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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

QA 29467

In the Matter of)

Computer Reservations)
System (CRS) Regulations)

Docket No. OST-97-2881-31

COMMENTS OF
AMADEUS GLOBAL TRAVEL DISTRIBUTION, S.A.

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December 9, 1997

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**COMMENTS OF
AMADEUS GLOBAL TRAVEL DISTRIBUTION, S.A.**

Amadeus Global Travel Distribution, S.A. ("AMADEUS") hereby submits its comments in response to the Advance Notice of Proposed Rulemaking ("Notice") issued by the Department in this proceeding. 62 Fed. Reg. 47606 (September 10, 1997). By that Notice, the Department initiated a proceeding to determine whether it should continue and/or modify the rules governing airline computer reservations systems ("CRSs") at 14 C.F.R. Part 255. Consistent with the Department's November 7, 1997 notice in this proceeding, AMADEUS also hereby submits its comments in response to the petition for rulemaking filed by America West Airlines, Inc. regarding booking fees generated by travel agents. 62 Fed. Reg. 60195. AMADEUS' response to the America West petition is embraced within its answer to question number 12 set forth in the Notice.

SUMMARY OF POSITION

- The CRS rules should be continued, albeit with certain revisions.
- CRS rules should be extended to regulate Internet and other on-line reservation services.
- The Department's revisions of the rules should include:
 - one year maximum contract terms for subscriber contracts;
 - explicit permission for CRSs to reasonably restrict certain potentially destructive third-party software.
 - extension of the mandatory participation rules to corporate discounts and similar information offered to CRS users.
- The Department's rules should not be extended to include detailed regulation of flight display criteria, but the Department should adopt its proposed "consumer preference" rule.
- Regulation of CRS booking fees is not needed and airlines, not CRSs, are the appropriate parties to address any travel agency booking abuses.

I. OVERVIEW OF THE STATE OF THE CRS MARKET

Before addressing the issues that the Department has raised in its Notice, which are also of concern to AMADEUS, AMADEUS will here comment on certain of the Department's general assertions about the market in which CRSs operate. First, as discussed further below, AMADEUS agrees with the Department that

the CRS rules have generally worked well to promote competition in the CRS business and to protect airline consumers and travel agents against potential abuses. Further, AMADEUS agrees that continued regulation that is designed to protect competition, without undue regulation of the business terms under which CRS services are offered, is appropriate at this time.

Second, the Department states that the "size of the 'halo effect' [the benefit that an owning airline realizes when agencies use the system owned by it] has apparently shrunk in recent years." Notice, 62 Fed. Reg. at 47607. AMADEUS submits that while evidence of the halo effect may no longer be as obvious as it once was, the "halo effect" nonetheless persists. As the Department notes, CRS subscribers often receive "large bonuses for using a system." Notice, 62 Fed. Reg. at 47607. Such bonuses are paid to subscribers for the exclusive use of a particular CRS and may take the form of tickets on flights operated by owner-airlines of that CRS. There would be no incentive to offer these bonuses unless certain owner airlines were aware of an advantage to having such exclusivity. The continued existence of the "halo effect" is evidence not only of the ongoing necessity of regulation in the CRS industry, but also

the need for stricter DOT enforcement of the current rules to ensure that bias does not infect CRS services.

Third, as discussed in more detail below in response to question 5, AMADEUS submits that the CRS rules should be revised to require shorter subscription terms for CRS contracts. Part 255.8(a) of the Department's regulations currently states that a CRS may offer a subscriber contract with a term up to five years in length only if a contract up to three years in length is simultaneously offered. However, with the accelerating pace of technological change in the CRS industry, shorter contract terms are appropriate to allow subscribers to switch CRS service providers more quickly. Such freedom will spur additional competition within the CRS industry, as well as allow subscribers to increase efficiency in their selection of the CRS that best suits their needs. Accordingly, Part 255.8(a) should be amended to prohibit any subscriber contracts with a term longer than one year.

Fourth, as the Department states in the Notice, an "important development" in the CRS industry is "the creation of booking sites on the Internet for use by consumers." 62 Fed. Reg. 47608. While Internet and other computer on-line services currently represent only a minority portion of the airline

reservation marketplace, that portion is growing quickly. As discussed in more detail below in response to question 7, the Department's rules regarding CRSs should be extended to cover Internet sites that offer reservation information for more than one airline, or its affiliates, to prevent distortion of competition in the CRS industry and opportunities for hidden biases in displays used by agents, corporate travel offices and consumers. As the use of such services by travel professionals and individual consumers grows, opportunities to circumvent the instant rules will arise. These rules were developed, in large part, to promote the provision of accurate information to consumers. This same purpose supports regulation of Internet and other computer services which have the potential to distort information. Such regulation should be the same as that applied to airline-owned CRSs in order to protect the industry and consumers from undue bias.

The European Union's ("EU") current proposal to amend Council Regulation No. 2299/89 of the EU's Code of Conduct for Computerized Reservation Systems ("EU Proposal") merits the Department's review in this connection. As explained in further detail in response to questions numbered 7 and 12, the EU's proposal offers several worthwhile policy alternatives for the

Department's consideration, especially concerning regulation of Internet services. Moreover, some harmonization with the EU rules is desirable due to the global nature of the airline and CRS industries, to prevent business-actors from being caught between potentially conflicting regulations of several sovereigns. Absent harmonization, globally accessible Internet sites could be forced to choose among: (1) following the most restrictive rule, (2) being electronically screened from conducting business in the most restrictive jurisdiction and (3) maintaining two (or more) complete sites at significant expense.

RESPONSES TO THE DEPARTMENT'S SPECIFIC QUESTIONS

The Notice explicitly requests commenters to address fifteen specific issues. 62 Fed. Reg. at 47609. AMADEUS will initially comment on issues numbered 1-8, 10-12, and 15, as follows.

1. AMADEUS FAVORS CONTINUATION OF THE RULES WITH REVISIONS

The Notice states the Department's "preliminary position that the rules should be continued, probably with revisions." 62 Fed. Reg. 47606. AMADEUS agrees that appropriate regulation of the CRS market serves the public interest. When

the Department last reviewed part 255, it found two critical facts underlying the need to continue these rules:

First, carriers rely heavily on travel agencies for the marketing of airline service -- and travel agencies hold themselves out to the public as neutral providers of airline information and tickets Secondly, travel agencies rely heavily on CRSs to find out what airline services are available and to book seats for customers -- and most agencies use only one system to carry out these functions. Each vendor thus largely controls the information seen by its subscribers on airline services.

Final Rule, 57 Fed. Reg. 43780, 43781 (September 22, 1992) ("1992 Decision"). Despite some changes in CRS ownership and the initiation of certain Internet alternatives (both of which will be further discussed below), the essential industry structure that led to the Department's decision to adopt the current rules is unchanged. A majority of travelers continue to rely on travel agencies, which generally use only one CRS. The incentive and opportunity for bias in favor of airline owners and marketing airlines remains, particularly with respect to CRSs that are tied primarily to a single carrier by ownership or marketing relationships.

AMADEUS submits, however, that the rules should be continued for three years instead of five. In its last review, the Department found that a five year sunset provision, through

December 31, 1997, was warranted. The Department has now proposed that the sunset provision be extended to March 31, 1999, which would give the existing rules an effective lifespan of over six years. Notice of Proposed Rulemaking, 62 Fed. Reg. 59313 (Nov. 3, 1997). As demonstrated by the issues raised by the Department in the instant proceeding, the speed and breadth of technological change is having a great impact on the CRS market and the scope of the instant rules. Accordingly, AMADEUS submits that when the amendments to the instant rules are finalized, they should include a provision for sunset on March 31, 2002, well over four years from now. By that time, technological changes in the CRS industry, as well as further development of Internet alternatives, will warrant further review of the rules, including an assessment of whether market changes have rendered the rules unnecessary.

2 AND 3. THE RULES HAVE GENERALLY BEEN EFFECTIVE BUT SOME RULES, SUCH AS THE LENGTH OF CONTRACT TERMS, MUST BE MODIFIED, TO REMAIN EFFECTIVE IN LIGHT OF CHANGES IN TECHNOLOGY (INCLUDING GROWTH OF THE INTERNET) AND BUSINESS CONDITIONS.

In general, the Department's CRS rules have effectively mitigated the grossest structural inequities in the CRS market that distort the provision of information and hinder

competition. However, the Department's questions indicate that it is aware of the risks to competition associated with certain technological changes, particularly the growth in unregulated Internet and on-line computer services. AMADEUS submits that in order for the CRS market to continue its growth in competitiveness, such systems must be brought within the ambit of these rules. AMADEUS' proposals regarding Internet sites and other similar computer services are discussed in detail in response to question number 7.

One of the rules that should be revised as a result of technological and market changes is the rule regarding the length of subscription contracts. The removal of limitations on the use of third-party hardware and software has increased the potential for flexibility and competition, but the marketplace has not reflected this full potential, in part because subscribers are limited in their ability to switch from one CRS to another. The Department's current rule on this point states:

(a) No subscriber contract may have a term in excess of five years. No system may offer a subscriber or potential subscriber a subscriber contract with a term in excess of three years unless the system simultaneously offers such subscriber or potential subscriber a subscriber contract with a term no longer than three years. ...

14 C.F.R. § 255.8(a). AMADEUS notes that the above rule was adopted upon the Department's finding in its 1992 Decision that some cost-savings were available for longer-term contracts and therefore such contracts were desired by subscribers. However, the core purpose of the contract term rule was to promote competition, expand service and promote technological advancement. 1992 Decision, 57 Fed. Reg. at 43832. AMADEUS submits that allowing systems to limit the choice of agencies to three or five year contracts is unreasonable in light of the accelerating rate of technological change and the limitation on competition posed by long-term contracts. As CRSs offer more services or upgrade their systems to require more "computer power" to use their system, travel agents must continually make choices regarding pricing, hardware and software.

For these reasons, the Department should amend § 255.8 to limit subscription contracts to no more than one year. By doing so, the Department will allow CRSs with a smaller market share in a particular area to gain a competitive toehold, thus enhancing one of the central goals to be achieved by its rules -- the promotion of competition. At the same time, by giving agents

greater options, a one-year term rule will provide additional incentive for CRSs to offer the most competitive services.^{1/}

4. CHANGES IN OWNERSHIP OF CRSs HAVE HAD NO SIGNIFICANT IMPACT ON THE JURISDICTIONAL AND ANALYTICAL BASES FOR REGULATING CRSs.

AMADEUS does not believe that the dilution of airline ownership of certain CRSs which are now partially owned by the public has meaningfully changed the market in which CRSs operate in a manner that would suggest that rules are no longer needed or appropriate. As long as there remains a significant element of airline control over a CRS, or a marketing relationship between an airline and a CRS, the essential reasons underlying regulation remain in place.

The Department seems to have already addressed this point, correctly, in its December 3, 1997 decision in Docket OST-96-1639, Fair Displays of Airline Services in Computer Reservations Systems, 62 Fed. Reg. 63837, 63843. There, in rejecting Sabre's argument that display bias rules are not needed because of the twenty percent public ownership of its stock, the Department observed that AMR, American's parent, "continues to

^{1/} Other changes to the CRS rules supported by AMADEUS are discussed in response to other questions, below.

own eighty percent of Sabre's stock and obviously has the ability to control Sabre's operations."

5. THE THIRD-PARTY HARDWARE AND SOFTWARE RULES ARE WORKING EFFICIENTLY AND NEED NO SIGNIFICANT ALTERATION AT THIS TIME. HOWEVER, THE RULES SHOULD BE REVISED TO ALLOW CRSs TO LIMIT THE ACCESS OF CERTAIN BURDENSOME PROGRAMS AND TO MORE EXPLICITLY RECOGNIZE THE RIGHT OF CRSs TO REQUIRE CERTIFICATION.

The rules allowing travel agencies to use third-party hardware and software generally have worked, as intended, to give subscribers greater access to travel information and computer technology. However, technological changes suggest the need for certain revisions to the rules to allow CRSs to continue to provide efficient service to all subscribers. As part of the 1992 Decision, the Department noted that CRSs need to retain contractual control over the type of equipment used, in order to prevent damage to the CRS system. The Department stated:

We agree that vendors are entitled to some assurance that agencies will not use products that are likely to damage a system. We are accordingly adopting a condition allowing them to bar the use of third-party hardware and software unless it is certified by the vendor.

1992 Decision, 57 Fed. Reg. at 43798. See also, 57 Fed. Reg. at 43796 ("We will preserve the vendor's right to protect the

integrity of its system against its subscriber usage of incompatible equipment and programs.").

AMADEUS notes that since the liberalization of hardware and software rules, certain systems employed by travel agents have the ability to remain running for several hours, roaming the CRS to search for availability information on flights and fares. In certain instances, these programs can paralyze a system. The Department has already recognized the need for CRSs to protect themselves from such problems, when, albeit in the context of third-party hardware, DOT noted that "[t]he systems ... should have devices that can protect them against a surge in usage." 1992 Decision, 57 Fed. Reg. at 43799. AMADEUS submits that a CRS should have the flexibility, contractually, to limit such software programs to off-peak hours, session limits or similar reasonable conditions. Consequently, AMADEUS requests that the Department amend § 255.9 to reflect that time or length of use limitations would be consistent the CRS's right "to protect the integrity of the system."

Further, as subscribers employ increasingly complex third-party hardware and software, certification of the systems being used by subscribers will become ever more important for CRSs. Clearly the current rules were intended to protect the

right of each CRS to prescribe reasonable certification requirements. As the Department noted in its 1992 notice of final rulemaking, the intention was to adopt "a condition allowing [CRSS] to bar the use of third-party hardware and software unless its use is certified by the vendor." 57 Fed. Reg. at 43798. However, the language of the rules themselves only obliquely refers to this certification requirement. Part 255.9(a)(1) allows restrictions on third-party hardware or software "as necessary to protect the integrity of the system." Part 255.9(b) allows fees at "commercially reasonable levels to certify third-party equipment." Consequently, in order to clarify the rules in light of likely future concerns, AMADEUS submits that the rules should be amended by inclusion of the following, or similar, language:

255.9(e) Nothing in this section shall be construed to prohibit any system from use of reasonable certification requirements necessary to protect the integrity of the system.

6. THE MANDATORY PARTICIPATION RULE STRENGTHENS COMPETITION IN THE AIRLINE AND CRS BUSINESSES AND SHOULD BE EXTENDED TO COVER AIRLINES THAT MARKET A SYSTEM AS WELL AS ALL SERVICES OR FEATURES OFFERED BY OWNER OR MARKETER AIRLINES, SUCH AS CORPORATE DISCOUNT FARES.

AMADEUS submits that the mandatory participation rule has played a critical role in strengthening competition in the

CRS industry. The rule should be extended to cover airlines that market a system as well as all services or features offered by an owning or marketing airline, including timely information updates and corporate discount fares, in order to support the continued growth of competition in the industry. Mandatory participation increases competition by preventing abuses under which an airline closely linked to a CRS can prevent another system from competing effectively by withholding participation. As the Department noted in 1992:

The [mandatory participation] rule is necessary, for some system owners do not participate in enhancements in other systems and do not provide complete information on their fares and services to CRSs, as we tentatively found in the NPRM. No one has argued that system owners never limit their participation in other systems as a weapon to obtain more subscribers at their hubs, and no one has denied the potential usefulness of such tactics. While a system owner will lose bookings from subscribers in another system, the loss in airline bookings can be outweighed by the gain in CRS subscriptions (and the likely increase in its airline revenues from the new subscribers).

1992 Decision, 57 Fed. Reg. at 43800. These fundamental reasons for adopting the mandatory participation rule, as outlined by the Department, still exist. AMADEUS submits that if the rule were removed, owner-carriers, particularly those affiliated with a CRS owned by a single carrier, would have the incentive and the opportunity to limit CRS competition through non-participation.

Not only should the mandatory participation rule be continued, but it should be extended to airlines that market a CRS. Airlines which do not own a portion of a CRS, but market that CRS, should not be permitted to refuse participation in other CRSs. Such refusal creates a similar result to that described by the Department, i.e., their lack of participation is used to smother competition as travel agents in hub cities are required to subscribe to the marketed CRS in order to access the local carrier. Other CRSs are effectively precluded from participating in that market, contrary to the objective of the instant rules.

In fact, the Department has already recognized the potentially disruptive power of airlines that market a CRS in the context of the recently adopted amendment to Part 255.6, concerning parity clauses. Docket OST-96-1145, Computer Reservations System Regulations, 62 Fed. Reg. 59784 (November 5, 1997). While the Department there generally barred the enforcement of parity clauses (which prohibit a carrier from choosing a level of participation in a CRS lower than that carrier's level of participation in any other system), it excepted from that rule airlines that either own or market a CRS, as non-participation in some systems may be used "[i]n order to

encourage travel agencies in areas where it is a major airline to use the system that it owns." 62 Fed. Reg. at 59788. As is particularly relevant here, the Department stated further that "the same incentive to downgrade participation in competing systems could well exist in an airline that is marketing a system." 62 Fed. Reg. 59788.

In addition to expanding the mandatory participation rule to marketing carriers, the rule should also be expanded to all systems and features offered by an airline to the CRS that is owned or marketed by that airline. Differences in access to such data clearly create unfair advantages that distort CRS and airline competition. In response to the Department's question, AMADEUS submits that an excellent example of such features is access to corporate discount fares. Notice, 62 Fed. Reg. at 47610. At the time of the 1992 review of the CRS rules, the Department noted that special corporate fares typically are made available only through a system affiliate of the offering airline:

A related matter involves complaints that some carriers offer corporations special discount fare that may be booked only through an agency using their CRS. . . . Obviously, a vendor's tactic of telling businesses that certain discount fares may be obtained only through its subscribers could be an effective means of using a dominant share of the local airline market as a tool for obtaining a larger share of the local CRS market.

If the fare was widely available to corporations, this tactic would resemble an unlawful tying of discounted airline service and CRS usage. . . . At this time we will not adopt a general prohibition against an airline's tying the availability of special corporate fares to use of its affiliated system for booking the fares. If, however, an airline widely offers a discount fare to businesses on the condition that they use its CRS for booking the fare, that would be a violation of the requirement that commonly available fares be made available to all systems.

1992 Decision, 57 Fed. Reg. at 43801. In addition, the Department stated that it would not apply the rules to "systems used by corporate travel departments . . . because corporations operating their own travel offices can choose which system they will use and control their employees' airline bookings." 57 Fed. Reg. at 43794.

AMADEUS submits that the Department should now expand mandatory participation to corporate discount fares. When such fares can be booked only through a single CRS, that situation distorts competition in a manner that the CRS rules should prohibit. As noted in the 1992 Decision, travel agencies can only compete for the business of certain corporations if they subscribe to the CRS linked to the corporation's preferred carrier. The Department has correctly observed that when such corporate fares are "widely available", the situation created "would resemble an unlawful tying" arrangement. 57 Fed. Reg. at

43801. However, the Department has failed to define the concept of a "widely available" fare. In effect, the Department's current position has become an invitation to owner carriers with corporate fares to create such arrangements.

For example, some corporations have their own internal travel office with CRS access. The current rules allow carriers to entirely prevent competition among CRSs to provide service to these internal travel offices as only one system may access the fares that the corporation negotiated. The carrier effectively imposes a CRS monopoly on the corporation, contrary to the public interest in promoting CRS and airline competition. This loophole in the existing rules should be closed.

Finally, the concurrently filed comments of System One Amadeus, the national marketing company in the U.S. for AMADEUS, offers a series of examples of how system owner airlines are not (at least in a timely manner) providing enhancements to other CRSs that they are providing to their owned CRS. For example, certain owners have provided electronic ticketing capability to their CRSs before they have to AMADEUS, placing AMADEUS at a competitive disadvantage. Another owner allows its CRS alone to provide upgrades to frequent flyers.

These practices appear to violate the existing terms of section 255.7. However, if some airlines choose to find the obligations of that rule ambiguous (and in fact the rule is not ambiguous), the Department should use this proceeding to make clear that infractions of its non-discrimination/mandatory participation rules will not be tolerated.

7. THE CRS RULES SHOULD BE EXPANDED TO APPLY TO INTERNET AND COMPUTER ON-LINE SERVICES

In its October 15, 1996 Comments filed in Docket OST 96-1639, Fair Displays of Airline Services in Computer Reservations Systems, AMADEUS argued that the Department should extend the regulations of Part 255, including the display bias rules, to so-called On-line Reservations Services. These are services that offer all of the same basic functions as a traditional CRS to users of personal computers and the Internet -- they display flights of several airlines using a set of ranking criteria, set forth information about fares, rules and availability and allow the user to book reservations and purchase tickets. AMADEUS made clear that its proposal was not aimed at On-line Reservations Services owned or operated by one airline (as to which the user would have an expectation of bias), but to

other services directly offered by intermediaries that may have a marketing or other business relationship with an airline or CRS.

AMADEUS observed in its October 1996 Comments that when the Department last considered this issue in its 1992 Decision, it opted not to extend Part 255 to such services because of the determination in its 1990 Marketing Study^{2/} that personal computers account for a very small percentage of all airline bookings. With the development of broad access to the Internet, the situation has, of course, changed dramatically since that time. The Department's Notice in this proceeding properly observes that "the use of these services is growing rapidly." 62 Fed. Reg. at 47607. Not only are consumers using the Internet for travel-related transactions at an accelerating pace, but so are travel agents and corporate travel departments.^{3/}

When an intermediary, such as a travel firm or computer service company, sets up a reservations and booking web site, the user of the website (individual consumers, travel agents, corporate travel departments, etc.) reasonably expects to

^{2/} "Airline Marketing Practices: Travel Agencies, Frequent Flier Programs, and Computer Reservation Systems"

^{3/} The October 15, 1996 Comments submitted by AMADEUS in the Display Bias proceeding set forth data on the growth of Internet access and use.

receive neutral information of the same sort that is available from a traditional CRS. For that reason, the Department's rules should apply to such On-line Reservations Services to ensure that abuses in the form of biased displays do not develop.

Accordingly, AMADEUS submits that the current rules should be extended to cover Internet sites and other computer services which purport to provide information regarding several airlines. Failure to apply the rules to such seemingly independent On-line Reservations Services will distort competition in the CRS industry. As use of these Services increases, so does the potential for distortion.

The Notice in this proceeding asks that parties supporting the extension of the CRS rules to booking services available through the Internet discuss the differences between the methods used by travel agencies and those used by individual consumers accessing the Internet. In that regard, the Notice observes that travel agents are generally tied to one CRS and are often pressed for time, characteristics that the Department suggests may not apply to consumers using the Internet. However, given the large number and variety of consumers that use the Internet, and the variability in the uses to which the Internet is put, this matter would seem to defy any generalizations.

Indeed, many users of such Internet services are travel agents, or corporate travel departments which have a market effect on a large number of travelers. Such professional persons are making decisions based on precisely the same time pressures described by the Department as relevant to the rationale for regulating CRSs. In the case of consumers, there is no reason to believe that a large number of consumers are any different than travel agents in wanting information quickly. Nor is there any reason to believe that, just like travel agents may be tied to one CRS, many consumers would not "bookmark" and revisit the same Internet sites, creating an effect similar that of travel agencies relying on only one CRS.

In addition, while the Notice appears to assume that only consumers make use of these Internet sites, the fact is that travel agents and corporate travel departments increasingly use On-line Reservations Services either to supplement their own information sources or in lieu of traditional CRSs. If the Internet site is biased, perhaps because the service provider has a marketing relationship with an airline, the agent (and in turn the consumer) will not receive the type of information that the CRS rules are designed to make available.

Regulation of On-line Reservations Services would be neither difficult nor anti-competitive. A pending EU proposal to include Internet and on-line services in the EU's CRS regulations demonstrates a method whereby the Department could apply the general principles discussed above without requiring more detailed rulemaking or monitoring. The EU has proposed a Council Regulation whereby the CRS Code of Conduct would be extended to include "services distributed through systems such as the internet." See Annex, Report Accompanying EU Proposal, at 18. The proposal makes it the responsibility of the [CRS] to ensure that any third party providing services on its behalf conforms to the provisions of the Code. Moreover, the proposal properly limits its scope so as not to apply to a carrier using the Internet to display information about its own services because the consumer would not reasonably expect to receive unbiased information from such a source, much like the offices or sales counter of an individual air carrier.

The Department should focus, like the EU proposal, on the concept of "unbiased information." In the same way that a consumer "expects" limited information when visiting a website established by an individual airline, that consumer may expect unbiased information by choosing to visit a comprehensive source

of information -- whether that be a travel agency or a website operated by a travel professional or on-line service provider. A consumer accessing a computer service is not likely to see any reason to visit several websites and cross-research the resulting fare information. This is especially true as individual consumers are unlikely to have the experience and skill of travel agents in evaluating the flight and fare information generated by these services.

Further, it does not matter whether or not the Internet site uses a CRS as a booking engine or not. As the Department notes, it appears that most or all of the Internet sites offering fare information and booking ability use a CRS engine for booking. That situation may or may not continue to prevail in the future. The Department's rules should ensure that, whether a CRS is involved or not, a user receives unbiased information when its utilizes an On-line Reservations Service.

Finally, the Notice also requests comment on Delta's proposal for de-linking Internet booking participation from participation in traditional CRS services offered to travel agent subscribers. That proposed rule should not be adopted. It would significantly distort competition if major system owners, like Delta, could choose not to be distributed through an Internet

site in a particular market segment by a CRS in which it chooses to participate.

8. COMPETITION BETWEEN CRSSs GENERALLY ENSURES THAT CRS DISPLAYS ARE DESIGNED TO MEET CONSUMER DEMANDS. THE DEPARTMENT SHOULD NOT ABANDON ITS LONG-HELD VIEW THAT DETAILED REGULATION OF FLIGHT DISPLAY CRITERIA WOULD REQUIRE A COMPLEX WEB OF REGULATORY REQUIREMENTS, SERVE NO USEFUL PUBLIC PURPOSE AND UNDULY INTERFERE IN DECISIONS THAT CRSSs SHOULD BE PERMITTED TO MAKE.

AMADEUS notes that the Department has recently adopted a final rule in Docket OST 96-1639, Fair Displays of Airline Services in Computer Reservations Systems, 62 Fed. Reg. 63837 (December 3, 1997), that addresses the issues raised here.

There, the Department adopted a rule requiring each CRS to offer one display that lists flights without giving on-line connections a preference over interline connections and a rule that prohibits displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting flights. In its decision, however, the Department expressly reserved on the question of whether or not to adopt a so-called "consumer preference" rule, deferring consideration of that issue for this proceeding.

AMADEUS' position on the issue was set forth in its October 15, 1996 Comments submitted in the Display Bias

proceeding. In those comments, which AMADEUS asks be incorporated into the record of this proceeding, AMADEUS observes that (1) intense competition between CRSs generally serves to ensure that CRS displays are designed to meet consumer demands and (2) the Department should not abandon its long-held view that detailed regulation of flight display criteria would be inappropriate. AMADEUS reaffirms those views here. The new rules adopted by the Department rulemaking are more than sufficient to curb any abuses in display bias. Further, the portion of the new rules that prohibits a display that fails to select flights based on elapsed time or give single-plane flights a preference over connecting services is consistent with the comments filed by AMADEUS in the Display Bias proceeding.

Any regulation beyond the scope of the new rules concerning a CRS's criteria for editing and ranking displays would require a complex web of regulatory requirements that would serve no useful public purpose and unduly interfere in decisions that CRSs, consistent with the demands of their subscribers, should be permitted to make. Moreover, any additional rules would end up stifling the ability of CRSs to meet the varying demands of their subscribers. Consequently, the Department should pursue no more detailed regulation of CRS displays.

If any further rules are considered, however, AMADEUS believes that the Department's proposed "consumer preference" rule amendment to Section 255.4 would be appropriate. That rule would (a) require all systems to provide at least one integrated display based on criteria rationally related to consumer preferences and (b) prohibit the use of editing and ranking criteria that are likely to mislead consumers by causing superior services to be displayed after inferior services, thereby favoring some airlines and discriminating against others. This proposed rule would reinforce the principle of nondiscrimination and, at the same time, provide an additional enforcement tool to allow the Department to address problems if they do arise.

10. THE RULE REQUIRING EACH SYSTEM TO MAKE AVAILABLE TO PARTICIPATING AIRLINES THE SAME FUNCTIONALITY USED BY ITS OWNER AIRLINES (SECTION 255.5) SHOULD BE RETAINED.

The 1992 amendments to the CRS rules added several elements designed to increase equality of functionality available to participating airlines. The rules, at sections 255.4 and 255.5, include requirements for equal access to enhancements and equal loading of information, as well as a rule prohibiting systems from using defaults that favor the vendor carrier. While

these rules have not imposed strict equal functionality, they have drawn the market somewhat closer to equal functionality.

As the Department noted in 1992, differences in the methods used to provide CRS services to participating carriers, in contrast with owner carriers, means that

bookings on the vendor are often more reliable and require less work from the agent. Architectural bias is the term commonly used for the differences in the quality and ease of functionality between transactions on the vendor carrier and transactions on other carriers. As a result of architectural bias and other factors, each vendor continues to receive a disproportionate share of the bookings made by its subscribers...

57 Fed. Reg. at 43810.

AMADEUS believes that the premise underlying these rules -- the removal of architectural bias -- remains sound and should be maintained in the new CRS rules that the Department will presumably adopt at the end of this proceeding. As the Department found in its 1992 Decision, rules requiring dehosting or complete equal functionality would impose substantial costs and offer no discernible benefits. AMADEUS submits that the Department's resources should be devoted to ensuring that its existing rules are adequately enforced where violations are found.

11. THE DEPARTMENT SHOULD NOT ATTEMPT TO REGULATE THE LEVEL OR STRUCTURE OF BOOKING FEES AS DOING SO WOULD UNDERMINE MARKET FORCES IN THE CRS INDUSTRY.

The Department thoroughly considered the booking fee regulation issue in its 1992 Decision. It decided there for several reasons to provide that fees should not be discriminatory, but that their level should not be subject to Department regulation. The Department should stand by that decision.

The 1992 Decision was based on (1) the discipline imposed by the then new third-party hardware/software rules, which facilitate the ability of agents to establish direct links to internal airline reservations systems, (2) the fact that fees had not risen faster than the rate of inflation and (3) the fact that there is no practicable way of regulating booking fees short of setting up a sophisticated public utility type of regulatory structure.

None of these factors militating strongly against the regulation of the level booking fees has changed since 1992. If anything, the arguments against booking fee regulation are stronger now than they were then. The use of third party hardware and software by agents to establish direct links with

airlines is growing, as is Internet access and use. These factors impose a market constraint on booking fees.

The Department's newly issued rule at section 255.6(e) prohibiting parity clauses (except under certain circumstances) will further serve to expand airline choices in the level of CRS services they wish to pay for. This new competitive element in connection with CRS services will also serve to "regulate" booking fee levels.

The level of AMADEUS' booking fees has not, in fact, increased beyond the level of inflation over the last several years. Other than the America West complaint focused on certain types of booking fees (rather than the general level of those fees), AMADEUS is not aware of any active efforts by airlines to seek Department regulation of CRS booking fee levels.

Finally, the Department has appropriately asked whether there is "a practicable method for regulating the level of booking fees." The answer today, as it was in 1992, is no. To involve the Department in regulation of booking fees would be to put CRSS on a par with public utilities in terms of the level of regulation that applies to the industry. Any such regulation would encourage parties to challenge fees that are already set at levels fixed by the market, and involve the Department in

frequent and complex fee level proceedings that would tax scarce government resources.

12. THE DEPARTMENT SHOULD REJECT AMERICA WEST'S BOOKING FEE PROPOSALS. ANY UNNECESSARY BOOKINGS LOGGED BY TRAVEL AGENTS SHOULD BE RESOLVED PURSUANT TO THE PRINCIPAL-AGENT RELATIONSHIP EXISTING BETWEEN TRAVEL AGENTS AND PARTICIPATING CARRIERS.

AMADEUS here responds to the petition for rulemaking filed by America West Airlines, Inc. ("HP") regarding booking fee practices. In the course of doing so, AMADEUS will also respond here to question number 12, posed in the Notice, concerning CRS charges for "unnecessary or valueless" transactions.

At the outset, AMADEUS takes issue with HP's repeated, undifferentiated references to "CRS vendors" in describing discriminatory, and apparently uniform, practices. HP's filing is rife with unsubstantiated non-specific claims that "CRS vendors" engage in unfair and deceptive practices, "strategic manipulation of booking practices and fees" and actions that harm the airline industry and the traveling public. If HP's concerns arise out of the practices of certain CRSs but not others, HP should tailor its comments accordingly. (HP does not even mention AMADEUS in its comments.) Its inflammatory and unfocused language adds nothing of value to the record in this proceeding.

For example, HP claims that booking practices encouraged by CRSs result in no value to HP, but in the diversion of millions of dollars to CRS owner carriers. This charge is unsubstantiated, and it is grossly false with respect to AMADEUS and its owner carriers. It bears note that according to a 1995 European Commission report, the proportion of passive bookings for AMADEUS was 1.6% in 1995, compared with 17% for Galileo and 42% for Sabre. Although passive bookings are more frequent in the U.S., the percentage of passive bookings on System One/Amadeus has declined this year by 21%.

HP states that all of its booking fees per passenger, apparently including those fees charged by AMADEUS to HP, have increased by 10% each year since 1992. AMADEUS' booking fees to HP have not increased in any year by anything approaching 10%. HP's booking costs may have increased, but that is a matter within its control -- e.g., it can endeavor to discipline its agents, it can consider different levels of CRS functionality (the new parity clause rule offers additional options in that regard) and it can review alternative distribution channels if it so desires. Further, AMADEUS suspects that CRS costs represent no more than a small percentage of the distribution costs that HP

incurs -- the far larger percentage being commissions paid to travel agents.

In arguing that certain travel agents engage in unnecessary and "abusive" bookings, including passive bookings or bookings under fictitious names, HP fails to adequately come to terms with the fact that travel agents and participating carriers stand in a principal-agent relationship -- and plainly it is the responsibility of the carrier/principal to control the actions of its own agents. A CRS, which is solely a conduit of information to the principal and the agent in this scenario, should not be burdened with further regulation because HP has not effectively controlled its own agents to its satisfaction.

A CRS does not control the uses to which a travel agent puts the information provided. Nor is a CRS in a position to evaluate whether an agent accesses a CRS or enters bookings for reasons that HP or any other airline would characterize as other than legitimate. In each of the allegedly abusive booking fee scenarios presented by HP, the CRS has provided the communications and reservations service for which it was hired, consistent with all statutory, regulatory and contractual obligations. HP offers no reason why such services should be

provided free of charge to the airline, particularly where the agent abuses the system.

However, that is exactly the result that would follow were the Department to adopt a proposal providing that the CRS could only charge a booking fee for actual passenger travel as reflected in carrier boarding records. Under that proposed rule, the CRS would be required to bear the cost of a transaction in which a reservation was booked but the passenger subsequently chose not to travel. In other words, the CRS is being asked to bear a business risk that logically should fall on the airline alone.

Further, while airlines may have legitimate concerns regarding billing, there are several means available to address such situations, short of the kind of intrusive regulation of booking fees that HP has proposed. AMADEUS already offers airlines several effective tools to limit passive bookings, such as a functional ban on passive bookings, as well as passive notification, which immediately notifies airlines of passive bookings, allowing them to accept or reject these bookings.

Moreover, AMADEUS offers airlines a choice in booking fee systems -- a net segment-based fee system and a transaction-based fee system. A net segment-based system deducts

charges for all the segments canceled up to a certain time limit before flight departure. Transaction-based billing simply counts the number of transactions. Each airline is free to choose the system that works best for it and to change systems as often as annually. The availability of these alternative fee systems, as well as other programs, demonstrates that the market can and has responded to exactly concerns of the sort raised by HP.

Allegations of unnecessary bookings are not new in the CRS industry. While AMADEUS believes that the market should be allowed to address these allegations, the pending EU Proposal demonstrates that the proper focus of any regulatory activity in this area should be on the agent, not the CRS. The EU has thus proposed the following rules for subscribers:

Use of Distribution Facilities by Subscribers

1. A subscriber shall keep accurate records covering all CRS reservation transactions. These shall include flight numbers, reservations, booking designators, date of travel, departure and arrival times, status of segments, names and initials of passengers with their contact address and/or telephone number and ticketing status. When booking or canceling space, the subscriber must ensure that the reservation designator being used corresponds to the fare paid by the passenger.
2. A subscriber shall not make duplicate reservations for the same passenger. In cases where confirmed space is not available on the customer's choice, the

passenger may be wait-listed on that flight (if wait-list is available) and confirmed on an alternate flight.

3. Whenever a passenger cancels a reservation, the subscriber must immediately release such space.

4. When a passenger changes an itinerary, the subscriber shall ensure that all space and supplementary services are canceled at the time the new reservations are made.

5. A subscriber shall, where practicable, request or process all reservations for a specific itinerary, and all subsequent changes, through one CRS.

6. A subscriber shall only request or sell airline space when requested to do so by the consumer.

7. A subscriber shall ensure that a ticket is issued in accordance with the reservation status of each segment and in accordance with the applicable time limit. A subscriber shall not issue a ticket indicating a definite reservation and a particular flight unless confirmation of such reservation has been received.

By focusing on subscriber conduct, the proposed EU regulation touches on the parties that are responsible for the type of situation about which HP complains. If any regulation is warranted in this area -- and AMADEUS submits that no regulatory response is called for -- it should focus on the conduct of subscribers, not CRSs. For that reason, the rules proposed by HP should not be proposed for adoption.

15. THE DEPARTMENT'S RULES ALREADY EXEMPT A U.S. CRS FROM COMPLYING WITH CERTAIN REQUIREMENTS IN RESPONSE TO SOME CONDUCT BY A NON-U.S. CRS. THE RULES NEED NOT BE REVISED TO PROVIDE FOR ADDITIONAL "COUNTERMEASURES."

The current rules, at section 255.11(b), provide that U.S.-based CRSs need not extend the provisions of these rules to a non-U.S. carrier operating or affiliated with a CRS that does not extend the provisions of these rules to U.S. carriers. This provision is consistent with the theme of "equal treatment" (e.g., nondiscrimination, equal functionality) running throughout the rules. Where a foreign carrier or CRS does not extend consistent treatment to U.S. carriers, U.S. CRSs should be released from these obligations to that non-U.S. carrier. This is an appropriate and commensurate response.

Further, U.S. carriers that wish to pursue a claim against a foreign system owner carrier with respect to alleged CRS-related discrimination have a powerful legal tool in the form of the International Air Transportation Fair Competitive Practices Act, 49 U.S.C. 41310(c). This statute has been invoked in the past to address CRS matters involving foreign discrimination. See Complaint of American Airlines against British Airways, Order 88-7-11 (July 8, 1988). Also, the Department's recent decision to allow for the enforcement of

parity clauses against airlines that own or market a competing CRS provides another valuable weapon to address potential discrimination.

AMADEUS submits that there is no need to expand the Department's rules to include additional countermeasures or retaliation provisions. Instead, the Department should focus on regulation of market segments that may distort competition and obstruct the objectives of this rule, such as now-unregulated On-line Reservations Services.

CONCLUSION

For all of the above stated reasons, the Department should re-adopt its CRS rules with the modifications described above.

Respectfully submitted,

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European Union Proposal for a Council Regulation Amending
Council Regulation No. 2299/89
on a Code of Conduct for
Computerized Reservation Systems

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**PROPOSAL FOR A COUNCIL REGULATION (EC)
AMENDING COUNCIL REGULATION (EEC) NO.2299/89 ON A
CODE OF CONDUCT FOR COMPUTERISED RESERVATION SYSTEMS (CRSs)**

(Presented by the Commission)

**REPORT ON THE APPLICATION OF COUNCIL REGULATION (EEC)
NO.2299/89 ON A CODE OF CONDUCT FOR COMPUTERISED
RESERVATION SYSTEMS (CRSs) AND PROPOSALS FOR
AMENDMENTS TO THE CODE**

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**REPORT ON THE APPLICATION OF COUNCIL REGULATION (EEC)
NO.2299/89 ON A CODE OF CONDUCT FOR
COMPUTERISED RESERVATION SYSTEMS (CRSs)**

I. Introduction

CRSs are an important means of distributing air transport services, and therefore can play a key role in increasing competition between air carriers. They provide customers with immediate access to a wide range of information on carriers' schedules and fares and offer the possibility to make instantaneous confirmed bookings. However, CRSs can be used to prevent or inhibit competition. Firstly, through discriminatory behaviour in preventing or limiting access to the CRS facilities and secondly, through architectural bias, whereby the CRS is designed to provide more accurate and reliable information on the flights of the carriers owning the CRS than for their competitors. In addition, in the EU, the CRS market is highly concentrated to the extent that in most Member States a single CRS has a market share exceeding 80%. Codes of conduct for CRSs have been developed in many regions of the world to regulate the operation of this particularly sensitive sector.

The first EU code of conduct for CRSs ("code") was adopted by the Council on 24 July 1989, and addressed the main problem areas affecting the CRS market that had been identified at that time. The code was subsequently amended by Regulation 3089/93 which was adopted by the Council on 29 October 1993. The amendments were necessary to clarify existing provisions and to reflect developments in the industry that had occurred since the original regulation was adopted. A more detailed description of the amendments adopted in 1993 and of their implementation is given in the next section.

This present document has been prepared pursuant to Article 23 of the amended code which states that "The Council shall decide on the revision of this Regulation by 31 December 1997 on the basis of a Commission proposal to be submitted by 31 March 1997, accompanied by a report on the application of this Regulation". The report on the application of the amended code is set out in Section II of this document. In addition, in the light of the experience gained since the adoption of the amended code in 1993, and in order that the code will be able to respond to developments in the sector in the coming years, proposals to make additional amendments to the code are set out in Sections III and IV.

The need for the Code to reflect the extensive discussions that have taken place between the Commission and the CRS industry, air carriers and subscribers, concerning the basis on which CRSs charge for their services together with the rapid developments taking place in distribution methods e.g. electronic ticketing and the Internet, have resulted in the Commission bringing forward the proposal for an amendment to the code.

II. Application of the code of conduct

The amendments made to the code in 1993 were necessary to respond to a range of specific problems that had been encountered since the adoption of the original code in 1989. The principal amendments included, firstly, the need to ensure that CRSs make equal functionality available to all participating carriers, and, in particular, by those CRSs which share common systems with their parent carriers. In this respect, the code requires that a system vendor's distribution facilities are clearly separated from the internal reservation system of its parent carriers. The effectiveness of the arrangements put in place to achieve the separation of the two functions is subject to verification by independent external audit. Associated with the technical requirements for the separation of the distribution facilities of a system vendor from the internal systems of its parent carriers, was a requirement for a system vendor to be established as a separate entity from its parent carrier for legal purposes.

Secondly, the code was extended to include non-scheduled services following the removal of the distinction between scheduled and non-scheduled services as a result of the third liberalisation package. Thirdly, the amended code requires parent carriers and their subsidiaries to provide other CRSs, with equal timeliness, the same information and booking possibilities as they provide to their own CRS. This modification was aimed principally at improving competition between CRSs by enabling each of them to provide fully comprehensive information on schedules and availability. Fourthly, rules were introduced to limit the display of code share or other jointly marketed flights to a maximum of two options in the principal display. Fifthly, access to personal and marketing data contained in a CRS was also made subject to external audit. Finally, a number of amendments to the rules on charging were made to improve the transparency of the billing procedures.

The principal activities carried out by the Commission concerning the application of the code provisions, and related activities, are set out below.

II.1 Waivers granted

Article 2 of the amending Regulation 3089/93 provides for a period of grace of six months following the entry into force of the regulation before the provision (Article 3(1)) requiring the establishment of separate entities for the system vendor and its parent carrier(s) applies. Furthermore, it provides that the Commission may grant an additional 12 months' waiver for objective reasons.

The creation of separate entities for the system vendor and the parent carrier raised special difficulties for one parent carrier and its CRS, which was an operational division of the airline itself. The Commission accepted that the airline should be granted a waiver of 12 months in order to allow it to establish separate legal entities to be responsible for CRS's contractual relations with, on the one hand, participating carriers and, on the other hand, subscribers. The waiver expired on 11 June 1995, by which date the various legal entities had been established.

II.2 Complaints received

The procedure for making complaints to the Commission in respect of alleged infringements of the code and the Commission's duties to initiate procedures to terminate any infringements, are set out in Article 11 of the code. Since the entry into force of the amended code on 11 December 1993, some twenty two complaints from air carriers and CRSs concerning alleged infringements of the code have been received.

Of the complaints, six referred to alleged discrimination by CRSs in favour of their parent carriers. Of these, three concerned CRSs which made certain functionalities available to their parent carriers which were refused to other participating carriers, and three concerned favourable treatment given to the parent carriers of a CRS during the migration phase of that CRS from the former multi-access type of system to the present neutral global core system. All the complaints have been satisfactorily resolved following discussions with the parties concerned

The next most frequent cause of complaint (four cases grouping some twenty one airlines) concerned the alleged incompatibility of CRSs charging policies with Article 10.1 of the code. Article 10.1 states that "Any fee charged by a system vendor shall be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service." The main thrust of the complaints was that the combined effects of the incentives granted to subscribers by CRSs and the inadequacy of controls on the validity of bookings exercised by CRSs, led to an unequal distribution of CRS costs between carriers and subscribers contrary to the requirements of Article 10.1. Given the dominant role played by CRSs in the distribution of air transport products and the statutory obligation placed on most major carriers (as owners of CRSs) which effectively requires them to participate in CRSs, a dissatisfied carrier cannot refuse to deal with their CRS partners.

The issues raised in the complaints were both varied and complex, and had important commercial consequences for carriers, CRSs and subscribers. With a view to allowing a full and informed discussion of the issues to take place, the Commission set up a working group to examine the present charging arrangements and to consider possible alternative arrangements. The group was assisted in its work by an external firm of consultants (SH&E). The results of a study carried out by SH&E were distributed in August 1995, and formed the basis for further, more informed, discussions of the working group. In order to clarify the manner in which Article 10.1 is to be applied some amendments to the existing code provisions are being proposed to the Council.

With one exception, the remaining complaints concerned specific problems relating to: the security of individual passenger data (two cases), display of flights (five cases), market access (two cases), unfair contract terms, and the conformity of ticketing arrangements. In the case of the security of data, it has been demonstrated that no breach of the rules occurred. Concerning the display of flights, in two cases the display has been modified satisfactorily, and in the three remaining cases no infringement of the code was found to have taken place. The problems of market access for an EU CRS in a third country, and of a third country CRS in the EU, have been resolved. In the final two cases discussions are continuing with the CRSs concerned.

The final complaint concerned the refusal of US based CRSs to provide non-US carriers with marketing data relating to US domestic traffic. In accordance with the US rules for CRSs in force at the time, marketing information on US domestic traffic could only be provided to US carriers. The US provision contrasted strongly with the EU code where no such discriminatory provision exists, and therefore in the EU, system vendors are required to make marketing information available to all participating carriers regardless of nationality. However, Article 7 of the EU code provides that certain obligations of the code applicable to system vendors do not apply where reciprocal rights are not granted in third countries. The CRS Amadeus notified the Commission of its intention to invoke the reciprocity provision of the code in order to terminate the sale of its marketing information to US air carriers.

Given the gravity of the discrimination the Commission intervened directly with the US Department of Transport (DOT) with a view to persuading it to modify the US code to eliminate the discriminatory treatment. As a result of the discussions that subsequently took place between the Directorate General for Transport, ESA¹, and the US DOT, an exemption was granted to US CRSs to enable them to sell marketing data on US domestic traffic to EU carriers.

The Commission has not so far been required to take formal decisions in respect of the complaints it has received. It has been possible to resolve complaints within a limited time through direct contact with the parties.

II.3 Other enforcement activities

The Commission is also required to carry out assessments of the adequacy of each CRS's compliance with specific code requirements concerning security of data and the non-discriminatory operation of a CRS's distribution facilities. These assessments are foreseen in Article 6.5 (adequacy of the safeguards on the availability of booking, marketing and sales data) and Article 21.a (annual technical audit)

II.3.a Data Security (Article 6.5)

Article 6.3 of the code states that "a system vendor shall ensure that the provisions in paragraphs 1 and 2 [of Article 6] above are complied with, by technical means and/or appropriate safeguards regarding at least software, in such a way that information provided by or created for air carriers can in no way be accessed by one or more of the parent carriers except as permitted by this Article". Paragraphs 1 and 2 set out the detailed rules concerning the security of access to individual passenger booking data and the availability of marketing data. The system vendor is required to make a description of the technical and administrative measures ("security package") it has adopted available on request to all participating carriers and the Commission. Finally, the Commission is required to assess the adequacy of the security

¹ ESA - EFTA Surveillance Authority

packages and to decide whether the measures are sufficient to provide the safeguards required by Article 6.

The security packages submitted by the system vendors contained a considerable volume of complex technical information on the data security access policies implemented by each CRS. The Commission's assessment concentrated on the following aspects of the packages - the system structure/architecture including data bases and the main records therein, security policy governing access to data including the policy governing authorisation of access to users, levels of access, awareness of safeguards obligations under Code of Conduct, technical measures concerning access by parent carriers, participating carriers and subscribers. Finally, the assessment examined the conditions applicable to the provision of marketing, booking and sales data.

As part of its on-going monitoring activities, the Commission visited a number of CRS installations and, amongst other matters, verified the accuracy of the information contained in the security packages.

On the basis of the paper based description of the system supplemented by the visits to CRSs, the Commission was satisfied with the adequacy of the information provided by the system vendors. However, prior to taking a formal decision on the security packages as required by Article 6.5 of the code, it cross-checked the written description provided by the system vendor with the audit reports described in section II.3.b below.

Formal decisions approving the adequacy of the safeguards were adopted by the Commission in September 1995 (four CRSs) and January 1996 (one CRS).

II.3.b Annual technical audit (Article 21.a)

Article 21.a.1 of the code requires a system vendor to ensure that "the technical compliance of its CRS with Articles 4a and 6 is monitored by an independent auditor". It also requires a system vendor to submit a copy of the auditor's report on his inspection and findings to the Commission once a year. This provision of the code introduced in the review of 1993 represents the first time that the technical compliance of a CRS with any code of conduct in force throughout the world has been subject to statutory audit.

In order to provide guidance to the system vendors' auditors on the nature and extent of the audit checks to be carried out, the Commission appointed a specialist consultant in the field of computer auditing and established a working group, to jointly develop a set of CRS audit guidelines. The audit guidelines defined the nature and scope of the audit checks to be carried out based on a series of defined control objectives. The guidelines were published in October 1994 and copies were also sent to all Member States directly. The guidelines were also used by the Commission's services as a standard against which the adequacy of the audit reports were to be judged. Although the use of the guidelines is not mandatory, the CRSs' auditors have generally used them as the basis for the audits they have carried out.

The 1994 audit reports of the five CRSs operating in the European Union (Amadeus, Galileo International, GETS, SABRE and Worldspan) were submitted to the Commission by the end of March 1995. They were subsequently examined by the Commission, and for two of the five CRSs further clarification of control weaknesses identified by the auditors was required.

The first case concerned the security of passenger information where the CRS was using two of its parent carriers' internal ticketing systems for issuing tickets on behalf of all carriers. The CRS does not have its own ticketing system at the present time, and therefore has to rely on third parties for ticketing functions. The system vendor's auditor was not able to verify whether the parent carriers were excluded from having access to the data transmitted to their ticketing systems by the CRS for the purpose of issuing tickets. Although the terms of the contractual arrangements between the parties generally prohibited such access, there did not appear to be any specific technical safeguards in force to prevent it. As a result of discussions between the Commission and the system vendor, it was agreed that special audits of the two carriers' ticketing functionalities would be carried out. The results of these audits have demonstrated that the safeguards in place in each of the carriers is adequate to ensure that no access to confidential passenger data is possible by the carriers.

In the other case, it appeared from a pre-audit check carried out by the system vendor itself that employees of hosted carriers (carriers whose internal reservation systems share common facilities with the CRS) had the possibility to access passenger details where the carrier was not involved in the journey and, therefore, had no legitimate interest in accessing the information. The system vendor immediately undertook the necessary steps to correct the programming logic that controlled access to passenger data. The system is now in full compliance with the provisions of Article 6 in this respect.

The Commission is satisfied that the exhaustive nature of the checks carried out during the course of the audit of all CRSs would have led to the discovery of any deficiencies in the technical safeguards in place to meet the requirements of Articles 4a and 6(3). With the exception of the second case cited above, which has now been corrected, no preferential access to confidential passenger data and no operational advantages accrue to parent carriers of the CRSs present in the EU.

The reports on the 1995 audits have not identified any material issues which require intervention by the Commission.

In line with an undertaking given to CRSs when the guidelines were first adopted, the Commission has reviewed the audit guidelines in the light of the experience gained in the first year of their use. A revised version of the guidelines was issued in September 1996.

II.4 Requests for guidance

Over the period since the adoption of the amended code, the Commission's services have given guidance on the application of a particular provision of the code on three points - advertising in the principal display, display of code share flights and the treatment of passive bookings. The

background to the request for clarification and the Commission's services response is set out below.

The Commission's services gave their guidance on interpretation without prejudice to any other future positions of the Commission; it is for the Court of Justice to give binding interpretations of Community law pursuant to Article 177 of the Treaty.

II.4.a Advertising in the principal display

As part of the development of their commercial activities, CRSs wanted to offer carriers and others the possibility to place advertisements in the displays provided to subscribers. A number of CRSs sought to persuade the Commission that its concerns over the possible discriminatory effects of advertising in the principal display were not justified. In particular, they underlined the fact that their proposals envisaged the clear separation of the advertisement from the information contained in the principal display itself. In addition, they would ensure that the content of the advertisements displayed would be subject to the appropriate safeguards to prevent the neutrality and transparency of the display from being influenced.

It was accepted that CRSs could include advertising in the principal display on condition that they would apply strict guidelines on the content of the advertisements and the number of advertising slots that any carrier can take. The latter restriction is required to prevent a large carrier buying up all available advertising slots. The CRSs also have to ensure that any advertising is separated in a clear manner from the principal display. Finally, the advertising should not be used as a functionality through which bookings could be made.

II.4.b Display of code share flights

Paragraphs 9 and 10 of the Annex to the code require system vendors to ensure that no flight option shall be displayed more than once unless there is a joint venture or other contractual arrangement (such as a code share) requiring two or more carriers to assume separate responsibility for the offer and sale of air transport products, in which case each carrier, up to a maximum of two can have a separate display. From a technical standpoint, the selection of the two flights to be displayed is complex, and cannot be carried out by the CRS in isolation. In the absence of an agreement amongst carriers for an industry wide standard to be used for communicating the necessary information to enable the CRS to carry out the selection procedure, CRSs were continuing to display more than two flight options.

The Commission's services have indicated that a proposed set of procedures providing a solution to this problem drawn up jointly by the Association of European Airlines and the Reed Travel Group, were in conformity with the code. Any air carrier following these procedures would therefore have discharged its obligations under the code by providing sufficient data. Conversely, any code-sharing air carrier not following the AEA/Reed procedure will have to provide the required data in another way. However, if a CRS is not using these procedures, it will have to indicate which data code-sharing air carriers will have to provide. At the same time, the Commission's services indicated their willingness to consider alternative solutions to this problem.

II.4.c Passive bookings

Meetings were held with system vendors and carriers in early 1994 to find a mechanism for implementing the provisions of Article 10.1 concerning the notification of, and the possibility for a carrier to reject, a passive booking. As a result of the meetings, a coding structure for the notification and cancellation of passive bookings has been agreed and has now been implemented industry wide.

III. Need for an amendment to the code of conduct

1. An analysis of the complaints submitted under the existing code of conduct demonstrates that the present code is generally able to provide a satisfactory mechanism for resolving the majority of the problems identified by carriers, CRSs and subscribers, and hence makes a major contribution to securing fair competition in the CRS and related markets. However, there are a number of specific areas where the provisions of the code may need to be adapted to address issues that have been identified since the present code was adopted and, in particular, as a result of discussions that have taken place during the course of the charging principles review. In addition, important developments are taking place in the airline distribution sector and their effects, although they may not be significant today, will have to be taken into account in the code review in order that the code remains relevant for the foreseeable future.

2. In the following section the Commission has set out the motivation for a number of suggested amendments to the code. The amendments reflect discussions held with the industry partners and national experts.

a) Subscriber obligations

3. Air transport user organisations have indicated their concern to the Commission about a possible shortcoming of the present code which is the absence of any direct obligation on subscribers concerning the use of a CRS similar to those placed on carriers and system vendors. The rules placed on system vendors concerning the provision of accurate and comprehensive information in their CRS displays are rendered ineffective if the same information is not passed on to the customer. This should not be seen as implying that the subscriber deliberately seeks to mislead a customer or to misuse the system. Rather that in the face of large volumes of information contained in the displays, the subscriber must be selective in the information it passes on to the customer. In order to ensure that all stages in the process of distributing information on air transport services are subject to a consistent level of safeguards to guarantee the integrity of the final product, it is proposed that the missing link in that chain, i.e. the subscriber, is brought within the scope of the code.

4. At the present time, the only manner in which a subscriber is subject to any constraint in the use of a CRS is found in Article 9.5, which states that "A system vendor shall provide in each subscriber contract for (a) the principal display, conforming to Article 5, to be accessed for each individual transaction, except where a consumer requests information for only one air carrier or where the consumer requests information for bundled air transport products alone; (b) the subscriber not to manipulate material supplied by CRSs in a manner which would lead to inaccurate, misleading or discriminatory presentation of information to consumers." During the charging principles review, system vendors expressed their difficulty in ensuring that their subscribers fully respected these provisions. By bringing subscribers directly within the scope of the code, any complaint concerning a subscriber's behaviour can be investigated in a more objective and transparent manner.

5. The first objective of the amendment is to ensure certain minimum levels of confidence in the non-discriminatory nature of the information provided to the customer.

6. To meet the first objective, it is proposed that in the absence of a specific request from a customer, a subscriber will be required to use a neutral display. Furthermore, the subscriber should not manipulate the information provided by a CRS in a manner that would lead to inaccurate, misleading or discriminatory presentation of information to the customer. This provision will also apply to the use of third party software that subscribers may use as an interface between the CRS and themselves.

7. In addition, the consumer should also be provided with full information on a number of key features of the flight, including any en-route changes of equipment, the number of scheduled en-route stops, the identity of the air carrier actually operating the flight, and of any changes of airport required in any itinerary provided, to the extent that this information is shown by the CRS. Finally, to assist consumers in their choice of flight, they shall be entitled at any time on request to be provided with a print out of the CRS display or with access to a parallel CRS display reflecting the same image being viewed by the subscriber. Commercially sensitive data, such as "net fares", would be excluded from this provision.

8. The second objective of the amendment is to protect the carrier from the effects of abusive bookings that lead to unnecessary booking fees and reduced reliability of inventory control systems.

9. In respect of the second objective, the code must also ensure that the subscriber uses the CRS in manner which is in the best interests of all the parties involved in a transaction. Therefore, it is necessary that the subscriber is required to use the system only to make valid transactions and hence avoid the risk that a carrier is billed for unnecessary bookings. Subject to any derogation from this principle granted to the subscriber by the carrier concerned.

10. To meet this objective, the subscriber will be required to make reservations and issue tickets in conformity with the information contained in the CRS used, and, where possible, carry out reservation and ticketing operations in the same CRS. A subscriber shall not make reservations for the same passenger which are physically impossible to carry out, such as duplicate bookings on a number of flights to guarantee a customer a seat on a flight at whatever time he may eventually arrive at the airport.

(Reference: proposed Article 9.a and Annex II)

b) Extension of scope of code to include rail options

11. With the rapid expansion of the high speed rail network in the EU, the consumer now has a competitive alternative to air transport for journeys between 300 and 800 kms. However, in order to take full advantage of this new choice of transport modes, or combination of modes, the prospective passenger needs to be able to compare the different characteristics of the services

on offer, and to be provided with a continuity of information in the case of a combination of modes. At the present time, rail and air services are, for the most part, distributed through separate channels which renders the comparison of options by the potential traveller difficult. There are isolated examples where rail services are currently integrated into an air transport CRS display; for the most part they are identified by air carrier designator codes.

12. The Commission is aware of the importance of distribution arrangements in the overall objective of encouraging interoperability. It is also aware of the possible benefits in terms of the improved quality of information available to the consumer and of the reduced distribution costs arising from the elimination of wasteful duplication of reservation systems. It is therefore proposing to introduce, under certain circumstances, the possibility for rail to be integrated into the CRS display of air transport services.

13. It would appear that the most satisfactory method of fixing the conditions under which a rail transport operator could distribute its services alongside those of air carriers would be to apply the same obligations on the rail operator as those applicable to a participating carrier. Therefore, in order to avoid discrimination, it is proposed that a rail transport operator would be considered as an air carrier for the purposes of the code and could distribute its services in an integrated display if it meets the obligations placed on a participating carrier as set out in Article 4 of the code.

14. The question has been raised as to whether a rail operator, who also provides computer reservation services (for rail transport) should also be treated as a system vendor/parent carrier and thus be required to respect the obligations contained in Articles 3, 3a, 4, 4a, 5, 6, 7, 8, 9, 10 and 21a of the code. It would appear, however, that since such reservation systems are designed to cater primarily for the rail operator's own services and that the participation of other rail operators is very limited indeed, then the rail operator's system should not be considered as a CRS for code purposes.

15. The basis on which rail services will be integrated into the principal display are complex and must be subject to careful consideration. In particular, the possible screen padding effects that may be caused by the display of all rail services. It should be considered which rail services should be included e.g. High speed, Inter City, etc but excluding local services. However, it is not proposed at this stage to fix different criteria for the inclusion of rail services in the display algorithm. More general technical problems may arise from the substantial increase in the number of IATA location identifier codes required to cover all the railway stations likely to be included in CRS displays. It is not clear whether the existing stock of three digit codes will be inadequate to meet the likely demand for new codes.

(Reference: proposed Articles 2(r), 2(s), 2(t) and 21.b)

c) Charging policy

16. An extensive debate has taken place between the Commission, CRSs, carriers and subscribers concerning the basis on which CRSs calculate the level of fees to be charged for the services they provide. Several carriers have complained to the Commission that CRSs have not

respected the requirement under Article 10.1 that "Any fee charged by a system vendor shall be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service". They base their complaints on the fact that subscribers using a CRS receive discounts or incentives based on usage (productivity pricing or incentive schemes). They claim that a consequence of such schemes is that the part of the cost burden no longer borne by the subscriber is therefore transferred to the fee charged to the carrier. They suggest that as a result of the incentive payments, many large subscribers are effectively paid for the use of the CRS facilities.

17. With the help of external consultants, the Commission carried out a detailed examination of CRSs' charging policies. However, the results of this examination were inconclusive on the issue of incentive payments to subscribers. The report suggested that the present trend in incentive schemes was leading to a competing spiral between CRSs in their bids for subscriber business which did not result in any added value for the carrier who has to foot the bill through increased booking fees.

18. On the other hand, it was also recognised that the present system of incentive payments to subscribers is an important marketing tool for the CRSs in gaining access to new markets or of increasing market share in their existing markets. The CRSs consider that their charging policy with respect to subscribers is composed of two distinct elements, firstly a fee for the provision of equipment and other services, and secondly a fee payable to the subscriber for the provision of distribution services to the CRS. The level of the distribution fee varies according to the competition in the market for such services. The consultant's report demonstrated that the higher the degree of competition, the higher the level of the distribution fee. Where competition is the most intense, the result can be that the CRS is required to pay a higher fee to subscribers for the distribution of its services than the fee it charges the same subscribers for the rental of equipment and other services.

19. The Commission accepts that it is not in the CRSs' interest for the fees payable to subscribers for the distribution service to continue to increase, and that therefore CRSs have not deliberately set about increasing payments to subscribers in order to raise booking fee levels. Given the close correlation between the level of incentive payments and the extent of competition between CRS in a particular market, the Commission is persuaded by the CRSs' assertion that incentives awarded to subscribers are distribution costs. As such they can be included in the booking fee calculation.

20. The Commission does not seek to prevent competition between CRSs by imposing restrictions on a CRSs ability to attract new business. Therefore, the obligation of a system vendor with respect to its charging policy to subscribers needs to be clarified. Accordingly, it is proposed that the existing Article 10.1 (renumbered as Article 10.1.a) should apply only to fees charged to participating carriers, and a new Article 10.1.b would be introduced requiring that fees charged to a subscriber for equipment, etc, should be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service. The level of distribution fees payable to

subscribers, which, for the reasons set out above, are considered as distribution costs for the system vendor, and would be dealt with as described in paragraph 19.

21. Article 3.a.1.(b) of the code sets down the cost to be charged to a parent carrier when it is required to accept a booking in accordance with Article 3.a.1.(a). However, the present text is ambiguous and could lead to CRSs charging excessive fees for such bookings. To ensure that the provision defines more precisely the charge to be paid, it is suggested a parent carrier, in respect of another CRS, should not be obliged to pay more than the same CRS charges for the nearest equivalent transaction.

(Reference: Articles 3.a and 10.1)

d) Display of code-share flights

22. In the amendment to the code adopted in 1993, participating carriers with code-share type arrangements were each allowed, up to a maximum of two, to have a separate display using their own carrier designator codes. The reasons motivating the Council's decision concerning code-share flights remain valid today. Essentially, they are that code-sharing can provide benefits to the consumer through, for example, improved connecting flights, streamlined check-in procedures, special fare deals, and joint frequent flyer programmes.

23. However, it has been suggested that the limit of two on the number of flight options to be displayed is both arbitrary, and, more importantly, difficult to implement. So far, only one CRS has put in place a satisfactory procedure to enable carriers to comply with this provision ("the AEA/Reeds solution"). The other three CRSs operating in the EU have announced their intention to implement the rule, but have identified a number of practical problems. They stem for the most part from the absence of sufficient information from the carriers to enable the CRS to identify the two options to be displayed.

24. In these circumstances, consideration must be given to whether the present rule should be amended. If the rule is to be amended, there appear to be only two possible alternatives. The first alternative is that all code-share flights (both operational and marketing) can be shown in the CRS display. The second alternative is that only the operational flight itself can be shown.

25. There is a convincing argument that the possibility to include all flight options in a CRS display results in an unacceptable level of "screen padding" (the CRS display shows several flights which appear to be operating on a route but which are all, in fact, marketing versions of a single operational flight). The consequence is that "genuine" operating flights are relegated to the second or third display screens and stand little chance of being selected by the subscriber. As the majority of all bookings are made from the first screen, the practice can have severe discriminatory effects in favour of carriers having code-sharing arrangements. The result is also very confusing for the consumer.

26. In these circumstances, the Commission considers that the balance of the arguments tends to suggest that the distortive effects of the display of multiple flight options of the same flight outweighs the benefits to the consumer of code-share arrangements described above.

27. The proposal contained in the second alternative to the existing arrangements - only the operating flight to be displayed - has met with a generally negative reaction from all sides of the industry. The recognised benefits of the code-share arrangements would be undermined if carriers were unable to market the flights of their code-share partners in their own names.

28. In the light of the above, it is proposed that the present arrangements be maintained in force, but clarified so that a CRS, in the absence of adequate information to apply the two option rule, will be allowed to select, on a non-discriminatory basis, the options to be displayed.

(Reference: Annex, paragraph 10)

e) Scope of audit

29. The present text of Article 21a concerning the audit of the technical compliance of a CRS requires clarification as to the period covered by the audit, the activities of the CRS that are subject to audit, and the deadline for the submission of the audit report.

30. Currently a system vendor is required to ensure that the technical compliance of its CRS is monitored by an independent auditor. The code does not specify whether monitoring is to be continuous throughout the year or limited to a specific point in time (e.g. the date on which the auditor carried out the audit).

31. In order to guarantee that the controls required by the code are in place at all times, it is necessary for the monitoring to refer to the entire year. However, this does not necessarily require that the auditor is present 24 hours per day. He may rely on internal controls applied by management to achieve the objectives required by the code.

32. The technical compliance of the CRS subject to monitoring by the independent auditor includes not only the software and hardware of the system but also the internal controls applied by management referred to in the previous paragraph.

33. Finally, in the interests of the efficient organisation of the monitoring process, it is proposed that the audit report should cover a calendar year and be submitted within four months after the end of the year in question.

(Reference: Article 21.a)

f) Ticketing arrangements for flights carrying the same flight number operated by the same carrier

34. The text of the provision concerning ticketing arrangements for flights carrying the same flight number operated by the same carrier (paragraph 9 of the annex to the code) requires clarification to ensure that the objectives intended by the Council are fully met. The code currently states that "Nevertheless, only one reservation shall be necessary where the flights are

operated by the same air carrier, with the same flight number, and where the air carrier requires only one flight coupon." It has been observed that the requirement of the air carrier to have only one flight coupon does not impose a corresponding obligation on the CRSs to issue such a coupon.

35. It is therefore proposed to amend the text of the provision to read "Nevertheless, where the flights are operated by the same carrier with the same flight number and where a carrier only requires only one flight coupon and one reservation, a CRS should only issue one coupon and charge for one reservation".

(Reference: Annex, paragraph 9)

g) Security package

36. Article 6.4 of the code requires a system vendor to make available, within three months of the entry into force of the regulation, a description of the technical and administrative measures ("security package") which it has adopted to conform with the security of personal and marketing data requirements of the code (Articles 6.1 and 6.2). The Commission is required to decide on the adequacy of these measures to provide the safeguards required (Article 6.5).

37. Given that the Commission has recently completed this assessment of the security packages in respect of all CRSs operating in the EU, and that the audit foreseen under Article 21a requires the security provisions of Articles 6.1 and 6.2 to be monitored in any case, the requirement to submit a description of the measures taken, and for their review by the Commission, is no longer required. Therefore, in order that the eventual consolidated version of the three code regulations properly reflects the obligations on system vendors, it is proposed that Articles 6.4 and 6.5 are deleted.

38. The deletion of Article 6.5 requires that the text of Article 3.a.2 should be reviewed. Article 3.a.2 states that "The obligation imposed by the Article shall not apply in favour of a competing CRS when, in accordance with the procedures of Article 6(5) or Article 7 (3) or (4), it has been decided that the CRS is in breach of Article 4a or that a system vendor cannot give sufficient guarantees that obligations under Article 6 concerning unauthorised access of parent carriers to information are complied with." Since it is proposed that Article 6.5 be deleted, and since Articles 7(3) and 7(4) (the reciprocity provisions) already provide through Article 7.2 for the withdrawal of the obligation on parent carriers under Article 3.a directly, then Article 3.a.2 should be linked to the general enforcement powers of Article 11.

(Reference: Articles 3.a and 6)

h) Right of a defendant to be heard

39. Under the enforcement powers given to the Commission by the Council in Article 11 of the code, it is empowered to initiate procedures to terminate infringements of the provisions of

the code. In the case that the Commission intends to impose a fine on an undertaking or association of undertakings, it must give the parties concerned the right to be heard on the matters to which the Commission takes objection (Article 19). It is possible however that the Commission could take a decision which, without involving the imposition of a fine, could nevertheless have important commercial consequences for the undertaking concerned (e.g. the Commission may require a system vendor to remove what it considers are unfair terms in a participating carrier agreement). The absence of the possibility for the defendant to be heard in such circumstances may infringe his rights of defence. It is therefore proposed that the right to a hearing should be expressly granted to all defendants in cases where the Commission intends taking a decision.

(Reference: Article 19)

i) Inclusion of information systems within the scope of the code

40. At the present time it is difficult to assess with any accuracy the developments that will take place in the methods of electronic distribution of air transport products. Already bookings can be made through the Internet on several airlines and CRSs. The question is frequently asked whether such systems fall within the scope of the code of conduct. The definition of a CRS according to the present code states that a "computerised reservation system means a computerised system containing information about, inter alia, schedules, availability, fares and related services, with or without facilities through which reservations can be made or tickets may be issued, to the extent that some or all of these services are made available to subscribers".

41. However, as the Internet or similar systems only act as sophisticated communications links between information providers (e.g. an airline or CRS) and their subscribers and do not contain any information on air transport services per se, they do not appear to fall within the definition of a system vendor or CRS. Such systems are considered analogous to communication networks which do not fall directly within the scope of the code (e.g. the SITA network), but should come under the responsibility of a system vendor to ensure that any third party providing services on its behalf respects the relevant code provisions.

42. In these circumstances, for services distributed through systems such as Internet, it is the information provider (i.e. CRS or carrier) that must ensure compliance with the code provisions. Special attention should be paid in this respect to the fact that the code definition of a CRS refers to air carriers in the plural, therefore a carrier using the Internet or a similar service to display information about its own services alone would not be considered as a CRS. However, as soon as it chose to display other carriers' services, then it may risk being considered as a CRS, and expected to comply with the code accordingly.

43. Article 21 of the code presently exempts a CRS used by an air carrier or group of air carriers in its/their own offices from the rules concerning the neutrality of the principal display. The consumer would not reasonably expect to receive unbiased information from the offices or sales counters of an air carrier. The application of the same principle to services provided through systems such as the Internet should permit a group of carriers - those with code share or

other similar agreements but not simply interline agreements (since this could severely limit the number of CRSs falling within the scope of the code) - to offer information on their air transport products without being subject to the provisions of Article 5 and 9(5). It is proposed that Article 21 also be amended to ensure consistency.

44. To ensure that CRS services that are provided in an electronic means directly to the user are also covered by the code, it is proposed that the definition of a subscriber be amended to refer to the "user of a CRS" by deleting reference to the distribution facilities. This would also have the effect of clarifying that information systems are covered by the code.

(Reference: Article 2.1 and proposed Articles 21 and 21.c)

j) Obligations of third parties

45. In order to clarify the manner in which information systems, as with any other third party providing services on behalf of a system vendor, fall within the scope of the code, it is proposed that an obligation be placed on a system vendor to specifically ensure in its relations with third parties the duty to respect the relevant code provisions.

(Reference: Article 4.a)

k) Ranking of flights

46. With the increase in the use of hub and spoke arrangements by carriers, the service provided by indirect flights can now be of an equivalent level to that offered on other direct flights involving stops at intermediate points.

47. The ranking criteria contained in paragraph 1 of the Annex to the code should be amended such that the ordering of the display of flights is firstly all non stop flights between the city pair concerned, and secondly all other flights.

(Reference: Annex, paragraph 1)

l) Billing information on magnetic media

48. Amongst other matters, Article 10.1 of the code requires that a system vendor offers billing information on magnetic media. This provision recognises the fact that the audit of CRS bills can only be satisfactorily carried out by electronic means. The volume of booking data involved is so great that alternative billing media such as microfiche or paper are inadequate.

49. System vendors normally charge a fee for providing billing information on magnetic media (BIDT - billing information data tapes) but not for the provision of information on other media. The fee is considerably higher than the cost of the tape itself. To ensure that the objective of the provision is not impaired by the charge made for the BIDT by the system vendor, it is proposed that the fee to be charged for billing information on magnetic media should not exceed the cost of the media itself together with transportation costs thereof.

(Reference: Article 10.1)

m) Other

50. Article 23.2 of Reg 2299/89 has ceased to be required following the passage of time and can therefore be deleted.

(Article 23.2 of Reg 2299/89)

Proposal for a
Council Regulation (EC)
amending Council Regulation (EEC) No 2299/89
on a Code of Conduct for computer reservation systems (CRSs)

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Articles 75 and 84(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²

Acting in accordance with the procedure referred to in Article 189c of the Treaty in co-operation with the European Parliament³,

Whereas Council Regulation No 2299/89⁴ as amended by Regulation No 3089/93⁵ has made a major contribution to ensuring fair and unbiased conditions for air carriers in computer reservation systems, thereby protecting the interests of consumers;

Whereas it is necessary to extend the scope of Regulation No 2299/89 and to clarify its provisions and it is appropriate to take these measures at Community level to ensure that the objectives of the Regulation are met in all Member States;

Whereas this Regulation is without prejudice to the application of Articles 85 and 86 of the Treaty;

Whereas this Regulation is without prejudice to the application of the Directive 95/46/CE of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data;

1

2

3

4 OJ No L 220, 29.7.1989, p1

5 OJ No L 278, 11.11.1993, p1

Whereas Commission Regulation (EEC) No 3652/93⁶ as amended by the Act of Accession of Austria, Finland and Sweden, exempts from the provisions of Article 85(1) of the Treaty agreements for the common purchase, development and operation of computer reservation systems;

Whereas systems providing information directly to the consumer by electronic means through public telecommunications networks should be brought within the scope of the code;

Whereas it is desirable to clarify the basis on which parent carriers should be charged for bookings they are required to accept from competing CRSs;

Whereas it is necessary to clarify the basis on which CRSs charge for the services they provide to participating carriers and subscribers to improve transparency;

Whereas it is necessary to ensure that third parties carrying out services on behalf of a CRS are subject to the same obligations the code imposes on that CRS;

Whereas the effectiveness of the code's CRS audit requirements has rendered unnecessary the separate assessment by the Commission of a CRS's data security arrangements ;

Whereas it is necessary to include subscribers directly within the scope of the code so that the reservation services they provide to their customers are not inaccurate, misleading or discriminatory;

Whereas the right of a defendant to be heard on matters to which the Commission takes objection need to be expressly foreseen;

Whereas the integration of rail services into the CRS display of air transport services can improve the quality of information available to consumers and eliminate the wasteful duplication of distribution services;

Whereas rail operators distributing services through integrated air and rail CRSs should be subject to the same conditions as air carriers;

Whereas information or distribution facilities offered by carriers having joint venture or other contractual arrangements should not be subject to the code provisions;

Whereas the ranking criteria for the display of flights should provide consumers with the best options for their air travel arrangements,

HAS ADOPTED THIS REGULATION:

⁶ OJ No L 333, 31.12.1993, p37

Article 1

Regulation No 2299/89 is hereby amended as follows:

1. Article 1 is replaced by the following:

“Article 1

This Regulation shall apply to computerised reservation systems to the extent that they contain air transport products, with or without the incorporation of rail transport products, when offered for use and/or used in the territory of the Community, irrespective of:

- the status or nationality of the system vendor,
- the source of the information used or the location of the relevant central data processing unit,
- the geographical location of the airports between which air carriage takes place. ”

2. Article 2 is amended as follows:

- a) Paragraph (l) is replaced by the following:

" (l)

"subscriber" means a person, other than a consumer, or an undertaking, other than a participating carrier, using a CRS under contract or other financial arrangement with a system vendor;"

- b) Paragraph (m) is replaced by the following:

" (m)

"consumer" means any person seeking information about and/or intending to purchase an air transport product; where a system vendor has a financial arrangement with a consumer, the principles of neutrality of this Regulation shall apply;

- c) Paragraph (q) is added:

“ (q)

“rail transport operator” means any private or public undertaking whose main business is to provide rail transport services to passengers.”

d) Paragraphs (r), (s) and (t) are added

“(r) "unbundled rail transport product" means the carriage by rail of a passenger between two stations, including any related ancillary services and additional benefits offered for sale and/or sold as an integral part of that product;

(s) "bundled rail transport product" means a pre-arranged combination of an unbundled rail transport product with other services not ancillary to rail transport, offered for sale and/or sold at an inclusive price;

(t) "rail transport product" means both unbundled and bundled rail transport products;”

3. Article 3a. is amended as follows:

a) Subparagraph 1.(b) is replaced by the following:

“(b)

The parent carrier shall not be obliged to accept any costs in this connection except for reproduction of the information to be provided and for accepted bookings. The booking fee payable to a CRS for an accepted booking made in accordance with this Article should not exceed the fee charged by the same CRS for the nearest equivalent transaction. ”

b) Paragraph 2 is replaced by the following:

“2

The obligation imposed by the Article shall not apply in favour of a competing CRS when, in accordance with the procedures of Article 11, it has been decided that the CRS is in breach of Article 4a or Article 6 concerning unauthorised access of parent carriers to information.”

4. Article 4a.4 is added:

“4

The system vendor shall ensure that any third parties providing in whole or in part CRS services on its behalf respect the relevant provisions of this regulation.”

5. Articles 6.4 and 6.5 are deleted

6. The following Article 9.a is inserted:

"Article 9a

1. (a) As regards information provided by a CRS, a subscriber shall use a neutral display in conformity with Article 5.2.(a) and (b) unless another display is required to meet a preference indicated by a consumer.

(b) A subscriber shall not manipulate information provided by a CRS in a manner that will lead to inaccurate, misleading or discriminatory presentation of such information to the consumer.

(c) A subscriber shall make reservations and issue tickets in conformity with the information contained in the CRS used or as authorised by the carrier concerned.

(d) A subscriber shall inform the consumer of any en-route changes of equipment, the number of scheduled en-route stops, the identity of the air carrier actually operating the flight, and of any changes of airport required in any itinerary provided, to the extent that this information is present in the CRS.

(e) A consumer shall be entitled at any time to have a print out of the CRS display or be provided with access to a parallel CRS display reflecting the same image being displayed to the subscriber.

2 A subscriber shall use the distribution facilities of a CRS as described in Annex II of this code"

7. Article 10.1 is replaced by the following:

"1.(a) Any fee charged to a participating carrier by a system vendor shall be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service.

The billing for the services of a CRS shall be sufficiently detailed to allow the participating carriers to see exactly which services have been used and the fees therefor; as a minimum, booking fee bills must include the following information for each segment:

- type of CRS booking,
- passenger name,
- country,
- IATA/ARC agency identification code,
- city-code,
- city pair of segment,

- booking date (transaction date),
- flight date,
- flight number,
- status code (booking status),
- service type (class of service),
- PNR record locator,
- booking/cancellation indicator.

The billing information shall be offered on magnetic media. The fee to be charged for the billing information provided on magnetic media shall not exceed the cost of the media itself together with transportation costs thereof.

A participating air carrier shall be offered the facility of being informed at the time that any booking/transaction is made for which a booking fee will be charged. Where a carrier elects to be so informed, it shall be offered the option to disallow such booking/transaction, unless the latter has already been accepted.

(b) Any fee for equipment rental or other service charged to a subscriber by a system vendor shall be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service. Productivity based benefits awarded to subscribers by system vendors in the form of discounts on rental charges or commission payments, are considered as distribution costs of the system vendor.

The billing for the services of a CRS shall be sufficiently detailed to allow subscribers to see exactly which services have been used and the fees therefor;"

8. Article 19.1 is replaced by the following:

" 1

Before taking decisions pursuant to Articles 11 or 16, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission takes, or has taken, objection. "

9 Article 21 is replaced by the following:

"Article 21

The provisions in Article 5, Article 9(5) and the Annex to this Regulation shall not apply to a CRS used by an air carrier or a group of air carriers, which have a joint venture or other contractual arrangement, but excluding interline agreement, in its (their) own office(s) and sales counters clearly identified as such.

10. Article 21a.1 is replaced by the following:

" 1

The system vendor shall ensure that the technical compliance of its CRS with Articles 4a and 6 is monitored by an independent auditor on a calendar year basis. For this purpose, the auditor shall be granted access at any time to any programs, procedures, operations and safeguards used on the computers or computer systems through which the system vendor is providing its distribution facilities. Each system vendor shall submit its auditor's report on his inspection and findings to the Commission within four months of the end of the calendar year under review. This report shall be examined by the Commission with a view to any necessary action in accordance with Article 11 (1)."

11. The following Articles 21b and 21c are added:

"Article 21b

A rail transport operator will be considered as a participating carrier for the purposes of the code on condition that it has an agreement with a system vendor for the distribution of its products through a CRS. Its services shall be treated in the same manner as air transport products and be incorporated into the principal display in accordance with the criteria set out in Annex I. to the code. All references to "flights" in this Regulation shall be deemed also to include references to "rail travel".

Article 21c

Where two or more carriers have a joint venture or other contractual arrangement, but excluding interline agreement, to provide information and/or distribution facilities accessible through a public telecommunications network, clearly identifying the arrangement as such, the information/distribution facilities will not be subject to the provisions of the code."

12. Article 22.1 is replaced by the following:

"Article 22.1

This Regulation shall be without prejudice to national legislation on security, public order and data protection measures taken in application of Directive 95/46/CE. "

13. Article 23 is replaced by the following:

"Article 23

The Council shall decide on the revision of this Regulation by 31 December 2002 at the latest, on the basis of a Commission proposal to be submitted by 31 March 2002, accompanied by a report on the application of this Regulation."

14. The Annex is replaced by Annex I and Annex II set out in the Annex.

Article 2

This Regulation shall enter into force on the 30th day following its publication in the *Official Journal of the European Communities*.

This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX

"ANNEX I

Principal display ranking criteria for flights offering unbundled air transport products.

1. Ranking of flight options in a principal display, for the day or days requested, shall be in the following order unless requested in a different way by a consumer for an individual transaction:

- (i) all non-stop direct flights between the city-pairs concerned,
- (ii) all other flights.

2. A consumer shall at least be afforded the possibility of having, on request, a principal display ranked by departure or arrival time and/or elapsed journey time. Unless otherwise requested by a consumer, a principal display shall be ranked by departure time for group (i) and elapsed journey time for group (ii).

3. Where a system vendor chooses to display information for any city-pair in relation to the schedules or fares of non-participating carriers, but not necessarily all such carriers, such information shall be displayed in an accurate, non-misleading and non-discriminatory manner between carriers displayed.

4. If, to the system vendor's knowledge, information on the number of direct scheduled air services and the identity of the air carriers concerned is not comprehensive, this shall be clearly stated on the relevant display.

5. Flights other than scheduled air services shall be clearly identified.

6. Flights involving stops en route shall be clearly identified.

7. Where flights are operated by an air carrier which is not the air carrier identified by the carrier designator code, the actual operator of the flight shall be clearly identified. This requirement shall apply in all cases, except for short-term *ad hoc* arrangements.

8. A system vendor shall not use the screen space in a principal display in a manner which gives excessive exposure to one particular travel option or which displays unrealistic travel options.

9. Except as provided for in paragraph 10, the following shall apply:

(a) for direct services, no flights shall be featured more than once in a principal display;

(b) for multi-sector services involving a change of aircraft, no combination of flights shall be featured more than once in a principal display;

(c) flights involving a change of aircraft shall be treated and displayed as connecting flights, with one line per aircraft segment.

Nevertheless, where the flights are operated by the same carrier with the same flight number and where a carrier only requires only one flight coupon and one reservation, a CRS should only issue one coupon and charge for one reservation

10. 1. Where participating carriers have joint venture or other contractual arrangements requiring two or more of them to assume separate responsibility for the offer and sale of air transport products on a flight or combination of flights, the terms 'flight' (for direct services) and 'combination of flights' (for multi-sector services) in paragraph 9 shall be interpreted as allowing each of the carriers concerned - up to a maximum of two - to have a separate display using its individual carrier designator code.

2. Where more than two carriers are involved, designation of the two carriers entitled to avail themselves of the exception provided for in subparagraph 1 shall be a matter for the carrier actually operating the flight. In the absence of sufficient information from the operating carrier to identify the two carriers to be designated, a system vendor may designate the carriers on a non-discriminatory basis.

11. A principal display shall, wherever practicable, include connecting flights on scheduled services which are operated by participating carriers and are constructed by using a minimum number of nine connecting points. A system vendor shall accept a request by a participating carrier, to include an indirect service, unless the routing is in excess of 130% of the great circle distance between the two airports or except where this would lead to the exclusion of services with a shorter elapsed journey time. Connecting points with routings in excess of 130% need not be used.

Annex II

Use of distribution facilities by subscribers

1. A subscriber shall keep accurate records covering all CRS reservation transactions. These shall include flight numbers, reservations booking designators, date of travel, departure and arrival times, status of segments, names and initials of passengers with their contact address and/or telephone number and ticketing status. When booking or cancelling space, the subscriber must ensure that the reservation designator being used corresponds to the fare paid by the passenger.

2. A subscriber shall not make duplicate reservations for the same passenger. In cases where confirmed space is not available on the customer's choice, the passenger may be waitlisted on that flight (if wait-list is available) and confirmed on an alternate flight.

3. Whenever a passenger cancels a reservation, the subscriber must immediately release such space.
4. When a passenger changes an itinerary, the subscriber shall ensure that all space and supplementary services are cancelled at the time the new reservations are made.
5. A subscriber shall, where practicable, request or process all reservations for a specific itinerary, and all subsequent changes, through one CRS.
6. A subscriber shall only request or sell airline space when requested to do so by a consumer.
7. A subscriber shall ensure that a ticket is issued in accordance with the reservation status of each segment and in accordance with the applicable time limit. A subscriber shall not issue a ticket indicating a definite reservation and a particular flight unless confirmation of such reservation has been received."