that major airlines' strong

³ See Glossary in Appendix B

position in their home countries gave them leverage in negotiations with CRS providers, and that this had allowed them to achieve significant reductions to average fees. More generally, it was claimed by a CRS provider that average costs per segment have reduced at each renegotiation of the FCA with the airline involved. CRS providers also claimed that some airlines' own commercial positions allowed them to use techniques such as applying surcharges to and withholding ancillary services information from travel agents using CRSs disfavoured by the airline.

Conclusions and Recommendations

- 1.44 Regulation 80/2009 sets out a code of conduct for CRS providers whose objective, as noted in the terms of reference (TOR) of this Study, is to offer consumers an unbiased choice of air fares under fair conditions. Given that the Regulation is intended to protect consumers, it is important to consider that consumers' interests could, theoretically, potentially be undermined, in different circumstances, by any of the participants in the air ticket distribution market. For example:
- CRS providers might charge excessive booking fees, which are ultimately passed on to consumers as higher air fares;
 - Airlines might attempt to benefit from their dominance in particular markets (such as the home market of a traditional network carrier) by pushing sales towards channels where unbiased display rules do not apply, allowing them to charge supra-competitive fares;
 - Travel agents might fail to use the lowest cost distribution mechanisms in response to incentives offered by other market participants, including CRSs, passing on these higher costs to customers;
 - New technology providers might seek, despite providing services at least partially equivalent to those of CRSs, to avoid the obligations of the Regulation to offer consumers an unbiased choice.
- 1.45 We note that in our study we did not find any evidence that any of these situations have actually occurred.
- 1.46 All the major stakeholders in the aviation distribution industry, including airlines, travels agents and CRS providers, support the existence of some form of Regulation for computerised reservations systems, even if they do not agree as to its exact form. In addition, as noted above, each of those stakeholders has the possibility to distort competition in certain circumstances. Furthermore, the nature of the market is that it consists of millions of individual transactions, for each of which it is possible that some distortion of competition is taking place, but not necessarily the same distortion in each case. In these circumstances it seems unlikely that the blunt instrument of the EU's basic Competition Law would be able to provide sufficient remedy to prevent unfair competition in many cases, and there does appear to be a strong case for maintaining some form of formal Regulation over the electronic distribution of airline products.
- Article 2 - Definitions*
- 1.47 We do not support the view that airline alliance websites could be considered as CRSs. Firstly because the alliance website is a distribution tool of these airline

alliances only and does not claim to be neutral and secondly because these travel products are available to all without a subscription. We also do not support the view that Direct Connects should be treated as CRSs since they do not serve competing airlines.

Article 3 - Relationship with transport providers

- 1.48 This study raises the question as to whether the provisions of Article 3(1) need to be clarified. Full-content agreements between airlines and CRS providers, which are widely used in the industry, while allowing airlines to distribute fare content to alternative reservations systems, do in general constrain the conditions on which this distribution takes place (unless a specific exception to the “full content” requirement has been negotiated and agreed within the contract). We would recommend that Article 3 (1) be clarified through guidelines or, possibly, enforcement action so that there is no debate in its interpretation, particularly in relation to the meaning of “*unfair and/or unjustified conditions*” and on the implications that participating carriers may “*freely use alternative reservation systems such as its own Internet booking system and call centres*”.

Article 5 - Displays

- 1.49 The question as to whether other distribution channels than the CRS providers should be included in the scope of Article 5 (Article 5 prevents discrimination, bias, and misleading information on CRS) is one where there is significant disagreement in the industry. Travel agents and CRS providers strongly advocate it claiming that it is in the interest of the customers. In contrast, technology companies strongly deny that MSEs or Direct Connects should be covered by Article 5 since they do not claim by nature to offer a one-stop shop. Airlines generally do not feel that they should be included but some airlines are unsure about these new distribution channels. We recommend that there is no modification in the scope of Article 5.
- 1.50 The appropriate test for whether a distribution channel should be included in the scope of Article 5 relates to the definition of a CRS under the Regulation. This defines a CRS as serving multiple airlines and being used by subscribers, i.e. generally travel agents with long or medium term contracts (and not end-users making a single ticket purchase). Where emerging distribution channels meet these stipulations they should be included, but not otherwise.

Article 7 - Marketing Information Data Tapes (MIDT)

- 1.51 We do not see an objection to group sales of MIDT data which appear to us as a commercial practice that should be negotiated at a price and with conditions acceptable to both parties. Whether IATA is infringing Article 7(3) remains to be decided by the Commission

Article 9 - Data provided by participating carriers

- 1.52 Article 9 provides that the data submitted by participating carriers to CRS providers must allow the CRS provider to comply with the rules set out in Annex I. Whilst there is no dispute that Article 9 is effective and serves a purpose, there is a debate as to whether the rules set out in Annex I (discussed below) should be modified to incorporate unbundled products.

Article 10 - Specific rules for parent carriers

- 1.53 Article 10 offers some safeguards in order to protect the consumers and the travel agents against possible abuses by airlines that are CRS provider shareholders. Whilst the airlines generally feel that this Article is redundant owing to their lack of control on the CRS providers, there is still a strong view among the travel agency community that airlines may have a strong “market power”. As such, we would recommend that this Article remains unchanged.

Annex I

- 1.54 Annex I (Section 1) requires the display of applicable taxes, charges, surcharges and fees to be paid to the air carrier that “*are unavoidable and foreseeable at the time when shown on the display*”. The prescriptions in Annex I are in line with the provisions of the Regulation 1008/2008 on price transparency.
- 1.55 There is considerable disagreement between industry players as to which elements of the airline offer should be considered part of the basic travel product and which as an ancillary product. Not only do different airlines disagree about what is the basic product, but within the distribution chain, both airlines on one side and CRS providers and travel agents on the other appear to believe, based on stakeholder comments, that the other party is trying to “*game*” the system to its advantage.
- 1.56 Given the differentiation that has taken place between different airline products, with some full service offers providing significantly more within the basic fare and others offering less, there is a genuine danger that the objectives of the neutral display provisions of the Regulation are being undermined, since it is not obvious that displays are comparing like-with-like. However, it is very difficult to provide a single objective definition of what is the basic travel product: should it for example, include or exclude baggage, seat selection or meals? Equally, it is unlikely to be practical for CRS providers to display all possible combinations of the various elements of the offer which might be considered as part of the basic travel product either now or in the future.
- 1.57 Therefore, it is recommended that a small number of options for the nature of the basic travel product be defined within the Regulation (e.g. with/without baggage and with/without seat reservation) and that CRSs be required to provide a neutral display for each defined option, while airlines would be required to provide the information to support each of these options. This would keep the requirements on each party to a minimum, but nevertheless allow the concept of neutral display to continue to work to the consumer’s advantage as airlines’ offers continue to diversify.

2 Introduction

- 2.1 Computer Reservation Systems (CRS) were originally developed by the airlines to provide a single interface for the subscribers (i.e. the travel agents): at that time, for air travel, consumers could practically only rely on one single information and distribution channel, the one constituted by CRS providers and travel agents. CRSs allow travel service providers (airlines, car rentals, hotels, etc.) to distribute their travel content to travel agents and ultimately to end-customers, or, seen from another perspective, to allow travel agents to access and book travel products for their customers.
- 2.2 Originally controlled by the airlines, their ownership structure gave the carriers an incentive to engage in display bias in favour of their own content. The CRS Code of Conduct of 1989 (Regulation 2299/89) was originally intended to impose obligations on the CRS providers to prevent parent carriers benefiting from preferential treatment in the operations of the CRS, to the detriment of consumers. Given the complex and multi-national character of the CRS services and its support for the single aviation market, regulation at an EU level has a value-added in this sector.
- 2.3 The Code of Conduct was revised in 2009 with the adoption of Regulation 80/2009. The revision was warranted by the fact that changes in CRS providers technology and economics were gradually eroding the key features of the competitive landscape for which the Code of Conduct was designed.
- 2.4 The earlier Code of Conduct was increasingly ill-adapted to the changed market conditions and was creating economic inefficiencies. Most importantly, the Code stifled price competition. In addition, the prohibition for airlines to differentiate content between CRS providers significantly restricted their negotiating freedom.
- 2.5 Even though the revised Code of Conduct is relatively recent, many technological and marketing changes have happened and therefore the objective of this study is to check whether the Code of Conduct would need revision in some areas.
- 2.6 This Final Report describes the key findings of the Study. It contains a number of technical terms that are explained in a glossary available in Appendix B.
- 2.7 Please note that this is a report on a very competitive industry where some data is necessarily confidential. Nonetheless most stakeholders understood the value of disclosing confidential data and findings in order to allow us to research, understand and analyse the Regulation with the best possible available data. We thank them for their understanding and for sharing their information. Since this confidential data cannot be presented in this Report, some of the statements made here are based on evidence excluded from the text.
- 2.8 The document is structured as follows:
- Chapter 3 describes the methodology used and data sources;
 - Chapter 4 provides a market analysis of the European airline distribution industry;
 - Chapter 5 presents the structure of the distribution industry as well as some explanation of new trends;

Final Report

- Chapter 6 examines key issues relating to the operation of Regulation 80/2009;
- Chapter 7 provides a comparison with other international markets;
- Chapter 8 summarises the views of the stakeholders; and
- Chapter 9 provides our conclusions and recommendations;

2.9 We also provide an appendix containing:

- Appendix A: copy of the questionnaires.
- Appendix B: Glossary.

3 Research methodology

Objectives

- 3.1 The objective of this evaluation as set out in the Terms of Reference is:
- To check whether the Code of Conduct would need revision in some areas.
 - To collect data and examine a series of questions that will allow the Commission to re-evaluate its previous findings and conclusions ex-post.

Methodology

- 3.2 The research methodology that has been used in this mid-term evaluation of Regulation 80/2009 is based on an approach using:
- Assessment of data in order to understand the size and composition of the market and any recent developments;
 - Interviews with a wide range of stakeholders, to address the questions relating to the current state of the market and effectiveness of the legislation;
 - Desk research of CRS providers, airline and travel agents websites (including dedicated online travel agents), to address the factual questions posed in the Terms of Reference;
 - An interrogation of CRS providers user displays and booking systems in order to fully understand issues concerning neutral display and access to data; and
 - International comparison.

Data collection

Desk research

- 3.3 We have carried out desk research to collect relevant information. The desk research identified data sources, as well as issues raised in previous studies and their associated recommendations.
- 3.4 Table 3.1 lists all the policy and other documents that were reviewed.

TABLE 3.1 BIBLIOGRAPHY

Type	Document name
Legal framework	EC Regulation 80/2009
Legal framework	EC Regulation 2299/89
Policy documents	Impact Assessment (2299/89), 2007
Policy documents	Q&A 2007 revision
Policy documents	Roadmap - Fitness check
Legal documents	AA vs. Travelport & Orbitz 2011
Legal documents	US Airways vs. Sabre 2011
Legal documents	USA DoJ vs. Google and ITA, 2011

Final Report

Type	Document name
Industry reports	Travel Gold Rush, Oxford Economics - Amadeus, 2011
Industry reports	Unbundle 4, 2011 Draft
Industry reports	Institute of Travel & Meetings Research - Cost Offload March 2011, pp2-6
Industry reports	Air and Space Law, 2011, Mia Wouters: "Simplification of the European Code of Conduct for Computer Reservation Systems (CRS)"
Industry reports	Travelport 10-K forms, 2010
Industry reports	PhoCusWright, The Role and Value of the Global Distribution Systems in Travel Distribution, November 2009
Industry reports	Industry journals such as Travel Weekly, Air Business and Travel News (ABTN) and the Travel Trade Gazette
Database	Eurostat
Database	MIDT data provided by the CRS (Confidential)

3.5 The desk research was conducted with the following objectives:

- To identify any possible data sources;
- To review the key issues highlighted by other studies as well as common themes in the CRS legislation in order to be able to identify gaps and areas with a lack of clarity; and
- Understand the earlier views and opinions of the stakeholders.

Stakeholder consultation

3.6 As requested in the Terms of Reference, a consultation with stakeholders was undertaken. The aim of the stakeholder consultation was to inform our understanding of the market's key drivers and structures, to gain an overall understanding of the extent to which airlines and agents are complying with their regulatory obligations and to understand if all areas of Regulation 80/2009 remained fit for purpose.

3.7 In agreement with the Commission a programme of stakeholder consultation was defined and discussions were sought and, where possible, held with the following organisations:

- CRS Providers and their representative industry bodies;
- Airlines (major and smaller carriers) and their representatives;
- Technology companies (other than CRS providers) who focus on search and booking tools;
- Other transport providers;
- Travel agents / tour companies and their representatives; and
- Consumer organisations.

- 3.8 Consultation with workers' representatives was not perceived as relevant in the context of this mid-term evaluation since air transport industry workers are not expected to be significantly impacted by changes or deregulation of the CRS Code of Conduct. Direct consultation with customers or passengers was not within the Terms of Reference. Some additional stakeholders were also added following their own request to take part and after approval by the Commission.
- 3.9 Table 3.2 provides the number of stakeholders by category that participated in the study.

TABLE 3.2 STAKEHOLDERS THAT PARTICIPATED IN THE STUDY

Stakeholder categories	Number of stakeholders that participated
CRS and representatives	4
Airlines and representatives	10
Travel Agents and representatives	7
Consumer organisations	1
Technology companies	1

Questionnaires

- 3.10 Question lists were used to ensure that each interview was consistently structured and produced comparable results. Question lists were developed for each category of stakeholder (CRS providers and representatives, airlines and their associations, travel agents, etc.).
- 3.11 The questionnaires were designed in order to:
- Collect general stakeholders' views about the current Code of Conduct and whether or not they think that changes are required.
 - Collect specific views on the key issues to be covered such as parent carriers, neutral display, MIDT, etc; and
 - Collect the data required by the study.
- 3.12 The questionnaires were designed to be specific for each category of stakeholder: some questions were not always necessarily relevant to all, but we also endeavoured to achieve a maximum number of similar questions in order to collect industry-wide views. Additionally, based on our initial contacts with the stakeholders, we expected that the responses to the questionnaires would produce a large number of comments and views, which required a framework for analysis that was able to take all views into account and give weight to answers according to the representativeness of the view among the industry.
- 3.13 The questionnaires' main areas of focus were:
- Regulation 80/2009
 - CRS relationship
 - CRS ownership
 - Unbundling and ancillary services

Final Report

- Technological developments
- Marketing Information Data Tapes (MIDT)
- Data protection
- Intermodality
- Developments outside Europe
- Market information

3.14 These sets of questionnaires are provided in Appendix A.

International comparator

3.15 There were five countries for which the Terms of Reference requested a comparison with the EU: USA, Canada, Brazil, Japan and China.

3.16 For each country, we carried out desk-based research. We also contacted stakeholders such as the Civil Aviation Authorities or key airlines in each country that we identified as being relevant for the study.

4 Market analysis

Background

- 4.1 This section presents a review of the CRS provider market and the airline distribution market more generally. Owing to the competitive nature of the industry only a limited amount of data was publicly available, and this constrains the analysis and limits the conclusions that can be drawn without additional data.
- 4.2 The data and trends set out below need to be understood in the context of a number of different sub-markets within the aviation industry, in Europe and elsewhere. Firstly, there is an important distinction between consumers travelling for leisure and those travelling on business, and a further distinction between those travelling on simple, “point-to-point” journeys and those with more complicated multi-leg itineraries.
- 4.3 Leisure travellers on shorthaul routes, or business travellers with simple itineraries, have been able to take advantage of the strong growth of low-cost carriers (LCCs) since the EU internal market for aviation was deregulated (starting in 1993). LCCs have driven down costs through a number of initiatives, not least the reduction of distribution costs, which has been facilitated by the growth of the Internet. In turn, this cost pressure has forced the traditional network carriers to reduce their own costs where they compete with LCCs, including in the area of distribution. The growth in the use of airline websites, pioneered by LCCs but also now universally adopted by network carriers, has to be seen in this context.
- 4.4 In contrast, business travellers, or leisure travellers wanting more than just a ticket for a simple journey, often have more complicated requirements in terms of the journey and other services they may require (hotels, car hire, etc.). Traditionally, these travellers have been served by travel agents, for whom wide access to airlines’ products is a crucial requirement.
- 4.5 In terms of distribution, network carriers developed computer reservations systems to support the travel agents at lower costs than through use of telephones, and the sophistication of these systems has increased through time. As noted in section 2 above, regulation of computer reservations systems was brought in as the sophistication and reach of these systems increased, in order to create a level playing field for airlines, especially those which did not control computer reservations systems.
- 4.6 The LCC model was built on removing costs, and this was partially achieved through simplification of distribution. In particular, LCCs initially generally allow bookings only through their own websites and avoided more complicated features such as connecting journeys, whereas bookings for such journeys are handled by the CRS providers’ systems.
- 4.7 Changes in the shares of low cost carriers, and in the use of network carriers’ own websites for (generally) simpler journeys, have contributed to the changes in shares of distribution channels described below. It should, however, be emphasised, that these changes are very different in the different sub-markets. While for leisure travel, low cost carriers, airlines’ own websites as well as on-line

travel agents have become increasingly important, for business travellers the traditional travel-agent based model still remains the normal means through which air travel is booked and ticketed. CRS providers play a vital role in that market, by facilitating travel agents' activities, allowing them to research and then book a wide range of products for their (corporate) customers. This point is reinforced by a growing trend for some LCCs (such as easyJet) to allow their products to be offered through CRS providers' systems, in addition to through their own websites, a capability clearly targeted at the business market.

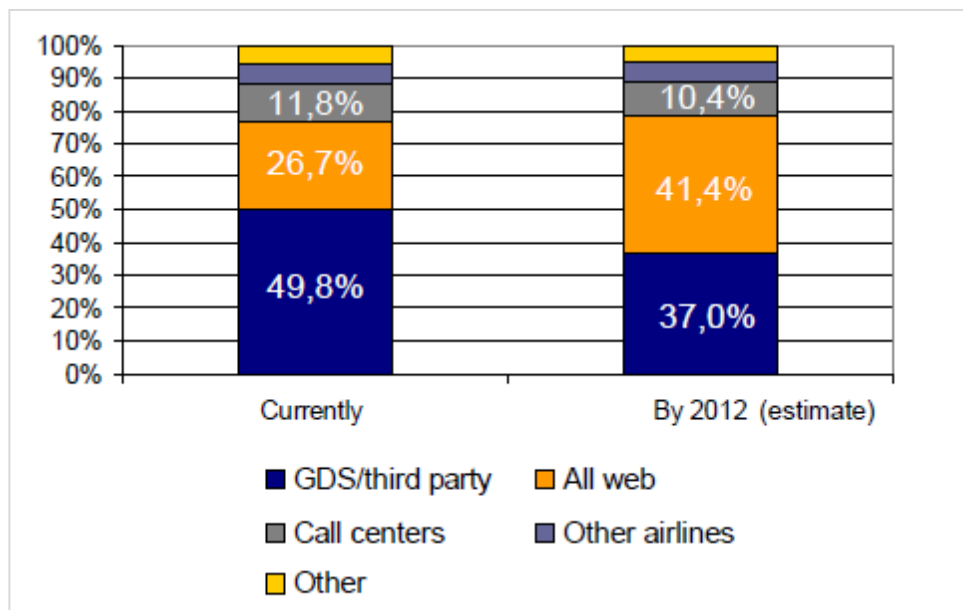
Evolution of the global air travel distribution market

4.8 This section examines the market for aviation-based travel and distribution services.

Worldwide Trends

4.9 The evidence suggests that globally the share of direct sales (i.e. by airlines directly to customers, not involving a travel agent), has significantly grown between 2008 and 2011. These sales are predominantly using airline websites. SITA's IT Trends Report of 2011 indicates that 2011 was a turning point with direct sales channels accounting for more than half of airline ticket sales. SITA estimates that this trend will continue for the foreseeable future.

FIGURE 4.1 GLOBAL AIRLINE SALES (AS A PERCENTAGE OF TOTAL SALES)

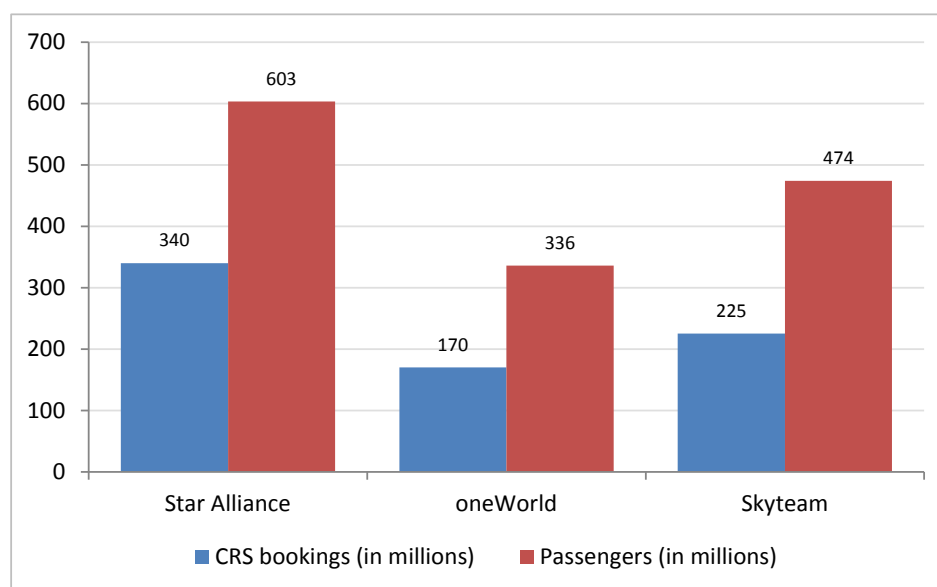


Source: Manakos (2011), based on SITA Airline IT Trends survey 2008. Note that "currently" = 2008.

4.10 This trend is also confirmed by the sales of airline alliance tickets. In 2010, it is estimated that airline alliances sold approximately half of their tickets in terms of volume through CRSs: 47% for Skyteam, 51% for oneworld and 56% for Star Alliance.

4.11 Despite this increasing trend for direct sales in terms of volume, network carriers' revenues are still predominantly sourced from travel agents (and hence from the use of CRS providers' systems). This reflects the fact that the trend towards direct sales is much more strongly pronounced in the leisure market, while business travellers are still predominantly served by travel agents.

FIGURE 4.2 CRS BOOKINGS OF ALLIANCE PASSENGERS



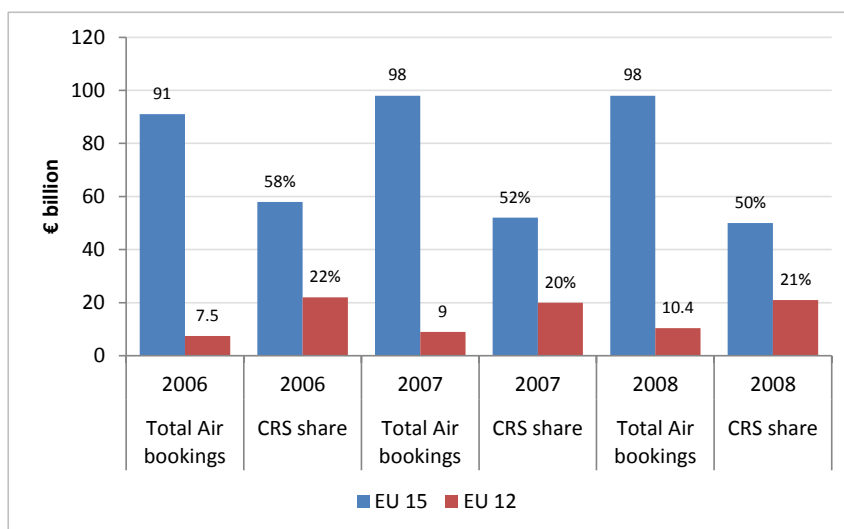
Source: Alliance CRS bookings: Travelport, Alliance passengers: own websites

Europe

- 4.12 The European market is heavily skewed towards Western Europe (EU 15) which ETTSA estimates represents about 90% of total travel sales in the EU, with the other EU States (EU 12) accounting for the remaining 10%. In terms of CRS providers' bookings, the weight of Western Europe is even stronger with EU15 countries accounting for 95% of the bookings among the 27 Member States in 2010.
- 4.13 There is no disagreement among all stakeholders in the industry that the share of CRS providers' sales in Europe has decreased: ETTSA's most recent figures communicated to us indicate that the percentage of total European air market sold through CRS providers was 50% (in 2008)⁴ in the EU15 market, whilst it was lower in the EU12 with a 21% market share. This contrasts with nearly 60% CRS providers' market share in the EU 15 in 2006.

⁴ Technology and Independent distribution in the European Travel Industry, ETTSA, 2011

FIGURE 4.3 CRS AIR BOOKINGS AND SHARE IN EUROPE (2008)



Source: *Technology and Independent distribution in the European Travel Industry, ETTSA, 2011*

4.14 The lower CRS providers’ share in EU12 reflects some factors such as a significant amount of air travel being booked through tour operators which primarily use low-cost airlines or charter airlines and direct bookings by phone (from travellers and travel agents) and to a lesser extent online, especially for domestic bookings.

Market share of the CRS companies and CRS concentration

4.15 Examining the market shares of the CRS providers in the EU shows the importance of Amadeus and to a lesser extent Travelport and Sabre. In 2010, in 14 of 27 Member States one CRS provider handles more than 70% of indirect bookings (i.e. bookings not made directly with the airline, whether online or offline).

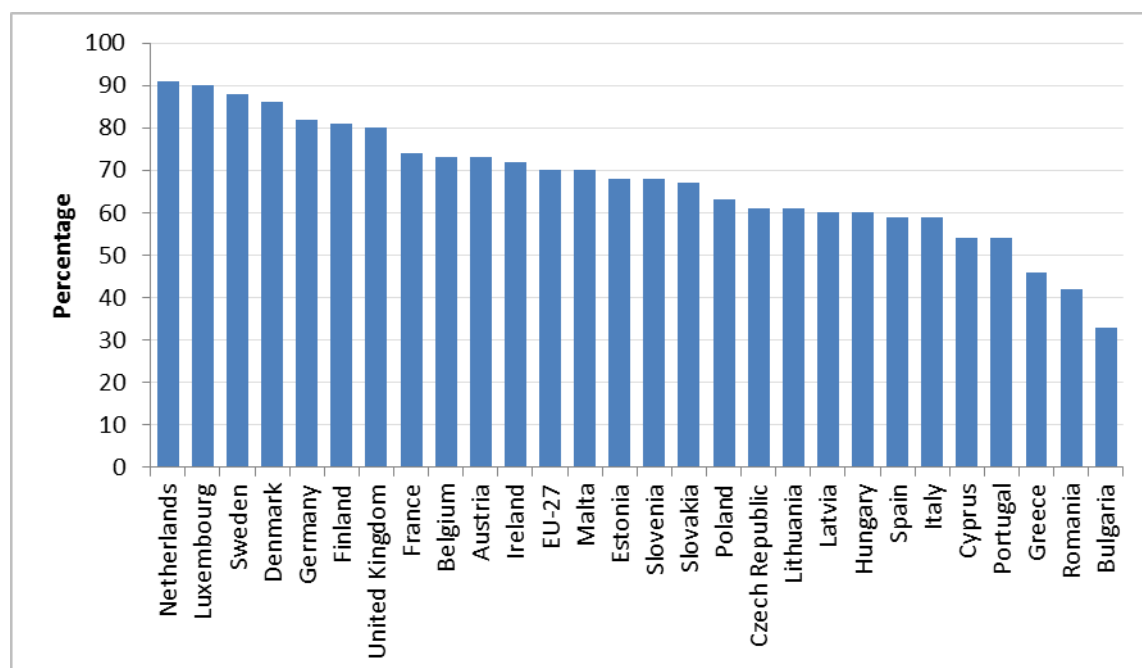
4.16 Looking at the split between online (i.e. internet) and offline bookings facilitated by the CRS providers, overall it is the offline channel that still dominates with more than 80% of the bookings overall (and 100% of the EU12 bookings). Only Finland, France and Denmark record significantly higher levels of online CRS provider bookings, at 40%, 37% and 36% respectively. This is of course influenced by the internet penetration and usage in the EU countries (as illustrated in Figure 4.4) and presumably of bookings through online travel agents.

4.17 No data was provided by the CRS providers or the agents regarding business and leisure customers since it was stated that customers do not necessarily expose their journey purpose at the time of booking.

Internet penetration

4.18 A crucial factor for the success of online distribution of airline tickets is the availability of (broadband) internet access and the availability of ‘internet-friendly’ payment mechanisms. Data on the availability of broadband internet access and the number of internet users is provided by Eurostat.

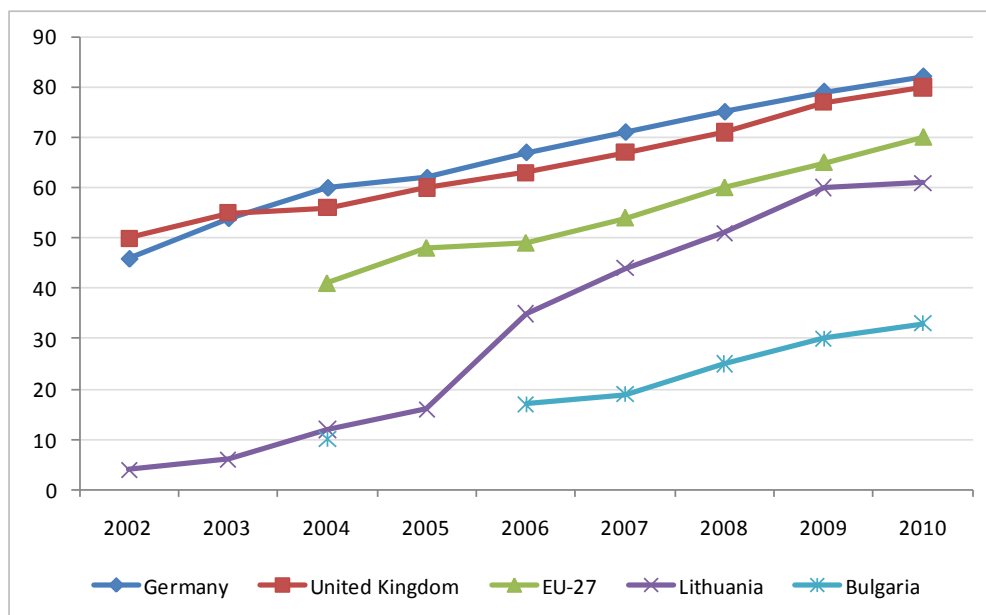
FIGURE 4.4 HOUSEHOLDS THAT HAVE INTERNET ACCESS AT HOME, EU27 MEMBER STATES, 2008



Source: Eurostat2010

- 4.19 A relatively heterogeneous distribution of internet usage and availability of internet access is seen throughout Europe. Internet penetration is highest in Scandinavia and Western Europe and usage rates are significantly lower in Southern and Central European Member States. Between 80% and 90% of the households are internet users at home in the Netherlands and Denmark, while in Bulgaria and Romania this figure is at or less than 40%. Nevertheless, Figure 4.5 shows that considerable growth in use can be seen across Europe countries. It can therefore be expected that user rates in Eastern Europe will approach the levels seen in Western Europe in the foreseeable future.

FIGURE 4.5 DEVELOPMENT OF HOUSEHOLDS THAT HAVE INTERNET ACCESS AT HOME IN A SELECTION OF MEMBER STATES (2002-2010)



Source: World Bank, World Development Indicators 2010

- 4.20 A second key factor regarding the online distribution of goods and services are the existence of internet-friendly payment mechanisms. To a large extent, payment systems have developed at a national level and are used mainly at this level, despite the common market and initiatives to create a common payment area. The market for payment options throughout the European Union therefore remains highly fragmented.
- 4.21 There is a wide proliferation of debit cards across Europe: figures from the European Central Bank show that in all but five Member States there are on average more than one card (whether debit or credit) per inhabitant. Nonetheless there exist some limitations in the European-wide use of these forms of payment: In the case of passengers from Member States other than the home country of the airline where a ticket is to be booked, this surcharge-free payment option is often not available (for example Visa Electron and Mastercard Prepaid, the sole surcharge-free mode of payment with Ryanair). An alternative for passengers not having a credit card is the online payment service Paypal; however in some Member States, Paypal accounts can only be linked with credit cards (such as Romania).

Cost of CRS participation

- 4.22 In general, it has proved difficult to obtain information on the cost of CRS providers' distribution due to its confidential nature, but we have obtained information from one CRS provider and airline stakeholders, set out below, with their identities protected.
- 4.23 The table below shows average CRS booking fees per **segment** (not per ticket) for three European and one North American network carrier in 2010.

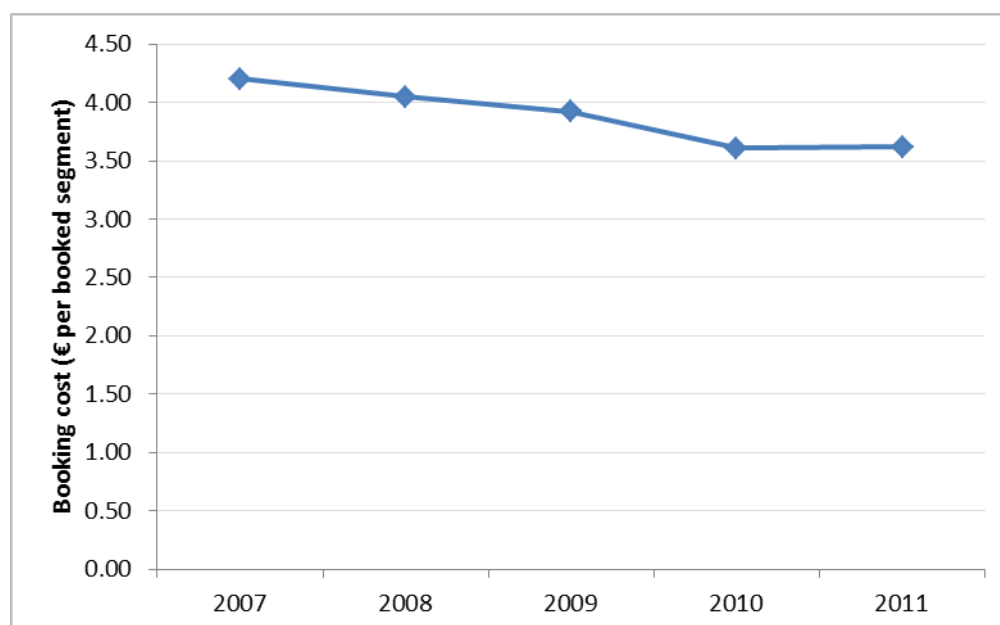
TABLE 4.1 BOOKING FEE PER SEGMENT (2010)

	CRS BOOKING FEE
European-based network airline A	€ 3.70
European-based network airline B	€ 4.21
North-American based network airline C	€ 5.18

Source: stakeholder data - Confidential

- 4.24 For Airline A, booking fees have declined from €4.27 in 2007 (a CAGR of -4.7% p.a.) and for Airline C from €5.56 in 2008 (CAGR of -3.5% p.a.).
- 4.25 One CRS provider has supplied information on its average booking fees per segment, covering its top three EU and top two US customer airlines, shown in Figure 4.6 below. The CRS provider noted that these costs were in nominal terms, so that the declining trend is faster in real terms, and did not take account of increasing quality of service, implying that like-for-like costs have declined faster than implied by the raw data.

FIGURE 4.6 CRS PROVIDER AVERAGE BOOKING COST TREND



- 4.26 This shows that the booking fees in 2010 were €3.61 per segment (and were very similar in 2011), having fallen from €4.20. This represents a CAGR of -4.9% p.a. to 2010 and -3.6% p.a. to 2011. This CRS provider data appears reasonably consistent with the lower end of the range of data provided by airline stakeholders.
- 4.27 This stakeholder data is consistent with estimates of the fees charged by CRS providers which can be approximately calculated from publicly available CRS Annual Report data (based on stated revenues and the number of segments booked via the CRS).

Final Report

- 4.28 The airlines and CRS providers strongly disagree about how CRS charges compare with the costs of other distribution channels. Airline stakeholders considered that CRS providers' fees were much higher than the fees incurred for use of other channels, including their own websites. Airline A (in Table 4.1 above) indicated that the average fees it incurred per segment for bookings through direct channels were €0.94, while Airline B stated it paid fees averaging €0.45.
- 4.29 CRS providers reject this comparison, stating that it is not comparing like with like, and that the figures of less than one euro per segment cannot be correct, as they do not capture the full costs of the transaction, including IT systems and overheads. One CRS stakeholder suggested that true airline costs per segment for bookings over its own website are likely to be significantly above the CRS booking fees per segment discussed above.
- 4.30 Our understanding is that the non-CRS fees quoted by airline stakeholders are a transaction cost for use of the relevant system and therefore do not include any costs relating to airline selling staff (e.g. through telephone sales) or airline system support staff. The CRS per segment fees quoted presumably cover the costs of CRS system development, operation and support, but exclude staff selling costs, since these are incurred by travel agents, not the CRS providers (travel agents are remunerated for these costs either through airline commission payments where these still exist, through service charges imposed directly on end-customers, or through financial assistance/incentives from CRS providers).
- 4.31 Regardless of the validity of this comparison, an indication of the range of distribution costs for airlines using different distribution channels can be obtained by considering selling costs per passenger segment on LCCs. EasyJet, for example, sells the vast majority of its seats through its own website and, based on its published 2011 Annual Report had "selling and marketing costs" per passenger segment of €2.36 in 2010 (based on exchange rate of £1 = €1.25).
- 4.32 While it is not possible from publicly available data to identify the exact composition of the selling and marketing costs in easyJet's Report, it is reasonable to assume that selling and marketing costs include the full costs of distribution, including the operation of easyJet's website, as well as other activities such as advertising. Based on this assumption, easyJet's cost of sale per passenger segment (€2.36), is lower than the corresponding cost of sale for network carriers using CRSs, which includes CRS usage fee (estimated to be in the range €3.60 to €5.20 per passenger segment based on information provided by stakeholders). This comparison is not like-for-like since network carriers, who tend to use CRSs, offer more complicated itineraries than LCCs (who generally only allow point-to-point journeys) and need to reach wider sections of the market than LCCs, in particular corporate and other travellers using travel agents, so it does not demonstrate that CRS providers offer lower value. However, it does indicate that, for some market segments, lower cost distribution mechanisms are available than those currently provided by CRSs.

CRS and airline market shares

- 4.33 We explain further in the report why the issues faced by the network airlines in distributing their tickets can be very different from those faced by low-cost

airlines. In the table below we present the data of a European-based network airline:

TABLE 4.2 SEGMENTATION OF AIRLINE SALES, 2010

An airline based in the EU	CRS		Non-CRS	
	Revenues	Bookings	Revenues	Bookings
Online	7%	10%	13%	20%
Offline	67%	56%	13%	14%
Total	74%	66%	26%	34%

Source: stakeholder data - Confidential

4.34 In this example, some three-quarters of the airline revenues are generated through CRS providers, showing the interdependency of airlines and CRS providers. The share of revenue generated through travel agent sales is likely to be higher, as direct internet sales tend to serve low-yield traffic on average, while most high-yield business traffic is booked via travel agents. This is also confirmed by the CRS providers, for example in a press cutting from Amadeus in 2011 “*on average the yield per net booking is 66% higher in the travel agency channel than it is in the airline website*”⁵.

4.35 In its annual report, Lufthansa indicates direct online sales on its website www.lufthansa.com accounted for only 0.8% of its ticket sales (in volume) in 2002, whereas in 2009 they had increased to 16.7% and by 2010 were expected to reach 20%.

CRS dependency on airline products

4.36 CRS providers’ market shares are comparatively higher on bookings in the air transport sector than they are on other travel products as illustrated in the table below. One explanation is that it is the air transport sector product that attracts travel agents to using a CRS. This explains the importance of the air transport product to CRS providers.

TABLE 4.3 CRS MARKET SHARES IN EUROPE

Year	2006		2007		2008	
	EU15	EU12	EU15	EU12	EU15	EU12
Air bookings	58%	22%	52%	20%	50%	21%
Hotel and car bookings	3%	NA	4%	NA	4%	NA
European Travel market bookings	24%	11%	23%	10%	22%	11%

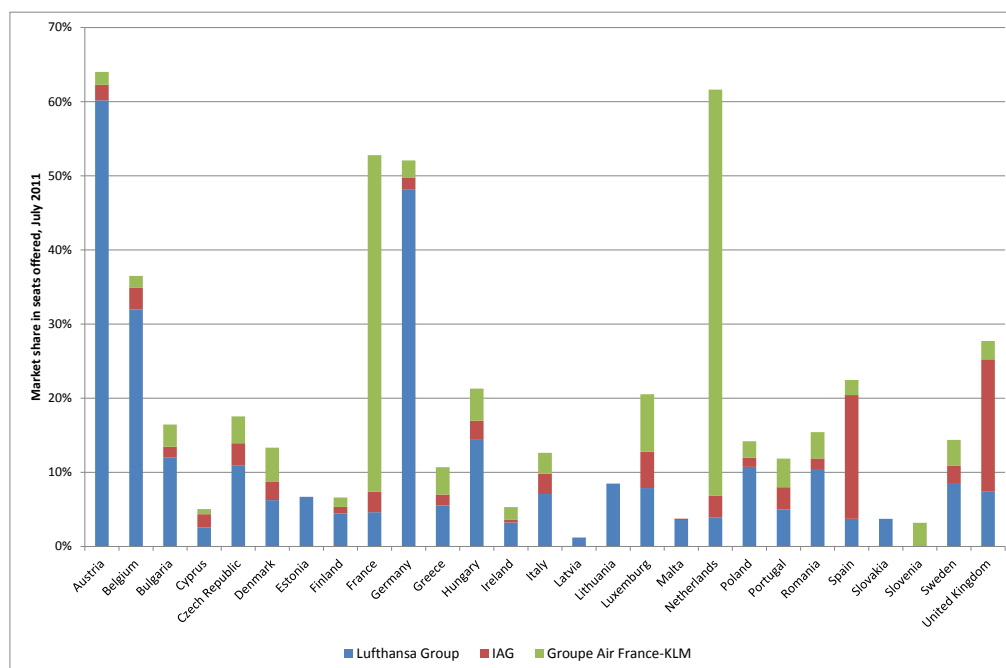
Source: *Technology and Independent distribution in the European Travel Industry, ETTSA, 2011 (EU15: EU Member States prior to 2004; EU12: EU Member States joining since 2004)*

⁵ Source: <http://www.amadeus.com/amadeus/x5088.xml>

Airline market shares

- 4.37 Airlines have generally divested their controlling shares in CRS providers and Amadeus remains the only CRS provider with airline minority financial participation. Amadeus IT Group S.A. is a subsidiary of Amadeus IT Holding S.A. (formerly WAM Acquisition, S.A.), which is traded on the Spanish Stock Exchange as of 29 April 2010 as a result of an IPO.
- 4.38 Currently, three airline groups hold minority stakes in CRS provider Amadeus: Lufthansa, Iberia and Air France. The following figures provide insight into the relative strengths of these carriers in EU markets.

FIGURE 4.7 MARKET SHARE OF MAJOR AIRLINE GROUPS, 2011



Source: OAG, seats offered in July 2011. Lufthansa Group is herein defined as Lufthansa, Swiss, Austrian Airlines, SN Brussels, BMI, BMI Baby and Germanwings.

- 4.39 Overall, Lufthansa alone holds a market share (based on scheduled seats from OAG⁶) of 8.7% in EU27. If all Lufthansa Group airlines are taken into account, too, the market share increases to 14%. While Iberia alone holds an EU-wide market share in supplied seats of 3%, the combined IAG (Iberia merged with British Airways in 2011) group holds 7.2%. Air France alone has an EU-wide market share of 6%. When KLM and Transavia are included, market share increases to 9.1%.

Online travel agents in Europe

- 4.40 The Online Travel Agency (OTA) sector which has been an important driver of the growth of online travel in Europe is consolidating and in 2008, six OTAs (Expedia, Priceline Europe, Travelocity, Opodo, Orbitz Europe and eDreams) accounted for 51% of the market. The penetration of OTAs in Europe has increased over recent years and this sector has experienced strong growth. ETTSA estimates that OTAs account for 11% of all travel sales (air, hotel, cars) in 2011 in Europe, with

⁶ See Glossary in Appendix B

significantly different levels of penetration per country. Some of the largest markets are mature whilst some others particularly in EU15 (Members joining the EU before 2004) are smaller due to lower internet take-up and higher hotel fragmentation.

TABLE 4.4 OTA PENETRATION IN EUROPE (% OF BOOKINGS)

	2007	2011
Europe	6%	11%
France	11%	16%
UK	11%	15%
Scandinavia	8%	15%
Germany	7%	13%
Spain	7%	16%
Italy	4%	8%
EU 12	1%	3%

Source: *Technology and Independent distribution in the European Travel Industry, ET TSA, 2011*

Note: EU 12 - Member States joining since 2004

- 4.41 There is a strong trend towards integration in the OTA market in Europe and across the world: the table below shows the ownership of leisure and corporate OTA by the CRSs.

TABLE 4.5 OTA OWNERSHIP

GDS	Leisure Market	Corporate Market
Sabre	Travelocity, which includes: lastminute World Choice Travel Zuji	GetThere Travelocity Business
Travelport	Travelport holds a majority stake in Orbitz, which includes: CheapTickets ebookers HotelClub RatesToGo	Traversea Orbitz for Business

Source: *PhoCusWright, The Role and Value of the Global Distribution Systems in Travel Distribution, 2009, updated.*

Note that from July 2011, Opodo, eDreams and GoVoyage are merging and Amadeus is no longer the owner of Opodo.

4.42 However, not all online travel agency (OTA) sales are facilitated by a CRS provider: the same report by ETTSA estimates that only 25% of standalone air bookings (i.e. without any other travel product) in the UK are processed by a CRS provider, 30% in France and 15% in Germany in 2008. This is because for simple air journeys, it is possible for an online travel agency OTA to use the CRS to check the airline inventory, but then to book directly with the airline (i.e. not via the CRS provider). For more complex air journeys as well as integrated bookings, the CRS percentage is much higher (but we were unable to obtain detailed figures).

Price differentiation

- 4.43 While for the LCCs, indirect distribution over CRS has grown in importance in recent years, the internet as a direct distribution channel has a growing importance in the distribution of tickets for network carriers, and as explained above some carriers try to incentivise the use of direct distribution channel by offering lower fares compared to tickets distributed over CRS.
- 4.44 Below we present the research carried out on the pricing policy of airlines using different distribution channels. We present insights into the price differences of tickets for the three distribution channels: airline direct sales over the internet, indirect sales via CRS and indirect sales via online travel agents.

TABLE 4.6 PRICE DIFFERENTIATION ANALYSIS

Operating carrier	Route	Booking Date	Travel date	End price internet direct sales (airline website)	End price indirect sales via Amadeus ⁷	End price indirect sales OTA
Aer Lingus	Dublin-Madrid-Dublin	1 st August 2011	20 th August-27 th August	€385.32 (incl. €12 ticket service charge)	€498.34	€508.34 (Expedia)
Air Berlin	Düsseldorf - Palma	29 th July 2011	15 th August 2011	€97.99 (€87.99 air fare + €10 service charge)	€123.11	€125.10 (Expedia)
Air Berlin	Berlin-Tegel-Rome Fiumicino	29 th July 2011	4 th August 2011	€158.99 (€148.99 air fare + €10 service charge)	€149.37*	€151.36 * (Expedia)
Air France	Paris-CDG-Prague	29 th July 2011	4 th August 2011	€461	€460.20	€460.20 (Opodo France)
Alitalia	Rome Fiumicino - Munich - Rome Fiumicino	1 st August 2011	20 th August-27 th August	€366.01 (incl. €5 ticket service charge)	€361.01	€361.01 (Opodo Italy)
AUA	Vienna-Milan Malpensa-Vienna	1 st August 2011	20 th August-27 th August	€186.22 (incl. €15 ticket service charge)	€201.22 for travel agents without preferred fares contract €171.22 for travel agents with preferred fares contract	€172 (Ebookers)

⁷ Without ticket service charge potentially levied by travel agent

Operating carrier	Route	Booking Date	Travel date	End price internet direct sales (airline website)	End price indirect sales via Amadeus ⁷	End price indirect sales OTA
British Airways	Frankfurt-Singapore-Frankfurt	29 th July 2011	5 th August-13 th August	€1035.42	€1035.42	€1050.40 (Opodo Germany, includes €14.98 service charge)
CSA	Prague-Bucharest-Prague	1 st August 2011	20 th August-27 th August	€311.36 (incl. €8 ticket service charge)	€255.23	€260.23 (Opodo Germany, incl. €4.90 ticket service charge)
Finnair	Helsinki-London-Heathrow-Helsinki	1 st August 2011	20 th August-27 th August	€271.02 (incl. €15 ticket service charge)	€256.02	€266.02 (Expedia)
Flybe	Düsseldorf - Birmingham	29 th July 2011	4 th August 2011	€192 if booked at ba.com €228.40 if booked at flybe.com	€192.11 if booked under BA codeshare flight number €239.61 if booked with the operating carrier	€202.09 (if booked on Opodo Germany as BA flight, includes service charge of €9.98), €249.59 (if booked on Opodo Germany as flybe flight, includes service charge of €9.98)
German wings	Cologne-London-Stansted	29 th July 2011	20 th August 2011	€59.99 (w/o snack, drink and baggage) €76.99 (including snack, drink and baggage and seat reservation)	€98.05 (including snack, drink and baggage)	€61.98 (w/o snack, drink and baggage, Expedia) €84.48 (including snack, drink and baggage and seat reservation, €76.99 air fare + €7.49 service charge, Opodo Germany)
German wings	Cologne-Barcelona	29 th July 2011	2 nd August 2011	€254 (w/o snack, drink and baggage) €271 (including snack, drink and baggage and seat reservation)	€327.05	€255.99 (w/o snack, drink and baggage, Expedia) €261.49 (including snack, drink and baggage and seat reservation, €76.99 air fare + €7.49 service charge, Opodo Germany)
Iberia	Madrid-Frankfurt-	1 st August	20 th August-	€215.47	€224.47	€225 (Ebookers)

Final Report

Operating carrier	Route	Booking Date	Travel date	End price internet direct sales (airline website)	End price indirect sales via Amadeus ⁷	End price indirect sales OTA
	Madrid	2011	27 th August			
KLM	Amsterdam-Madrid-Amsterdam	1 st August 2011	20 th August-27 th August	€133.68 (incl. €10 ticket service charge)	€148.68 for travel agents without preferred fares contract	€158.68 (Expedia)
LOT	Warsaw-Stockholm-Warsaw	1 st August 2011	20 th August-27 th August	€646.92 (incl. €15 ticket service charge)	€631.92	€642 (Expedia)
Lufthansa	Cologne-Berlin-Tegel	29 th July 2011	4 th August 2011	€98.72 (includes €5 ticket service charge)	€108.72 for travel agents without preferred fares contract €93.72 for travel agents with preferred fares contract	€95.71 (Opodo Germany, incl. €1.99 service charge)
Lufthansa	Frankfurt-Baku-Frankfurt	29 th July 2011	5 th August-13 th August	€609.86 (includes €10 ticket service charge)	€629.86 for travel agents without preferred fares contract €599.86 for travel agents with preferred fares contract	€601.85 (Opodo Germany, incl. €1.99 service charge)
Malev	Budapest-London Heathrow-Budapest	1 st August 2011	20 th August-27 th August	€314 (incl. €6 ticket service charge)	€308.45	€318.45 (Expedia)
SAS	Copenhagen-Zurich-Copenhagen	1 st August 2011	20 th August-27 th August	€326.90 (incl. €10 ticket service charge)	€233.90	€243.90 (Expedia)
TAP	Lisbon-London-Heathrow-Lisbon	1 st August 2011	20 th August-27 th August	€369.02	€310.02	€322.66 (Ebookers)
Vueling	Barcelona-Amsterdam	29 th July 2011	4 th August 2011	€139.99	€171.28	€159.99 (Opodo Germany, €139.99 air fare + €20 service charge)

Note: By “end price internet direct sales via Amadeus” we mean price that would be paid by a user if he were to use Amadeus to book its ticket (it would therefore be an indirect sale since customers do not use Amadeus themselves).

Source: DLR analysis of information provided by airline websites, Amadeus CRS and online travel agents (Opodo, ebookers and Expedia), July 2011. These numbers are results of research that was carried out online (for “end price internet direct sales” and “end price indirect sales OTA”). We conducted the same fare search on the Amadeus platform as well since Amadeus is the largest CRS in Europe. This was performed by DLR internal travel agency.

4.45 A number of observations can be made from the set of air fares analysed:

- I LCCs have in all cases sold their flights at a higher price via CRS than via their own website:** Only in recent years have a number of LCCs started to sell flights over the CRS, mainly to appeal business travellers. For this group of passengers, tickets are booked by travel management companies, which usually prefer the use of CRS in order to streamline business processes. The LCCs, in turn, pass through the additional administrative and CRS provider costs to the customer, which is possible particularly in the area of business travel, where price sensitivity is relatively low. The price differential found in the set of analysed fares between direct internet sales and CRS distribution varies between €10 and €56 one-way.
- I Network carriers have in most cases the same fares online and via the CRS:** In the set of analysed air fares, most network carriers do not differentiate fares depending on the distribution channel. The reason for this can be found in the full content agreements, which almost all network carriers have signed with their CRS providers. Network carriers therefore provide their full range of fares, including lowest fares both over their own direct sales as well as via the CRS. Some particularities concerning CRS distribution can be found, nevertheless. Lufthansa applies in its core markets Germany, Switzerland and Austria the “*preferred fares scheme*”. Lufthansa agreed to make available the full content to travel agents, but passed through CRS provider fees to travel agents (€4.90 per segment). Travel agents had to sign a preferred fare agreement with the carrier to access preferred fares; otherwise Lufthansa fares are available over CRS only for a €15 one-way/€30 return surcharge.
- I European network carriers have different policies concerning ticket service charges levied for direct ticket sales over their websites:** here we find that British Airways, Air France and Iberia sell their air fares over direct sales channels without any additional service charges. Lufthansa (including Austrian and Swiss) levy a charge of €5 for intra-European flights and €10 for intercontinental flights. This policy leads to flights that can be booked at lower prices indirectly over online travel agents, which levy sometimes a lower or no service charge at all. Opodo Germany, for instance, levies a €1.99 ticket service charge for Lufthansa flights, resulting in €3.01 or €8.01 cheaper flights for the passenger when a flight is booked on the OTA website. In the case where a brick-and-mortar travel agent in Germany, Switzerland or Austria levies the same service charge as Lufthansa, then there is no price advantage for the passenger on direct bookings online.
- I Online travel agents differentiate ticket service charges depending on airline type and geographical markets:** online travel agents differentiate their service charges, not only across countries, but also depending on airline type. The following table summarises the findings for Opodo :

TABLE 4.7 OPODO SERVICE CHARGE

	France	Germany	Italy	Spain	UK
Air France	-	€4.90	-	-	£10
Alitalia	-	€4.90	-	(€11) *	£10
British Airways	-	€4.90	-	(€11) *	£4.50
Iberia	-	€4.90	-	(€11) *	£10
Lufthansa	-	€1.99	-	(€11) *	£10
Flybe	-	€2.47	Carrier not available	(€11) *	£5
Germanwings	-	€7.49	Carrier not available	(€11) *	Carrier not available
Vueling	-	€20.00	-	(€11) *	Carrier not available

Source: DLR analysis of Opodo websites, *) Opodo in Spain offered a special discount of 11 € on selected flights. July 2011

- I Online travel agents sometimes match the LCCs internet prices, but sometimes also sell at the CRS price:** In cases where online travel agents also sell low cost carrier tickets, we found that sometimes the fare offered over the indirect sales channel matches the airlines' direct offer on its own website, but sometimes the relatively higher air fare as offered on Amadeus is shown to the customer. This finding is an indication that some online travel agents can use both direct connects to the carriers' distribution systems, as well as access to fares and inventories over the CRS.
- I Flights booked with the non-operating codeshare partner can be cheaper than tickets booked with the operating carrier:** for a range of flights, we found that passengers have the opportunity to buy a ticket at the operating carrier or, alternatively, through the non-operating code-sharing partner. The analysis show that code-sharing partners often have different prices for the same flight sold either by the operating or by the marketing carrier. Moreover, in the case of the analysed flight from Düsseldorf to Birmingham, operated by Flybe and also sold by British Airways, the non-operating carrier sells the ticket over direct and indirect sales channels about 15% cheaper than the operating carrier.
- I Low cost carriers have different CRS distribution strategies and some even differentiate their product depending on distribution channel:** low cost carriers have different distribution strategies concerning the use of CRS and also their policies concerning ancillary services differ. While some carriers automatically include checked baggage and drinks/snacks when a booking is made over a CRS, others do not or only at special request and with additional fees. We found that sometimes a lack of transparency occurs when low cost carrier tickets are sold over indirect distribution channels, as sometimes no clear indication is given, which services are included with the booking and which are not.

5 Overview of the air distribution industry

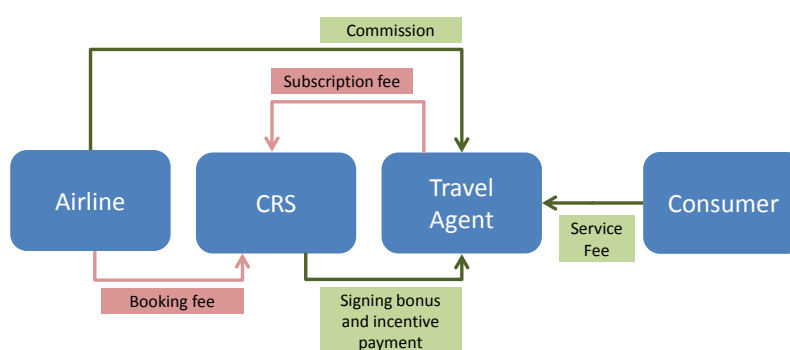
Current business models

- 5.1 The current air ticketing distribution market consists principally of three major groups of stakeholders - airlines, travel agents and distribution technology providers including CRS providers - with complex commercial interactions, rather than a “linear” industry where business relationships are conducted on a one-to-one basis. This chapter examines these relationships.

Relationships of CRS and travel agents

- 5.2 The traditional market structure between the CRS providers and the airlines is presented below:

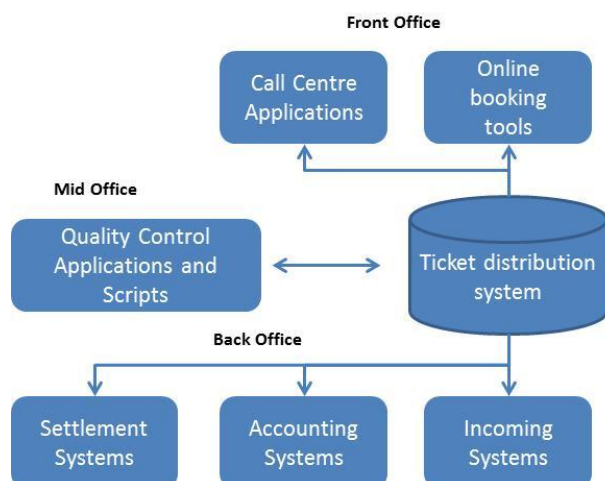
FIGURE 5.1 TRADITIONAL AIRLINE-CRS PROVIDER-TRAVEL AGENT RELATIONSHIP



Source: Impact Assessment, Proposal for a regulation of the European Parliament and of the Council on a Code of Conduct for computerised reservation systems, Commission Staff working document, 2007

- 5.3 The diagram shows that CRS providers operate in what is known as a “two-sided market”, sitting between airlines and travel agents. In such markets there are a variety of models for how the intermediary player is remunerated, which can be from either or both of the other two parties (with the other party’s costs sometimes effectively subsidised). In the case of the airline distribution market, CRS providers are principally remunerated by airlines, but there are also payments between CRS providers and travel agents (in both directions) and sometimes, though increasingly rarely, also directly between airlines and travel agents (sales commissions).
- 5.4 Travel agents use CRSs for a variety of reasons:
- The CRSs provide the travel agent with the technology enabling it to conduct a single search to access hundreds of airlines’ inventories (as well as hotels and other travel products) and display the information in a format that is understandable by the agent and, ultimately, by the customer.
 - When the customer books his or her travel, the airline pays a fee to the CRS provider which in some cases gives a share of this fee to the agent.
 - CRS providers often also provide the equipment and software that the travel agent uses for its front office (the booking of the customer travel requirements) and back office tasks such as accounting systems, airline billing and settlements, customer relations, etc. (see diagram below).

FIGURE 5.2 TRAVEL AGENCY FUNCTIONS



Source: *Case of American Airlines vs. Travelport Limited and Orbitz International LLC, Northern District of Texas, Fort Worth Division, April 2011*

- 5.5 Because of the complexity of these systems as well as the staff training required to run the systems, most travel agents rely on only one CRS provider - according to the American Society of Travel Agents at the end of 2009, 86% of travel agents in the US use only one CRS - and tend only rarely to change CRS provider: the same source quotes that in the USA in seven years only 15% of agents have changed CRS provider. The nature of the travel agent - CRS relationship is an area of dispute in the industry, with airlines suggesting that travel agents are locked into CRS relationships, whereas CRS providers state that there are a significant number of large travel agents which use multiple CRS providers, including 24 out of the largest 25 European agents. The true situation is unclear, with some stakeholders stating that travel agents often have a secondary CRS provider as a backup system rather than as a principal provider.
- 5.6 CRS provider contracts with travel agents generally include commitments to a minimum level of sales through the CRS, which encourage the agents not to divert substantial sales through other channels, although CRS providers consider that there is usually sufficient leeway in these minimum levels so as not to constrain agents' behaviour significantly.
- 5.7 There is a trend for CRS providers to offer some back-office systems used by the agencies, as well as booking tools used by corporate accounts. Third-party developers that are looking at developing competitive products to those of the CRS providers need to deliver solutions which are attractive to the agents and hence interoperable with the CRSs, which means that they need their product interfaces to be approved by the CRS providers, thereby potentially giving CRS providers influence over products sold by third-parties.
- 5.8 Nowadays online booking is key to the travel distribution market, with customers often comparing flight options online on on-line travel agent (OTA) or meta-search engines (MSE) websites before purchasing a ticket on these websites or elsewhere. OTAs have attracted the interest of the CRS providers since their early development and some OTAs are owned by CRS companies, as shown in Table 4.7.

Relationships of travel agents and airlines

- 5.9 There are several aspects to the relationships between airlines and travel agents. Although airlines have reduced or cut the commissions that they pay to travel agents since 2001, airlines are still very interested in finding out what sales the travel agents have made (on their own services and those of the competition). This explains the value of MIDT data to airlines and the concerns that travel agents have about its appropriate use and regulation.
- 5.10 Some airlines are keen to develop direct access to the agents because the agents are the effective distributor of the airline product (for indirect sales). Some airlines are keen to achieve such access through the use of Direct Connects, but in many cases have not been able to persuade travel agents to do so and travel agents in general appear to support the CRS model.
- 5.11 Travel agents considered that there were a number of reasons influencing their choice of CRS provider, including the technology and training provided, but some also noted that the level of incentives from CRS providers was a relevant factor. Airline stakeholders considered that there was no incentive for either CRS providers or travel agents to reduce CRS booking fees due to the impact of CRS provider incentives, to the detriment of airlines, which pay the fees. CRS provider stakeholders pointed to fees which airlines had, they claimed, in some cases imposed on “disfavoured” CRS providers, as indicating that airlines had significant ability to influence travel agents’ choice of CRS provider.

Relationships of CRS and network airlines

- 5.12 By their nature, network airlines rely heavily on business travellers and these passengers account for a disproportionately high share of the network airlines’ revenues. Before the year 2000, it was generally acknowledged that business travellers accounted for around two thirds of airline revenues for short-haul flights in Europe. Even though there have been some changes in how business travel is booked, it remains a market segment that is much more dependent on travel agents than the leisure market. An explanation is that travel agencies are perceived by companies as able to offer more complex travel requirements, or additional services or, crucially, can better enforce travel policies than individual employees. Network carriers therefore need to maintain a strong relationship with the travel agency community. It is worth noting that CRS providers tend to have different competitive shares in different markets: in Europe this is illustrated in the Market Analysis chapter. Across the globe, Amadeus is the leader in most European countries, whilst Sabre is the largest in the USA, and Travelport in the Middle-East and Africa.
- 5.13 In this context airline stakeholder respondents have put forward the view that the airlines have little choice but to participate in every CRS in order to reach all of their potential customers. This claim is strongly disputed by CRS providers: for example, a CRS provider supplied evidence of a network carrier discontinuing its contract with the provider to support the contention that airlines can, in practice, afford not to use all CRS providers, and also pointed to the claim noted in paragraph 5.5 above that all but one of the top 25 European travel agents use multiple CRSs systems as further supporting evidence.
- 5.14 Additionally, CRS providers are also providing an increasing number of IT functions to airlines, such as inventory management, sales and revenue management, which

increases the inter-dependency of the two types of organisation. While clearly mutually beneficial to some extent, since these are commercial agreements freely entered into, there are strong disagreements between the different parties about the impact of such situations on the wider distribution market. An airline stakeholder claimed that when using an IT system provided by a GDS that hosts airline flight information data, an airline is generally tied by contractual provisions preventing it from using its original data to the benefit of other distribution providers (OTAs for example) or by additional fees to be paid by the airline when a subscriber of a competing GDS requests flight information from such airline (through a connection to the IT system). In response a CRS provider stakeholder denied that such provisions are in place.

Full Content Agreements

- 5.15 Full content agreements (FCAs) are commercial contracts between the CRS providers and the network airlines, which, broadly stated, require airlines to give all of their fare content to the CRS Providers across all geographic markets, subject to any exceptions which may be negotiated (whether in terms of fare content or geographical coverage), in return for receiving a discount on booking fees. The implication of such agreements is that airlines cannot reserve certain special (i.e. low) fares exclusively for either their own or other distribution channels, except where such negotiated exceptions apply. Where there is a requirement in such a contract, or in the related participating carrier agreement (PCA), that the CRS provider is offered the same fare content as is offered to other CRS providers, this is known as a “parity” or “most favoured nation” (MFN) clause. It should also be noted that some FCAs also contain clauses which restrict the CRS provider from discriminating between airlines in respect of the commercial terms offered or of the incentives paid to travel agents. FCAs are renegotiated regularly and the terms reflect the commercial positions of the respective parties at the time of such renegotiation.
- 5.16 Note that we have not been able to see any of these contracts, except for a very small number of redacted extracts, due to their confidentiality (and have therefore relied on stakeholders’ views for this discussion).
- 5.17 While freely entered into by both parties, the rationale for agreeing to FCAs and their impact on the market is, stakeholder comments suggest, strongly disputed by CRS providers and travel agents on the one hand and airlines (supported by new technology providers) on the other. CRS providers and travel agents consider that FCAs, by ensuring that all fares are available in CRSs, enable consumers readily to compare all fares in the market, allowing travel agents to provide a direct consumer benefit which would otherwise be lost. Airlines consider that FCAs (and MFN/parity clauses) effectively constrain their ability to negotiate freely with other distribution channels, thereby reducing the incentives for innovation in distribution and preventing lower fares being offered through lower cost distribution channels.
- 5.18 Airlines consider that, due to CRS providers’ strong market presence in certain territories and travel agencies’ tendency only to use a single CRS provider, they have little choice but to work with all CRS providers in order to address the market and are driven to agree to FCAs in order to reduce the cost of the CRS distribution channel, which they consider to be expensive. Most agreements require airlines to provide worldwide content, which implies that an airline is not able exclusively to

distribute its content directly in its home market, where it might prefer to do so given a strong brand presence there. Instead it has to allow distribution by CRS provider in the same way that it does in other markets, where its brand is weaker (and hence where the use of a CRS is more attractive to the airline), although CRS providers noted that airlines often negotiate discounts on booking fees in their home market.

5.19 In contrast, CRS providers point to the declining costs of CRS booking fees as evidence that the discounts offered in FCAs are significant. They consider that airlines have significant negotiating levers in determining the conditions in FCA contracts, allowing them to “carve out” significant exceptions to the general principle of providing “full content”, given certain network airlines’ strong market presence in certain territories and indicate that some airlines have also been trying to get more control of their content. According to the CRS providers and travel agents, airlines’ methods include:

- Levying a surcharge on a subscriber (travel agent) when it uses a particular CRS provider to make bookings on that airline (but not when it uses other CRS providers or other distribution channels);
- Removing, or threatening to remove, the availability of key public fares (usually the lowest fares), by setting the corresponding booking class availability to zero through the CRS in question;
- Providing differentiated content through private fares negotiated directly between a travel agent and an airline;
- Cancelling the distribution agreement (most often seen where an airline has a large home market and little international distribution);
- Discriminating on financial terms other than CRS booking fee surcharge (e.g. reduced commissions, etc.); or
- Withholding ancillary services.

Distribution costs

5.20 Other sources such as air transport and travel journals provide some insight into the steps taken by airlines to reduce their CRS distribution costs. The following Lufthansa case study outlines one such attempt.

Case Study: Lufthansa’s efforts to reduce its distribution costs

In 2008, Lufthansa tried to reduce its GDS distribution costs by half (Pilling⁸, 2010), by offering the lowest fares to travel agents over a direct connect portal. If the same fare was booked via a GDS, travel agents were charged a €4.90 surcharge, which was reported as the segment GDS fee that Lufthansa had to pay Amadeus for each booked segment.

At that time, Amadeus was reported have an 80% market share in Germany and Switzerland, consisting of about 50 million bookings in Germany and 18 million bookings in Switzerland. In response to Lufthansa’s step, Amadeus, in order to retain market share, reimbursed travel agents the €4.90 fee levied by Lufthansa in 2008 and 2009.

⁸ Pilling, 2010: Lufthansa and Amadeus sign distribution peace pact, <http://www.flightglobal.com/articles/2010/01/19/337267/lufthansa-and-amadeus-sign-distribution-peace-pact.html>

Lufthansa's step was considered remarkable, as it is reported to have resulted in "a loss of agency goodwill" and a loss in the value of its own shares held in Amadeus (11.57 % prior to the IPO in 2010, currently 7.61%, valued at approximately €480 million in July 2011).

The situation was resolved in December 2009 when a full content deal from then until 2014 was concluded between Lufthansa and Amadeus. The reduction in GDS fees for Lufthansa has been estimated by the media to be less than 20%, indicating that Lufthansa's initial target of halving their GDS fees was not reached. Based on the data contained in an article by Pilling (2010), we estimate the Amadeus GDS booking fee for Lufthansa to be around €4 per segment⁹.

Development of LCC bookings on CRSs

- 5.21 Low Cost Carriers (LCCs) which have largely been established in the internet era or have successfully managed migrating all their sales on to their own internet websites, generally do not rely heavily on CRS providers to distribute their products. LCCs do not target corporate passengers to the same extent that network carriers do, and are therefore in a stronger bargaining position with the CRS providers. In this case, the negotiating power tends to lie with the LCC.
- 5.22 Traditionally LCCs have distributed their tickets directly via online or call centre sales rather than via CRS providers. In 2006, for example, easyJet had 100% direct sales with 95% through its website and 5% through its call centre (easyJet 2006)¹⁰. In recent years however, some LCCs which do not focus on the leisure market only have decided to increase their use of CRS providers for the distribution of their flights: for instance Amadeus reports that in the first quarter 2011, 5% of its total bookings were flights on LCCs. This grew by 16% compared to the first quarter of 2010, and Amadeus management¹¹ estimated that this could be growing at a rate of 30% per annum for the European market.
- 5.23 In 2009, 56 low cost carriers globally were using Amadeus to distribute their tickets¹² and Travelport stated that, in 2011, it displayed content from 74 LCCs. Each LCC has a different distribution strategy when it comes to CRS distribution. Several carriers, such as Ryanair or Wizz Air completely refuse to sell tickets over CRSs. Other carriers, such as easyJet, Germanwings, Norwegian Air Shuttle and Vueling have made available virtually all their flights to travel agents using CRS providers.
- 5.24 Nevertheless, there are some differences in the policies applied for sales over the direct online distribution channel and ticket sales over the CRSs. The following table summarises some particularities for travel agents and travellers booking LCC flights on Amadeus, in comparison to the direct online sales channel. The

⁹ Source: analysis of <http://www.flightglobal.com/news/articles/lufthansa-and-amadeus-sign-distribution-peace-pact-337267/>

¹⁰ http://www.aerlines.nl/issue_37/37_Van_Soldt_ea_Online_Marketing_Airline_Industry.pdf

¹¹ Rogl Dirk; Jegminat, Georg, 2011: Der schnellste Weg zum Kunden, in: fw 4/11, pp.18-23

¹² Russell, 2009, Amadeus Eyes all airlines, Travel Weekly (UK); 10/2/2009, p. 12

comparison was conducted for major LCCs operating in the EU, providing information on their sales policies on Amadeus.

TABLE 5.1 AIRLINE SALES POLICY DIFFERENCES: CRS AND ONLINE DISTRIBUTION CHANNELS

Airline	Differences compared to airline's own online distribution channel
Blue Air	Bags need to be added manually by the travel agent (€10 bag fee). No drinks/snacks included
easyJet	Travel agencies are granted access to Amadeus inventory
Germanwings	Tickets are issued/validated by Lufthansa and can be combined with Lufthansa fares, but no through baggage handling in case passengers decide to use Germanwings as a feeder flight. Germanwings uses 16 different booking classes on Amadeus, including a flexible ticket (class I). All fares have same rules concerning advance booking etc., but lowest fare classes are not available shortly before departure. Snack, drink and 20kg baggage are automatically included with each booking over Amadeus
Norwegian Air Shuttle	Amadeus E-Ticket and IATA BSP ¹³ only in Denmark, Sweden, Finland, Norway. Amadeus Ticketless available in all markets
SmartWings	E-Ticketing possible with Icelandair or Hahn Air as issuing/validating carrier. No refund, name change or rebooking with Amadeus bookings.
Transavia	One bag is automatically included with Amadeus booking. Fares include a €3 surcharge, no Point of sale surcharge.
Vueling	Amadeus E-Ticket and IATA BSP available in Spain, France, Italy, Netherlands, Belgium, Luxemburg and Portugal.
WindJet	Booking made with Amadeus Ticketless. Best and Flex fares are available on Amadeus. € 7 surcharge per bag, 8 € administration fee and €2 point of sale fee.

Source: DLR analysis of airline information contained in Amadeus CRS (GG AIR, July 2011)

Note: A stakeholder commented that easyJet now sells to all agencies and that easyJet makes all ancillary services available through CRS

- 5.25 Germanwings tickets are issued by Lufthansa and the technical back office solution to connect Germanwings' inventory management system with Lufthansa's ticketing servers is provided by Amadeus.
- 5.26 The importance of CRS sales for low cost carriers varies, and remains difficult to determine. In 2010 easyJet stated that "15% of business seats were already being booked through" GDS channels in 2009, and was further quoted on the premium yield obtained through this distribution mode: "business customers tend to book later, paying around 20% more than the average fare for their easyJet flights." Vueling also announced that in 2008 15% of its sales were coming from Amadeus.

¹³ See Glossary in Appendix B

Recent developments

5.27 In this section we describe technical and customer needs developments that are relevant in this study

Technological developments

5.28 Technological developments have offered new options to consumers, airlines, CRS providers and travel agents, as well as adding a new challenge to the coverage of the Regulation. Alongside online travel agents, “meta-search engines” (MSE) or “connection portals” are now playing a part in the advertising and distribution of airline tickets.

5.29 Online travel agents (OTAs) such as Expedia or Opodo provide flight search and flight booking facilities. Their revenues are generated primarily through booking fees, supplemented through advertising sales. Meta-search engines (MSEs), such as Kayak, Skyscanner, Swoodo provide flight search but not flight bookings: to purchase a ticket, the user must click a link to an airline or OTA website. Meta-search engine revenues are generated via advertising sales and referral fees collected from the airline or online travel agency websites. Google has now also entered this market.

5.30 Meta-search engines have developed very quickly over the last 5 years (Kayak was founded in 2004 by individuals previously involved in the creation of Expedia, Travelocity and Orbitz, Skyscanner in 2001). Meta-search engines provide a relatively easy search option for the consumer that would have been cumbersome with a manual search of individual carriers' websites in the past. They also offer customers a new range of search tools such as travel searches without having to enter specific dates or destinations, or fare monitoring trends in order for customers to estimate the best possible time to book cheap airline tickets.

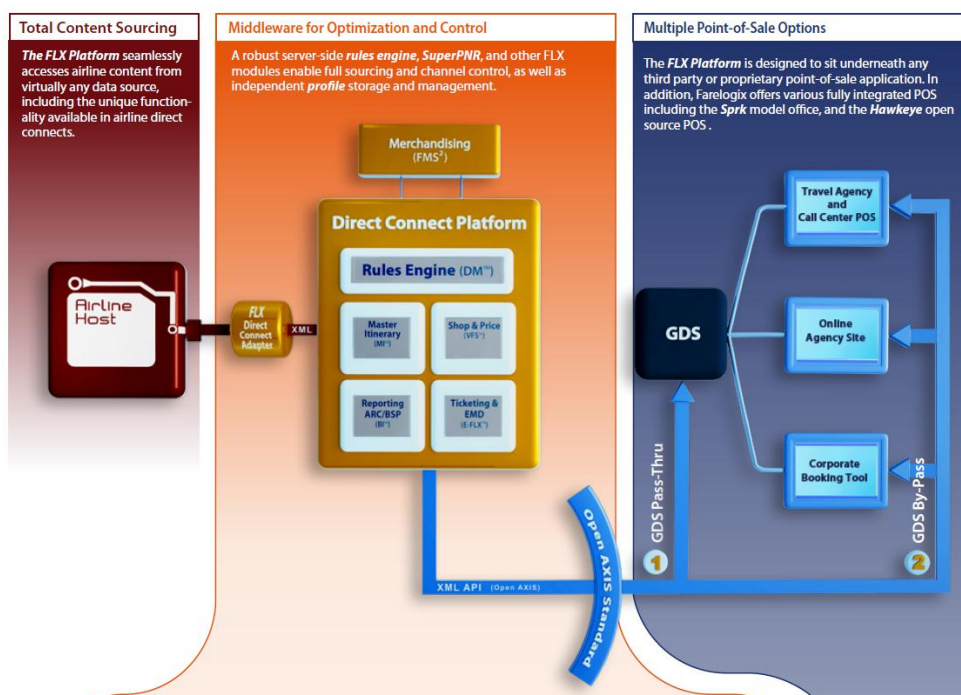
5.31 The internet has brought some benefits across a number of industries, such as much reduced costs of distribution, better functionality and ease of personalisation, and there is no doubt that the internet has changed the way that customers interact with their suppliers. In the past, airline products used to be “a seat + a fare” and was presented to travel agents on a “green screen”, a form of presentation which many travel agents continue to prefer today due to its simplicity and speed, despite more sophisticated user interfaces being available. However airlines argue that e-commerce has changed this and that they want to be able to offer to their customers personalised shopping and booking, integrated access to ancillary services and direct technology where the passenger can receive/exchange information with the airline through a range of new technology tools (mobile phones, etc).

Direct Connect

5.32 A Direct Connect is an alternative for the agents to sell tickets without a CRS, directly linking the travel agent to the airline’s booking system; it is only accessible to travel agents and not to customers. American Airlines and Lufthansa offer Direct Connects which the airlines state offer travel agents similar information to a CRS at much lower cost. These claims are disputed by CRS providers, who consider that the functionality is different and that, while costs may be lower for airlines, additional costs are incurred by travel agents due to the requirement to use different systems.

- 5.33 A Direct Connect is a “technology connection (API¹⁴ or adaptor), using standardized XML¹⁵, creating a real-time two-way communications link between a third party such as a CRS, online travel agency or corporate booking tool, directly into an airline’s Computer Reservation System (CRS) for the purpose of allowing the third party to distribute, sell and manage airline bookings and related products and services” according to Farelogix.
- 5.34 According to the same source, Direct Connects fall into two categories: CRS “pass-thru” and “CRS by-pass”, meaning that Direct Connect do not necessarily have to totally by-pass the CRS.
- CRS pass-thru: this is where the airline and the CRS provider reach an agreement to provide a direct XML link between the airline and the CRS. The CRS providers already do this for a number of LCCs.
 - CRS by-pass: This is where there is a direct link between the airline and the travel agent, without any CRS interaction. It can be provided through the API or other open source software such as Farelogix’s Hawkeye.

FIGURE 5.3 DIRECT CONNECT INTEGRATION



Source: Farelogix, 2011

- 5.35 Some technology companies are able to integrate travel content from multiple sources on one screen in an efficient manner, including data from multiple CRSs or multiple Direct Connects. This capability is also provided by some CRS providers.
- 5.36 This is generally done through access to third-party applications programming interfaces (“API”) that can interact with the CRSs’ front and back office software.

¹⁴ API: Application Programme Interface - third-party application programming interface to allow software components to communicate with each others

¹⁵ XML: eXtensive Markup Language - language commonly used by programmers

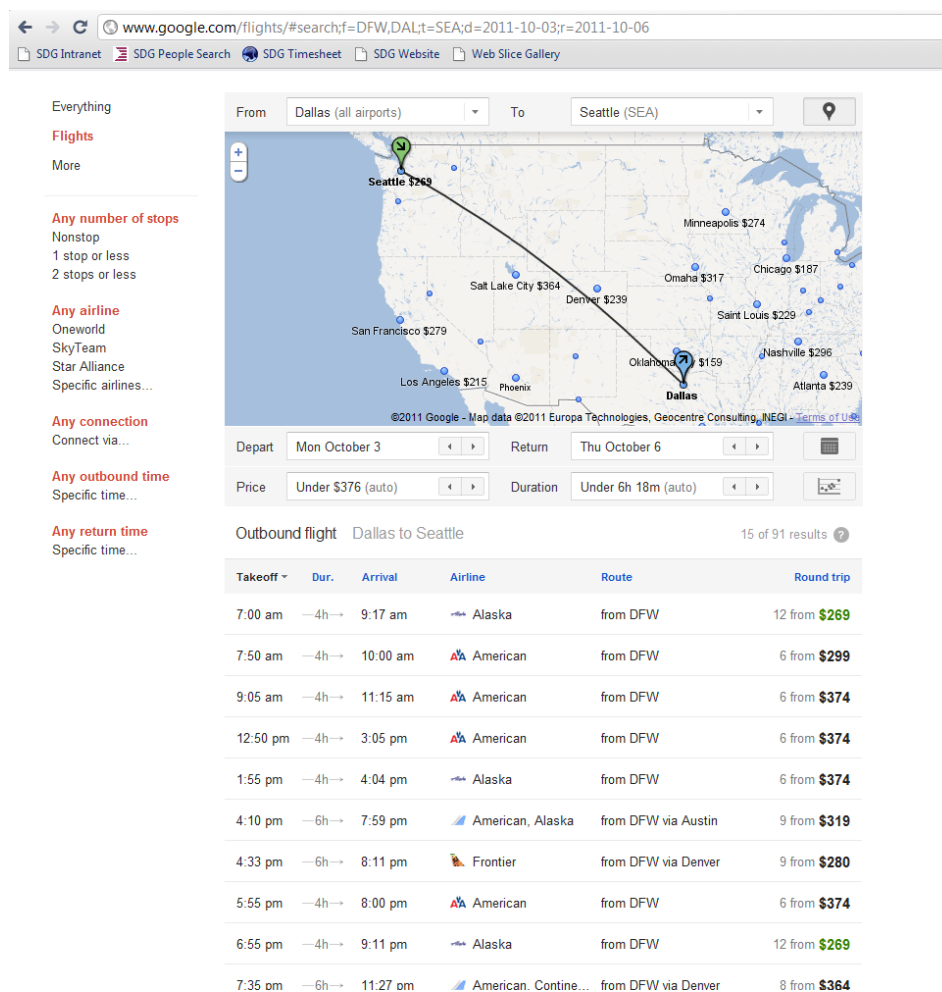
Final Report

Stakeholders had different views about the ease with which other companies can access these APIs. One CRS provider noted that it was “very willing” to license its API (and did so to over 300 organisations). However, another stakeholder claimed that CRS providers restricted access to their APIs for companies whose technology directly competed with that of the CRS provider.

Google Flight Search

- 5.37 In September 2011 Google, and its new acquisition ITA Software, launched Google Flight Search in the USA. The website is available throughout the world but currently has capability to only book roundtrip US domestic flights between a limited number of cities via booking links to airline websites (with the intent that other partners in the travel industry will be able to participate at a later date).
- 5.38 When a flight search is made, Google Flight Search displays a route map with origin and destination marked, along with the prices from the origin to other nearby destinations. Flight results can be filtered by number of stops, price, flight duration, airlines, airline alliances, connections, outbound time, return time, dates, etc. A Google Flight Search screen shot for a sample search (Dallas - Seattle, outbound 3 October 2011, return 6 October 2011) is provided in Figure 5.4.

FIGURE 5.4 GOOGLE FLIGHT SEARCH SCREEN SHOT (DALLAS-SEATTLE)



Source: Google Flight Search, Dallas - Seattle, September 2011

- 5.39 The flight search capability is flexible. The consumer can select an origin only and use the map to see prices to a range of destinations, and can set filters for flight duration and maximum price.
- 5.40 Once a consumer has selected a flight, a ‘Book’ button is displayed that routes the consumer directly to the airline website to purchase the ticket. In some cases, Google may be unable to connect directly with the airline to purchase the ticket. In this case, the customer will have to repeat its search on the airline website, or, particularly in the case of a multi-airline flight, repeat the search with an online travel agent.
- 5.41 Google Flight Search returns options sorted by outbound flight departure time. Lowest possible round trip total costs are shown in the right hand column, with the lowest possible cost (\$269) highlighted in green. When the first row (7:00am, Alaska airline) is selected, a drop down list of return flight options appears, again ordered by departure time and showing total return trip cost in the right hand column. The lowest possible return trip price for the Dallas-Seattle journey (Oct 3 - Oct 6) is \$269. This price is available through a number of different airlines including Alaskan and American.
- 5.42 It is important to notice how the flight search results are displayed: they are not ranked by the criteria that CRS providers are required to use.
 - They are not ranked purely by price, otherwise the 6:55 pm Alaska Airlines flight from DFW would be on the 2nd line and not on the 9th as it currently stands;
 - They are not ranked by elapsed travel time, otherwise the direct American Airlines and Alaska would not be listed after the indirect American, Alaska airlines and Frontier airlines;
 - They are not ranked by flight time, otherwise the 7 am Alaska Airlines flight listed first would be listed after the 7:50 am American Airlines;
- 5.43 More surprising, was the last line of the Google search tool stating “display Continental, US Airways”. When this button is clicked a whole range of travel options appear in the main display, with in some cases cheaper flights or earlier flight times than had been displayed originally.

Any return time Specific time...	6:55 pm	—4h→	9:11 pm	↔ Alaska		14 from \$280
	7:35 pm	—6h→	11:27 pm	↔ American, Contin...	via Denver	1 from \$375
	7:39 pm	—5h→	11:04 pm	↔ Frontier	via Denver	12 from \$271
	7:39 pm	—6h→	11:27 pm	↔ Frontier, Continental	via Denver	1 from \$375
	8:00 pm	—5h→	11:27 pm	↔ United, Continental	via Denver	5 from \$251
	9:55 pm	—4h→	11:59 pm	↔ American		7 from \$472
	Show all results including:				Continental, US Airways	from \$249

Source: Google Flight Search, Dallas - Seattle, September 2011

Final Report

- 5.44 The user has the option to select the display option by clicking on the category headings displayed in blue. Google states that its flight search feature is not influenced by paid relationships and that flight search results are “*chosen primarily based on cost and total travel time, while covering a variety of departure times and airlines*”.¹⁶
- 5.45 A comparative search for the same Dallas-Seattle journey on Kayak.com and Expedia.com reveals slightly different results. On Kayak.com it returns a Continental flight with one stopover in each direction for \$259. Results are arranged by price and with a multitude of different combinations of airports. Those that are shown on the first page of results tend to have very similar price and are operated by Continental or United Airlines. The first non-stop flights are not displayed in the unfiltered results until the 5th page (at 50 results per page). The cheapest non-stop flight available through Kayak.com is \$299 with American Airlines.
- 5.46 For the Expedia.com search, the first option shown in the results is the Expedia Bargain Fare. Clicking through the link reveals the price to be \$243 and a condition of purchase is that the consumer is not informed of exact departure time, flight duration or number of connections until the flight has been purchased. The next flight shown in the results is priced at \$218 return, has one stopover and is operated by Continental. The total fare including taxes (\$259) is displayed in smaller print directly underneath the tax-exclusive fare¹⁷.
- 5.47 The simple results comparison between three of the major OTA/meta-search options available for consumers highlights the range of display options adopted. Expedia’s results are shown exclusive of tax, Kayak’s are displayed in ascending price order and Google’s display is at the first instance by outbound flight time. Whilst results in each of the three examples shown are customisable and can be filtered by the consumer based on personal preferences, the primary display following the search remains different for each.

Other developments

Split ticketing

- 5.48 Meta-search engines have contributed towards increased transparency between alternative fares offered by one alliance or one carrier. Splitting end-on-end tickets into two or more tickets can result in substantial savings for passengers (a technique that some OTAs can also utilise).
- 5.49 As shown in Figure 5.5, the cheapest flight option returned by Kayak on Air France between Copenhagen and Clermont-Ferrand (outbound travel 15th November, return 22nd November, search date 2nd August) was €444 on one ticket with four flight segments (Copenhagen-Paris CDG-Clermont Ferrand-Paris CDG-Copenhagen). The same booking and fare can also be obtained via the Amadeus CRS.

¹⁶ Tnooz, Google launches Flight Search with booking links to airline sites only, 13/09/2011, <http://www.tnooz.com/2011/09/13/news/google-launches-flight-search/>

¹⁷ In Europe this would be in breach of Regulation 1008/2008 but Google Flight Search only operates in the USA for the time being

FIGURE 5.5 KAYAK SEARCH FOR COPENHAGEN-CLERMONT-FERRAND ITINERARY

Source: www.kayak.com, July 2011

- 5.50 In contrast to the results obtained from Kayak and Amadeus, where only end-on-end-fares with combinable fare elements were presented, Dohop also returned fares valid only for specific sections of the itinerary. In this example, the air fare can be reduced from €444 to €267 if separate tickets for the flights CPH-CDG-CPH and CDG-CFE-CDG are purchased. This is illustrated in Figure 3.6.

FIGURE 5.6 DOHOP SEARCH FOR COPENHAGEN-CLERMONT FERRAND ITINERARY

Source: www.dohop.com, July 2011

- 5.51 The reason for the difference in price is that the domestic fare component for the ticket Paris CDG-Clermont Ferrand-Paris CDG (Fare Base RS3APFR) cannot be combined with international fares. If the domestic fare is purchased as a single ticket, the ticket amounts to €163. A roundtrip ticket Copenhagen-Paris CDG-Copenhagen can be booked in the "N" class with fare base NSR3DK for €104. The cheapest available through fare CPH-CDG-CFE-CDG-CPH is priced at €444, as returned by Amadeus, online travel agents, and the meta-search engine Kayak.
- 5.52 The benefits of a lower air fare, however, come with a disadvantage. When two independent tickets are combined no through baggage handling is offered and the transfer is not guaranteed by the airlines.

Final Report

“Build your own” multi-leg flight

- 5.53 Whilst building your own multi-leg flight can result in more flight options and on occasion, lower fares, it also means passengers creating multi-leg itineraries on their own by using the information displayed on these websites would not be protected if the connecting flight is missed due to cancellation or late arrival of the incoming flight. This contrasts with multi-leg flights offered by airlines or travel agencies through CRSs which are “interlined” and therefore offer guaranteed connections to the passenger.
- 5.54 In contrast with network carriers' schedules, low cost carrier transfer connections are purely coincidental, i.e. schedules are not optimised for transfer connections. This results in many commercially relevant connections that are unidirectional, i.e. convenient transfer itineraries are only possible in one direction, but not for both the outbound and return flight.
- 5.55 Uncertainty levels about the reliability of connections remains very high in such crowded air traffic airspace as Europe, and the flight times are not necessarily adequate for the passengers. With network carriers offering a wide range of fares that are perceived by passengers as competitive for guaranteed transfer itineraries, the prevalence of “self-made” transfer itineraries in Europe is still relatively low.

Airport-led guaranteed connection schemes

- 5.56 As seen above, the possible implication for passengers of non-guaranteed connections quoted by search engines can be inadequate. We present below some schemes that are an interesting development for passengers willing to book “guaranteed connections” on low-cost flights
- 5.57 Benefits which could potentially be generated from transfer itineraries for individual airports with a high share of low cost carrier traffic were identified by the airport operators of Berlin and Cologne/Bonn, who set up their own schemes facilitating transfers for both participating airlines and passengers.
- 5.58 Viaberlin.com allows travellers to search for connections between all carriers serving the two Berlin airports. Therefore, it is not only possible to build online or interlining connections with low cost carriers, but also to combine low cost carriers with traditional network airlines. The integration of network carriers into the scheme is particularly beneficial, as Lufthansa, SAS and British Airways have begun offering domestic and intra-European one-way and return tickets at competitive price levels.
- 5.59 The scheme requires a minimum connection time of two hours between arrival in Berlin and the onward journey for a connecting flight that leaves from the same airport as the arrival, and four hours if an airport change between arrival and departure is required. For a given city pair, Viaberlin.com displays all available connections, including price and travel time information.
- 5.60 In August 2007 the airport of Cologne/Bonn launched a transfer scheme named Cologne Bonn Connect. The scheme was, however, discontinued in early 2011. The model in Cologne/Bonn differed from the system offered in Berlin. Within the Cologne Bonn Connect service it was possible to only combine flights of Germanwings and TUIfly, which reduced the overall number of potential

connections considerably, as compared to a scheme where the flights of all carriers at an airport could be combined.

- 5.61 Overall the Connect Cologne Bonn transfer scheme did not fulfil expectations: when TUIfly decided in 2009 to change its business model and exit the low cost carrier market, only Germanwings remained in the scheme, and the airport eventually stopped marketing Connect Cologne Bonn scheme in early 2011. Germanwings however decided to continue to provide online connections, offered both over the internet and also over CRS. Connections in the Germanwings "SmartConnect" scheme are provided via Cologne/Bonn, Berlin-Schönefeld and Stuttgart. Through baggage handling is provided at all hubs, therefore providing a quality level comparable to transfer itineraries offered by network carriers.

6 Key issues relating to the operation of Regulation 80/2009

Neutral display

- 6.1 Regulation 80/2009, Article 5 specifies the rules concerning neutral display of search results by the CRSs in Article 5. The data provided by the participating carriers must be displayed in a neutral and comprehensive manner and without discrimination or bias. The criteria used for ranking shall not be based on the carrier identity and be applied on a non-discriminatory basis to all participating carriers. The display rules must abide by the following:
- Prices shall be inclusive of all the applicable taxes, charges , surcharges and fees which are unavoidable and foreseeable;
 - At the choice of the subscriber (i.e. travel agent) travel options can be ranked either by fares or by non-stop travel options ranked by departure time or by elapsed journey time.
 - In the case of code-share arrangements, each of the air carriers concerned (but no more than two) shall be allowed to have a separate display.
 - Information on the bundled products shall not be featured in the principal display.
 - Additionally, where train services for the same city-pair are offered on the CRS, at least the best ranked train service or air-rail service shall feature on the first screen of the display.
- 6.2 There are also some other specific provisions on air carriers subject to an operating ban in the EU, as well as identification of the operating carrier.
- 6.3 We have tested two CRS providers (Amadeus and Travelport) and have not observed any issues with the neutral display. Most stakeholders, including most but not all airline respondents, have agreed in their views that, in Europe, the Code of Conduct prevents unfair display of one carrier over another. In other parts of the world we understand this may not always be the case: for example, in the US, “biased” displays are allowed, subject to being disclosed to the end-user.
- 6.4 One issue has been raised by a stakeholder on Article 5.3 on the air carriers subject to an operating ban pursuant to Regulation (EC) No 2111/2005. This stakeholder claimed that the airlines banned from operating in the EU were not correctly identified. We asked one of the travel agents to test this and found that this was not the case as illustrated below. Figure 6.1 shows the display of flights operating between Kabul and Dubai, including those operated by Safi Airways (4Q) a banned airline.
- 6.5 What is true however is that there is no specific symbol that shows that the airline is banned from operating.

FIGURE 6.1 OPERATING BAN ILLUSTRATION

```

*****
Window 2                               Friday, October 07, 2011, 4: 5
*****
THU 20OCT11 KABUL /DUBAI 20/0000 20/2359 G*BAL
1 KBL DXB 0800 1040 4Q 203 C9 J3 Y9 B9 B9 K9 N2 H9 Q9 W8 320B E
2 KBL DXB 0840 1105 FZ 302 YA NA VA 73HB E
3 KBL DXB 1705 1930 FZ 304 YA NA VA 73HB E
4 KBL DXB 1820 2100 4Q 201 C9 J6 Y9 B9 B9 K9 N2 H9 Q9 WC 320B E
5 KBL DEL 1425 1725 AI 244 C4 DC JC ZC RC Y9 B9 M9 H3 KC#320C*E
6 DXB 1925 2125 IT 41 JA CA DA IA ZC YA BA WA HA KA#320B E
4Q BANNED FROM OPERATING WITHIN THE EU
>A*
>

```

Source: Query run on Galileo by Travelport, October 2011

- 6.6 However with more bookings taking place outside of the CRS, the issue of neutral display on OTAs and meta-search engines is relevant. Currently Direct Connects and MSEs are not required to follow the rules stated in the Code of Conduct, so while the information which is provided from the CRS providers is covered by Article 5 on neutral display, the other data sources such as direct search (with or without screen scraping¹⁸) on airline websites do not have to follow the rules of the Code.
- 6.7 While on-line travel agents (OTAs), and indeed brick and mortar travel agents, are obliged by the Regulation to display information derived from CRSs in a neutral fashion, this does not apply to information derived from other sources. Meta-search engines (MSEs) are under no obligation to display flight information according to the rules of Regulation 80/2009.
- 6.8 This means that currently in Europe, not all flight information is displayed in a neutral manner. The impact on customers is therefore potentially significant, particularly on leisure consumers who are more likely to use OTAs and MSEs than corporate travellers. The fact that no leisure travel focused consumer organisation contacted chose to take part in the stakeholder consultation may indicate that this is only a minor problem. However it is also possible that consumers are not aware of the potential biases in these displays. In any case, consumers are able freely to switch between different OTAs and MSEs and it could therefore be argued that the forces of competition are likely to prevent any significant disadvantage to consumers from any biases in the displays provided by these distribution channels.
- 6.9 Some stakeholders, particularly travel agents and CRS providers, advocate that these distribution channels should be covered by the regulation: they do provide information to customers like the CRS providers, and even if they are not able to process the bookings they nonetheless influence the buying decision of the customers.
- 6.10 Other stakeholders, including meta-search engines and technology providers disagree about extending the coverage. They argue that the Code of Conduct would need to be applied fairly across all channels (not just online), as channel specific rules would be inherently unfair. This would raise the issue of the non-participation of LCCs in OTAs or meta-search engines. One stakeholder has

¹⁸ Screen scraping is a technique in which a computer programme extracts data from a human-readable output coming from another programme.

therefore suggested that CRS display rules could be made equal only in a Business to Business (B2B) environment (i.e. with CRS and Direct Connects), but not with OTA or MSE.

Unbundling and ancillary services

- 6.11 Unbundling the passenger air transport service has become an important trend in the aviation industry globally. Ancillary services, such as seat reservation, checked baggage or meals were always included within the air fare, but now an increasing number of airlines charge passengers for various add-on services. While most low cost carriers have always relied on unbundling and ancillary revenues, network carriers have now increased their revenues in this area.
- 6.12 The graphic below illustrates the airlines in the world with the largest share of ancillary revenues: most of the airlines are low-cost airlines, such as easyJet or Ryanair. The stakeholders' interviews have informed us that the share of ancillary revenues is much lower for European based network airlines, from "*a very small proportion*" to up to 5%. Nonetheless, the amounts for these network carriers can still be significant such as those collected by United Airlines, the largest airline in the world for ancillaries with an estimated €3.5 billion revenues in 2010 (according to the same source as in the table below).

FIGURE 6.2 AIRLINE SHARES OF ANCILLARY REVENUES

Top 10 Airlines – Ancillary Revenue as a % of Total Revenue			
Annual Results – 2010		Annual Results – 2009	
29.2%	Allegiant	29.2%	Allegiant
22.6%	Spirit	23.9%	Spirit
22.1%	Ryanair	22.2%	Ryanair
21.0%	Jet2.com	19.4%	easyJet
20.5%	Tiger Airways	19.4%	Tiger Airways
19.2%	easyJet	18.1%	Jet2.com
18.7%	AirAsia	14.4%	Aer Lingus
18.1%	AirAsia X	13.3%	Alaska Airlines
15.7%	Flybe	13.2%	Flybe
14.7%	United Continental	13.1%	AirAsia

Currency exchange based upon rates in effect for 2011 and 2010. 2010 carrier results were based upon recent 12-month financial period disclosed which may have ended during 2010 or 2011.

Source: Amadeus/IdeaWorks 2011

- 6.13 Low-cost and, more recently, network airlines in the EU offer a new challenge to CRS providers with product unbundling that customers are in most cases free to choose or not. This trend has several implications for the processing of reservations. In the past, when products such as meals were automatically "bundled" with the basic passenger transport element, there was no need for implementing a function for the provision of additional services in the reservation systems. Various additional services, such as excess baggage, were typically paid in the form of miscellaneous charges orders (MCO), miscellaneous purpose

documents (MPD) and excess baggage tickets (EBT), which were documents issued on the airlines' ticket stock and had to be processed to a large extent manually.

6.14 Elements of the product which are not explicitly part of the basic fare offer of an airline do not fall within the definition of Article 5 and Annex 1 of Regulation 80/2009, requesting CRS providers to include all applicable taxes, charges and fees in the price shown on the principal display. However, the elements that form part of the basic fare offer do of course vary between different airlines - for example, seat allocation and free baggage allowance are parts of the basic offer of most network airlines but are generally treated as unbundled ancillary services by LCCs. There is no reference to ancillary services as "optional price supplements" as described in Article 23 of Regulation 1008/2008.

6.15 The inclusion of ancillary data in CRSs presents two challenges - firstly relating to the capability of the systems themselves and secondly to the availability of the relevant data from the airlines in an appropriate form. Technological and industry standards initiatives in both these areas are both ongoing, although airlines and CRS providers disagree about the level of progress and where the responsibility for any gaps lies. More detail on current capabilities is set out from paragraph 6.20 below.

Should all avoidable fares be displayed by the CRS?

6.16 It is clear that it is in the interest of the travel agents to be able to display, inform and book unbundled services for their customers. However, in the view of the Institute of Travel & Meetings, currently they can only do this with "*enormous difficulty, adding significantly to purchasing and processing costs, and causing major problems for data visibility. The relative simplicity of travel purchasing has been compromised*"¹⁹. CRS providers also strongly support the view that they should be able to display all elements of fares, including those sometimes considered as "*unavoidable*". For example they consider that a baggage fee should be seen as an unavoidable part of the fare on an international flight. The consumer organisation participating in the study advocated for all fare conditions and additional charges (i.e. for ancillary services) to be available on one screen. It considered that the greater pricing freedom in the current Regulation had resulted in significantly more disaggregated prices being displayed in the CRS and hence less transparency.

6.17 In contrast, the airlines generally do not want avoidable charges to be displayed on CRSs. For example, in the case of baggage charges, the airlines consider that it is a passenger's choice and hence avoidable and thus does not need to be included in the fare displayed by the CRS: clearly, the inclusion of a baggage charge would raise the apparent price on the CRS display. Where such discretionary charges are not available through the CRS, but the services are required by the end-customer, travel agents are required to access airlines' own systems, providing an opportunity for the airline to achieve a stronger relationship with the Travel agent or end-customer.

6.18 More generally, some airlines believe that the airline product has broadened so far beyond the original concept of a seat and associated fare that CRS providers can

¹⁹ ITM, *the Collapse Of Simplicity?* June 2011

no longer capture the essence of the full offer to the customer, and that it is therefore important for airlines to build direct relationships with end-customers for the optional elements of the product. On top of the basic product, airlines have added products such as “anytime, anywhere technology” that allows the passenger to receive and respond to new information from the airline, personalised shopping and booking (driven by the development of online shopping with different products being offered to different customers based on the identification of “who’s asking”), and integrated access to ancillary services (which may or may not require a charge depending, for example, on loyalty status). Airline stakeholders expressed a concern that CRS providers do not offer the flexibility required to appropriately differentiate the airlines’ products and that a requirement to sell airlines’ optional services through CRS providers would risk stifling innovation and reducing competition. It is of course in airlines’ interest to use more bespoke distribution technologies to help differentiate their products and to get closer to their customers.

- 6.19 CRS providers, however, dispute that airline technology is superior, noting that in many cases CRS providers supply the technology on which airlines’ own booking systems are hosted and pointing to the level of investment in technology and, in some cases, industry technology awards that have been received. CRS providers have, of course, an interest in retaining some standardisation of the airline products to enable these to be successfully compared through their systems, supporting neutral display.

Are CRS able to display all fares?

- 6.20 In short, the answer to this question seems to be that they can, provided that the airlines give them all the fares and that the CRS provide a sufficient level of functionality. In support of this, one CRS provider indicated that it had agreed deals to display ancillary service information with carriers representing about half of its European bookings. There are a number of issues about the technical solutions which may explain why some stakeholders think that the CRS cannot display all fares, whereas the CRS providers state the opposite
- 6.21 A basic airline product consists of a seat and a fare. Fare information is fed into the CRSs by ATPCO²⁰ and schedule information by OAG. ATPCO-Optional Services (or OS) facility which is, as much as possible, an industry standard has been operational since October 2010. It enables airlines to offer customized and branded ancillary offerings in all channels, including the CRS portals. It allows airlines to communicate (**but not to book**) their service offerings to potential passengers. Passengers are therefore able quickly and efficiently to determine their total travel costs, including any value-added services they wish to purchase. At the time, Amadeus, Datalex, ITA Software, Sabre and Travelport all announced the ability to accept and display ATPCO Optional Services data.
- 6.22 Some airlines already use ATPCO to file published and private fares, and the carriers can now file ancillary services/charges via ATPCO, with the ability to dynamically manage ancillary services. However the CRS providers claim that “a number of airlines have no interest in fully disclosing their ancillary fees via the

²⁰ See Glossary in Appendix B

CRSs because they like being able to create the impression the prices they charge for travel are lower than is indeed the case when one takes into account the related services travellers need or want”.

- 6.23 An even more advanced industry-wide solution for the distribution of ancillary services is under development, and should replace other solutions such as the ones developed by individual CRS providers within the next two and a half years - the so-called "EMD" (Electronic Miscellaneous Document) system. *“EMDs are designed to work like electronic tickets. The documents are stored electronically in the issuing airline’s database. Usage can be tracked just like flight coupons in an electronic ticket. The EMD can be used to collect charges for all types of services. They can also be used to collect amendment fees, excess baggage charges, and to issue refunds²¹”.*
- 6.24 It is seen by many in the industry as the missing link to getting bag fees, lounge access, on-board meals and Wi-Fi out of the airline-only channels and into the CRS and travel agency market. Currently, the first stage of this process has been completed, namely the agreement of the system design and roll-out plan by all industry participants, including ATPCO, CRSs, BSPs, IATA, ARC²² and the airlines. The second stage of this process i.e. implementation, is also well underway, and IATA/ARC have indicated a general industry implementation deadline of the end of 2013. Consequently, any airline wishing to sell ancillary services via an indirect channel such as a travel agency will need to have EMD-capability after the deadline. However one pending issue is the slow take-up rate of EMDs by the airlines and we have been told by some stakeholders that the 2013 deadline seemed likely to slip.

Intermodality

- 6.25 Regulation 80/2009 states (in clause 15 of the Recitals) that *“information on bus services for air-transport products or rail-transport products incorporated alongside air transport products should, in the future, be featured in the principal display of CRSs”*. Furthermore Annex 1 of Regulation 80/2009 states that *“no discrimination on the basis of airports or rail stations serving the same city shall be exercised in constructing and selecting transport products for a given city-pair for inclusion in a principal display”*.
- 6.26 An OAG search made in July 2011 indicates 94 locations in Europe as being connected with rail or bus services that can be booked over airline reservation systems. The 3 letter codes used by CRS for the 3,800 airports in the world would not be sufficient to cover the 50,000 train stations in Europe and we understand that IATA would only be able to release 640 codes. However, all Belgian and German railway stations have a generic location identifier (ZWY for Belgium and QYG for Germany), which can be used to book a combined air and rail trip, which allows passengers to start or terminate their journey at any rail station in one of the two countries.

²¹ According to IATA, Airline guide to EMD implementation, 2010

²² See Glossary in Appendix B

- 6.27 After a review of Amadeus and Galileo system displays, we find that the two requirements as laid out in Article 15 and in Annex 1 are fulfilled by the CRS providers:
- Journeys with a combination of bus/rail and flight segments are listed in the neutral availability display (Amadeus entry code AN, Galileo entry code G*GAL) with the same sorting priority as journeys which incorporate only flight segments.
 - Where a city is served by one or more airports and a railway station, all location identifiers are automatically included in the search and the resulting travel options are listed in a neutral order. For instance, if a search for an itinerary from Cologne to Lyon is entered, both Cologne/Bonn airport (CGN) and Cologne Central Railway station (QKL) as well as Lyon airport (LYS) and Lyon Part Dieu Railway Station (XYD) are automatically considered in the search.
- 6.28 However, this is only one part of the issue and the recent White Paper's (COM (2011) 144 final) objective of creating an "*online information and electronic booking and payment systems integrating all means of transport should facilitate multimodal travel*" is achieved only to a small extent.
- 6.29 As of July 2011, only 20 bus routes and 208 train routes were loaded into the CRSs and could be booked in combination with air tickets in the EU. A true neutral comparison based on travel time, cost or emissions of different transport modes for a particular city pair is not yet possible within the CRSs. It is debatable whether the CRS systems are capable of handling such a vast increase of information to cover other transport modes. CRSs were never intended to provide such information and currently display only a handful of bus and rail connections.
- 6.30 Possible technical limitations of CRS are not the only barriers to the establishment of intermodal products in Europe. There are several reasons for the limited integration of rail and bus services in the CRS, such as:
- Rail transport providers obviously weigh the potential benefits of integration into the CRS against the costs involved. It is not only the segment fees for uploading and listing of services which are a limiting factor, but also the organisational costs of non-airline transport operators to be compliant with airline systems (e.g. billing and settlement plan participation, upload of schedules, inventory management). As analysed in the 2006 case study for the route Cologne-Frankfurt within the project "*Air and Rail - Competition and Complementarity*²³", even for a large transport operator like Deutsche Bahn, these aspects were considered as the most complex ones when it comes to the integration into air ticket distribution systems for the set-up of the AIRail services.
 - Pricing of rail and air services: in the case of the Rail&Fly product, there is a fixed price, independent from the distance travelled on the train. This means that no yield management techniques can be applied, a key element of pricing in all transport industries.

²³ Air and Rail - Competition and Complementarity, Study for the European Commission, Steer Davies Gleave 2006

Final Report

- 6.31 The stakeholder interviews have shown that airline managers are cautious when it comes to an extension of train services to be sold over GDS. While this provides a limiting factor for air and rail intermodality, on the other hand it might give new entrants in the area of travel IT management and meta search engines an opportunity to fill this gap in the market.
- 6.32 Given the technological and organisational limitations, the German example of an integration of rail services in a global fashion with “virtual” railway connections and generic railway station location identifiers is probably the most pragmatic and practical approach. With a generic location identifier, any railway station is accessible with a Rail&Fly ticket (a train ticket optionally available in combination with an air ticket), thereby achieving a country-wide coverage on the ticketing side without the need of uploading each railway service separately into the GDS. The success of the German Rail&Fly service with millions of tickets sold each year is a practical example for the success of this approach.²⁴
- 6.33 Nevertheless, the integration of processes between airlines and railway operators is not easy, even for the advanced and successful case of intermodality in Germany. The example of the German Rail&Fly ticket, which is considered as a commercial success by all stakeholders involved shows some of the limitations in the cooperation on a technical level: Deutsche Bahn requires a bar coded ticket for the identification of travellers and the validation of train tickets shown on-board. But in the GDSs, no barcode can be stored in the PNR²⁵.
- 6.34 It is far more likely that, at least as a first step, door-to-door multimodal travel search will be realised as the combination of systems of different types of travel operators, instead of being based just on airline reservation systems. There exist some examples of start-ups that are specialised in multimodal searches:
- Verkehrsmittelvergleich²⁶ (“transport mode comparison”) is a provider which offers information on prices and journey times of itineraries using railway, coach and air transport connections, as well as information on rental cars, route planners, etc. It acts as a one-stop shop for mobility in Germany. It provides direct links to the transport operators' websites, so that travel itineraries can be booked. The internet site has many features of a multi-modal platform, but a key issue remains that when different modes or transport providers are combined, users are required to enter personal and payment information on each transport providers' internet site separately. It therefore features a common information platform, but the integrated booking and payment system as envisaged by the White Paper is not yet realised.
 - Zoombu in the United Kingdom, is aiming to provide a multimodal travel search engine, was recently taken over by Skyscanner. This underlines the importance (travel) search engine providers see in integrated door-to-door travel searches for the future.

²⁴ The airport operator Fraport reported for 2005 1.6 million passengers using Rail&Fly tickets at FRA alone

²⁵ See Glossary in Appendix B

²⁶ <http://www.verkehrsmittelvergleich.de/>

Personal data

- 6.35 Personal data rules are laid out in Section 4 of the Regulation, in Article 11. The rules state that personal data of the travel agent's customers should be stored safely by the CRS providers, without identification of the natural persons or companies on behalf of whom they are acting when making the data available to third parties.
- 6.36 All the personal data that is collected by Travelport through its CRS searches and transactions are physically stored on servers located in the USA under the international "Safe Harbor privacy" principles. No clarification was received from the other CRS providers as to how and where their data is stored and safely maintained.
- 6.37 The Safe Harbor Agreement imposes seven strong self-regulation principles and went into effect in 2000 after negotiations between the EU and the USA, as regulatory regimes relating to privacy differ. US companies appear to tend to view private data as a valuable commercial asset rather than as an individual asset. Practically, in the United States, this usually means the consumers must "opt out" of customer lists and sales promotions. In Europe, customers generally have to "opt in" to commercial marketing schemes.
- 6.38 The stakeholder consultation did not highlight any specific issues regarding the protection of consumer information. It should also be pointed out that a data protection legislation framework exists in Europe (the EU Data Protection Directive, which is currently under revision) which provides means to protect the personal data. In that respect, the inclusion of references to personal data may have overlaps with current or new proposals on this particular issue.

MIDT

- 6.39 The Code of Conduct covers the Marketing Information Data Tapes (MIDT) in Article 7. The Code states that:
- MIDT data must be offered on a non-discriminatory basis and equal timeliness to all participating carriers; data may cover all participating carriers and/or subscribers;
 - Participating carriers shall not use the data to influence the choice of the subscriber (i.e. travel agents);
 - Where such data results from the use of the distribution facilities of a CRS by a subscriber established in the Community, the data shall not include identification of the subscribers unless the subscriber and system vendor agree on the conditions for the appropriate use of such data; and
 - Agreements between subscribers and system vendor (i.e. CRS) on the MIDT shall be made available to the public.
- 6.40 There are three aspects to the MIDT data issues: the first regarding the grouped sale of MIDT data, the second regarding the issue of subscriber identification and the final one on the conditions of the agreements between the CRS and the subscribers.
- 6.41 Grouped sales are a current market practice where airlines have been purchasing the MIDT data from the CRS as a group rather as individual airlines. This is

because of the cost of the MIDT data, which is very high, in light of its paramount marketing and strategic value. The CRS providers are unhappy with this practice because of a possible “competitive risk”, i.e. that airlines might analyse the data as a group and potentially coordinate their distribution strategy and travel agency strategy. However, such practice would clearly be covered by general anti-competition law, so there is no *prima facie* case to include a prohibition on grouped sales in the Regulation. In contrast, requiring MIDT to be purchased separately by each airline would substantially increase distribution costs.

- 6.42 MIDT data is derived from travel agency bookings data and is very useful for airlines as well as for other industry organisations. It provides a detailed insight into what the agencies have been booking and what air travel products the passengers have been purchasing. Some of the issues that the airlines may be exploring with MIDT data include monitoring the impact of promotions, identifying the best airlines for alliances, defining new routes, identifying most productive travel agents, forecasting traffic, understanding origin and destination flows, etc. MIDT data is available from the CRS providers as well from IATA with a product called IATA PaxIS.
- 6.43 Apart from the issue of the IATA PaxIS product discussed below, there do not seem to be any other notable issues with the MIDT provisions of the Code of Conduct. The current issue that CRS providers and travel agents have with IATA PaxIS has resulted in a joint CRS complaint logged with the European Commission in June 2009. The result of the investigation of the complaint is pending.
- 6.44 On the third point (the conditions in agreements between CRSs and agents) the agents feel that even though Article 7 (3) gives them protection in principle, in practice this is not necessarily the case: agreements have been obtained in some instances by giving travel agents a very short time to respond, or an absence of answer was considered as agreement (however, these points were contested by CRS providers). The possibility to disagree was not always clear for travel agents as well. Moreover it appears unclear how an agent could decide to withdraw its agreement if it no longer wants to be identified in marketing data.

Parent carriers

- 6.45 There is no evidence in the review that we have undertaken that the airlines which still hold shares in the CRS providers are able to maintain a better degree of control over the distribution market than those which do not. The parent carrier rules as stated in Article 10 do not seem to have negatively affected the business of these airlines, but do act as an effective barrier against the practices that a controlling stake in a CRS might facilitate.

7 Developments outside the EU

7.1 We have investigated the regulatory situation for CRS providers in the USA, Canada, Brazil, China and Japan. These countries vary in the extent of their regulation: the USA has been unregulated since 2004, Canada retains some partial regulation but is comparatively freer than the EU, and Japan and China, whilst not specifically regulated, remain difficult markets for western CRS providers to operate in.

The USA

7.2 The deregulation of the US CRS market occurred in 2004; however the US Department of Transport (DOT) has retained its authority to prevent unfair methods of competition in the sale of air transport services.

7.3 In recent years, the US market has been the precursor of significant changes like those witnessed later on in Europe. However, it should be noted that the structure of the US and EU markets is different (for example the airline industry is more concentrated in the US), while the different regulatory frameworks mean that market players operate under different incentives, so that there is no automatic “read-across” to Europe from the US experience, which may be of limited relevance.

7.4 There has been a steep increase in the popularity and use of OTAs and meta-search engines. Airlines, desiring to use alternative distribution mechanisms, have also been at the forefront of developing Direct Connect portals which they have encouraged travel agents to use, sometimes in replacement of and others in parallel to GDS services. Currently 76% of travel agencies still use a CRS, and CRS providers continue to play an important role in the market even if their market share has reduced²⁷. There have been a number of lawsuits, lodged in 2010 and 2011, between airlines and CRS providers, and the US Department of Justice is investigating the operation of the market.

7.5 In November 2010, following unsuccessful contract negotiations, American Airlines (AA) notified Orbitz that it was terminating their relationship and “de-listing” AAs fares from Orbitz’s system, following which Travelport sued AA for breach of contract. In April 2011, American Airlines sued Travelport and Orbitz for anti-competitive and exclusionary acts and practices, alleging Travelport had in effect abused its power in the industry to penalise American Airlines for developing and using Direct Connect technology that travel agents (both online and offline) could use to check and make ticket bookings, bypassing the CRS systems. In June 2011 a court order reinstated American Airlines tickets on Orbitz, where they remain at the time of writing.

²⁷ American Society of Travel Agents (ASTA), 2010 GDS report

Case Study: American Airlines delisting from Orbitz

Since 2002, Orbitz and American Airlines had an agreement where Orbitz booked tickets on American Airlines through a Supplier Link Interface (Direct Connect), rather than a CRS.

Following Travelport's acquisition of a majority (48%) share in Orbitz in 2006, Orbitz began increasing its share of tickets sold through the Travelport GDS rather than the Supplier Link Interface, allegedly contravening its contractual agreement with American Airlines. Following unsuccessful contract renewal negotiations between Orbitz and American Airlines in 2010, it emerged that Orbitz had signed an agreement with Travelport that strongly limited Orbitz's flexibility in using a Direct Connection with American Airlines or other air carriers. Orbitz describes this provision in its 2010 10-K filing²⁸:

"Because our GDS service agreement with Travelport limits our ability to modify our existing agreements with the airlines or to enter into new, direct distribution arrangements, we may have limited flexibility to respond to developments in the airline industry, and we may be forced to forgo new partnering opportunities.... The limitations imposed by the GDS service agreement may place us at a competitive disadvantage and could negatively impact our business and results of operations".

Orbitz's announcement in late 2010 that it would not be implementing a Direct Connect system with American Airlines resulted in American Airlines notifying Orbitz in November 2010 that they were terminating their relationship. American Airlines flights were removed from the Orbitz system.

American Airlines claims that Travelport responded by doubling booking fees charged to American Airlines for bookings made by travel agents outside the US. American Airlines responded by levying a booking source premium for Travelport subscribers, which Travelport added to fares in the form of a tax to customers. This resulted in American Airlines fares appearing more expensive than their competitors to subscribers and passengers on the CRS display.

In June 2011 a court order reinstated American Airlines tickets on Orbitz, where they remain at the time of writing. The lawsuits continue, however, with American Airlines amending its antitrust suit to include Sabre, and in September amending the claim once more to allege that Sabre "organized an unlawful group boycott against American."

It appears that Expedia feared that American Airlines could potentially develop the same proposal as in the case of Orbitz and - in what some commentators called an act of solidarity with Orbitz - temporarily listed American Airlines flights with a lower priority (from December 2010 to April 2011).

- 7.6 In April 2011, a week after American Airlines filed their suit against Travelport and Orbitz, US Airways lodged a similar antitrust lawsuit against Sabre, claiming Sabre

²⁸ Forms 10 K are annual reports required by the US Security and Exchange Commission (SEC)

responded to their demands to cease “*exclusionary restrictions that protect Sabre from competition*” by threatening”... to shut off access to US Airways...”²⁹.

- 7.7 In 2011 the US Justice Department brought a civil action against Google Inc. regarding their proposed US\$700m takeover of ITA, a provider of an independent airfare pricing and shopping system including the QPX system which is used by some of the most popular online travel engines, including Orbitz, Kayak, Bing Travel, etc. The Department of Justice alleged that Google’s takeover of ITA breached US anti-trust laws as the proposed merger gives Google the means and incentive to use its ownership to disadvantage its flight search rivals (following the launch of Google Travel) and thus result in reduced quality, variety and innovation for consumers of comparative flight searches.
- 7.8 The civil action taken by the US Department of Justice against Google was resolved and Google completed its takeover of ITA earlier in 2011. Google modified the conditions of its takeover to include concessions regarding the on-going provision of airfare pricing and shopping systems to Google’s rivals, such as Kayak or Orbitz. The civil actions involving the airlines and CRSs remain on-going at the time of writing.
- 7.9 In May 2011 the US Justice Department began its own investigation into whether airline flight and fare information distributors are stifling competition and violating Federal antitrust laws. They have contacted stakeholders such as American Airlines, Sabre, Delta Airlines, and Travelport.
- 7.10 No EU airline reported any specific issues in the USA that would not be met by US airlines or other airlines.

Canada

- 7.11 Whilst the operation of CRSs in Canada is regulated, the level of regulation is lower than that of the EU. Canadian Computer Reservation Systems (CRS) Regulations SOR/95-275 has requirements in areas such as equal participation, coverage, and display. Key features are summarised below:
- Display: System vendor (i.e. CRS vendor) shall ensure displays are comprehensive, neutral and non-discriminatory. In ordering information on displays, a system vendor shall not use any factor that relates to carrier identity. Fares shall be displayed in a neutral and non-discriminatory manner.
 - Equal participation: A system vendor shall allow any carrier the opportunity to participate in its distribution facilities. The same standards of care and promptness in loading the information of each participating carrier shall be applied.
- 7.12 Regarding carrier participation, the most notable difference between the EU Regulation and Canadian is that there are no rules regarding parent carriers. Both regulations stipulate that system vendors must allow any carrier to participate however there is no requirement for airlines to participate equally in all systems.

²⁹ Tnooz, <http://www.tnooz.com/2011/04/21/news/us-airways-sues-sabre-on-antitrust-grounds/>, accessed September 2011

Final Report

- 7.13 In recent years Canada has seen similar market changes to the US, with the rise of Online Travel Agencies, meta-search engines and a desire on the part of airlines to control their distribution systems. Interestingly, Canada's flag carrier, Air Canada, has reacted quite differently to these market changes than American. In January 2011, Air Canada and Travelport reached a full-content agreement.
- 7.14 In practice Travelport's Apollo GDS accesses Air Canada content through a new Air Canada API. The new API is licensed from Farelogix. Under the new Air Canada-Travelport agreement, Travelport has committed to launching an enhanced version of its Agencia travel agent desktop in Canada in the first half of 2011, and Air Canada will provide agencies with all of its fare families, seats and availability, as well as optional services, including paid seat assignments, pre-paid meals and Maple Leaf Lounge access.
- 7.15 Air Canada stated that *"the GDS becomes more of an integrator of supplier responses and merchandising rather than running the merchandising show"*³⁰, and hopes to strike similar deals with Sabre and Amadeus.

Japan

- 7.16 Whilst the Japanese travel market is one of the largest in the world, only 15-20% is managed by specialised travel companies, with the majority serviced by in-house or general service travel companies. There are two major CRSs in Japan, Infini and Axess, provided by the two largest airlines in Japan, Japan Airlines and All Nippon Airways respectively.
- 7.17 Domestic air and rail services in Japan must be booked through proprietary local supplier computer reservation systems that are Japanese based. To provide full service with full airline content and ticketing capability, a travel agent must therefore use multiple GDSs. Data capture is complex. Adoption of online booking tools in Japan has been slow, mainly due to the high personalised service expectation of customers.
- 7.18 LUTE Technologies indicated that that the duopoly presented by Axess and Infini had resulted in competitive restrictions in the market but the Kieretsu structure (i.e. strong links between the two organisations) has resulted in a compliant, structured market despite the lack of direct regulation.

China

- 7.19 Despite China's commitments to the World Trade Organisation, the Chinese market remains tightly restricted and inaccessible for many international companies. Only travel agencies licensed by the China National Tourism Administration are permitted to distribute air or train tickets.
- 7.20 All airlines in China, except China Spring, sell tickets through TravelSky, the sole CRS provider for the country's aviation industry and the only CRS provider permitted to operate in China. TravelSky is approved by the Civil Aviation Administration of China (CAAC) and licensed by the China Air Transportation Association (CATA). Foreign CRS providers are prevented from entering the

³⁰ Tnooz, <http://www.tnooz.com/2011/01/13/news/american-airlines-furor-air-canada-travelport-declare-world-peace/>, January 13 2011, accessed September 2011

- Chinese market by regulatory and administrative barriers put in place by Chinese authorities. TravelSky has limited data integration capability so TMCs must build local technology systems that do not interface with global platforms.
- 7.21 For the past 15 years, Travelport has partnered with TravelSky and currently supplies it with ticketing technology. The Travelport E-Ticket Interchange system plugs into the TravelSky technology to provide interline e-ticketing as well as handling tools for ground agents³¹.
- 7.22 The Chinese government is gradually eliminating some limitations on the entry of Foreign Travel Companies (FTCs) to the Chinese market. FTCs are now permitted to establish joint-venture companies with Chinese partners or wholly owned foreign companies to operate tourism or hotel booking services without regional limitations. Wholly owned foreign companies are not yet permitted to handle air distribution in China, although there has recently been a test case involving a Hong Kong organisation.
- 7.23 Nevertheless, progress is slow and two CRS stakeholders noted that they have been effectively blocked from entering the market. One CRS stakeholder noted further that the EU transport industry is experiencing adverse effects as a result of the closed Chinese market. It states that TravelSky is linked to Chinese airlines through its ownership structure and allege that TravelSky commonly discriminates against EU airlines as there is no Chinese code of conduct that prevents them from doing so. This stakeholder also noted TravelSky's technical inferiority as compared to its global CRS competitors. The technical lag is noted elsewhere: in 2009 a PhoCusWright report for Amadeus noted:
- “To a large extent, Chinese companies do not take advantage of technology to automate processes and cut costs, but continue to rely on manual systems and paper processes. This is due to a lack of awareness of the tangible benefits that new technologies can bring to their business.”³²*
- 7.24 The CRS stakeholder stated that the Chinese market could significantly improve through market liberalisation, which would place the necessary pressure on TravelSky to quickly adapt and modernize its technology and services in order to compete with foreign competitors.
- 7.25 In March 2009, Amadeus formally applied to the Civil Aviation Administration of China for providing CRS services directly to Chinese travel agents and airlines. No response has been forthcoming so far.³³
- 7.26 A set of foreign CRS regulations have been presented by Civil Aviation Administration of China for public consultation, however these only relate to CRS potentially entering the China market with respect to non-Chinese airlines. There is currently no industry-wide code of conduct in existence to supervise/regulate

³¹ Tnooz, <http://www.tnooz.com/2010/02/04/news/travelport-secures-china-technology-deal-through-travelsky/>, 4 February 2010, accessed 13 October 2011

³² *Corporate Travel Management and Travel Practices in China*, PhoCusWright (for Amadeus IT Group), January 2009

³³ Market Access Database, Europe. http://madb.europa.eu/madb_barriers/barriers_details.htm?barrier_id=095248&version=4, May 2011

Final Report

the market behaviour of TravelSky. A CRS stakeholder noted that whilst TravelSky may freely operate in the EU, they are not in turn permitted to operate in China. The CRS requested that any non-EU CRS whose country did not allow EU CRSs to operate should not be allowed to operate in the EU.

Brazil

- 7.27 Our understanding from stakeholder responses is that there is no regulation relating to the operation of CRSs in Brazil. One stakeholder reported that there was an initial proposal a number of years ago, however it was not implemented.

8 Stakeholder consultation

8.1 This Chapter presents the results of the consultation that was carried out with stakeholders between August and October 2011. Their views were gathered from written responses to questionnaires and verbal answers during face-to-face and telephone interviews.

8.2 In general, the overwhelming majority of stakeholders felt that the Regulation is necessary and they did not support a withdrawal of the Regulation.

Airlines and their representatives

8.3 The views summarised here are significantly more representative of the network airlines as only a limited number of low-cost airlines were willing to take part in the consultation. It has also been difficult to obtain the views of small or start-up airlines, but we were informed by consultees that affording a reasonable CRS distribution was particularly difficult for small operators (due to issues of complexity, implementation costs, access to market and travel agents) and may create a disadvantage compared to established legacy airlines.

8.4 In relation to the relative importance of CRSs for the airline respondents, we note that for the network airlines which responded, the percentage of annual revenue sold through travel agents ranged from 50% upwards. For the LCC respondents, this proportion was much smaller, at around 5%.

8.5 Overall the views of the consulted airlines regarding the current Regulation differed and, whilst some stated that it was “*well-drafted*”, others felt that some changes related to regulatory measures might be necessary concerning data ownership and to prevent abuse of market position by CRS providers, as these carriers considered that the current Code is ill-adapted to the current evolution of the distribution and IT sector.

8.6 Some of the consulted airlines felt that the existing provisions of the Code needed to be enforced more effectively and consistently. They also advocated that only after such enforcement had taken place, would the question of whether additional changes are necessary be more meaningfully evaluated.

8.7 The consulted airlines generally agreed that a regulation of the neutral display is in the interest of the consumers. However one airline thought that self-regulation would be more effective than the present Regulation.

8.8 All network airlines consulted shared the view that they had little choice but to participate in all CRSs, even in their home markets: they do not view participation in one CRS as substitution for participation in another CRS, and thus thought that CRS providers continue to have strong market positions at regional level. They perceive that CRSs are “*essential*” for network and leisure carriers to ensure that the airline products can be distributed at the other end of the route, and with CRS companies concentrated by geography, airlines felt that it gives CRS a strong commercial position enabling them to contract terms that airlines would otherwise not agree to. One airline noted that CRSs are particularly important in countries with a low internet penetration rate.

Final Report

- 8.9 A low cost carrier noted that its business model differed significantly from network carriers, with less dependency on indirect sales, as did its distribution requirements. This LCC had tickets available on two CRS providers only, with plans for a third.
- 8.10 The airlines consulted also stated that their sales channels had diversified over the last 5 years, however they also noticed a saturation level for direct sales, and therefore remained committed to multi-channel strategy. One airline explained that direct sales are directly linked to their brand image and presence in the market and that therefore outside the home market direct sales are not a credible alternative to other forms of distribution. They considered that whilst airline direct sales have increased over the last 5 years, it has not provided the airlines with leverage in their CRS contract negotiations (a claim denied by CRS providers).
- 8.11 The airlines perceived advantages of direct sales included “lower costs”, faster innovation, better product differentiation and data protection. One recurrent criticism of the CRS providers by airlines was that they display airline products on fare (or travel time) only - as required by the regulation - and they felt that CRS providers did not give enough information to the users on their airline products or were able to support product differentiation. The LCC respondent did not have a preference for booking channel as CRS fees are passed onto the consumer; for them, net revenues across all channels were comparable.
- 8.12 The airlines consulted thought that the travel agents did not have a direct incentive to use the CRS provider that charges the highest booking fees to airlines because travel agents are not aware of the booking fees paid by airlines, but that the distribution model is such that agents have an incentive to select the CRS provider that will offer the highest revenue sources to the agencies, leading to high booking fees. Airlines also all shared the view that they are not able to influence the choice of CRS provider by the travel agents and therefore there is no correlation between CRS ownership and airline market share.
- 8.13 On content discrimination, airlines felt that they would like to differentiate the data provided to the CRS providers based on their distribution needs but were usually prevented in doing so by full content provisions and non-discrimination clauses. They also agreed that they have seen their ability to control access to their content being restricted as contracts impose non-discriminatory clauses. They also noted that one of the draw-backs of full content agreements was the risk of slowing the pace of innovation.
- 8.14 The LCC respondents stated that full content agreements were unacceptable and that prices differ between distribution channels in order to cover CRS fees and other administrative costs. The LCCs stated that they do not sign ‘standard’ contracts with CRS providers as CRS participation for them is additional business rather than a core distribution channel. For the LCCs, the impact of greater price freedom under the revised CRS Regulation has meant an increase in traffic volume booked through CRSs.
- 8.15 Most, but not all, airlines appeared satisfied that CRS displays for all CRS providers in Europe are unbiased, but they were quick to point that these measures contained in the Regulation are still very pertinent and should be retained.

- 8.16 A point about the CRS Code of Conduct made by small airlines or airlines which are not in a market dominant position is that the Code does not embrace all aspects of the CRS distribution process: a CRS transaction is made of 3 components which are flight research, fare availability and ticketing. Annex I covers flight display neutrality but does not covers aspects such as fare availability display (expect where the subscriber chooses the principal display to be ranked by fares) or ticket availability display. It is therefore not clear to the airlines or the travel agents what the algorithm or the display rules are for fares and ticketing, and some airlines feel that they are not treated equally by the CRS providers.
- 8.17 The airlines consulted agreed that the development of meta-search engines (MSE) was highly relevant for their business, even though they currently only account for a small share of the network airlines sales or revenues. This share is more significant for LCCs. LCCs also prefer meta-search bookings above all others as the booking is made directly through their website, allowing them to collect passenger data for marketing use. Concerning the risk of display bias views were mixed. Some airlines thought it was minimal because the information provided by meta-search engines originated by CRS providers covered by the Regulation but some held the view that the engines should be considered as a CRS in their own right, even though they do not fulfil bookings and consequently are not liable for the products that are offered. Others thought the risk was high, because each MSE is free to filter or alter display as they choose, including not displaying an airline at all.
- 8.18 Direct Connects were also perceived by the airline stakeholders as an opportunity to lower distribution costs and use updated technology. A limited number of the airline respondents stated that they participated in direct connections, but all felt that Direct Connect was going to be a significant factor in the distribution landscape in the future. Again views on display bias were mixed between network carriers who thought that risk was minimal and leisure carriers who highlighted a high risk of display bias. In any case all airlines agreed that a Direct Connect is not a CRS since it only provides information on the product of one airline.
- 8.19 Network airlines all agreed that ancillary revenues contributed only to a very small proportion of their revenues today. CRS providers were perceived as not yet ready but developing the technological solutions for product unbundling, however airlines felt that they should be free to decide to sell their additional services through CRSs. One airline noted that CRS providers do not have an incentive to provide unbundling and ancillary capabilities, which is partly driven by a desire by travel agents to keep processing costs low. Airlines also believe that the ability to offer customised travel products is a key requirement for them and that due to what airlines perceive as a lack of CRS investment in technology, a “*lowest common denominator*” approach would be taken by CRS providers if airlines were required to sell their ancillary services through this channel.
- 8.20 Concerning travel agents, airlines felt that they did not have a full understanding of the commercial relationship between travel agents and CRS providers so as to ascertain whether the structure of the industry meant that travel agents have an incentive to use the CRS provider that offers the highest booking fee. But they felt that, as a principal, this would not be in the consumer’s interest. One airline disagreed with the view that travel agents have an incentive to use the CRS

provider that offers the highest booking fee, since travel agents only very rarely switch their CRS provider. Airlines also considered that it could be detrimental for airlines if travel agents threatened to change CRS provider as this could result in higher incentive payments to the agent, which would then be passed as a cost to the airlines.

- 8.21 On the issue of airline shareholding in CRS providers, there was an agreement that airlines should remain free to invest in CRS providers but that obligations are still needed, even if airlines no longer exercise a controlling influence. In Europe, airlines felt there was no relationship between airline market share and CRS provider ownership.
- 8.22 On the issue of data protection, IACA commented that the rules were generally applied by the CRS vendors, but that there were some inconsistencies between Article 11 subsection 1 and data protection requirements in Germany. Similarly for MIDT data, IACA felt that the current regulatory regime did not go far enough and that the air carrier should have a say in whether it wants to participate in MIDT. Other airlines did not comment on MIDT.

Travel agents

- 8.23 All travel agents consulted thought that CRSs continue to be the best solution for online and off-line travel bookings, by maintaining a centralised connection to virtually all airlines, while facilitating agents' front and back office operations and promoting the efficiency of business customers' travel policies. However agents noted the pressure from the airlines to move to Direct Connect services, as well as multi-sourcing gaining in importance in the last five years, is putting additional workload on travel agents for the booking processes and back office coordination. One agent noted that in spite of a developing usage of the internet by travel agents for multi-sourcing, this had not been translated into a decline in CRS usage. For the agents, one central point of access for the data is preferable and this is how they hope the market will remain in the future.
- 8.24 The agents consulted shared the view that the Code of Conduct is useful and necessary, with an overwhelming majority indicating that it needed enhancing in the area of MIDT and travel agent identification. Another key issue for the travel agents and TMCs is the risk of display bias on meta-search engines and airline direct connect portals: they state that *"since CRSs are the only distribution channel ensuring neutral and transparent comparison guaranteed by specific legislation, limitations to the use of CRSs are to the detriment of consumers"*. Additionally ECTAA and GEBTA noted a short-coming with the Regulation was that the Code regulates CRS providers' relationship with carriers and CRS providers' relationship with subscribers, but does not address the relationship between carriers and subscribers concerning the use of a CRS. They suggested the following changes:
- i) The neutrality of meta-search engines should be addressed;
 - ii) Airlines full content should be provided to all CRS providers at no additional cost compared to content made available in direct distribution;
 - iii) Ancillary services should be published and available in the CRSs with all necessary information and conditions; and

- iv) discrimination of access in CRSs to fares and booking classes and any other content based on the country where the subscriber (travel agent) is established should be prohibited.
- 8.25 Most travel agents expressed the view that airlines have accentuated the trend of making services and information less (or not) available in CRSs. Examples of such behaviour includes fares which are available exclusively on airlines' websites, or exclusively available for agents established in certain EU Member States, or lack of fully detailed fare notes and ancillary services.
- 8.26 Most travel agents use only one CRS provider. Large travel management companies (TMCs) sometimes have access to another CRS provider for back office purposes or to handle specific customers, but one travel agent estimated that the percentage of travel agents that had changed CRS provider since 2009 was less than 5%. Furthermore, some agents agreed that they have an incentive to use the CRS providers that offer the highest incentive payment, but these respondents noted that this is only one of the elements which determine the agents' choice of a CRS. Other elements include content available in the CRS, technology offered by the CRS and the training required from its staff to use the CRS.
- 8.27 Travel agent stakeholders' views about the future role of travel agents varied: some felt that their role as neutral travel advisor to customers could be jeopardised by travel suppliers distributing directly, in cases where such suppliers do not have the same incentives as per the Code than CRS providers to act as neutral advisors, and could deprive consumers of opportunities to make an informed decision. However others felt that travel agents which had up to now been able to claim neutrality to consumers whilst still receiving incentives from airlines and CRS providers had to change their business model in the future or risk decline in the long-term.
- 8.28 One travel agent felt that low-cost airlines had changed the market by giving more importance to website bookings. One trade association also mentioned that even middle size network airlines had important leverage vis-à-vis travel agents. It quoted the American Airlines example of withdrawing the authority to issue tickets on its behalf from agents in Europe (not its strong home market) that refused to use Direct Connect instead of a CRS.
- 8.29 On the issue of parent carriers, travel agents thought that the Code of Conduct provisions were still needed. Agents thought there was a correlation between CRS ownership and airline market share but this was really a legacy from the days where CRS providers were airline owned. Some travel agents were against airline investment in CRS providers, another thought that it may be advisable that airlines are not allowed to control CRS providers, whilst others thought that the issue had moved on to ownership by IT players such as Google or Apple which could lead to higher costs for airlines, agencies and consumers.
- 8.30 The consulted travel agencies did not appear to have issues with the neutral display as it currently is. However most stated that they wanted to be in a position to have all fare conditions and additional charges (i.e. for ancillary services) available on one screen, and that legal provisions needed to be created to force the CRS providers and carriers to display final prices in the principal display. The agents want to require airlines to publish ancillary services with all

necessary information and conditions in the format used to publish the air fare itself, notably through CRSs, and make ancillary services available through the same channel. Currently they consider that the process is arduous and inefficient due to the need to collect the ancillary revenue through a separate procedure. ECTAA and GEBTA also had a concern about displays showing different fares and available classes depending on the country where the subscriber is established.

- 8.31 Two agents that responded estimated that ancillary services accounted for 15% to 25% of their revenues, but the travel agency representatives did not provide supporting evidence. They all agreed that the possibility to offer ancillary services to customers is limited and that it makes the comparability of services provided by the carriers not transparent.
- 8.32 The agents estimated that the impact of meta-search engines on their business was currently limited, especially for the corporate market. Most of them thought that display bias risk was high, because in the absence of statutory obligations for neutral display, display is governed by commercial agreements or interests. Agents estimated that Direct Connect (excluding LCC direct sales) is today limited in Europe but the situation could rapidly evolve considering the pressure exercised by some airlines. However, agents all agreed that Direct Connect are not expected to offer any guarantee of unbiased display since they are by definition only showing the services of one airline or a limited number of airlines. As to whether Direct Connects should be regulated by the Code of Conduct, the views differed significantly: some thought they ought to, others recognised that this is only addressing one aspect of the market fragmentation, whilst some think that Direct Connect content should be available in CRSs.
- 8.33 As to whether software is used that can integrate CRS, internet and Direct Connect on one screen, the Travel Agents positions differ widely Opodo stated that such software was used in all their searches, whereas at the other end of the spectrum ECTAA and GEBTA thought that this is not widely used, possibly due to the cost of such systems.
- 8.34 Travel agents highlighted that personal data was an important topic of the regulation but did not have an issue with it.
- 8.35 On MIDT, most agents felt that the rules were not effective for a variety of reasons:
- i) Even though Article 7(3) prohibits the identification of agents in marketing data, with an exception if the agent and the system vendor agree on the terms of identification, many agents felt that they were identified in marketing data following an airline's requirements. This would happen when airlines required agents to agree to be identified in marketing data resulting from the use of a CRS, as a condition for continuing to receive financial incentives from the airline. However, if an agent agrees to be identified to satisfy the request of one airline, his identification is provided to all airlines participating in the CRS, following Article 7(1). Travel agents recommended that *"either the Code should allow for agents to agree to be identified in marketing data provided only to a specific airline, or airlines should not be allowed to interfere in the agreement between agents and CRSs on their identification"*.

- ii) Regulation 80/2009 does not qualify the agreement that agents may reach with system vendors to be identified in marketing data. The Code does not require that the agreement must be explicit or specific or limited in time and the travel agents representative claimed that in some cases it was unclear to travel agents how to decline to participate, opt-out or even take time to consider the decision.
 - iii) The complaint filed by ECTAA and GEBTA against IATA for infringement of Article 7(3) in September 2009 is still pending. ECTAA (and GEBTA) agreed that IATA Pax IS and IATA DDS should be covered by the Regulation.
- 8.36 From the travel agents' perspective, there are still many difficulties to overcome in order to effectively distribute intermodal products, such as being able to issue one ticket only, or being able to offer better intra-European rail fares. One agent stated that it was initially difficult to obtain detailed statements of sales from rail companies but this had improved. Another agent said that the display of rail and flights for the same route was still separated in the CRS in Germany: we have asked for clarification.

CRS Providers

- 8.37 All CRS providers consulted agreed that the Code serves a purpose and that the Code should be retained: it is "*appropriate*" and "*promotes competition*". The CRS providers recommend some changes given the changes that have taken place in the distribution industry.
- 8.38 Because the CRS providers are subject to legal requirements to provide a neutral channel of distribution and a means of objective price and availability comparison, this has safeguarded choice and transparency for the consumers. For this reason, CRS providers feel that their importance to consumers and travel agencies has not changed over the last five years.
- 8.39 However CRS providers feel that their role as neutral and unbiased providers of travel information is threatened by the trend by airlines to withhold certain ancillary fee information for unbundled services for which extra fees must be added on the price displayed in CRSs and thus having a negative impact on transparency.
- 8.40 Therefore the CRS providers recommend the following changes:
- The Code needs to address a shortcoming on unbundling and ensure that participating carriers must provide to CRS providers and other similar distribution providers with (a) full access to information and prices on all ancillary services offered and (b) the practical ability to offer all available ancillary services with the basic flight transaction.
- 8.41 All CRS providers disagreed that travel agents have an incentive to use the CRS provider that charges the highest booking fees to the airlines. They felt that the most important incentive for the travel agent is a combination of full content and technology. A system that offers high incentive payments but does not provide the agency with full content and does not enable easy and efficient booking, fulfilment and ticket processing, would be rejected by travel agencies.

Final Report

- 8.42 All the CRS providers strongly consulted disagreed with claims made by airline stakeholders during our consultation exercise that the commercial position of CRS providers effectively compelled airlines to participate in all CRSs and to agree contract terms which they would not normally accept (for example in Full Content Agreements). In contrast, the CRS providers stated that major airlines' strong position in their home countries gave them leverage in negotiations with CRS providers, and that this had allowed them to achieve significant reductions to average fees. More generally, it was claimed by a CRS provider that average costs per segment have reduced at each renegotiation of the FCA with the airline involved. CRS providers also claimed that some airlines' own commercial positions allowed them to use techniques such as applying surcharges to and withholding ancillary services information from travel agents using CRSs disfavoured by the airline.
- 8.43 The question about whether the ability of airlines in Europe to control access to their content has changed the market brought some interesting views. The CRS providers felt that airline consolidation has created some airlines with *"considerable market power compared to smaller carriers and new entrants"*. They also thought that airlines withholding information on unbundled products in the data provided to the CRS provider was a significant issue as discussed below. The various methods used by airlines to control access to their content were quoted as (ranked with the most common at the top) :
- Levying a subscriber surcharge;
 - Content differentiation (removal or no availability of public fares);
 - Direct Connect initiatives;
 - Content differentiation (private fares between a travel agent and an airline);
 - Cancellation of the distribution agreement by the airline;
 - Financial discrimination other than CRS booking fee surcharge (e.g. reduced commissions, etc.);
 - Withholding ancillary services.
- 8.44 On the rule of the Code regarding CRS ownership, the CRS providers did not agree on whether the justification for regulation is still present. Some argued that airline ownership of ticket booking systems, whether CRS or Direct Connect, can create a risk for consumers. Others felt that these rules no longer have any relevance but it is important to ensure a level playing field and prevent a discriminatory bias in favour of the airline Direct Connect where airlines distribute flights from other airlines.
- 8.45 Additionally all CRS providers felt that as long as the parent carrier obligations are maintained in the Code, they have no objection to airline investment in CRS providers.
- 8.46 Neutral display: the CRS neutrality has traditionally enabled travel agencies to offer a wide range of travel options and price comparisons to their customers. In order for this to remain, the CRS providers proposed that Annex I of the Code of Conduct should be amended in order to make clear that carriers participating in a CRS must provide all the unbundling information that may be missing currently (see next paragraph). Some CRS providers also thought that the obligation to display a rail alternative on the first screen was sometimes impractical for the

- customer since the alternative may not be very attractive in travel times and therefore limits the number of more attractive air options that can be displayed on the first page.
- 8.47 On the question of unbundling there is no doubt that the CRS providers agreed that they are all *“fully able to receive, process and display ancillary fee data that the airlines send through the ATPCO-OS facility which has been operational since October 2010”*. They also thought that it is the airlines that curtail the ability of the CRS provider to offer all of the ancillary services as part of the transaction process. CRS providers believe that airlines are required by Regulation 1008/2009 to *“disclose all non-optional elements of the fare at the beginning of the booking process”*, but that some airlines think it is their choice whether to decide which ancillary service fares are disclosed through a CRS. This has a negative impact for the travel agents and the customer, both in time and financially.
- 8.48 As a consequence most of the CRS providers advocated that airlines provide to all distribution channels they choose to use, including but not limited to the CRSs :
- full access to information and prices on all ancillary services offered; and
 - the ability to offer all available ancillary services with the basic flight service transaction (i.e. the ancillary services which are provided with the basic flight service by the airline directly).
- 8.49 The CRS providers felt that the development of meta-search engines was a proof that the distribution landscape is changing, with increasing numbers and forms of competitors entering the same space to compete with the CRSs. They also agreed that MSE used directly by the customers do not ensure any of the protection of the Code, but they also acknowledge that MSE lack the functionality that CRSs offer to consumers in integrating connecting journeys.
- 8.50 On Direct Connects, the CRS providers felt that some airlines in their dominant markets *“have the power to compel travel agents to move to Direct Connect portals if it is the only way the agencies can access the full complement of that airline’s fares even if those portals are vastly inferior to CRS in terms of technology and functionality”*. The CRS providers felt that Direct Connect portals are biased by design, and that they must be subject to the same consumer protection rules to which the GDSs are subject. In this case, the owner carriers should be considered parent carriers as per the Code (on airline alliances Direct Connect portals).
- 8.51 On intermodality, one CRS provider argued that the Code is not in *“keeping with the ambitions of the Commission’s White Paper on Transport”* since it does not facilitate the interoperability between at least air and rail services within the CRS distribution model. Also, it notes that *“in many markets within the EU, rail operators enjoy a monopoly position unlike the airline vendors which presents challenges in pricing for aggregated distribution services”*.
- 8.52 The CRS providers shared the view that rules on group sales would be unnecessary and that they would be best left to be negotiated between commercial parties.
- 8.53 The CRS providers all share the view that IATA paxIS and IATA DDS products do not comply with Article 7 of the Code as per their 2009 complaint.

Final Report

- 8.54 A CRS provider also commented that Article 7(4) should be removed since *“existence and content of an agreement between a CRS and its travel agents is considered commercially confidential in itself, rendering the requirement unworkable in practice”*. Another CRS provider also thought that an existing agreement between a CRS and a subscriber (on Article 7) should not have to be renewed but instead should continue to be upheld in order to avoid *“considerable administrative burden”*.
- 8.55 On the issue of personal data, two CRS providers thought that the EU Data protection Directive provides effective and relevant means to protect personal data. For this reason they feel that Article 11 overlaps with this Directive. Also a CRS provider disagreed with the current Code that only defines the data controller as the CRS and said that carriers and subscribers should also be seen as joint subscribers.
- 8.56 Regarding intermodality, most CRS providers argued that *“the Commission should consider the interrelation, and any interdependencies, between the Code and any regulation/legislation underpinning the TAP TSI (Telematic Application for Passengers - Technical Specification of Interoperability) and the future of intermodal transport in the EU”*. They also mentioned that at the very least, any revision to the Code should contain a recital that states the Commission’s objectives to TAP TSI and other relevant intermodality objectives. One CRS went further by asking for rail or high-speed rail operators to be *“obliged to participate in a CRS-type technology since many of these are monopoly operators”*.

Consumers

- 8.57 The consumer organisation that responded to our consultation felt that the current regulation of the market ‘must’ continue but that aspects of the regulation should be defined more precisely, for example MIDT data, and the definition of consumer. They thought that Greater pricing freedom in the current regulation had resulted in significantly disaggregated prices/fares shown on the CRS, which makes them less transparent.
- 8.58 The consumer organisation remarked that CRSs are extremely relevant to the business consumer market, with approximately 80-95% of business travel bookings made via a managed travel programme going through a CRS provider. Their view was that the CRSproviders allow access to markets which may otherwise be difficult to reach.
- 8.59 The consumer organisation felt that the specific obligations regarding parent carriers are needed *‘without a doubt’*, and indeed should be expanded in order to reduce shareholder influence on CRS operations. Airlines should not be free to invest in CRS providers, although it was felt that any correlation between CRS ownership and airline market share could be a legacy from the days of direct and unfettered CRS ownership rather than any direct influence today.
- 8.60 Regarding principal display, the consumer organisation felt that the regulation should be more precisely defined. The organisation considered that consumers do not consider the initial CRS display to be unbiased, finding it ‘cryptic’, which leads to user error and lack of price transparency. They advocated that all fare conditions and additional charges (i.e. for ancillary services) should be available =on one screen.

- 8.61 The impact of meta-search engines on their business was limited, especially for the corporate market, which requires data and policy elements presently offered only by the CRS providers. The development of Direct Connect portals may lead to improved choice for customers, but may also result in the loss of comparability with other airlines. The risk of display bias in both connection portals and Direct Connect portals was felt to be “*very high*”, and they recommended that they should be treated as CRS providers under the Regulation.
- 8.62 The Consumer organisation believed that the provisions of the Code of Conduct on personal data was not effective or relevant but did not elaborate on the reasons why they held that position.
- 8.63 On MIDT, they felt that the rules were not effective, and that that IATA Pax IS and IATA DDS should be covered by the Regulation.

Technology companies

- 8.64 The “technology companies” are technology services provider companies that have developed products relevant for travel agencies and tour operators. One such company responded to the consultation.
- 8.65 The technology company’s general view of the current regulation is that it does not address the imbalances in the marketplace. In principal it perpetuates a closed market for the CRS providers, which restricts the ability for airlines or the user community to enter open and direct bilateral contracts. The result is a restricted market that penalises smaller airlines, small intermediaries and adds in effect a hidden tax to the user. The technology company’s view is that the regulation should be re-constituted from a perspective of all stakeholders.
- 8.66 The technology company stated that the regulation should allow for open and free competition without “*tying, threshold levels or other forms of restrictive practices that the GDS now inflict individually on the suppliers and users*” which “*shuts out any possible competition while at the same time preventing innovation which could reduce the overall cost to the consumer and both sides of the supply value chain*”. The regulation should be maintained, as self-regulation would not work due to the size and power of the global CRSs in the EU market area.
- “If the GDS cannot provide or chooses not to provide a service then the airline SHOULD BE free to provide the service to the agency either directly or via another channel or service without any punitive action to either the airline or the agency. Such is not the case today due to the anti-competitive nature of the FCA (Full Content Agreements) that exist between the airlines and GDSs”*
- 8.67 The greater pricing freedom allowed by the current regulation has impacted negatively according to the technology respondent, this is due to the flexibility of the global CRS providers to shift resources, cross-subsidise between countries and world regions and price the competition out. The technology respondent noted that despite being a new entrant to the market, the level of restrictive behaviour has “*escalated*” in order to keep new players out.
- 8.68 The technology company respondent has a contract with one CRS provider and hopes to expand it further. It noted that the contract terms and conditions are “*unrealistic and designed to curtail any competitive activities on our part without any corresponding change in their behaviour*”.

Final Report

- 8.69 Meta-search engines connect directly to online travel agents (many of which have CRSs at their back end accessing airline content) and airlines. The Technology organisations felt that airlines would prefer the direct connection to OTAs or CRS providers as it excludes the ‘middle-man’ from the transaction.
- 8.70 The technology company feels the entrance of meta-search engines to the market has impacted it dramatically. It noted the share of CRS business had declined due to the emergence of new business models and advanced products developed by airlines. Furthermore, the technology company commented that the lack of personalisation offered by the CRSs is a key benefit that web based businesses have brought to the market. The company commented that the CRS market has fallen below 50% worldwide and that there is an inevitability to this trend. The respondent noted that meta-search engines provided a “*market levelling service*” and their provision in an open, competitive environment showed that services can be provided at a far lower cost, to the benefit of the consumer.
- 8.71 Regarding travel agents, the company stated that they were not incentivised to use CRS providers with the highest booking fee, but that other methods were employed by CRS providers to keep travel agents from changing CRS providers, such as high threshold level agreements preventing an agency from using another alternative system as a backup or alternatives such as Direct Connect inside one agency.
- 8.72 On neutral display, the regulation’s provisions do not apply to meta-search engines. The decision to include online travel agents or carriers lies with the meta-search engine, although the success of the concept relies on a large range of listed carriers and options. As a result, some carriers that do not explicitly wish to cooperate (e.g. Ryanair) are listed regardless. The majority of carriers/OTAs appearing in results, however, appear via an API provided by the partner. The different sources of fares information sometimes result in different levels of information to the consumer. Fares coming from a CRS display the complete fare base, however this information is not provided directly from airlines.
- 8.73 The technology company responded that they feel there is a neutral display need that is not covered by the Regulation; the need to create neutrality requirements and rules for both human read and machine read displays. This respondent urged strong caution however in extending the neutral display requirement from CRSs to OTA displays. If the regulation were extended it would have to extend to all channels (not just online) and LCC non-participation in CRSs would become an issue. The CRS providers are no longer the provider of all possible options so they cannot have fully neutral displays. Their recommendation is to retain the neutral display requirements in a B2B environment only.
- 8.74 Regarding how fares are displayed, a meta-search engine provider responded that it wanted to avoid search result distortions and therefore imposed a mandatory requirement on all partners that the prices displayed are inclusive of any unavoidable charges and fees. This has reportedly driven a reduction in service charges levied by online travel agencies. OTAs reported to this MSE that undercutting service charges of competitors can result in steep increases in bookings. Occasionally, the fare shown in the meta-search engine is no longer available. This is not a deliberate act but is generated by the caching of results as each price query on a CRS incurs costs for an online travel agent. Meta-search

engines work hard to avoid this occurring as user reaction tends to be strongly against this.

- 8.75 The rules regarding parent carriers are viewed as necessary but largely irrelevant as today it applies to only three airlines. In the view of the technology company, the rules regarding parent carriers should not be expanded to include Direct Connect, otherwise it would have to be extended to any form of technology that displays an airline product to an audience, which is seen as impractical and unnecessary.
- 8.76 Regarding content availability, the technology company recommended that airlines be able to restrict content in any channel as it sees fit but that it must provide equal content to all CRS providers (regardless of the level of content available).

The technology company stated that it feels the sections in the regulation regarding MIDT are largely ignored, particularly item 4 (agreements between subscribers and system vendors shall be made available to the public). It believes that failure to disclose appropriately should have penalties, which would help ensure data is used wisely. Apart from issues with the price of MIDT data (“outrageous”), this respondent felt that all data sources available on the market should have the same regulation applied.

9 Conclusions and recommendations

Framework for assessment

- 9.1 Regulation 80/2009 sets out a code of conduct for CRSs whose objective, as noted in the terms of reference (TOR) of this Study, is to offer consumers an unbiased choice of air fares under fair conditions. In evaluating whether the Regulation is achieving this objective, it is important to consider the structure of the market in which CRS providers operate, a structure which is rapidly evolving and inherently complex.
- 9.2 As illustrated in Chapter 4, the traditional CRS market structure involves airlines paying a booking fee to CRS providers, a portion of which is passed on as incentive payments to travel agents. This structure is still the dominant model in the business travel sector but operates in a context of increasing direct sales by airlines, as well as an increasing use of new technologies. In some sub-markets, particularly the leisure market, travel search engines attempt to substitute for, or bypass, the functionality of CRSs, allowing consumers to purchase directly from travel agents or from airlines, without the CRS playing a part.
- 9.3 A key point is that, for important sub-sectors of the market, all of the participants may have a strong competitive position. For example, in most EU countries a single CRS has a majority share of all CRS bookings (and generally a majority share of airline revenue sales, particularly in the business travel market). Similarly, in many EU countries, certain airlines have a majority share of at least the business travel market in their “home” country, while a small number of travel agents tend to have exclusive accounts to provide travel services for important businesses (such as financial institutions and other large corporations) which are significant users of air travel. A small number of new technology providers provide services to the travel search market.
- 9.4 Given that the Regulation is intended to protect consumers, it is important to consider that consumers’ interests could, theoretically, potentially be undermined, in different circumstances, by any of the participants in the air ticket distribution market. For example:
- CRS providers might charge excessive booking fees, which are ultimately passed on to consumers as higher air fares;
 - Airlines might attempt to benefit from their dominance in particular markets (such as the home market of a traditional network carrier) by pushing sales towards channels where unbiased display rules do not apply, allowing them to charge supra-competitive fares;
 - Travel agents might fail to use the lowest cost distribution mechanisms in response to incentives offered by other market participants, including CRS providers, passing on these higher costs to customers;
 - New technology providers might seek, despite providing services at least partially equivalent to those of CRS providers, to avoid the obligations of the Regulation to offer consumers an unbiased choice.

Final Report

- 9.5 We note that in our study we did not find any evidence that any of these situations have actually occurred.
- 9.6 The evaluation of the Regulation therefore needs to consider the effectiveness of each article, considering its impact on the various market actors. Given these impacts, it should then be possible to consider the criteria set out in the Terms Of Reference, for each relevant article, namely:
- Would self-regulation be a more effective alternative to some regulatory measures and what has been the Regulation's added value? Have some regulatory measures been shown to be redundant, overlapping, ineffective, or inconsistent?
 - Do the relevant stakeholders find that the Regulation addresses the issues it is meant to address, appropriately? Are there shortcomings that still need to be addressed?
 - Is the CRS Code of Conduct still fitting the needs of the changing market circumstances or are changes needed? And if yes, what kind of changes would the stakeholders propose to the current CRS Code of Conduct?
- 9.7 We therefore consider Regulation 80/2009, and each of its articles, in this context. We have also included our recommendations, but would suggest that an impact assessment is carried out where the recommendations might be expensive to implement (such as on Annex I).

Review of Regulation

- 9.8 All the major stakeholders in the aviation ticket distribution industry, including airlines, travels agents and CRS providers, support the existence of some form of Regulation for computerised reservations systems, even if they do not agree about its exact form. In addition, as noted above (paragraph 9.4), each of those stakeholders has the possibility to distort competition in certain circumstances. Furthermore, the nature of the market is that it consists of millions of individual transactions, for each of which it is possible that some distortion of competition is taking place, but not necessarily the same distortion in each case. In these circumstances, although instruments proposed by EU's Competition Law would be able to provide sufficient remedy where major competition issues arise, there does appear to be a strong case for maintaining some form of formal Regulation as a "lex specialis" in order to address specific issues arising over the electronic distribution of airline products.

Article 1- Subject matter and scope

- 9.9 The article states that the Regulation applies specifically to CRSs' air transport products and to rail transport products incorporated alongside air transport products into the principal display of a CRS.
- 9.10 As providers other than the CRSs continue to develop products which provide some, but not necessarily all, of the functionalities of a CRS, it will be important regularly to consider the correct scope of the Regulation and whether its objective is to ensure an unbiased choice to the consumer across all platforms (in which case Meta Search Engines and Direct Connects might be considered for inclusion), or whether the objective is limited to ensuring an undistorted market for air travel distribution in sectors of the market (in particular business travel) where only CRS

providers might be considered to have strong market presence (in which case the scope of the Regulation can be limited to cover only CRSs).

Article 2 - Definitions

- 9.11 Article 2(4) defines a CRS as a system with information on more than one air carrier, with or without facilities to make reservations or issue tickets, to the extent that some or all of these services are made available to subscribers.
- 9.12 Some stakeholders have queried the definition of a CRS and hinted that the airline alliance websites that sell tickets of all the alliance's airlines could be considered as CRSs as per the definition. We do not support this view because these travel products are available to all without a subscription³⁴.
- 9.13 Today, Direct Connects can offer a substitute to only a small fraction of the bookings that can be offered on a CRS, but as technology develops it will be easier to integrate more than one carrier on a Direct Connect platform, and the question of whether Direct Connects, or rather a platform integrating Direct Connects, should be treated as CRSs can be raised. In our view, Direct Connects, in so far as they do not currently serve competing airlines but instead distribute the content provided by one particular airline, should not be considered to be CRSs.

Article 3 - Relationship with transport providers

- 9.14 This article requires CRS providers to treat participating carriers equally, and not to prevent participating carriers from also participating in other CRSs. Under Article 3(1)(a), the Code broadly prohibits unfair and/or unjustified conditions in CRS providers' relationships with air carriers. Under Article 3(1)(b) it prohibits a CRS provider from restricting the use of alternative reservation systems (such as the carrier's own internet booking system).
- 9.15 This study raises the question as to whether the provisions of Article 3(1) need to be clarified. Full-content agreements between airlines and CRS providers, which are widely used in the industry, while allowing airlines to distribute fare content to alternative reservations systems, do in general constrain the conditions on which this distribution takes place (unless a specific exception to the "full content" requirement has been agreed within the contract). We would recommend that Article 3 (1) be clarified through guidelines or, possibly, enforcement action so that there is no debate in its interpretation, particularly in relation to the meaning of "*unfair and/or unjustified conditions*" and on the implications of the requirement in Article 3(1b) that "*a participating carrier may freely use alternative reservation systems such as its own Internet booking system and call centres*".

Article 4 - Distribution facilities

- 9.16 Article 4 ensures fair and equal information and loading and processing procedures for all participating carriers. No issues were found during the study with the content of Article 4.

³⁴ Some website may require to be a member to book but this is different from being a subscriber whereby the disincentive to leave the system is high.

Article 5 - Displays

- 9.17 Article 5 prevents discrimination, bias, and misleading information on CRS. Article 5(1) specifically imposes obligations on GDSs to display the data provided by participating carriers in a *neutral, comprehensive and non-discriminatory* manner. There is no disagreement with this Article but there is a strong debate as to the validity of the rules set out in Annex I to which Article 5.1 must comply.
- 9.18 On Article 5(4) it can be questioned whether it is necessary for GDSs to use a “*symbol*” to identify a carrier on the Commission’s list of carriers banned from operating in the EU, and it might be sufficient for a CRS merely to identify that carrier, in a clear and unambiguous way, in its display.
- 9.19 The question as to whether distribution channels other than the CRSs should be included in the scope of Article 5 is one where there is significant disagreement in the industry. Travel agents and CRS providers strongly advocate it claiming that it is in the interest of the customers. In contrast technology companies strongly deny that MSEs or Direct Connects should be covered by Article 5 since they do not claim by nature to offer a one-stop shop. Airlines generally do not feel that they should be included but some airlines are unsure about these new distribution channels.
- 9.20 The appropriate test for whether a distribution channel should be included in the scope of Article 5 relates to the definition of the a CRS under the Regulation. This defines a CRS as serving multiple airlines (i.e. providing competing airline offers) and being used by subscribers (i.e. generally by travel agents with long or medium term contracts and not end-users making a single ticket purchase). Where emerging distribution channels meet these conditions they should be included, but not otherwise.

Article 6 - Relationships with subscribers

- 9.21 Article 6 prohibits unfair and/or unjustified conditions in CRS relationships with subscribers, and has specific provisions for smaller subscribers.
- 9.22 The CRS providers do not believe it is necessary to differentiate between larger and smaller subscribers, and think that it should be subject to normal contractual negotiations between system vendors and subscribers.
- 9.23 Because of the integration of the CRS products as part of the travel agency middle and back-office, in practice CRS providers can have a strong influence over travel agent behaviour despite the prohibition of unfair contract terms in subscriber agreements. However we have not received any comments from the travel agents on this issue.

Article 7 - Marketing Information Data Tapes (MIDT)

- 9.24 Article 7 sets out the rules regarding the provision of Marketing Information Data Tapes.
- 9.25 Clarification on how the travel agents and CRS provider agreements should be reached seems necessary in light of the current market practices, as discussed earlier in the report in paragraph 8.35ii).

- 9.26 From a travel agency's point of view, rigorous enforcement of Article 7.3 seems to be necessary in order to ensure that the provisions on the protection of the travel agents' identification in marketing tapes are effective.
- 9.27 Article 7 (2) does not seem to serve a purpose currently since it appears that carriers are unable to influence the choice of the subscriber, but we would recommend that this article remains as possible changes to the Regulation may alter the market.
- 9.28 One provision which does not seem to serve any purpose is the obligation to make available to the public any agreement between travel agents and CRS providers on their identification in MIDT (Article 7.4).
- 9.29 Whether IATA is infringing Article 7(3) remains to be decided by the Commission as discussed earlier in the report in paragraph 6.42.
- 9.30 We do not see an objection to group sales of MIDT data which appear to us as a legitimate commercial practice that should be negotiated at a price and with conditions acceptable to both parties.

Article 8 - Equivalent treatment in third countries

- 9.31 Article 8 provides rules on equal treatment in third countries for airlines. The CRS providers have argued that such protection is not currently afforded to GDSs against discrimination in third countries and have suggested that Article 8 should be amended so as to release EU CRS from their current Code of Conduct obligations when it faces discrimination from third country airlines outside the EU. Such an amendment would go against the general objective of the Code of Conduct and therefore we would recommend not including it.

Article 9 - Data provided by participating carriers

- 9.32 Article 9 provides that the data submitted by participating carriers to GDSs must allow the CRS providers to comply with the rules set out in Annex I. Whilst there is no dispute that Article 9 is effective and serves a purpose, there is a debate as to whether the rules set out in Annex I should be modified to incorporate unbundled products.

Article 10 - Specific rules for parent carriers

- 9.33 Article 10 offers some safeguards in order to protect the consumers and the travel agents against possible abuses by airlines that are CRS shareholders. Whilst the airlines generally feel that this Article is redundant owing to their lack of control on the CRS, there is still a strong view among the travel agency community that airlines may have "strong market power". As such, we would recommend that this Article remains unchanged.

Article 11 - Processing, access and storage of personal data

- 9.34 Article 11(5) prohibiting the identification in marketing, booking and sales data of natural persons or organisations and companies on whose behalf they are acting, remains important. It ensures personal data protection as well as the confidentiality of businesses' travel policies.
- 9.35 The issue raised by the CRS providers as to whether it overlaps with the current requirements of the EU Regulation on Data Protection (which is under review) is worthy of further consideration by the Commission.

Article 12 - Auditor and audited report

- 9.36 As suggested by the CRS providers, it is not clear who the “*other party claiming a legitimate interest*” in Article 12(2) refers to, and some clarification may be required.

Article 13 - Infringements

Article 14 - Powers of investigation

Article 15 - Fines

Article 16 - Procedures

Article 17 - Repeal

Article 18 - Review

Article 19 - Entry into force

- 9.37 No issues were found in the above Articles.

Annex I

- 9.38 Annex I (Section 1) requires the display of applicable taxes, charges, surcharges and fees to be paid to the air carrier that “*are unavoidable and foreseeable at the time when shown on the display*”. The prescriptions in Annex I are in line with the provisions of the Regulation 1008/2008 on price transparency.

- 9.39 There is considerable disagreement between industry players as to which elements of the airline offer should be considered part of the basic travel product and which as an ancillary product. Not only do different airlines disagree about what is the basic product, but within the distribution chain, both airlines on one side and CRS providers and travel agents on the other appear to believe, based on stakeholder comments, that the other party is trying to “*game*” the system to its advantage.

- 9.40 Thus airlines appear to believe that CRS providers are not able to display the products of different airlines to provide for a fair comparison (e.g. between an airline which includes baggage in its fares and one that treats it as an add-on), while CRS providers appear to believe that airlines deliberately withhold information on ancillary products either simply to provide a lower price for the “neutral” display or to force travel agents to access airline systems directly.

- 9.41 Different airlines define their different products in different ways - some include seat selection, baggage and meals in the basic product (in which case these elements are not optional or avoidable for the consumer) whereas others exclude seat selection, etc., and convert these services into ancillary unbundled product elements (which of course are avoidable). Therefore, by excluding all unbundled elements, the neutral display conditions in Article 5 and Annex I imply that the prices shown for different airlines will not be truly comparable - some will include a baggage allowance while others will not, for example, so there is a genuine danger that the objectives of the neutral display provisions of the Regulation are being undermined. However, it is very difficult to provide a single objective definition of what is the basic travel product: should it for example, include or exclude baggage, seat selection or meals? Equally, it is unlikely to be practical for CRSs to display all possible combinations of the various elements of the offer

which might be considered as part of the basic travel product either now or in the future.

- 9.42 Given the risk to the effectiveness of the neutral display part of the Regulation, but considering the difficulties involved in such product definitions, it is proposed that the industry, including airlines, travel agents, CRS providers and other interested bodies should be encouraged to develop a mutually acceptable solution.
- 9.43 However, if this was not deemed successful, then it is recommended that a small number of options for the nature of the basic travel product be defined within the Regulation (e.g. with/without baggage and with/without seat reservation) and that CRSs be required to provide a neutral display for each defined option, while airlines would be required to provide the information to support each of these options. This would keep the requirements on each party to a minimum, but nevertheless allow the concept of a neutral display to continue to work to the consumer's advantage as airlines' offers to the market continue to diversify.
- 9.44 In this context it is worth noting that the US Department of Transport is studying the economic impact of requiring airlines to distribute their ancillary fees through CRSs, but the DoT decision is not expected before November 2012. Whilst delaying its decision the DoT wrote in 2011: *"We cannot at this time agree that it is in the public interest to mandate that step, since we lack additional information about costs, benefits and consequences of requiring U.S. and foreign carriers to provide ancillary fee information to GDSs ..."*. *"The Department wants to ensure that any action it takes does not have unintended consequences, particularly given the sensitive nature of the market and the negotiations currently taking place between carriers and GDSs"*.
- 9.45 In the meantime, the DoT has been requiring airlines to list all of their fees for optional services on their websites, airlines and travel agents to disclose on the first fare quote screen that additional fees may apply and point to where it can be found, and airlines and travel agents to disclose bag fee information on e-ticket confirmations.
- 9.46 Clearly it would be appropriate to consider the results of the US study before finalizing the approach to this issue. However it is clear that there is a genuine concern that the current definition in the Regulation of the fare to be displayed in CRSs can lead to distortions in the intended neutral display of fares.
- 9.47 As regards to intermodality there does not seem to be any significant problem with Annex I.

APPENDIX

A

STAKEHOLDER QUESTIONNAIRES

A1 APPENDIX 2

CRSs and representative bodies of CRSs (ETTSA)

Regulation 80/2009

1. To what extent are some regulatory measures of Regulation 80/2009 redundant, overlapping, ineffective or inconsistent?
2. Are there any short-comings in Regulation 80/2009 that should be addressed?
3. Is Regulation 80/2009 still appropriate, and if so are there any necessary changes?
4. Would self-regulation (i.e. CRS full deregulation) in the EU be more effective?
5. What has been the impact for your business of the introduction of greater pricing freedom in Regulation 80/2009?

CRS relationship

6. To what extent do you think CRSs are important to end users (i.e. consumers) and travel agents?
7. How has this changed in the last 5 years?
8. How do you see this changing in the future?
9. N/A
10. Is it true to say that travel agents have an incentive to use the CRS provider that offers the highest booking fee?
11. N/A
12. N/A
13. N/A
14. N/A
15. N/A
16. N/A
17. N/A
18. To what extent do CRS market shares (in terms of booking volume) vary between EU Member States?
19. To what extent do CRS market shares vary between categories of customers (leisure/business travellers, local/foreign travellers, etc)?
20. N/A
21. To what extent do you see the role of the travel agents changing in the future?
22. Could you please clarify how the fare agreement between Amadeus and Sabre works, and how it may affect the market?
23. Has the ability of airlines in Europe to control access to their content changed the market?

Final Report

CRS ownership

24. How has your ownership structure changed since 2005?
25. To what extent do you think the specific obligations imposed on parent carriers are still needed?
26. Should airlines remain free to invest in CRS providers and control them or should there be rules that restrict the possibility for airlines or other sectors to control CRSs?
27. Do you feel there is a correlation between CRS ownership and airline market share in some particular countries or markets?
28. To what extent are transparency requirements needed for CRS providers that are not publicly listed on a stock exchange?

Neutral display

29. N/A
30. N/A
31. Do you have any issues with regard to how fares and services are displayed on CRSs?
32. N/A
33. To what extent are the prescriptions in Annex 1 of Regulation 80/2009 on principal display still pertinent?

Unbundling and ancillary services

34. To what extent do CRSs allow full flexibility for optional extras such as baggage allowance, allocated seating, priority check-in, etc?
35. N/A
36. N/A
37. To what extent do you feel that CRSs should change their capabilities regarding unbundling/ancillary services?

Technological developments

38. What is the impact on your business of the development of “connection portals” or “meta-search engines” such as kayak, dohop, or skyscanner?
39. To what extent do you think there is a risk of display bias in connection portals?
40. From a passenger point of view, what are the implications of using a connection portal rather than a CRS in areas such as non-guaranteed connections for example, or connections between/within low cost carriers?
41. N/A
42. What is the impact for your business of the development of Direct Connect portals?
43. To what extent do you think there is a risk of display bias in Direct Connect portals?
44. Should Direct Connect portals be treated as a CRS under Regulation 80/2009? If so, should the airline owning the Direct Connect portal be treated as a parent carrier?
45. To what extent is software that integrate CRS, internet and Direct Connect information on one screen being used?

MIDT

46. Should provisions on grouped sales of MIDT data be included in the regulation? Why?
47. Do you feel the provisions of the Regulation requiring agreement on conditions for the use of data in MIDT are applied and/or work in practice?
48. Do you have any other concerns regarding the implementation of Article 7 (regarding MIDT) in the Regulation?

Protection of personal data

49. To what extent are the provisions on the processing, access and storage of personal data effective and relevant?
50. N/A

Developments outside the EU

51. To what extent do you feel there is a competitive advantage/disadvantage for the EU airlines vis-à-vis their US counterparts from Regulation 80/2009?
52. What has been the impact of the US deregulation on the competitive situation for the EU airlines in the US?
53. To what extent has the US deregulation affected your business?
54. What is the regulatory situation regarding CRS operation in Canada?
55. What is the regulatory situation regarding CRS operation in China?
56. What is the regulatory situation regarding CRS operation in Japan?
57. What is the regulatory situation regarding CRS operation in Brazil?

Intermodality

58. What is your involvement in end-to-end transport provisions for your customers (rather than the flight component alone) and how do you see this evolving in the future?
59. Has greater pricing freedom with regard to booking fees allowed more rail services to be offered on the CRS displays?
60. Are there any problems encountered with the display of this information on CRSs?
61. Are additional measures needed to promote the sale of rail tickets via CRSs?

Market information

62. Please provide us with a segmentation of your sales by brick and mortar travel agent (off-line) and online, in total and broken down by Member State.
63. How have these figures evolved over the past five years?
64. How do you expect these figures to evolve over the next 5 years?
65. Please provide us with an indicative cost of participation in your CRS, and whether this differs amongst your subscribers.
66. How have these figures evolved over the past five years?
67. Please provide us with the market share of your CRS by ticket volume and revenue disaggregated by seller type (brick and mortar travel agents vs online sales) and then

Final Report

traveller type (leisure vs. business travellers), across the EU27 in total, and for each EU-27 country. Which factors explain the differences by country?

68. Please provide us with the average booking fee per segment since 2007 in real terms.

Airlines and representative bodies of airlines (IATA, AEA, ELFAA, IACA, ERAA)

Regulation 80/2009

1. To what extent are some regulatory measures of Regulation 80/2009 redundant, overlapping, ineffective or inconsistent?
2. Are there any short-comings in Regulation 80/2009 that should be addressed?
3. Is Regulation 80/2009 still appropriate, and if so are there any necessary changes?
4. Would self-regulation (i.e. CRS full deregulation) in the EU be more effective?
5. What has been the impact for your business of the introduction of greater pricing freedom in Regulation 80/2009?

CRS relationship

6. N/A
7. N/A
8. N/A
9. Which (if any) CRS provider do you use and for which markets?
10. Is it true to say that travel agents have an incentive to use the CRS provider that offers the highest booking fee?
11. Do you provide the same data to each CRS and if not what differences are there between the data you provide to each?
12. Which percentage of your annual revenue is sold through travel agents?
13. To what extent are the CRSs relevant to your business today?
14. How has this changed in the last 5 years?
15. What has been the impact of fare liberalisation³⁵ on your involvement with CRSs?
16. How do you see your relationship with the CRSs evolving in the future?
17. To what extent do CRSs offer you access to markets which you would otherwise have been unable to reach? If yes, which markets are these and how large are they?
18. To what extent does the importance of CRS as a sales channel for your business vary between EU Member States?
19. To what extent does the importance of CRS as a sales channel for your business vary between categories of customers (leisure/business travellers, local/foreign travellers, etc)?
20. From a commercial perspective, are there any reasons why you prefer customers to book directly from your web site?
21. N/A

³⁵ Regulation 80/2009 allows air carriers to differentiate the fare content that they provide to CRSs

Final Report

22. N/A

23. Has the ability of airlines in Europe to control access to their content changed the market?

CRS ownership

24. N/A

25. To what extent do you think the specific obligations imposed on parent carriers are still needed?

26. Should airlines remain free to invest in CRS providers and control them or should there be rules that restrict the possibility for airlines or other sectors to control CRSs?

27. Do you feel there is a correlation between CRS ownership and airline market share in some particular countries or markets?

28. To what extent are transparency requirements needed for CRS providers that are not publicly listed on a stock exchange?

Neutral display

29. Do you consider the initial CRS display to be unbiased (please specify which CRS provider(s) you are referring to)?

30. Is that the case for all CRS providers you use?

31. Do you have any issues with regard to how your fares and services are displayed on CRSs?

32. To what extent do you think the CRS providers implement provisions of Annex 1 (on principal display) adequately?

33. To what extent are the prescriptions in Annex 1 of Regulation 80/2009 on principal display still pertinent?

Unbundling and ancillary services

34. To what extent do CRSs allow full flexibility for optional extras such as baggage allowance, allocated seating, priority check-in, etc?

35. What proportion of your revenue is generated through unbundling/ancillary revenues?

36. N/A

37. To what extent do you feel that CRSs should change their capabilities regarding unbundling/ancillary services?

Technological developments

38. What is the impact on your business of the development of “connection portals” such as kayak, dohop, or skyscanner?

39. To what extent do you think there is a risk of display bias in connection portals?

40. From a passenger point of view, what are the implications of using a connection portal rather than a CRS in areas such as non-guaranteed connections for example, or connections between/within Low Cost Carriers?

41. Do you participate or plan to participate to any Direct Connect portals between airlines and travel agents, bypassing the CRSs in Europe?

42. What is the impact for your business of the development of Direct Connect portals?
43. To what extent do you think there is a risk of display bias in Direct Connect portals?
44. Should Direct Connect portals be treated as a CRS under Regulation 80/2009? If so, should the airline owning the Direct Connect portal be treated as a parent carrier?
45. To what extent are software that integrate CRS, internet and Direct Connect information on one screen being used?

MIDT

46. Should provisions on grouped sales of MIDT data be included in a regulation? Why/why not?
47. Do you feel the provisions of the Regulation requiring agreement on conditions for the use of data in MIDT are applied and/or work in practice?
48. Do you have any other concerns regarding the implementation of Article 7 (regarding MIDT) in the Regulation?

Protection of personal data

49. To what extent are the provisions on the processing, access and storage of personal data effective and relevant?
50. N/A

Developments outside the EU

51. To what extent do you feel there is a competitive advantage/disadvantage for the EU airlines vis-à-vis their US counterparts from Regulation 80/2009?
52. What has been the impact of the US deregulation on the competitive situation for your airline in the US?
53. To what extent has the US deregulation altered the way you use distribution channels?
54. What is the regulatory situation regarding CRS operation in Canada?
55. What is the regulatory situation regarding CRS operation in China?
56. What is the regulatory situation regarding CRS operation in Japan?
57. What is the regulatory situation regarding CRS operation in Brazil?

Intermodality

58. What is your involvement in end-to-end transport provisions for your customers (rather than the flight component alone) and how do you see this evolving in the future?
59. Has greater pricing freedom with regard to booking fees allowed more rail services to be offered on the CRS displays?
60. Are there any problems encountered with the display of this information on CRSs?
61. Are additional measures needed to promote the sale of rail tickets via CRSs?

Market information

62. Please provide us with a segmentation of your sales by sales channel: internet, call center, city office, direct connect, CRS, etc by ticket volume and revenue. **Please disaggregate the data into the following groups:** bookings made online using a CRS;

Final Report

Bookings made offline using a CRS; Bookings made online using non-CRS systems;
Bookings made offline using non-CRS systems.

63. How have these figures evolved over the past five years?
64. How do you expect these figures to evolve over the next 5 years?
65. Please provide us with an indicative cost per ticket sale for each of the distribution channels that you have listed.
66. How have these figures evolved over the past five years?
67. Please provide us with the average booking fee per segment since 2007 in real terms.
68. For those sales through CRSs, please can you split your sales by CRS provider (i.e 30% Amadeus, 30% Travelport, 40% Sabre)?

Eurostar

Regulation 80/2009

1. To what extent are some regulatory measures of Regulation 80/2009 redundant, overlapping, ineffective or inconsistent?
2. Are there any short-comings in Regulation 80/2009 that should be addressed?
3. Is Regulation 80/2009 still appropriate, and if so are there any necessary changes?
4. Would self-regulation (i.e. CRS full deregulation) in the EU be more effective?
5. What has been the impact for your business of the introduction of greater pricing freedom in Regulation 80/2009?

CRS relationship

6. N/A
7. N/A
8. N/A
9. Which (if any) CRS provider do you use and for which markets?
10. Is it true to say that travel agents have an incentive to use the CRS provider that offers the highest booking fee?
11. Do you provide the same data to each CRS and if not what differences are there between the data you provide to each?
12. Which percentage of your annual revenue is sold through travel agents?
13. To what extent are the CRSs relevant to your business today?
14. How has this changed in the last 5 years?
15. N/A
16. How do you see your relationship with the CRSs evolving in the future?
17. To what extent do CRSs offer you access to markets which you would otherwise have been unable to reach? If yes, which markets are these and how large are they?
18. To what extent does the importance of CRS as a sales channel for your business vary between EU Member States?
19. To what extent does the importance of CRS as a sales channel for your business vary between categories of customers (leisure/business travellers, local/foreign travellers, etc)?
20. From a commercial perspective, are there any reasons why you prefer customers to book directly from your web site?
21. N/A
22. N/A
23. Has the ability of airlines in Europe to control access to their content changed the market?

Final Report

CRS ownership

24. N/A
25. To what extent do you think the specific obligations imposed on parent carriers are still needed?
26. Should airlines remain free to invest in CRS providers and control them or should there be rules that restrict the possibility for airlines or other sectors to control CRSs?
27. Do you feel there is a correlation between CRS ownership and airline market share in some particular countries or markets?
28. To what extent are transparency requirements needed for CRS providers that are not publicly listed on a stock exchange?

Neutral display

29. Do you consider the initial CRS display to be unbiased (please specify which CRS provider(s) you are referring to)?
30. Is that the case for all CRS providers you use?
31. Do you have any issues with regard to how your fares and services are displayed on CRSs?
32. To what extent do you think the CRS providers implement provisions of Annex 1 (on principal display) adequately?
33. To what extent are the prescriptions in Annex 1 of Regulation 80/2009 on principal display still pertinent?

Unbundling and ancillary services

34. To what extent do CRSs allow full flexibility for optional extras such as baggage allowance, allocated seating, priority check-in, etc?
35. What proportion of your revenue is generated through unbundling/ancillary revenues?
36. N/A
37. To what extent do you feel that CRSs should change their capabilities regarding unbundling/ancillary services?

Technological developments

38. What is the impact on your business of the development of “connection portals” such as kayak, dohop, or skyscanner?
39. To what extent do you think there is a risk of display bias in connection portals?
40. From a passenger point of view, what are the implications of using a connection portal rather than a CRS in areas such as non-guaranteed connections for example, or connections between/within Low Cost Carriers?
41. Do you participate or plan to participate to any Direct Connect portals between airlines or Eurostar and travel agents, bypassing the CRSs in Europe?
42. What is the impact for your business of the development of Direct Connect portals?
43. To what extent do you think there is a risk of display bias in Direct Connect portals?

44. Should Direct Connect portals be treated as a CRS under Regulation 80/2009? If so, should the transport provider owning the Direct Connect portal be treated as a parent carrier?
45. To what extent are software that integrate CRS, internet and Direct Connect information on one screen being used?

MIDT

46. Should provisions on grouped sales of MIDT data be included in a regulation? Why/why not?
47. Do you feel the provisions of the Regulation requiring agreement on conditions for the use of data in MIDT are applied and/or work in practice?
48. Do you have any other concerns regarding the implementation of Article 7 (regarding MIDT) in the Regulation?

Protection of personal data

49. To what extent are the provisions on the processing, access and storage of personal data effective and relevant?
50. N/A

Developments outside the EU

51. N/A
52. N/A
53. N/A
54. N/A
55. N/A
56. N/A
57. N/A

Intermodality

58. What is your involvement in end-to-end transport provisions for your customers (rather than the flight component alone) and how do you see this evolving in the future?
59. Has greater pricing freedom with regard to booking fees allowed more rail services to be offered on the CRS displays?
60. Are there any problems encountered with the display of this information on CRSs?
61. Are additional measures needed to promote the sale of rail tickets via CRSs?

Market information

62. Please provide us with a segmentation of your sales by sales channel: internet, call center, city office, direct connect, CRS, etc by ticket volume and revenue. **Please disaggregate the data into the following groups:** bookings made online using a CRS; Bookings made offline using a CRS; Bookings made online using non-CRS systems; Bookings made offline using non-CRS systems.
63. How have these figures evolved over the past five years?

Final Report

64. How do you expect these figures to evolve over the next 5 years?
65. Please provide us with an indicative cost per ticket sale for each of the distribution channels that you have listed.
66. How have these figures evolved over the past five years?

Consumer organisations

Regulation 80/2009

1. To what extent are some regulatory measures of Regulation 80/2009 redundant, overlapping, ineffective or inconsistent?
2. Are there any short-comings in Regulation 80/2009 that should be addressed?
3. Is Regulation 80/2009 still appropriate, and if so are there any necessary changes?
4. Would self-regulation (i.e. CRS full deregulation) in the EU be more effective?
5. What has been the impact for the consumers of the introduction of greater pricing freedom in Regulation 80/2009?

CRS relationship

6. N/A
7. N/A
8. N/A
9. N/A
10. Is it true to say that travel agents have an incentive to use the CRS provider that offers the highest booking fee?
11. N/A
12. N/A
13. To what extent are the CRSs relevant to the consumers/travel agents today?
14. How has this changed in the last 5 years?
15. N/A
16. How do you see the consumer/travel agents relationship with the CRSs evolving in the future?
17. N/A
18. To what extent does the importance of CRS as a sales channel vary between EU Member States?
19. To what extent does the importance of CRS as a sales channel vary between categories of customers (leisure/business travellers, local/foreign travellers, etc)?
20. N/A
21. N/A
22. N/A
23. Has the ability of airlines in Europe to control access to their content changed the market?

CRS ownership

24. N/A

Final Report

25. To what extent do you think the specific obligations imposed on parent carriers are still needed?
26. Should airlines remain free to invest in CRS providers and control them or should there be rules that restrict the possibility for airlines or other sectors to control CRSs?
27. Do you feel there is a correlation between CRS ownership and airline market share in some particular countries or markets?
28. To what extent are transparency requirements needed for CRS providers that are not publicly listed on a stock exchange?

Neutral display

29. Do you consider the initial CRS display to be unbiased (please specify which CRS provider(s) you are referring to)?
30. Is that the case for all CRS providers?
31. Do you have any issues with regard to how fares and services are displayed on CRSs?
32. To what extent do you think the CRS providers implement provisions of Annex 1 (on principal display) adequately?
33. To what extent are the prescriptions in Annex 1 of Regulation 80/2009 on principal display still pertinent?

Unbundling and ancillary services

34. To what extent do CRSs allow full flexibility for optional extras such as baggage allowance, allocated seating, priority check-in, etc?
35. N/A
36. N/A
37. To what extent do you feel that CRSs should change their capabilities regarding unbundling/ancillary services?

Technological developments

38. What is the impact on consumers of the development of “connection portals” such as kayak, dohop, or skyscanner?
39. To what extent do you think there is a risk of display bias in connection portals?
40. From a passenger point of view, what are the implications of using a connection portal rather than a CRS in areas such as non-guaranteed connections for example, or connections between/within Low Cost Carriers?
41. N/A
42. What is the impact for the consumers of the development of Direct Connect portals?
43. To what extent do you think there is a risk of display bias in Direct Connect portals?
44. Should Direct Connect portals be treated as a CRS under Regulation 80/2009? If so, should the airline owning the Direct Connect portal be treated as a parent carrier?
45. N/A

MIDT

46. N/A

47. N/A

48. N/A

Protection of personal data

49. To what extent are the provisions on the processing, access and storage of personal data effective and relevant?

50. N/A

Developments outside the EU

51. N/A

52. N/A

53. N/A

54. N/A

55. N/A

56. N/A

57. N/A

Intermodality

58. How do you see end-to-end transport provisions for your customers (rather than the flight component alone) evolving in the future?

59. Has greater pricing freedom with regard to booking fees allowed more rail services to be offered on the CRS displays?

60. Are there any problems encountered with the display of this information on CRSs?

61. Are additional measures needed to promote the sale of rail tickets via CRSs?

Market information

62. N/A

63. N/A

64. N/A

65. N/A

66. N/A

67. Do you collect data on booking fees for CRS and other ticket booking sales channel? If so, we would be grateful if you could share this data with us.

Final Report

Travel agents and representative bodies of travel agents (GBTA, ECTAA, DRV, GEBTA)

Regulation 80/2009

1. To what extent are some regulatory measures of Regulation 80/2009 redundant, overlapping, ineffective or inconsistent?
2. Are there any short-comings in Regulation 80/2009 that should be addressed?
3. Is Regulation 80/2009 still appropriate, and if so are there any necessary changes?
4. Would self-regulation (i.e. CRS full deregulation) in the EU be more effective?
5. What has been the impact for your business of the introduction of greater pricing freedom in Regulation 80/2009?

CRS relationship

6. N/A
7. N/A
8. N/A
9. Which (if any) CRS provider do you use and for which markets? Can you also please estimate the percentage of travel agents that use only 1 CRS, and the percentage of agents that has changes CRS provider since 2009.
10. Is it true to say that travel agents have an incentive to use the CRS provider that offers the highest booking fee?
11. N/A
12. N/A
13. To what extent are the CRSs relevant to your business today?
14. How has this changed in the last 5 years?
15. What has been the impact of fare liberalisation³⁶ on the involvement of Low Cost Carriers in CRSs?
16. How do you see your relationship with the CRSs evolving in the future?
17. To what extent do CRSs offer you access to markets which you would otherwise have been unable to reach? If yes, which markets are these and how large are they?
18. To what extent does the importance of CRS as a sales channel for your business vary between EU Member States?
19. To what extent does the importance of CRS as a sales channel for your business vary between categories of customers (leisure/business travellers, local/foreign travellers, etc)?
20. From a commercial perspective, do you have a preferred booking channel for customers?
21. To what extent do you see the role of the travel agents changing in the future?

³⁶ Regulation 80/2009 allows air carriers to differentiate the fare content that they provide to CRSs

22. N/A
23. Has the ability of airlines in Europe to control access to their content changed the market?

CRS ownership

24. N/A
25. To what extent do you think the specific obligations imposed on parent carriers are still needed?
26. Should airlines remain free to invest in CRS providers and control them or should there be rules that restrict the possibility for airlines or other sectors to control CRSs?
27. Do you feel there is a correlation between CRS ownership and airline market share in some particular countries or markets?
28. To what extent are transparency requirements needed for CRS providers that are not publicly listed on a stock exchange?

Neutral display

29. Do you consider the initial CRS display to be unbiased (please specify which CRS provider(s) you are referring to)?
30. Is that the case for all CRS providers you use?
31. Do you have any issues with regard to how fares and services are displayed on CRSs?
32. To what extent do you think the CRS providers implement provisions of Annex 1 (on principal display) adequately?
33. To what extent are the prescriptions in Annex 1 of Regulation 80/2009 on principal display still pertinent?

Unbundling and ancillary services

34. To what extent do CRSs allow full flexibility for optional extras such as baggage allowance, allocated seating, priority check-in, etc?
35. What proportion of your revenue is generated through unbundling/ancillary revenues?
36. Which issues do you face when using the CRSs with the product unbundling trend by airlines?
37. To what extent do you feel that CRSs should change their capabilities regarding unbundling/ancillary services?

Technological developments

38. What is the impact on your business of the development of “connection portals” such as kayak, dohop, or skyscanner?
39. To what extent do you think there is a risk of display bias in connection portals?
40. From a passenger point of view, what are the implications of using a connection portal rather than a CRS in areas such as non-guaranteed connections for example, or connections between/within Low Cost Carriers?

Final Report

41. To what extent do you sell tickets through Direct Connect portals between airlines and travel agents, bypassing the CRSs in Europe?
42. What is the impact for your business of the development of Direct Connect portals?
43. To what extent do you think there is a risk of display bias in Direct Connect portals?
44. Should Direct Connect portals be treated as a CRS under Regulation 80/2009? If so, should the airline owning the Direct Connect portal be treated as a parent carrier?
45. To what extent are software that integrate CRS, internet and Direct Connect information on one screen being used?

MIDT

46. Should provisions on grouped sales of MIDT data be included in a regulation? Why/why not?
47. Do you feel the provisions of the Regulation requiring agreement on conditions for the use of data in MIDT are applied and/or work in practice?
48. Do you have any other concerns regarding the implementation of Article 7 (regarding MIDT) in the Regulation?

Protection of personal data

49. To what extent are the provisions on the processing, access and storage of personal data effective and relevant?
50. Do your members have any difficulty in complying with the current legislation?

Developments outside the EU

51. N/A
52. N/A
53. N/A
54. N/A
55. N/A
56. N/A
57. N/A

Intermodality

58. How do you see end-to-end transport provisions (rather than the flight component alone) evolving in the future?
59. Has greater pricing freedom with regard to booking fees allowed more rail services to be offered on the CRS displays?
60. Are there any problems encountered with the display of this information on CRSs?
61. Are additional measures needed to promote the sale of rail tickets via CRSs?

Market information

62. Please provide us with a segmentation of the sales of the organisations you represent by sales channel: internet, call center, city office, direct connect, CRS, etc by ticket

volume and revenue. **Please disaggregate the data into the following groups:**

bookings made online using a CRS; Bookings made offline using a CRS; Bookings made online using non-CRS systems; Bookings made offline using non-CRS systems.

63. How have these figures evolved over the past five years?
64. How do you expect these figures to evolve over the next 5 years?
65. Please provide us with an indicative cost per ticket sale for each of the distribution channels that you have listed.
66. How have these figures evolved over the past five years?
67. N/A
68. Please provide us with an indicative cost of participation in CRSs and incentive payment revenue.
69. How have these figures evolved over the past five years?
70. Please provide us with the total number of member organisations you have, and the combined annual turnover of your members.

APPENDIX

B

GLOSSARY

B1 GLOSSARY

ARC (Airline Reporting Corporation and Settlement Plan) provides transaction settlement and data information services in a similar manner to IATA's BSP (see below). ARC operates in the USA and USA Territories.

ATPCO (Airline Tariff Publishing Company) is a company that collects fares and fare related data from airlines and the travel industry and distributes it to CRS and the travel industry.

B2B (Business to business) a business selling to another business, rather than directly to an end-user of the product

BSP (Billing and Settlement Plan) is a system designed to facilitate the selling, reporting and remitting procedures of IATA Accredited Passenger Sales Agents, as well as improve financial control and cash flow for airlines that are members of BSP. BSP covers 176 countries, but not the USA where airlines use ARC (see above).

CRS (Computer Reservation System) are computerised networks allowing travel agents to search and book the flights of large numbers of airlines). Also call GDS (Global Distribution System).

EU12 The 12 Member States joining the European Union since 2004

EU15 The 15 Member States already in the European Union in 2004

GDS (Global Distribution System) are computerised reservation networks. They are also called CRS (Computer Reservation System).

MSE (Meta Search Engine) is a computerised search tool that sends user requests to other search engines or databases and aggregates the results into a list.

PNR (Passenger Name Record) is a computerised airline travel record. Whenever a booking is made a PNR is created by the airline.

OAG (Official Airline Guide) is a company that sources current and future schedules from airlines and distributes it to CRS and the travel industry.

OTA (Online Travel Agency) is a travel agency that provides its service online rather than from a brick and mortar shop.

Subscriber In the context of Regulation 80/2009, a subscriber means a travel agent subscribing to a CRS

TMC (Travel Management Company) are companies that provide travel management services such as data and negotiation assistance, travel policy advice, traveler tracking to businesses whose employees travel for business purposes.

CONTROL SHEET

Project/Proposal Name	Mid-term evaluation of Regulation 80/2009 on a code of conduct for computerised reservation systems and repealing Council Regulation 2299/89
Document Title	Final Report
Client Contract/Project No.	Click here to enter text.
SDG Project/Proposal No.	22388502

ISSUE HISTORY

Issue No.	Date	Details
3	28 September 2012	Report - Final

REVIEW

Originator	Clémence Routaboul	
Other Contributors	Rosie Offord	
Review by:	Print	Peter Wiener
	Sign	

Peter Wiener

DISTRIBUTION

Client:	European Commission
Steer Davies Gleave:	

