# COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 2299/89 on a code of conduct for computerized reservation systems

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(presented by the Commission)

# REPORT ON THE APPLICATION OF COUNCIL REGULATION (EEC) NO 2299/89 ON A CODE OF CONDUCT FOR COMPUTERIZED 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 Computerized Reservation Systems (CRSs)

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## 1. Introduction

Reservation systems have for a long time been used in aviation as a normal element in air carriers' day-to-day operations. It was in the United States, however, that carriers first developed modern, sophisticated CRSs to cope with the needs and quickly changing conditions of a free market and to hold or enlarge their competitive market positions.

Because of their extensive capabilities these CRSs became very powerful marketing tools for their owner carriers allowing them to achieve advantages to the detriment of their competitors. Discrimination occurred in the way flights were ranked in displays, but also, inter alia, with respect to access to marketing information generated by the CRS or by preventing subscribers from switching to or using a competing CRS.

Air carriers which did not have their own CRS came to depend to a wide extent on the CRSs of their competitors for the distribution and selling of their own products which encouraged tendencies to distortion of competition and abuse of dominant positions.

The need for a regulatory framework in the field of CRSs became obvious in order to avoid such abuse and to ensure fair competition between air carriers and CRSs to the benefit of both the industry and the consumer.

The Council adopted Regulation No 2299/89 on a code of conduct for computerized reservation systems on 24 July 1989. The Regulation was published in the Official Journal No L 220 on 29 July 1989 and came into force on 1 August 1989. The code stipulates i.e. that it has to be reviewed in 1992 for which purpose the Commission shall present a report on the application of the code. The report is contained in section II. At the same time the Commission finds that the code is in need of some modifications. The justifications for the proposed modifications are found in section IV and V and the proposal in its entirety in the Annex.

The proposals have been developed after thorough consultations with Member States, ECAC, air carriers, consumers and travel agents.

## II. Application of the code of conduct

### 1. Waivers granted to CRSs

The code of conduct prescribed for the first time as a legal obligation a single default algorithm for ranking flights in a principal display. However, when the code entered into force, no CRS operating in the Community was able to immediately fulfil the requirements set by the code. For this reason, Article 21(2) constituted a waiver of the application of Articles 5(3) and 9(5) concerning the principal display until 1 January 1990 in order to give system vendors the opportunity to adapt their CRSs. If for technical reasons compliance with the code was not possible by this date a further 12 months' waiver might be granted.

All CRSs operating at that time in the Community - Amadeus, Galileo, Sabre, Datas II (later on merged with Pars into Worldspan), GETS - asked the Commission by the end of 1989 for a waiver beyond 1 January 1990 the length of which differed from CRS to CRS. The waivers were formally granted by the Commission's decision of 12 July 1990 to:

- Amadeus until 31 December 1990;
- Galileo until 1 September 1990, extended by Commission's decision of 29 November 1990 until 31 December 1990;
- GETS until 31 December 1990;
- Datas II until 30 June 1990.

Sabre, for which American Airlines had asked as a precaution for a waiver until the second quarter of 1990, did not need any waiver beyond 1 January 1990.

## 2. The Explanatory Note

The code of conduct constituted a completely new area of legislation, without prior practical experience, to which the industry had to adapt itself. As experience with its application accumulated it became clear that there were some difficulties. During the first months of the implementation of the code of conduct queries were raised on how to apply the provisions of the code in practical terms, in particular with respect to the programming and operating of the systems.

For this reason, the Commission published an Explanatory Note in the Official Journal[1], clarifying the provisions of the code of conduct in particular for the principal display and the ranking criteria. While leaving to each system vendor the freedom to find its own individual solution to the requirements of the code, the

(1) OJ No C 184, 25.7.1990, p. 2.

Commission reserved to itself the possibility of examining any system in its totality to assess its overall compliance with the code of conduct. As the Explanatory Note as such has no legal power and is therefore not binding on the parties addressed by the code, its clarifications will therefore need to be incorporated into the revised code of conduct to the extent it still seems necessary or appropriate. The Explanatory Note will therefore become unnecessary and can be withdrawn with the entering into force of the revised code of conduct.

3. Complaints and requests for interpretation

Since the code of conduct entered into force on 1 August 1989 until the first 8 months of 1992 the Commission has received 28 complaints or requests for interpretation including 3 cases where the Commission was informed as a precaution, but where the matter itself has been settled directly between the parties concerned without further action by the Commission. The total number includes 3 cases raised under the competition rules, but which also affect the code of conduct.

The number of complaints and requests for help per year has been increasing slowly since 1989 as follows:

| | Complaints | Requests for interpret. |
|---|---|---|
| 1989 (5 months) | | 4 |
| 1990 | 2 | 2 |
| 1991 | 7 | 4 |
| 1992 (8 months) | 5 | 4 |

All cases so far have been admissible.

In 1989 and 1990 the majority of cases were requests for interpretation on how to apply the provisions of the code of conduct. Since 1991 complaints dominate, due to the increasing experience with the application of the code of conduct.

The bulk of these cases (15) refers to the way in which information on schedules and fares is displayed. Whereas these questions were predominant in the beginning, more and more other subjects are now addressed, in particular questions of accessing the principal display, of fees charged to participants, be they carriers or subscribers, and of participation of carriers in different CRSs. The increasing number of complaints as well as the change of subjects with their increasing complexity indicate the tough competition for market shares between air carriers and system vendors. In this respect questions of market access, i.e. the possibility of CRSs to compete on a fair, non-discriminatory basis in the different markets, gain more and more importance.

Hitherto, most cases could be solved by agreement on a voluntary basis, either between the Commission and the parties concerned or directly between the parties, with or without intervention of the Commission. No fines have been imposed so far. Most of these cases concerned the display of information.

There are still 10 complaints and requests pending which are more complex and therefore need more time for investigation and analysis or have been submitted to the Commission recently.

More detailed information on the complaints is given in the following paragraphs.

Three complaints concerned the display of joint venture flights which could lead to screen padding by including the same flight more than once in the principal display. The result was that a competing flight was only shown on the next page of the display thereby suffering a disadvantage since most bookings are made from

the first page of the principal display. The complaint was resolved in making a distinction between the types of joint venture allowing each airline to display individually where they were individually responsible for the sale of a portion of the seats i.e. a blocked space arrangement. The practices were modified accordingly.

A similar problem concerning code sharing was resolved by making it clear that one specific flight can only be shown once and not for each separate flight code.

A complaint concerned the fact that a reservation system allowed the inclusion of air fares not yet approved by the authorities for its parent carrier but not similar fares for other air carriers. This practice was stopped. Such fares may be included with an appropriate annotation but it has to be without discrimination.

It was also made clear following a complaint that all air fares provided by an air carrier must be shown by a CRS. It is not possible to limit the display of fares to only these which have been coordinated in IATA.

Two complaints concerned the possibility for "direct access" to air carriers' own inventories. In the case raised it was easier to do this operation for the parent carrier than for other participating air carriers. It was made clear that such discrimination is not possible. The procedures were changed.

Three complaints concerned abuse of dominant position mainly in respect of particpation or non-participation in competing CRSs. The complaints are treated under Article 86.

One complaint concerns the pricing policy of CRSs in particular in respect of providing free hardware to subscribers depending on a certain number of bookings. This complaint is still under examination.

Recently two complaints have been received. One concerns discrimination between a parent carrier and other participating air carriers both within and outside the Community. The other concerns the inclusion of certain air fares. They are both under examination.

## III. Worldwide aspects of CRS regulation

The more air transport is liberalized throughout the world, the more CRSs tend to go beyond the limits of the current markets and to operate on a worldwide basis. The interest of States in introducing their own CRS regulation is increasing. But national or regional regulations, although helpful, will not solve the problems in connection with worldwide operating CRSs, because these regulations differ in many and also important aspects. The need for global cooperation and global regulations in the field of CRSs is evident.

As both the ECAC and the EC code of conduct are due to be revised, ECAC and the Commission decided to cooperate closely in this matter in order to develop just one uniform set of rules for application in whole Europe. The discussions with ECAC have been very fruitful and there are good chances that the EC and ECAC will adopt similar texts.

Since 1985 ICAO, the International Civil Aviation Organization, not only encouraged its Member States to develop their own CRS regulations, but it also established its own worldwide recommendations for the use of CRSs. This task proved to be very difficult because of the different and often divergent interests of its Member States. The Commission and EC Member

States participated actively in the development of the ICAO code which was adopted by the ICAO Council in December 1991. This code, although it does not prescribe a single algorithm for the ranking of flights, represents an important step forward towards a general code to be applied worldwide.

It is to be hoped that most ICAO Member States will follow as a minimum this code of conduct. However, the ICAO recommendations do not go far enough and abuse is still possible even if these recommendations are repeated. This was pointed out in a letter to ICAO.

## IV. Needs for an amendment of the code of conduct

This code constituted a completely new field of legislation without prior practical experience and the Council therefore envisaged a revision of this Regulation by 31 December 1992. This revision should take into account the experiences with the application of the code of conduct as well as new developments in the CRS market.

As the relatively small, yet increasing number of complaints and requests for interpretation has shown, the code of conduct has proved in general to be quite efficient. Nevertheless it turned out that some areas need amendments and further clarifications. This concerns in particular certain aspects of the principal display and the ranking criteria. The algorithm itself, however, is not disputed. These clarifications will also serve to include the provisions of the Explanatory Note on the code of conduct for CRSs(2) into the new Regulation making the Explanatory Note unnecessary.

(2) OJ No C 184, 25.7.1990, p. 2.

Furthermore, three years of experience with the code as well as the fast technical and marketing development in the CRS sector have revealed possible weaknesses of the current code. Appropriate modifications and safeguards against new forms of discrimination will be needed in order to keep the code an efficient guarantor of competition.

When the Council limited the present code to scheduled air services, the Commission was invited to examine in detail the situation concerning CRS use for non-scheduled services and to present proposals. Since then, the third package has been adopted by the Council which removes most of the distinction between scheduled and non-scheduled services. To be consistent with this policy and to ensure fair competition between both kinds of air transport services, it therefore seems necessary to extend the scope of the code of conduct to non-scheduled services. This subject has also extensively been discussed within ECAC, in close cooperation with the Commission. A majority within ECAC favours such an integration.

One main question which has come up is the possibility for owners of a CRS virtually to bar market entry for other CRSs by refusing to participate and so preventing information on their flights becoming available through rival systems. The question of obligatory participation has therefore been raised in particular under Article 86 of the competition rules.

Another type of abuse is possible where the owner of a CRS creates a close connection between its own inventory (schedules and seat availability) and the CRS thereby securing certain advantages concerning the availability of information. The question of dehosting has therefore come up as a means to resolve the problems.

There are four main areas where modifications seem necessary:

1. Clarifications/modifications of existing rules
2. Inclusion of non-scheduled services
3. Mandatory participation in CRSs
4. Dehosting or specific safeguards

1. Clarifications/modifications of existing rules

The current code of conduct applies to CRSs offered for use and/or used in the territory of the Community, of which the services are made available to subscribers. But this formula and the definition of a subscriber did not make it clear whether corporate users and airline offices were included in the scope of the code. The proposed modifications will make it clear that the code applies to corporate users and airline offices in general (Article 2.k). However, the use of CRSs in airline offices, clearly identified as such, will be exempted from the provisions concerning the principal display and the ranking criteria, whereas all other provisions apply (Article 20a).

Clarification is also necessary with respect to loading of data into a CRS and marketing information. System vendors will only be able to fulfil the requirements of the code with respect to the display and ranking of data if the data submitted to the CRS for their part fulfil the requirements as set out in Article 4(1). The responsibility of a participating carrier for the quality of data it provides to a CRS has therefore been strengthened (Article 4.1). Furthermore, intermediaries will now be required not to manipulate data which are submitted via them in such a way that erroneous information is provided (Article 4.1).

Taking into account the importance that access to market information has for the competition between carriers, a modification to the code of conduct will ensure that information generated by a CRS, when made available, is offered to all participating carriers at the same time (Article 6).

The provision of a neutral, unbiased principal display, in particular as regards the order in which information is presented, constitutes the key element of the code of conduct. A number of questions as to the meaning of the present code have been raised and dealt with in the Explanatory Note. A clear understanding of the intentions of the code especially in this area is essential. The revised code of conduct, therefore in Article 5 and the Annex:

- clarifies that the principal display must always be accessed first except where a consumer requests information for only one air carrier;
- clarifies and strengthens the ranking criteria, especially with respect to code-sharing and/or joint venture flights;
- introduces specific provisions for the display of information on fares.

The current code of conduct allows a participating carrier or a subscriber to terminate its contract with a system vendor without penalty after a certain period. This provision had been included in order to avoid "liquidated damages" in cases where a contract is terminated prematurely, because this can unfairly prevent a carrier or subscriber from changing CRSs.

It has turned out, however, that in cases of termination a system vendor may be left with costs which are not directly linked to the use of the system by a subscriber for which there may exist long-term contracts with a third party, e.g. for hardware. Since the code stipulates that hardware may be used with any CRS, subject to compatibility, and in order to allow a system vendor to recover these costs and in order to increase competition in the field of third party hardware, a separation of contracts for the use of a CRS and the supply of the technical equipment seems appropriate. The latter will be dealt under normal contract law, unless the contract contains conditions which directly or indirectly would

prevent a subscriber from changing systems. Recovery of liquidated damages, however, remains prohibited and the contracts may not be set up in such a way that they prevent a subscriber from changing systems (Article 9.4).

The current code of conduct allows the use of third-party equipment if it is compatible with the system. However, the increasing use of intelligent PCs instead of dumb terminals encourages the use of third-party software. Provisions have therefore been proposed to also allow for third-party software provided it is compatible (Article 9.6).

The use of intelligent PCs and third-party software makes it increasingly unmanageable for system vendors to fulfil their obligation under the code to ensure that a subscriber does not manipulate material supplied by CRSs. The revised code of conduct respects this development by limiting this obligation to a contractual provision only (Article 9.5).

Another matter of constant concern to air carriers is billing practices by system vendors providing inaccurate, incomplete and unclear invoices. In order to ensure minimum standards for billing, a new provision has been included in the code of conduct (Article 10.2). A more detailed catalogue of requirements did not seem appropriate as the wishes of individual participating carriers vary widely in this respect.

Although modern CRSs more and more are offered and used in all parts of the world, the rules under which these CRSs operate may vary considerably between different countries. As long as there is no uniform worldwide code of conduct for CRSs, the provisions on reciprocity remain a necessary and important means for system vendors and participating carriers to strive for equivalent

treatment elsewhere in the world to that provided under the code of conduct. The proposed amendments to the code will make it clear that reciprocity rules will apply regardless of where discrimination exists outside the territory of the Community (Article 7.1 and 2).

2. Inclusion of non-scheduled services

The majority of air transport passengers in the Community is travelling on non-scheduled services. However, air transport products offered on these services, both as package tours or "bundled products" where air transport only forms one element of the whole product, and "seat-only" or "unbundled products" sold via intermediaries to the public and distributed through CRSs other than in-house systems of air carriers and tour operators, are not covered by the regulation. The scheduled and non-scheduled air carriers have increasingly been competing directly in each others' markets, in particular with respect to unbundled products. In order to ensure fair competition both kinds of air transport should be treated equally. Consequently, the third liberalization package integrates scheduled and non-scheduled services.

Equal treatment would also mean to give non-scheduled air carriers the possibility to distribute their products via the same channels and in the same way as those of scheduled air carriers, providing neutral, non-misleading information to the consumer. How best to incorporate this sector in the code of conduct, bearing in mind the different nature of unbundled and bundled products, has extensively been discussed in close cooperation with ECAC, air carriers, consumers and Member States.

The solution which serves consumer interests best and ensures non-discrimination between both kinds of air transport seems to be to include non-scheduled services in the scope of the code of conduct and to integrate unbundled products in the same display

irrespective of whether they are offered on scheduled or non-scheduled services (Articles 1, 2 and the Annex). However, full inclusion in the principal display of bundled products, apart from the actual flights, would severely limit the transparency of such displays. The detailed information on bundled products will therefore be displayed on secondary displays (Article 5.4). The general principles and rules of the code, however, will also apply to bundled products (Article 1).

The proposed amendments will ensure non-discriminatory distribution of information on unbundled products on scheduled and non-scheduled services. Nevertheless, in order to make clear that the products are basically the same, but not identical, non-scheduled services have to be clearly identified in the interest of the consumer. For the same reason, the consumer shall also be afforded the possibility of having, on request, the principal display limited to scheduled air services (Article 5.2b).

3. Mandatory participation in CRSs

When introducing the code of conduct, one of the objectives was to ensure fair competition between CRSs. There is no doubt that non-participation of an air carrier, in particular when it is dominant in a market, can seriously disadvantage a CRS and thus distort competition between CRSs. On the other hand, it has also to be taken into account that mandatory participation in all CRSs at the highest level of functionality would seriously affect competition between air carriers, weaken their negotiating power towards system vendors and hinder the incentives to further enhancements as well as introducing a substantial cost element which would in particular damage small and medium-sized air carriers. Furthermore, as long as Community air carriers and CRSs are not given the same treatment and possibilities in third countries as carriers/CRSs of these countries enjoy in the Community, a full participation at the highest level will disadvantage Community air carriers and CRSs.

It is possible to deal with this problem either under the competition rules or in the code of conduct. The latter approach, however, would seem to have the advantage that the code of conduct applies to all CRSs used and/or offered for use in the Community, be they single or multi-owned, whereas an amendment to the group exemptions concerning agreements between undertakings relating to CRSs would only apply to multi-owned CRSs although naturally Article 86 applies to single-owned systems.

The revised code of conduct aims to establish a balance between the different interests concerned. The relevant provision in Article 3a is restricted to parent carriers and their affiliates. It will require such an air carrier to provide to a competing CRS, on request, the same information on schedules, fares and availability on its services as it provides to its own CRS and to accept bookings on its flights from these other CRSs. As participation in other systems may impose a severe economic burden on small and medium-sized carriers the costs which they may be required to pay have been limited to the costs for the reproduction of the information to be provided and the booking fees. In this way it will be ensured that the economic viability of small carriers is not endangered.

4. Dehosting or specific safeguards

An issue of major concern to air carriers is the possibility for a parent carrier to obtain competitive advantages by virtue of the fact that its internal reservation system is not separated from the externally marketed CRS. It is claimed that dehosting is a prerequisite for equal, non-discriminatory treatment of parent and participating carriers in CRSs and for undistorted competition between air carriers. Dehosting means that the CRS functions must be separated from the internal reservation and inventory functions of air carriers.

Some existing CRSs are dehosted. In cases where the publicly marketed CRS also serves as the parent carriers's internal reservation system it may enjoy advantages in respect of real-time up-dating of schedules, last seat availability and up-to-date information on fares, whereas the same information for participating carriers will depend on the telecommunication links established and the loading methods available and selected. This gain of time for a parent carrier of a non-dehosted CRS and the higher reliabiilty of its data in that CRS may be a decisive competitive advantage.

Furthermore, CRSs generate a lot of marketing information on bookings, routes, markets, etc. which are essential for the business policy of an air carrier. A parent carrier of a non-dehosted CRS may have more or less unrestricted, at least quicker access to this marketing information than participating carriers. The competitive advantage of this is evident.

For these reasons dehosting is put forward as a solution to this problem. On the other hand:

(a) It is doubtful whether dehosting in itself will eliminate bias of a CRS in favour of the hosted carrier. The internal and external functions will still be close and the control of the CRS remains in the same hands.

(b) Mandatory dehosting may also cause political difficulties with third countries. This may, in return, have repercussions on the treatment of Community air carriers to their disadvantage in these countries. As long as dehosting is not a requirement on a worldwide basis such action has to be considered carefully.

The proposed modifications in Articles 4.4 and 6 of the code therefore do not include dehosting but concentrates on getting the underlying principles right. Provisions are introduced which will ensure equal treatment by establishing "Chinese walls" by technical means and appropriate software safeguards between the internal reservation system and the CRS and by prohibiting the parent carrier from reserving any specific loading and up-dating method for itself.

## V. Comments on individual Articles

Article 1

Editorial changes

Article 2 (a, b and c)

New definitions in order to include non-scheduled services with both unbundled and bundled air transport products.

Article 2 (d, formerly l)

Editorial change to ensure consistency of the terminology of the code.

Article 2 (e)

New definition because of the inclusion of non-scheduled air services.

Article 2 (g, formerly c)

Clarification. The code only applies to CRSs whose services are made available to subscribers.

Article 2 (j, formerly f)

Clarification to ensure equal treatment of parent and participating carriers with respect to access to marketing information.

Article 2 (k, formerly g)

Amendment to make it clear that corporate users are included.

Article 2 (m, formerly i)
Clarification.

Article 2 (o, formerly k)
Editorial change for consistency with the terminology of the code.

Article 3(1)
Clarification.

Article 3(2c)
Modification to make it clear that system vendors are only allowed to recover their direct costs in cases of a normal contract termination (in accordance with this paragraph).

Article 3a
Introduction of an obligation on parent carriers and their affiliates not to discriminate against competing CRSs by obliging them to provide the same information on own services to competing CRSs as to their own CRS and with equal timeliness. This Article should be read in conjunction with Article 8.3 for the question of ticketing.

Article 4(1)
Clarification of the participating carriers' obligation with respect to the quality of data provided for inclusion in a CRS. Furthermore, the provision prevents intermediaries from manipulating data submitted via them for inclusion in a CRS so that erroneous information results.

Article 4(3)
While requiring in principle a system vendor to load and process data submitted to its CRS with equal care and timeliness, it is recognized that there might be technical constraints which will lead to different treatment. This will be allowed as long as the constraints are outside the control of a system vendor.

Article 4(4)

Inclusion necessary to ensure that no parent carrier enjoys competitive advantages over its competitors with respect to quicker and more reliable loading and up-dating of data. This provision should be read in conjunction with paragraph 3.1.

Article 5

Reordered and partly reworded for clarification.

Article 5(2a)

The text now makes it clear that even when a consumer has introduced certain limitations the resulting display shall still be neutral, in other words it is still to be treated, to the extent possible, as a principal display.

Article 5(3)

Clarification to ensure that the principles of accuracy, comprehensiveness, etc. also apply to displays of air fares.

Article 5(4)

To clarify that the principal display is reserved for information on flights and types of air transport products.

Article 6(1) and (2)

Reordered and with editorial changes for clarification. The modifications in Article 6 (1b) will ensure that no parent carrier can reserve any information from its CRS for itself and that the information has to be offered to all participating carriers with equal timeliness, but recognizing that participating carriers may choose different transmission methods.

Article 6(3)

Inclusion necessary to ensure that only carriers or persons, who are entitled by the provisions in paragraphs 1 and 2, have access to the data and in particular that no parent carrier has unauthorized access to information generated by its CRS.

Article 7(1) and (2)

Editorial adaptations because of modifications elsewhere in the code of conduct. The amendments will also clarify that Community air carriers and/or system vendor will have the right to deviate from the obligations under the code of conduct if they are discriminated against and not accorded equivalent treatment to that provided under the code outside the territory of the Community, regardless where. Within the Community the code applies and compliance with its provisions can be assured by the procedures set out in Articles 11 to 20.

Article 8(1) and (2)

Clarification.

Article 8(3)

Clarification.

Article 9(4)

The new wording of this paragraph allows for a separation of contracts for the use of a CRS on one side and the supply of technical equipment on the other side, the latter being subject to normal contract law. The provision will also limit a system vendor to recover only direct costs related to a normal termination of the contract (according to this paragraph) for use of a CRS, but no liquidated damages.

Article 9(5)

Reordered and modified for clarification. The obligation on system vendors to ensure that subscribers do not manipulate data supplied by CRSs has been mitigated because its enforcement does not seem possible any longer with the use of intelligent PCs and the permission of third-party software in travel agencies.

Article 9(6)

Modification to allow for third-party software.

Article 10(1)

Modification to increase transparency of the fee structure so that participating carriers may only use and pay for services they really need.

Article 10(2)

Inclusion to provide for basic billing requirements.

Article 20a

This provision exempts CRSs used in airline offices and sales counters, clearly identified as such, from the requirements for the principal display and the ranking criteria.

**Annex**

The Annex has been reordered for clarification and modified, where necessary, in order to include non-scheduled services. In the heading it is already made clear, that the Annex only applies to flights offering unbundled products, both on scheduled and non-scheduled services.

Paragraph 2

Editorial changes

Paragraph 3

Clarification.

Paragraph 4

The provisions of this paragraph have to be read in conjunction with paragraph 3.

Paragraph 5

Inclusion necessary for transparency in the interest of the consumer to distinguish between scheduled and non-scheduled services in the principal display.

Paragraph 7

Inclusion necessary for transparency in the interest of the consumer.

Paragraph 8

Modifications necessary to avoid that the same air service appears more than once in a display.

Paragraph 9

This provision covers mainly scheduled services but the second part will also, as appropriate, apply to non-scheduled services.

Paragraph 10

Clarification and strenghtening of the existing requirement.

Proposal for a

COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 2299/89 on a code of conduct for computerized reservation systems

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas Council Regulation (EEC) No 2299/89(4) constitutes a significant step in respect of undistorted competition between air carriers and between computer reservation systems, thereby protecting the interests of consumers;

Whereas it is necessary to extend the scope of Regulation (EEC) 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;

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(1)

(2)

(3)

(4) OJ No L 220, 29.7.1989, p. 1.

Whereas Commission Regulation (EEC) No 83/91[5], as amended by Regulation (EEC) No 3618/92[6], exempts from the provisions of Article 85(1) of the Treaty agreements for the common purchase, development and operation of computer reservation systems;

Whereas the majority of air transport passengers in the territory of the Community travels on non-scheduled services;

Whereas the bulk of these journeys are package tours or bundled products with air transport forming only one element of the whole product;

Whereas "seat-only" or unbundled products on non-scheduled services compete in principle directly with air transport products offered on scheduled services;

Whereas it is desirable to treat same products equally and to ensure fair competition between both kinds of air transport products and a neutral dissemination of information to the consumer;

Whereas it is appropriate to deal with all matters of use of computer reservation systems for all kinds of air transport products in the same Council Regulation;

Whereas it would not be appropriate that bundled air transport products are integrated in the principal display;

Whereas it is desirable to clarify that Regulation (EEC) No 2299/89 should apply to computer reservation systems offered and/or used in the territory of the Community (except for those provisions on the principal display and the ranking criteria for systems used by an airline in its own office clearly identified as such) and to all final consumers, be they individual members of the public or corporate users;

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(5) OJ No L 10, 15.1.1991, p. 9.

(6) OJ No L 367, 16.12.1992, p. 16.

Whereas a clear distinction between a contract for participation in or allowing for use of a system and the supply of the technical equipment itself is appropriate, the latter being subject to normal contract law, thus allowing a system vendor to claim at least his direct costs in the case of termination of a contract in accordance with the provisions of this Regulation;

Whereas denial on the part of parent carriers to participate in systems other than their own can seriously distort competition between computer reservation systems and/or air carriers;

Whereas a parent carrier may enjoy unfair advantages arising from its control over its computer reservation system in the competition between air carriers; whereas therefore total equality of treatment of parent and participating carriers is necessary to the extent that a parent carrier uses the facilities of its own system;

Whereas it is desirable in the consumer's interest that a principal display shall always be provided for each transaction requested by a consumer,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2299/89 is hereby amended as follows:

1. Articles 1, 2 and 3 are replaced by the following:

"Article 1

This Regulation shall apply to computerized reservation systems relating to air 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 air transport product concerned.

**Article 2**

For the purposes of this Regulation:

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

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

(c) 'air transport product' means both unbundled and bundled air transport products;

(d) 'scheduled air service' means a series of flights each possessing all the following characteristics:

  - it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by consumers (either directly from the air carrier or from its authorized agents);

- it is operated so as to serve traffic between the same two or more points, either:

  1. according to a published timetable; or

  2. with flights so regular or frequent that they constitute a recognizably systematic series;

(e) 'fare' means the price to be paid for unbundled air transport products and the conditions under which this price applies;

(f) 'computerized reservation system' (CRS) means a computerized system containing information about, inter alia, air carriers'

- 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;

(g) 'distribution facilities' means facilities provided by a system vendor to a subscriber for the provision of information about air carriers' schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services;

(h) 'system vendor' means any entity and its affiliates which are responsible for the operation or marketing of a CRS;

(i) 'parent carrier' means any air carrier which is a system vendor or which directly or indirectly, alone or jointly with others, owns or controls a system vendor, as well as any air carrier which is owned and/or controlled by it;

(j) 'participating carrier' means an air carrier which has an agreement with a system vendor for the distribution of air transport products through a CRS. To the extent that a parent carrier uses the distribution and/or information facilities of its own CRS, it shall be considered a participating carrier;

(k) 'subscriber' means a person or an undertaking, other than a participating carrier, using the facilities of a CRS under contract or other arrangement with a system vendor;

(l) 'consumer' means any person seeking information about and/or intending to purchase an air transport product;

(m) 'principal display' means a comprehensive neutral display of data concerning air services between city-pairs, within a specified time period;

(n) 'elapsed journey time' means the time difference between scheduled departure and arrival time;

(o) 'service enhancement' means any product or service offered by a system vendor on its own behalf to subscribers in conjunction with a CRS other than distribution facilities.

## Article 3

1. A system vendor shall allow any air carrier the opportunity to participate, on an equal and non-discriminatory basis, in its distribution facilities within the available capacity of the system concerned and subject to any technical constraints outside the control of the system vendor.

2. (a) A system vendor shall not:

- attach unreasonable conditions to any contract with a participating carrier;

- require the acceptance of supplementary conditions which, by their nature or according to commercial usage, have no connection with participation in its CRS and shall apply the same conditions for the same level of service.

(b) A system vendor shall not make it a condition of participation in its CRS that a participating carrier may not at the same time be a participant in another system.

(c) A participating carrier may terminate its contract with a system vendor on giving notice which need not exceed six months, to expire no earlier than the end of the first year.

In such a case a system vendor may not be entitled to recover more than the costs directly related to the termination of the contract.

3. Loading and processing facilities provided by the system vendor shall be offered to all participating carriers without discrimination.

4. If the system vendor adds any improvement to the distribution facilities provided or the equipment used in the provision of the facilities, it shall offer these improvements to all participating carriers on the same terms and conditions, subject to current technical limitations."

2. The following Article 3a is inserted:

**"Article 3a**

1. (a) A parent carrier may not discriminate against a competing CRS by refusing to provide to a competing CRS with equal timeliness the same information on schedules, fares and availability relating to its own air services as it provides to its CRS or to distribute its air transport products through another CRS to the same extent, at the same level, as promptly or on comparable terms as through its own CRS, or by refusing to accept a reservation made through a competing CRS for any of its air transport products which are distributed through its own CRS.

(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 the bookings made.

2. Subject to the procedure set out in Article 7(3) and (4), the obligation imposed by this Article shall not apply in favour of a competing CRS which is in breach of Article 4(4) or whose parent carriers have access to information in breach of Article 6."

3. Articles 4, 5 and 6 are replaced by the following:

"Article 4

1. Participating carriers and others providing material for inclusion in a CRS shall ensure that the data submitted are comprehensive, accurate, non-misleading and transparent, inter alia, enabling a system vendor to meet the requirements of the ranking criteria as set out in the Annex.

Data submitted via intermediaries shall not be manipulated by them in a manner that would lead to inaccurate, misleading or discriminatory information.

2. A system vendor shall not manipulate the material referred to in paragraph 1 in a manner that would lead to inaccurate, misleading or discriminatory information being provided.

3. A system vendor shall load and process data provided by participating carriers with equal care and timeliness subject only to the constraints of the loading method selected by individual participating carriers and to the standard formats used by the said vendor.

4. A parent carrier shall not reserve any specific loading and/or processing procedure for itself.

Article 5

1. (a) Displays by a CRS shall be clear and non-discriminatory.

(b) A system vendor shall not intentionally or negligently display in its CRS inaccurate or misleading information.

2. (a) A system vendor shall provide through its CRS a principal display for each individual transaction and shall include therein the data provided by participating carriers on flight schedules, fare types and seat availability in a clear and comprehensive manner and without discrimination or bias, in particular as regards the order in which information is presented within the limits specified by the consumer at any one time.

(b) The consumer shall be afforded the possibility of having, on request, the principal display limited to scheduled air services.

(c) In constructing and selecting city-pairs for inclusion in the principal display no discrimination on the basis of airports serving the same city shall be effected.

(d) Ranking of flight options in the principal display shall be as set out in the Annex, within the limits specified by the consumer at any one time.

(e) Criteria to be used for ranking shall not be based on any factor directly or indirectly relating to carrier identity and shall be applied on a non-discriminatory basis to all participating carriers.

3. Where a system vendor provides information on fares in a separate display this display shall be neutral and non-discriminatory and shall contain at least the fares provided for all the flights of participating carriers shown in the principal display. This information shall be made available within the limits specified by the consumer at any one time.

4. Information on bundled products as to, inter alia, who is organizing the tour, places available and prices, shall not be displayed in the principal display.

**Article 6**

1. Information, statistical or otherwise, may be made available by a system vendor from its CRS only in accordance with the following conditions:

(a) information concerning individual bookings on an equal basis to the air carrier or air carriers participating in the service covered by the booking;

(b) information when offered, in aggregate or anonymous form, to participating air carriers, including parent carriers, on a non-discriminatory basis at the same time and to the same extent and on condition that, when requested, it is provided with equal timeliness, subject to the transmission method selected by the individual carrier;

(c) other information with the consent of the air carrier concerned and subject to any agreement between a system vendor and participating carriers.

2. A system vendor shall make available personal information concerning a passenger and generated by a subscriber to others not involved in the transaction only with the consent of the passenger.

3. A system vendor shall ensure by technical means and appropriate safeguards at least regarding software that the limitations on access to information specified in paragraphs 1 and 2 are complied with.

In particular in the case where the same technical facilities are used by the CRS and one or more carriers for (its) their own activities, the system vendor must not reserve to the abovementioned carriers, data, processing or information which are not available to the other participating carriers, or which are provided under different conditions."

4. Article 7(1) and (2) are replaced by the following:

"1. The obligations of a system vendor under Articles 3 to 6 shall not apply in respect of a parent carrier of a third country to the extent that its CRS outside the territory of the Community does not offer Community air carriers equivalent treatment to that provided under this Regulation and under Commission Regulation (EEC) No ....*

2. The obligations of parent or participating carriers under Articles 3a, 4 and 8 shall not apply in respect of a CRS controlled by (an) air carrier(s) of one or more third country (countries) to the extent that the parent or participating carrier(s) is (are) not accorded equivalent treatment outside the territory of the Community to that provided under this Regulation and under Regulation (EEC) No ......

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*OJ No L "

5. Article 8 is replaced by the following:

"1. A parent carrier shall not, directly or indirectly, link the use of any specific CRS by a subscriber with the receipt of any commission or other incentive or disincentive for the sale of air transport products available on its flights.

2. A parent carrier shall not, directly or indirectly, require use of any specific CRS by a subscriber for any sale or issue of tickets for any air transport products provided either directly or indirectly by itself.

3. Any condition which an air carrier may require of a travel agent when authorizing it to sell and issue tickets for its air transport products shall be without prejudice to paragraphs 1 and 2."

6. Article 9(4), (5) and (6) are replaced by the following:

"4. (a) A system vendor shall not attach unreasonable conditions to any subscriber contract allowing for the use of its CRS and, in particular, a subscriber may terminate its contract with a system vendor on giving notice which need not exceed three months to expire no earlier than the end of the first year.

In such a case a system vendor may not be entitled to recover more than the costs directly related to the termination of the contract.

(b) Subject to paragraph 2, the supply of technical equipment is not subject to the conditions set out in (a).

5. A system vendor shall provide in each subscriber contract that:

(a) the principal display, conforming to Article 5, is 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 does not manipulate material supplied by CRSs in a manner that would lead to inaccurate, misleading or discriminatory presentation of information to consumers.

6. A system vendor shall not impose any obligation on a subscriber to accept an offer of technical equipment or software, but may require that equipment and software used are compatible with its own system."

7. Article 10(1) is replaced by the following:

"1. 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 billing for the services of a CRS shall be sufficiently detailed to allow the participating carriers and subscribers to see exactly which services have been used and the fees therefore."

8. 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 in its (their) own office and sales counters, clearly identified as such."

9. Article 23 is replaced by the following:

**"Article 23**

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."

10. The Annex is replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 1993.

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

Done at Brussels,

For the Council
The President

ANNEX

"RANKING CRITERIA FOR FLIGHTS OFFERING
UNBUNDLED AIR TRANSPORT PRODUCTS

1. Ranking of flight options in principal displays, 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) other direct flights, not involving a change of aircraft, between the city-pairs concerned;

   (iii) connecting flights.

2. Consumer shall at least be afforded the possibility of having, on request, the 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 groups (ii) and (iii).

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 as between those carriers displayed.

4. If, to the best knowledge of the system vendor, information as to 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. For code-sharing and/or joint venture flights the air carrier actually operating the flight shall be clearly identified.

8. A system vendor shall not use the screen space in its principal displays in a manner which gives excessive exposure to one particular travel option or which displays unrealistic travel options. For direct services, no flight shall be shown more than once in a principal display.

   For multi-sector services involving a change of aircraft, no combination of flights shall be shown more than once in a principal display.

9. A principal display shall, wherever practicable, include connecting flights on scheduled air services of participating carriers 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. Connecting points with routings in excess of 130% need not be used.

10. Flights, involving a change of aircraft, shall be treated and displayed as connecting flights, with one line per aircraft segment."

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