

Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council on a Code of Conduct for computerised reservation systems

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(2008/C 224/12)

On 5 December 2007, the Council decided to consult the European Economic and Social Committee, under Articles 71 and 80, paragraph 2, of the Treaty establishing the European Community, on the

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

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2008. The rapporteur was Mr McDonogh.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 75 votes with 1 abstention.

1. Recommendations

The EESC agree and support the Commission's recommendations, but recommend the following should be added:

1.1 Introduce legislation for the complete divestment of CRS (Computerised Reservation Systems) ownership by parent carriers in the EU and measures to prevent future investments by carriers, directly or indirectly, in the CRS.

1.2 Retain the rules for parent carriers until these airlines have divested their ownership in CRS.

1.3 Abolish neutral display provisions. Maintaining a principle display is of limited use in practice due to each individual or corporate traveller's preferences or policies, while in the online travel environment, neutrality rules are rarely adhered to or not covered by the Code of Conduct.

1.4 Enforce the display of fares that are inclusive of all taxes, fees, surcharges and CRS costs at all times. Also ensure flight information is transparent especially with deceptive practices such as code sharing where the operating carriers must be clearly displayed to the consumer.

1.5 Allow travel agencies and airlines to negotiate terms freely with the CRS as to how MIDT data (Market Information Data Tapes) can be used and purchased.

1.6 Strengthen data privacy rules to specifically protect all data subjects within a PNR (Passenger Name Record), not just the traveller.

1.7 Enforcement of the data privacy section of the Code, in particular the transfer of personal information contained within airline to third countries (commercial and government organisations) needs to be guaranteed by the EU and recognised in the form of bilateral treaties with the third country's government, rather than as undertakings which are not legally binding.

1.8 Introduce new regulations whereby all PNRs created by CRS subscribers must be protected by the Code's Data Privacy articles without exception, including airlines who outsource the hosting of their PNR databases to CRS providers, as well as travel agencies, tour operators and corporations.

1.9 Remove the provision for subscribers to terminate contracts with CRS providers with three months notice.

1.10 Formally recognise the CRS as data controllers, not only for air and train data, but also hotels, cars, ferry, insurance and other data contained within their systems.

1.11 Encourage new CRS entrants into the market thereby increasing competition between the system vendors. Subscribers and consumers will be better served by improved service, technology and competitive pricing.

1.12 Encourage rail providers to distribute their content via the CRS and promote such greener modes of travel within the EU.

2. Introduction

2.1 On the 15 November 2007 the Commission proposed a revision of the Code of Conduct No 2299/89 for CRS. This regulation was established in order to prevent anti-competitive behaviour in a unique market for which general competition rules would not be sufficient. At that time, the CRS was the only viable channel through which consumers could access travel information, and crucially, the CRSs were owned and controlled by the airlines.

2.2 The CRS is a computerised system used to store, retrieve, distribute and reserve travel inventory.

2.2.1 The four CRSs in existence today are SABRE, Galileo, Worldspan and Amadeus. All are US owned apart from Amadeus which is European owned. Galileo and Worldspan have merged in 2007 but still operate as separate entities.

2.3 The CRS conditions have thoroughly changed as:

2.3.1 Most of the airlines have sold their shares in the CRSs, with the key exception of Air France, Lufthansa and Iberia ⁽¹⁾.

2.3.2 With the advent of the Internet, the CRS is no longer the only channel available to make air bookings. As Internet access continues to grow throughout the EU states ⁽²⁾, and online travel technology improves, the sole reliance on CRSs for access to travel data will continue to erode..

2.4 The CRS market in the US has been deregulated since 2004 and was granted on the basis that parent carriers divested in the CRS completely. Since then, booking fees have dropped between 20-30 %. The EU carriers are struggling to compete with the US carriers as they are unable to negotiate more favourable contracts with the CRS providers.

2.5 As a result of the Code of Conduct, the CRS market in the EU remains dominated by an oligopoly and the bargaining power between the main players is unevenly balanced. The CRSs have a guaranteed market and own the relationship with the travel agencies, while the airlines have increased their bargaining position by developing internet distribution capabilities.

2.6 Aside from the parent carrier rule, it is assumed that general competition laws in the EU would be sufficient to prevent abuses such as price-fixing in the absence of sector specific regulations.

3. Observations

3.1 Parent Carriers

3.1.1 Airlines with ownership in a CRS are known as 'parent carriers'. The lifting of parent carrier rules would be too hazar-

dous because three of the largest European airlines (Iberia, Lufthansa, Air France) hold significant stakes in Amadeus. The risks for anti-competitive behaviour are too great and dominance in home markets remains a real threat to the other CRS and non-owning carriers.

3.1.2 The EU should introduce a complete restriction on CRS ownership or shareholding (existing and future) by all airlines.

3.1.3 A complete separation of ownership between CRS and airline or other transportation provider will ultimately eliminate the possibility of collusion or unfair competition by parent carriers. In that scenario, the Code of Conduct can be simplified even further by removing the numerous safeguards the Commission proposal 709-2007 has in place for the parent carriers. The travel distribution market as a whole would benefit from this development as both CRS and airlines would compete on an equal basis without suspicion or fear of abuse

3.1.4 Until those conditions are met, the specific provisions for parent carriers in Article 10 must be retained in order to prevent anti-competitive behaviour.

3.2 Neutral Displays for online and offline travel agencies

3.2.1 The Code ensures that all CRS flight displays are neutral and are ranked without bias or discrimination. Travel agents are required to inform their customers of flight options in order of shortest elapsed flying times (non-stop direct followed by direct flights and indirect flights). However the customers can request to have the display ranked according to their own individual needs.

3.2.2 Maintaining display neutrality in today's market is ineffective especially as neutrality provisions do not exist for the online distribution channels such as airline websites and corporate self-booking tools.

3.2.3 Market demand ensures that the customer will have access to all the carriers, even with CRS-owned online agencies such as Lastminute.com and ebookers, all bookable airlines are generally available even if ranking is biased.

3.2.4 Online travel comparison sites ⁽³⁾ allow carriers or travel agencies to pay for prime position in the search results, regardless of price or schedule. The consumer can rank the order of the flights from a range of criteria including i.e. total price, departure time, carrier or elapsed flying time. The consumer is therefore not denied access to neutral information, as the information is still available to them. The consumer will ultimately choose the option that is most suitable to them.

⁽¹⁾ Combined ownership of 46.4 % of Amadeus.

⁽²⁾ Currently at 50 % penetration for all EU members.

⁽³⁾ e.g. Kelkoo (<http://www.kelkoo.fr>).

3.2.5 Business travellers' flight displays are typically governed by company travel policy, fares and carriers, rather than neutrality.

3.2.6 Abolishing display neutrality would allow carriers to pay for 'premium' position in CRS displays. However, it is unlikely the smaller carriers would lose significant market share, for the reasons stated previously: the consumer will choose based on their travel needs, not display ranking. This can be likened to Google search results, where information is freely available while certain providers can pay for position. The travel industry need be no different.

3.2.7 Due to these conditions it is recommended that Article 5 on Displays is repealed. The information need not be regulated as market forces and consumer choice will ensure a fair representation of the available travel information.

3.2.8 Ensuring maximum transparency of fares by including all taxes, fees and charges, including CRS fees from the initial results display is in the consumers interest. This will prevent airlines from biasing displays by only including surcharges at a later stage in the purchasing process.

3.3 MIDT rules

3.3.1 MIDT data contain detailed information about global booking activity of travel agencies and airlines. This information is collected by the CRSs and sold to the airlines. MIDT provide airlines with valuable competitive information including travel agency bookings, revenue and traffic patterns.

3.3.2 To obtain an equilibrium between the airlines and travel agencies, and in the consumers' interest, obscuring the identification of travel agents, either directly or indirectly would benefit the market overall. However, recognising that MIDT data can also be obtained from other sources such as IATA means that so as not to devalue this information too greatly, subscribers should also be allowed to negotiate without regulation with the CRS how the data will be used.

3.3.3 Add a clause in Article 7 to that will allow airlines and subscribers to negotiate freely with the CRS the terms of purchase for MIDT data.

3.4 CRS-subscriber regulations

3.4.1 Today's regulations attempt to protect the travel agencies by enabling them to terminate a contract with a CRS within a three-month notice period.

3.4.2 Repeal of Article 6.2 is recommended thereby enabling free negotiations between the parties without the need for regulation.

3.5 Hosting Agreements

3.5.1 Hosting should remain separate from CRS contracts in order to eliminate preferential treatment for hosted airlines especially parent carriers. If parent carriers divest their CRS stakes, this rule can sunset.

3.6 Data Privacy

3.6.1 A PNR is a document created by the CRS once a passenger has booked travel for flights, rail, accommodation, car rental, insurance and any other travel related content. The information contained within this document is highly sensitive and it should therefore be subject to stringent personal privacy laws. The information contained in a PNR includes inter alia the traveller's name, contact details, date of birth, personal preferences that can reveal the person's religion (e.g. requesting a kosher meal), the details of the person paying for the tickets, credit card details,, friends, family or business colleagues booked on the same itinerary, the travel agent name and contact details, and in the case of corporate travellers, codes are often added to the PNR indicating to which department or client the cost of the trip is expensed, or that they may belong to a trade union. It is possible to compile a highly detailed profile of both travellers and non-travellers connected with the booking and the EU must guarantee the protection of this personal data as stipulated in the Code.

3.6.2 The Code of Conduct privacy laws are broken systematically by the CRS when:

- a) data is transferred from the EU to a third country;
- b) personal information is processed without the consent of the data subject;
- c) information under the control of the CRS is processed for purposes other than making a reservation.

3.6.3 The EU Directive 95/46/EC (which is complementary to the Code of Conduct's privacy provision) is also broken as it states that as a 'data controller', the CRS must obtain consent from the data subject about disclosing personal information and that it shall not be transferred outside the EU, unless that country provides a similar level of protection for the data. In the US, there is no such law protecting personal data, where it can be used by the US government or US commercial entities to create profiles on travel data originating from the EU, and this data can be kept forever. An example is the US scheme called APIS (Advanced Passenger Information) requiring EU passenger data to be processed by the US government in order to permit entry into the country.

3.6.4 Strengthen data privacy rules to specifically protect all data subjects within a PNR, not just the traveller.

3.6.5 Enforcement of the data privacy section of the Code, in particular the transfer of personal information by the CRS contained within PNRs to third countries, needs to be guaranteed by the EU, and recognised in the form of bilateral treaties with the third country's government. The agreements in place between the US and the EU are 'undertakings' which are unenforceable and not legally binding.

3.6.6 New regulation should be introduced whereby all PNRs created by CRS subscribers must be protected by the Code's Data Privacy articles without exception, including airlines who outsource the hosting of their PNR databases to CRS providers, as well as travel agencies, tour operators, corporations and any other source of booking connected to the CRS.

4. Conclusion — next steps

4.1 Simplification of the Code of Conduct aims to create a more natural economic environment in which CRSs compete based on prices and service quality, while ensuring the consumer interests remain the top priority.

4.2 The degree of content consolidation (such as new rail providers or low cost carriers) as a result of pricing freedom should be closely monitored. Rail and low cost carrier integration will provide the customer with lower prices (and more travel options) via a CRS for short/mid distance destinations. This may result in network carriers competing on price and generally reduce the cost of airfares in the medium/long term. For those reliant on CRS providers for travel information, this would be a key benefit.

4.3 Rail content integration into the CRS display should be encouraged, as it is a key factor to reduce the environmental impact of air travel and promotes 'greener' modes of travel.

4.4 Monitor the impact of abolishing display neutrality. Market forces should counteract the possibility for anti-competitive behaviour even by parent carriers. It should not be a regulatory goal of the Code to enforce a single, consolidated and neutral source of information via the CRS — due to the changing market conditions, especially the Internet, this becomes increasingly irrelevant.

4.5 The socio-economic impact of the proposed changes to the Code of Conduct should also focus on the small to medium enterprises, including carriers and travel agents, who may be

vulnerable to the new flexibility allowed in the CRS marketplace.

4.6 The EU must create public awareness about the use of personal data contained within their booking records. The public is largely unaware of the existence of CRS systems and what happens with the personal information they process. Without this awareness, the right of data subjects to have access to data relating to them, as proposed by the Code, will be meaningless. It is unlikely that a passenger has ever requested a CRS for their personal records, simply because they do not know what happens to it, and if they did, would not consent to its usage.

4.7 Increasing the representation of groups not directly part of the travel distribution system, such as consumer groups and data privacy experts in the consultation process. This will result in a more balanced view of the state of the CRS market in the EU.

4.8 Review the progress of online travel technology. Improvements in availability, booking and post-booking functionality developed by the CRS and other travel technology companies are very significant. These improvements in online technology will empower the consumer and possibly force further regulatory changes.

4.9 In further technological developments, airlines in the US have connected directly to travel agencies (and bypass the CRS) in a move that further changes the CRS landscape. The reliance on CRS providers diminishes while the consumer, travel agent and airline gain leverage.

4.10 Encourage new market entrants. Increasing the competition among the oligopoly in the EU will stimulate the CRS market. A new generation of CRS providers have appeared in the US ⁽⁴⁾ since deregulation and due to their use of new technology are able to offer highly attractive services at lower cost to the airlines.

4.11 Assess the impact of lowering distribution costs both on the internal market and in international markets in terms of airfares and competitive positioning with the US carriers.

4.12 Review code of Conduct in 2-3 years to assess position of parent carriers, personal data protection enforcement and market conditions and consultations with additional lobby groups before considering further revision.

Brussels, 29 May 2008.

The President
of the European Economic and Social Committee
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⁽⁴⁾ e.g. G2 Switchworks, Farelogix — these are known as GNEs — GDS New Entrants.