

INCEPTION IMPACT ASSESSMENT ROADMAP FOR THE POSSIBLE REVISION OF THE CODE OF CONDUCT FOR COMPUTERIZED RESERVATION SYSTEMS

EU TRAVEL TECH INPUT

In light of the evaluation conducted last year, the European Commission is now considering a possible revision of the Computerised Reservations Systems (CRSs) Code of Conduct (Reg. 80/2009 ; “Code”). Indeed, the evaluation found the Code is less relevant than before to ensure fair and effective competition between carriers.

This possible revision of the Code is welcomed by eu travel tech. eu travel tech supports the principles the Code promotes: level playing field, transparency for consumers and business users and fair competition. This is especially important in a COVID-19 environment and beyond, where consumers are in need of transparent information that re-establishes their trust and confidence in travel, and where small airlines and travel businesses are able to compete on an equal footing with larger players. But, as fully acknowledged by the evaluation study, the air travel distribution landscape has undergone major changes over the last ten years, making the existing regulatory framework and the Code unfit for purpose. The Regulation must therefore be significantly amended and partially repealed [option 3 of the Inception Impact Assessment; see below].

As a result, we would support option 3 only if it reflects the below conditions, with a partial repeal of the Regulation combined with an updated scope and other provisions so as to take into account market developments and foster competition and innovation in airline ticket distribution:

- ✓ Apply to all players competing in the airline ticket distribution market; and in particular airline-controlled interfaces accessible by consumers or travel agents (airline agency portals, airline websites, mobile apps).**
- ✓ Display obligations on CRSs should be balanced with content quality commitments by airlines that choose to participate in CRSs so that European consumers can continue to make well-informed choices and compare and choose travel options that best suit their needs;**
- ✓ Be adequately enforced by the European Commission.**

With the growth of internet and online distribution, air travel distribution has morphed from a simple relationship of CRSs sitting between air carriers and travel agents (offline or online) to a more complex ecosystem. Travel agents and metasearch sites now empower consumers to make informed choices when searching, comparing and booking flights, making travel more accessible and transparent.

However, since 2009, the share of indirect distribution channels and therefore the ability to compare prices has been in constant decline, to the detriment of effective competition between carriers.

Why? Because large EU airlines have developed a preference for direct online distribution and alternative distribution systems (used by travel agents in the same manner as CRSs but against which the CRS Code of Conduct is not currently enforced).¹ To favour those new distribution channels, they have developed strategies to drive travellers away from indirect distribution channels, with practices such as:

- Surcharges on tickets purchased via CRS channels (imposed by Lufthansa Group, IAG and Air France/KLM).
- Withdrawal of basic fares from the CRSs environment (by Lufthansa Group and IAG).
- Marketing and advertising restrictions (meta restrictions, brand-bidding restrictions etc.).
- Ancillary services (such as baggage, priority boarding etc.) not made available to indirect channels.

As a result, the fragmentation of content across multiple distribution channels combined with an increase in the number of ancillary services and charges applied by the airlines, reduces transparency and comparability of travel options. It prevents fair competition between smaller airlines and big players by limiting market access, thereby impairing market efficiency and consumer benefit.

Alongside the rise of direct distribution is the consolidation of the European air travel market, with three carrier groups (Lufthansa Group, IAG, Air France/KLM) dominating large segments of the market. With their growing market power, large airlines have increasingly been able to favour direct distribution and prevent comparison of competing offers by travellers.

The COVID-19 pandemic will only strengthen this consolidation trend. Big carriers, already dominant on their markets, originating from Member States with wider ability to support their champions, have received massive support², while other governments, whether as a result of budget constraints or prioritisation, have not offered financial support to the air transport sector³. It is therefore very likely that such state aid will lead to market distortions, with potentially smaller airlines being

¹ In 2016, 34% of all bookings were made through a GDS while in 2018, the share of GDS bookings had decreased to 31%. In comparison, the non-GDS bookings have increased during the same time from 66% in 2016 to 69% in 2018. eu travel tech estimate, as mentioned in the Commission Staff Working Document “EVALUATION of the Regulation 80/2009 of the European Parliament and the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems”

² 9bn€ for LH group, 7bn€ for Air France/KLM

³ TAROM in Romania has benefited from a 130m€ package

forced out of markets by larger and wealthier airlines and the airlines receiving significant state support able to artificially compete against airlines not receiving such support. The risk of airline failure remains very high throughout the coming months and possibly years, leading to further reduction in consumer choice. **In such a context, it is more important than ever to use indirect distribution channels and their transparent marketplaces to enable competition between all airlines, independent of their size or public support.**

The Code of Conduct has not kept pace with the changes in technology and the overall air ticket distribution market. It covers a shrinking part of the market⁴ and its provisions are not sufficient to achieve its transparency objectives. This is why eu travel tech supports option 3 only if the revised text effectively addresses these market issues and is properly enforced.

The new regulatory framework must adopt a principles-based approach, tackling only what impacts the market, extending its reach past GDSs to cover all players in the wider air travel distribution market. **eu travel tech is calling for the following to be considered in the review of the EU air ticket distribution regulatory framework:**

There must be a level playing field between all players in the air ticket distribution market:

- ✓ The new regulatory framework shall prevent discrimination between distribution channels by:
 - Ensuring that a basic level of content is shown, neutrally displayed in the CRSs and available for purchase on all consumer channels so that consumers are not discriminated because they choose to search for travel using travel agents (online or offline) or metasearch sites Reciprocally, in practice airlines must share this content, including ancillary content, with players in order that this is workable and transparent;
 - Tackling the anticompetitive practices of dominant airlines, as outlined above.
- ✓ The new regulatory framework should extend the concept of “parent carriers” to cover distribution channels controlled by airlines, including airline interfaces and direct booking channels carrying out the functions of CRSs.
- ✓ In order to ensure a level playing field and promote undistorted competition, the scope of the CRSs Code of Conduct needs to be revised and should be expanded to cover all competing players in the airline ticket distribution market.

⁴ As acknowledged by the Commission in the roadmap, “*the continuing evolution of the sector is likely to result in a greater share of the tickets being distributed through channels that are currently outside the scope of the Regulation*”.

To ensure fair competition and transparency in the air travel market, the neutral display obligation must be linked to an obligation on airlines to enable access to essential air fare content. The absence of such access makes the neutral display obligation totally ineffective as a tool to ensure effective competition between carriers.

- ✓ Consumers should be able to compare offers and services in one place, choosing those that best meet their needs. Airlines participating in a CRS or alternative distribution systems must be required to provide “essential” air fare content, including basic fares and core ancillary services, and ensure that such content can be booked through those distribution channels. By making certain fares available only on direct distribution channels, some airlines prevent consumers from comparing prices and small carriers and new entrants from competing on the merits with them.
- ✓ In turn, CRSs are obliged to display fares in a neutral manner to their customers (i.e. travel agencies and tour operators). As confirmed by many stakeholders in the evaluation study, this allows fair competition between carriers and delivers transparency and choice for the consumer. But the neutral display and transparency obligations of the CRSs do not make sense without access to essential air content and should therefore be balanced with content access commitments from the airlines. One cannot go without the other.
- ✓ At the same time innovation in sort options needs to be safeguarded by allowing all players to include “value for money” sort options when “subscribers” display flight options to consumers, weighing among others price differential versus number of stops, duration, red-eye departure or arrival times, inclusion of ancillary services (e.g. seat allocation) and environmental impact in terms of CO2 emissions. Currently, “subscribers” (e.g. travel agents and tour operators) are limited in their ability to show these enhanced sort options to consumers by the Code, whereas other players such as metasearch engines like Google Flights Search are not subject to such constraints. Removing this limitation on “subscribers” will allow consumers to reduce search costs, enhance competition on service level and environmental impact and level the playing field .

A new regulatory framework must go hand-in-hand with an adequate enforcement of the rules by the European Commission

- ✓ The existing Article 16 of the Code of Conduct does not provide a robust legal framework. The obligations falling on the Commission need to be more detailed with a clear and binding timeframe for the examination of complaints and the conduct of investigations relating to suspected infringements. Improved procedures should reflect as far as possible those adopted in the areas of competition and consumer protection laws.

If the partial revision of the Regulation is not considered as a viable policy option by the European Commission, its full repeal (option 1 of the Inception Impact Assessment) will be called for.

- ✓ The full repeal of the CRS Code of Conduct would be the best alternative if a revised CRS regulatory framework fails to address the market issues identified through the above proposed changes. Equally, the CRS Code of Conduct should be repealed unless the revised text guarantees a level playing field amongst all competing players and enshrines tools that ensure a rigorous enforcement of such text. An adequate assessment of how competition and consumer law could protect the market issues in the absence of a CRS Code is strongly recommended.

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eu travel tech represents the interests of travel technology companies. eu travel tech uses its position at the centre of the travel and tourism sector to promote a consumer-driven, innovative and competitive industry that is transparent and sustainable. Our membership⁵ spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

⁵ eu travel tech's members include Amadeus, Booking.com, eDreams ODIGEO, Expedia Group, Travelport and Skyscanner. Associate members include American Express GBT. Strategic Partners include Lastminute.com, etraveli, Trainline, Travix, Travelgenio, OAG and CWT