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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION Regulation 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems

Delegations will find attached document **SWD(2020) 11 final**.

Encl.: **SWD(2020) 11 final**



Brussels, 23.1.2020
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION

**Regulation 80/2009 of the European Parliament and of the Council of 14 January 2009
on a Code of Conduct for computerised reservation systems**

{SWD(2020) 9 final}

1. Introduction

The CRS Code of Conduct¹ establishes a regulatory framework for computerised reservation systems (CRSs) insofar as they contain air transport products. CRSs (also known as Global Distribution Systems – GDSs) are used by travel agents and large corporations as a single point of access for booking airline and rail tickets, hotel rooms, rental cars, and other travel-related items. CRSs are also used by some metasearch sites to obtain information about services offered by air carriers that participate in CRSs. The CRS Code of Conduct also applies to rail transport services when they are presented alongside air transport products.

2. Evaluation and scope

The purpose of this evaluation is to assess to what extent the CRS Code of Conduct has achieved its objectives of preventing abuse of market power and ensuring market efficiency as well as the protection of consumer interests. The evaluation was informed by an external support study and analysis of evidence from a wide variety of sources, including information shared in the context of stakeholder consultation. It covers all 28 Member States.

3. Conclusions

Due to market and technological changes, there are questions as to whether the objectives of the CRS Code of Conduct are still relevant and whether the CRS Code of Conduct remains fit for purpose. The most significant market changes are almost complete divestiture of airlines in CRSs, the rise of alternative distribution channels and the increase in the direct distribution of air tickets. The most significant technological change concerns the penetration of the internet to individual households across the European Union, which rose from 55% in 2007 to 89% on average in 2018. At the same time, the use of mobile devices to access the internet increased from 36% in 2012 to 69% in 2018 in the EU. While CRSs continue to be an important player in the distribution of airline tickets, their share of bookings by volume has further decreased since the 2007 impact assessment.

Relevance

Overall, the objectives of **ensuring a level playing field** and **increasing transparency** may remain relevant. However, in view of developments in air ticket distribution, it is not clear whether it remains necessary to complement general EU competition rules with specific sectoral treatment of traditional CRS services in order to achieve a level playing field. Many stakeholders confirmed nonetheless that the transparency requirements in the form of the neutral display are still important in this respect.

Should it be considered that the CRS Code of Conduct is still necessary, its scope would require further attention to ensure that it continues to be relevant in light of market developments. There are divergent views among stakeholders as to whether the requirements should be extended to other players. Future policy decisions should carefully consider the impact on air ticket distribution as a whole.

¹ Regulation (EC) 80/2009 of the European Parliament and the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No. 2299/89.

None of the three traditional CRSs operating in Europe is owned by any air carrier to a significant extent. There is a theoretical possibility that air carriers might reinvest in CRSs, though there is currently no evidence that this is likely to happen. With or without the CRS Code of Conduct, EU competition rules would continue to apply. **Preventing parent carriers from distorting competition between CRSs and/or between themselves and participating carriers** therefore no longer seems a relevant objective for *ex ante* regulation. The provisions of the CRS Code of Conduct may therefore no longer be necessary.

Access to and preventing abuse of marketing data (MIDT data) still seems relevant to a certain extent because such data remain an important tool for air carriers in market research, and because some travel agents consider that MIDT data have been used unfairly to put pressure on them. However, there is no clear evidence whether it remains necessary to complement the general EU competition rules with sector-specific provisions to this end.

The objective of **consistent application of data protection rules** is being fully met by the General Data Protection Regulation (GDPR). However, since the provisions in the two pieces of legislation differ in certain respects, in terms of the level of detail or the scope, there needs to be a further cost-benefit analysis of the CRS Code of Conduct's rules, where these go beyond the GDPR.

The CRS Code of Conduct contains very limited provisions on **promoting rail transport and inter-modal transport**, and the evaluation has revealed that only a few rail companies participate in CRSs today. However, that does not mean that this specific objective is irrelevant and that a possible initiative to promote this objective should necessarily be excluded in the future. Nonetheless, there is insufficient evidence to confirm that the CRS Code of Conduct remains the most appropriate or necessary vehicle to achieve this objective.

Effectiveness

Overall, there are indications that the CRS Code of Conduct has not been fully effective in achieving the objective of ensuring a level playing field for all participating carriers for access to, and the use of CRS services, since it did not lead to better balancing of the bargaining power of different-sized air carriers vis-à-vis CRSs.

The objective of preventing distortion of competition between CRSs by parent carriers is currently being achieved, since no air carrier has a controlling share in any CRS. However, it is not clear whether the carrier divestment from CRSs is simply due to market development or if the presence of the CRS Code of Conduct also plays a role.

There are some indications that despite the CRS Code of Conduct, travel agents have still been subjected to pressure from air carriers on the basis of marketing data. However, this is considered to be a potential issue with the enforcement of the CRS Code of Conduct rather than with its provisions *per se*.

The use of new technologies, while introducing competition into the market, might lead to more fragmentation of content, thus reducing transparency and comparability. However, the CRS Code of Conduct never had the objective of preventing fragmentation and of making all airline tickets available on CRSs, but rather aimed to ensure that all information provided to CRSs by participating carriers is provided to CRSs' subscribers in a neutral and

comprehensive way. Therefore, it seems that the CRS Code of Conduct has been effective in achieving transparency of travel options made available on CRS platforms.

Regarding transparency and display neutrality, some stakeholders raise concerns about the increasing trend among air carriers of unbundling their services from the final price (i.e. offering services such as luggage, meals or seat selection separately). It remains to be seen whether these issues would need further attention and if so, what would be the best instrument to tackle them.

As regards consistent application of data protection rules specific to CRSs across the EU, the support study did not find any evidence to suggest that this objective has not been met.

Finally, results from the support study indicate that travel agents have access to rail options in their systems. CRS providers also confirmed that they work with a number of train companies and provide rail options in primary displays where relevant. Therefore, it seems that the specific objective of promoting rail transport has been partially achieved.

Efficiency

Most of the costs reported by different stakeholder groups seem to be the result of the market rather than the provisions of the CRS Code of Conduct. The CRS Code of Conduct imposes on-going direct costs to CRS providers derived from the reporting requirements (audits) of Article 12. As the CRS providers are all publicly listed companies these reporting requirements seem redundant as this is already publicly available information.

In terms of benefits, the removal of restrictions of contractual relationships between CRS providers and carriers seem to have led to more tailored offers for the carriers.

Overall, costs related to the CRS Code of Conduct seem to be minimal and the benefits seem to outweigh the costs.

Coherence

The evaluation showed that the provisions of the Code of Conduct are internally consistent. It also did not identify any inconsistencies with general competition law, EU legislation on consumer protection, or other business-related legislation. On the other hand, there are some differences between the CRS Code of Conduct and *Regulation 2019/712 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004* regarding the way discrimination against EU carriers is remedied.

Some of the substantive data protection provisions of the CRS Code of Conduct are made redundant by the GDPR. However, the GDPR and the data protection provisions of the CRS Code of Conduct differ in certain respects, in terms of the level of detail or the scope.

EU added value

The EU intervention has an added value compared to intervention on a national or global level. Given the international character both of CRS services and of the airline business, regulating the sector at the national level would increase costs and could trigger competitive distortions between Member States.