



# Legal committee– Topic 1

Director – Mia Wouters<sup>1</sup>

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<sup>1</sup> This paper reflects the author’s personal views and cannot be considered as the views of ICAO.

# Global distribution of airline tickets/ Computer Reservation Systems.

## 1. A word of explanation

To make money, and to stay in business, airlines need to sell the products and services they have created. But no matter how good your product or your service is, if you cannot inform the public of its availability, your good or service will remain on the shelf, unsold. Success in selling tickets largely depends on the airlines' ability to bring what it has to offer to the attention of the passenger and make it readily available for purchase once the passenger has made his choice. Airline capacity, however, has an exceptionally short shelf life. Once an aircraft takes off, any empty seat is lost forever. With the perishable nature of the seat inventory in mind, airlines are tasked to constantly match seat inventory with the demand of the passengers, and a Computer Reservation System (CRS) is probably the most adapted medium hereto.

A Computer Reservation System, later renamed to Global Distribution System, (CRS/GDS) consists of a database holding information on schedules, seat availability and fares of all its participating airlines and on a range of other travel and leisure services. When a travel agent (or a large corporate entity) sends a request for a quote for a trip, the GDS will "answer" with all possible combinations of schedules and prices of its participating carriers. A GDS further facilitates the work of the travel agent in physically making the reservation and issuing the tickets.

GDSs are thus used by travel agents (brick and mortar or online) and large corporations as a single point of access for booking airline tickets, rail tickets, hotel rooms, rental cars, and other travel-related items. GDSs are also used by some metasearch sites in order to obtain information about the services of carriers that participate in CRSs. These metasearch engines, however, do not have booking capabilities.

For several decades, GDSs enjoyed a privileged position in the market of distribution of travel and travel related products. Any newcomer would not only face the insurmountable cost of investment in technology but would also face the impossible task of attracting a sufficient number of travel agents who would use its technology, in order to attract sufficient interest of air carriers.

Travel agents pay a subscription fee to the GDS and the travel agent charges a service fee to the consumer for the booking of the ticket. GDS providers very often offer incentive payments to travel agents for booking tickets through their GDS, which mostly exceeds the amount of the subscription fee paid by the travel agent. Incentive payments paid by the GDSs to the travel agents usually vary according to the amount of bookings made. GDSs moreover, often provide the equipment and/or software that the travel agent uses for its front and back office. After all, for a GDS it is important that as many travel agents as possible use its system in order to generate as many bookings as possible through its software. Since, this is where the GDS gets its revenue from. Because, when a travel agent books a ticket on a certain airline, using GDS technology, this airline needs to pay a booking fee per segment booked by the travel agent to the GDS who's technology was used. This booking fee varies between 4 to 10 euro/dollar per segment.

Soon after their introduction, CRSs attracted considerable regulatory attention because of their increasing influence on the sale and distribution of international air transport services.

A number of States were concerned that as a powerful marketing tool, CRSs could have the potential to be abused to unfairly favour certain air carriers or air services because CRSs were initially owned by major airlines.

The robust position of the GDSs, first trembled when airlines actively started looking for cheaper ways to distribute their services. The airlines in an attempt to become

independent from the GDSs, developed alternative distribution channels which were perceived as cost effective and which were construed as trying to by-pass the classic GDS technology, and for that matter also the travel agencies. Airlines set up direct links with their seat inventory, created websites through which the consumer can directly book his flight, rental car, hotel room,..

The real shift in the balance of power between GDSs and airlines emerged when airlines started withholding their lowest “internet fares” from the GDS inventory and/or by charging the travel agent a penalty fee when the booking was made via a GDS. More and more airlines do not conclude full content agreements anymore with the GDS (i.e. contract conditions that require carriers to provide GDSs with the same fare content that they provide on their own distribution channel). In turn, the GDSs withdraw discounts on the booking fees. GDSs tend to only offer carriers discounted booking fees in return for providing them comprehensive (full) content.

These changes, together with regulatory changes, gave the airlines the power to offset the GDSs’ monopolistic behaviour. The United States witnessed already in 2004, the deregulation of the GDS market, with the elimination of all regulations on GDSs and their operations beyond 1 August 2004. Europe adopted a new Code of Conduct which increased the negotiating freedom of airlines and GDSs by allowing GDSs to freely set the booking fee and by allowing air carriers to differentiate the content of the information they give to the GDSs.

## 2. The ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems.

ICAO adopted a first Code of Conduct on the Regulation and Operation of CRS in 1991. This ICAO Code of Conduct was later reviewed in November 1996. ICAO

developed also two alternative model clauses on CRSs for optional use by States in their air services agreements (contained in the ICAO TASA, in Doc 9587).

In the Resolutions adopted at the end of the 32<sup>nd</sup> session of the Assembly, the Counsel was requested to revise the ICAO CRS Code when required.

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.

In the light of the fact that in the US the GDS is fully deregulated, in Canada there is partial deregulation and in Europe the existing Code of Conduct was revised and a new Regulation 2024/1230 of 24 April 2024, amended the previous Regulations (80/2009, Regulation 996/2010 and Regulation 165/2014) on CRS, you are asked to assess if ICAO still needs a Code of Conduct on GDS or if the objectives of preventing abuse of market power and ensuring market efficiency as well as the protection of consumer interests are achieved. Alternatively, does ICAO need to adapt the existing Code in the light of new evolutions.

### **3. Analysis and a few potential questions to be addressed by the delegates.**

- (1) How to ensure the equal treatment for all participating carriers in a GDS with regards to transparency on travel options and a neutral display. Smaller carriers see the neutral display in CRSs as having been a factor in enabling them to compete with larger carriers. Do the general competition rules create a level playing field or do we need sector specific regulations. Should other means of distribution be held to the same criteria.

- (2) What are the different methods of distribution. Will GDS continue to play a role? GDS is typically only concerned with B2B (airlines/GDS/Travel agents) Should we bring B2C and/or other new technologies within the scope of the Code of Conduct (platforms)?
- (3) Are there still potential problems with Marketing Information Data (MIDT) generated by the GDSs. Are they as important as they used to be? Is further regulation needed
- (4) To boost revenue, the airlines started to unbundle their services. Today airlines no longer provide for an “all inclusive” ticket. Instead consumers pay for the bare transport and if they want to have ancillary services they pay the extra sum that goes with it. Overall this has led to lower fares by allowing passengers to only pay for what they need. The list of ancillary services is as large as the imagination of the airline management and includes: baggage fee, advance seat selection, early boarding, lounge access, fast track security, in-flight catering, pre-order upgraded meals, on board Wi-Fi, reservation of exit-row seats, extra leg room/extra leg space, ... As a result, when a passenger asks for a fare quote he no longer only wants to be provided with a price and a schedule, he also wants to be informed of the ancillary services. Hence, price transparency alone is no longer enough to make an informed choice - true transparency means disclosing the price along with the corresponding product information. How can we make this happen? How do we achieve price transparency? Notwithstanding the fact that the ICAO CRS Code of Conduct only applies to the traditional CRS channel which is by its nature B2B. As indicated above, future policy decisions should carefully consider the impact on air ticket distribution as a whole and possibly include B2C.

## 4. Papers to read

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

Regulation (EU) 2024/1230 of the European Parliament and of the Council of 24 April 2024 amending Regulations (EC) No 80/2009, (EU) No 996/2010 and (EU) No 165/2014 as regards certain reporting requirements in the fields of road transport and aviation OJ. L 29.04.2024.

Commission Staff working document and executive summary of the evaluation of Regulation 80/2009 SWD (2020) 9 final.

RAVICH, Timothy, Deregulation of the Airline Computer Reservation Systems (CRS) Industry (March 1, 2004). *Journal of Air Law and Commerce*, Vol. 69, p. 387, 2004, Available at SSRN: <https://ssrn.com/abstract=2310130>.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, Argued: December 13, 2018 Decided: September 11, 2019; Docket Nos. 17-960, 17-983; *US Airways, Inc., for American v. Sabre Holdings Corporation*

[GDS system comparison: Amadeus vs Sabre vs Travelport](#)

For a better understanding of the CRS/GDS;

Regulation 139/2004 merger procedure case M.7802 Amadeus/Navitaire from 19/01/2016.

Regulation COMP 139/2004 merger procedure Case M 4523 Travelport/ Worlspan from 21/08 /2007.