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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3089/93

of 29 October 1993

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

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 Regulation (EEC) No 2299/89 (4) constitutes a significant step towards the achievement 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;

Whereas Commission Regulation (EEC) No 83/91 (5) exempts agreements for the common purchase development and operation of computer reservation systems from the provisions of Article 85 (1) of the Treaty;

Whereas non-scheduled air services are of major importance in the territory of the Community;

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

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

Whereas it is desirable to treat like products equally and to ensure fair competition between both kinds of air transport products and the 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 consumers looking for different products should be given the possibility to request displays for only scheduled or non-scheduled flights;

Whereas it is desirable to clarify that Regulation (EEC) No 2299/89 should apply to computer reservation systems offered to and/or used by all final consumers, be they individual members of the public or corporate users;

Whereas air carriers using a computer reservation system in their own clearly marked offices or counters should not be subject to the provisions governing the principal display;

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 his direct costs in the case of the termination of a participation or subscription contract in accordance with the provisions of this Regulation;

Whereas the refusal by parent carriers to provide the same information on schedules, fares and availability to systems other than their own and to accept bookings made by those systems can seriously distort competition between computer reservation systems;

(1) OJ No C 56, 26. 2. 1993, p. 28.
(2) OJ No C 176, 28. 6. 1993, p. 65.
(3) OJ No C 108, 19. 4. 1993, p. 16.
(4) OJ No L 220, 29. 7. 1989, p. 1.
(5) OJ No L 10, 15. 1. 1991, p. 9. Regulation last amended by Regulation (EEC) No 1618/93 (OJ No L 155, 26. 6. 1993, p. 23).

Whereas competitive neutrality of computer reservation systems for air carriers must be ensured in respect of equal functionality and data security, in particular through equal access to functions, information/data and interfaces and a clear separation between private airline facilities and distribution facilities;

Whereas competitive parity will be enhanced by ensuring the separate legal identity of computer reservation systems;

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 which are covered by this Regulation;

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

Whereas it is desirable that detailed marketing, booking and sales data shall be made available to participating carriers on a non-discriminatory basis and with equal timeliness; whereas identification or personal information on a passenger or a corporate user must remain private; whereas, therefore, a system vendor has to ensure by technical means and appropriate safeguards, at least regarding software, that no unauthorized access to information can take place;

Whereas billing information should be sufficiently detailed to allow participating carriers and subscribers to control their costs; whereas, in order to facilitate such control, such information should be made available on magnetic media;

Whereas it is desirable in the consumer interest to clarify that no flight or combination of flights shall be shown more than once in the principal display, except where, in a joint venture or other arrangement, each operating carrier assumes separate responsibility for the offer and sale of air transport products on the flights concerned;

Whereas the system vendor should ensure that the principles of technical compliance with the provisions concerning equal functionality and data security are monitored by an independent auditor,

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 to the extent that they contain 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 airports between which air carriage takes place.

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 prearranged 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 all possessing the following characteristics;

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

— 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 may 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 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 affilates which is or are responsible for the operation or marketing of a CRS;

(i) "parent carrier" means any air carrier which directly or indirectly, alone or jointly with others, owns or effectively controls a system vendor, as well as any air carrier which it owns or effectively controls;

(j) "effective control" means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:

— the right to use all or part of the assets of an undertaking,

— rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;

(k) "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 facilities of its own CRS which are covered by this Regulation, it shall be considered a participating carrier;

(l) "subscriber" means a person or an undertaking, other than a participating carrier, using the distribution facilities for air transport prodcts of a CRS under contract or other arrangement with a system vendor;

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

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

(o) "elapsed journey time" means the time difference between scheduled departure and arrival time;

(p) "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 have the capacity, in its own name as a separate entity from the parent carrier, to have rights and obligations of all kinds, to make contracts, *inter alia* with parent carriers, participating carriers and subscribers, or to accomplish other legal acts and to sue and be sued.

2. 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.

3. (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 not before the end of the first year.

In such a case a system vendor shall be entitled to recover more than the costs directly related to the termination of the contract.

4. If a system vendor has decided to add any improvement to the distribution facilities provided or the equipment used in the provision of the facilities, it shall provide information on and offer these improvements to all participating carriers, including parent carriers, with equal timelines and on the same terms and conditions, subject to any technical constraints outside the control of the system vendor, and in such a way that there will be no difference in leadtime for the implementation of the new improvements between parent and participating carriers.'

2. The following Article is added:

'Article 3a

1. (a) A parent carrier may not discriminate against a competing CRS by refusing to provide the latter, on request and with equal timeliness, with the same information on schedules, fares and availability relating to its own air services as that which it provides to its own CRS or to distribute its air transport products through another CRS, or by refusing to accept or to confirm with equal timeliness a reservation made through a competing CRS for any of its air transport products which are distributed through its own CRS. The parent carrier shall be obliged to accept and to confirm only those bookings which are in conformity with its fares and conditions.

(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 accepted bookings.

(c) The parent carrier shall be entitled to carry out controls to ensure that Article 5 (1) is respected by the competing CRS.

2. The obligation imposed by this Article shall not apply in favour of a competing CRS when, in accordance with the procedures of Article 6 (5) or Article 7 (3) or (4), it has been decided that the CRS is in breach of Article 4a or that a system vendor cannot give sufficient guarantees that obligations under Article 6 concerning unauthorized access of parent carriers to information are complied with.'

3. Article 4 is replaced by the following:

'Article 4

1. Participating carriers and other providers of air transport products shall ensure that the data which they decide to submit to a CRS are accurate, non-misleading, transparent and no less comprehensive than for any other CRS. The data shall, *inter alia*, enable 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 which 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 which would lead to the provision of inaccurate, misleading or discriminatory information.

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. The following Article is added:

'Article 4a

1. Loading and/or processing facilities provided by a system vendor shall be offered to all parent and participating carriers without discrimination. Where relevant and generally accepted air transport industry standards are available, system vendors shall offer facilities compatible with them.

2. A system vendor shall not reserve any specific loading and/or procesing procedure or any other distribution facility for one or more of its parent carrier(s).

3. A system vendor shall ensure that its distribution facilities are separated, in a clear and verifiable manner, from any carrier's private inventory and management and marketing facilities. Separation may be establsihed either logically by means of software or physically in such a way that any connection between the distribution facilities and the private facilities may be achieved by means of an application-to-application interface only. Irrespective of the method of separation adopted, any such interface shall be made available to all parent and participating carriers on a non-discriminatory basis and shall provide equality of treatment in respect of procedures, protocols, inputs and outputs. Where relevant and generally accepted air transport industry standards are available, system vendors shall offer interfaces compatible with them.'

5. Articles 5 and 6 are replaced by the following:

'Article 5

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

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

2. (a) A system vendor shall provide a principal display or displays for each individual transaction through its CRS 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.

(b) A consumer shall be entitled to have, on request, a principal display limited to scheduled or non-scheduled services only.

(c) No discrimination on the basis of airports serving the same city shall be exercised in constructing and selecting flights for a given city-pair for inclusion in a principal display.

(d) Ranking of flight options in a principal display shall be as set out in the Annex.

(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, the display shall be neutral and non-discriminatory and shall contain at least the fares provided for all flights of participating carriers shown in the principal display. The source of such information shall be acceptable to the participating carrier(s) and system vendor concerned.

4. Information on bundled products regarding, *inter alia,* who is organizing the tour, availability and prices, shall not be featured in the principal display.

5. A CRS shall not be considered in breach of this Regulation to the extent that it changes a display in order to meet the specific request(s) of a consumer.

Article 6

1. The following provisions shall govern the availability of information, statistical or otherwise, by a system vendor from its CRS:

(a) information concerning individual bookings shall be provided on an equal basis and only to the air carrier(s) participating in the service covered by and to the subscriber(s) involved in the booking;

(b) any marketing, booking and sales data made available shall be on the basis that:

(i) such data are offered with equal timeliness and on a non-discriminatory basis to all participating carriers, including parent carriers;

(ii) such data may and, on request, shall cover all participating carriers and/or subscribers, but shall include no identification of or personal information on a passenger or a corporate user;

(iii) all requests for such data are treated with equal care and timeless, subject to the transmission method selected by the individual carrier.

2. A system vendor shall not make personal information concerning a passenger available to others not involved in the transaction without the consent of the passenger.

3. A system vendor shall ensure that the provisions in paragraphs 1 and 2 above are complied with, by technical means and/or appropriate safeguards regarding at least software, in such a way that information provided by or created for air carriers can in no way be accessed by one or more of the parent carriers except as permitted by this Article.

4. A system vendor shall, within three months of the entry into force of this Regulation, make available on request to all participating carriers a detailed description of the technical and administrative measures which it has adopted in order to conform with this Article.

5. Upon receipt of the detailed description of the technical and administrative measures which have been adopted or modified by a system vendor, the Commission shall decide within three months whether the measures are sufficient to provide the safeguards required under this Article. If not, the Commission's decision may invoke the application of Article 3a (2). The Commission shall immediately inform Member States of such a decision. Unless the Council, at the request of a Member State, takes a different decision within two months of the date of the Commission's decision, the latter shall enter into force.'

6. In Article 7, paragraphs 1 and 2 are replaced as follows:

'1. The obligations of a system vendor under Articles 3 and 4 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 cariers equivalent treatment to that provided under this Regulation and under Commission Regulation (EEC) No 83/91 (*).

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 outside the territory of the Community the parent or participating carrier(s) is (are) not accorded equivalent treatment to that provided under this Regulation and under Commission Regulation (EEC) No 83/91.

(*) OJ No L 10, 15. 1. 1991, p. 9.'.

7. In Article 7, the following paragraph is added:

'5. (a) In cases where serious discrimination within the meaning of paragraph 1 or 2 is found to exist, the Commission may by decision instruct CRSs to modify their operations approximately in order to terminate such discrimination. The Commission shall immediately inform Member States of such a decision.

(b) Unless the Council, at the request of a Member State, takes another decision within two months of the date of the Commission's decision, the latter shall enter into force.'

8. Article 8 is replaced by the following:

'Article 8

1. A parent carrier shall neither directly nor 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 neither directly nor indirectly require use of any specific CRS by a subscriber for 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.'

9. 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 by giving notice which need not exceed three months, to expire not before the end of the first year.

In such a case, a system vendor shall 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 for :

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

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

10. In Article 10, paragraphs 1 and 2 are 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 therefor ; as a minimum, booking fee bills must include the following information for each segment :

— type of CRS booking,

— passenger name,

— country,

— IATA/ARC agency identification code,

— city-code,

— city pair or segment,

— booking date (transaction date),

— flight date,

— flight number,

— status code (booking status),

— service type (class of service),

— PNR record locator,

— booking/cancellation indicator.

The billing information shall be offered on magnetic media.

A participating air carrier shall be offered the facility of being informed at the time that any booking/transaction is made for which a booking fee will be charged. Where a carrier elects to be so informed, it shall be offered the option to disallow such booking/transaction, unless the latter has already been accepted.

2. A system vendor shall, on request, provide interested parties with details of current procedures, fees and systems facilities, including interfaces, editing and display criteria used. However, this provision does not oblige a system vendor to disclose proprietary information such as software programmes.'

11. 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(s) and sales counters clearly identified as such.'

12. The following Article is added :

'Article 21a

1. The system vendor shall ensure that the technical compliance of its CRS with Articles 4a and 6 is monitored by an independent auditor. For this purpose, the auditor shall be granted access at any time to any programs, procedures, operations and safeguards used on the computers or computer systems through which the system vendor is providing its distribution facilities. Each system vendor shall submit its auditor's report on his inspection and findings to the Commission at least once a year. This report shall be examined by the Commission with a view to any necessary action in accordance with Article 11 (1).

2. The system vendor shall inform participating cariers and the Commission of the identity of the auditor at least three months before confirmation of an appointment and at least three months before each annual reappointment. If, within one month of notification, any of the participating carriers objects to the capability of the auditor to carry out the tasks as required under this Article, the Commission shall, within a further two months and after consultation with the auditor, the system vendor and any other party claiming a legitimate interest, decide whether or not the auditor is to be replaced.'

13. Article 22 is replaced by the following:

'*Article 22*

1. This Regulation shall be without prejudice to national legislation on security, public order and data protection.

2. The beneficiaries of rights arising under Article 3 (4), Articles 4a, 6 and 21 (a) cannot renounce these rights by contractual or any other means.'

14. Article 23 is replaced by the following:

'*Article 23*

1. 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.

2. The Council shall review the application of Articles 4a and 6 (3), based on a report to be submitted, at the latest by the end of 1994, by the Commission.'

15. The Annex is replaced by the Annex to this Regulation.

Article 2

1. This Regulation shall enter into force on the 30th day following its publication in the *Official Journal of the European Communities*.

2. The new Articles 3 (1) and 5 (2) (b) of Regulation (EEC) No 2299/89 shall not apply until six months after the date referred to in paragraph 1. The Commission may grant a further 12 months' waiver to CRSs which, for objective reasons, are unable to comply with Article 3 (1) and Article 5 (2) (b).

3. The obligation in point 9 (c) of the Annex to display connecting flights with one line per aircraft segment shall apply from 1 January 1995.

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

Done at Brussels, 29 October 1993.

For the Council

The President

R. URBAIN

ANNEX

Principal display ranking criteria for flights offering unbundled air transport products

1. Ranking of flight options in a principal display, 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. A consumer shall at least be afforded the possibility of having, on request, a 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-disciminatory manner between carriers displayed.

4. If, to the system vendor's knowledge, information on 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. Where flights are operated by an air carrier which is not the air carrier identified by the carrier designator code, the actual operator of the flight shall be clearly identified. This requirement shall apply in all cases, except for short-term *ad hoc* arrangements.

8. A system vendor shall not use the screen space in a principal display in a manner which gives excessive exposure to one particular travel option or which displays unrealistic travel options.

9. Except as provided for in paragraph 10, the following shall apply :

   (a) for direct services, no flight shall be featured more than once in a principal display ;

   (b) for multi-sector services involving a change of aircraft, no combination of flights shall be featured more than once in a principal display ;

   (c) flights involving a change of aircraft shall be treated and displayed as connecting flights, with one line per aircraft segment.

   Nevertheless, only one reservation shall be necessary where the flights are operated by the same air carrier, with the same flight number, and where the air carrier requires only one flight coupon.

10. 1. Where participating carriers have joint venture or other contractual arrangements requiring two or more of them to assume separate responsibility for the offer and sale of air transport products on a flight or combination of flights, the terms 'flight' (for direct services) and 'combination of flights' (for multi-sector services) in paragraph 9 shall be interpreted as allowing each of the carriers concerned — up to a maximum of two — to have a separate display using its individual carrier designator code.

    2. Where more than two carriers are involved, designation of the two carriers entitled to avail themselves of the exception provided for in subparagraph 1 shall be a matter for the carrier actually operating the flight.

11. A principal display shall, wherever practicable, include connecting flights on scheduled services which are operated by participating carriers and are 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 or except where this would lead to the exclusion of services with a shorter elapsed journey time. Connecting points with routings in excess of 130 % need not be used.