

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Director of Investigation and Research under Section 64(1) of the Competition Act R.S.C. 1970, c. C-23 as amended;

AND IN THE MATTER OF a Limited Partnership formed to combine the operations of the Reservec and Pegasus computer reservation systems;

AND IN THE MATTER OF The Gemini Group Automated Distribution Systems Inc.

B E T W E E N:

F I L E D	COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	P R O D U I T
	APR 19 1989 <i>108</i>	
REGISTRAR — REGISTRAIRE		
OTTAWA, ONT.		#482

The Director of Investigation and Research

Applicant

- and -

Air Canada
 Air Canada Services Inc.
 PWA Corporation
 Canadian Airlines International Ltd.
 Pacific Western Airlines Ltd.
 Canadian Pacific Air Lines, Limited
 154793 Canada Ltd.
 153333 Canada Limited Partnership
 The Gemini Group Automated Distribution Systems Inc.

Respondents

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

- and -

File No.	<i>CT-88/1</i>
Exhibits	<i>4</i>
Filed	<i>25/04/89</i>
Registrar	<i>J. Rajani</i>

Consumers' Association of Canada
 American Airlines Inc.
 Wardair Canada Inc.
 Attorney General of Manitoba
 Alliance of Canadian Travel Associations
 Bios Computing Corporation
 Air Atonabee Limited

Intervenors

AGREED STATEMENT OF FACTS

1. The Applicant and Respondents hereby agree for the purpose of this consent Application that the facts contained in this Agreed Statement of Facts are true, as of the date this Agreed Statement of Facts was executed.

(A) The Merger

2. Air Canada ("AC") is a Corporation continued under the Canada Business Corporations Act pursuant to the Air Canada Public Participation Act, 35-36-37 Elizabeth II, C. 44.

3. AC is one of the largest Canadian air carriers in Canada and serves a network of domestic, transborder and international routes. Prior to June 1, 1987, AC operated a computer reservations system ("CRS") under the trade name Reservec II ("Reservec"). As of May 1, 1987, AC transferred certain assets of Reservec to a wholly owned subsidiary Air Canada Services Inc. (now 160092 Canada Inc.) in exchange for shares of Air Canada Services Inc.

4. PWA Corporation ("PWAC") is a company incorporated under the laws of Alberta on February 22, 1956 and continued under the Business Corporations Act, S.A. 1981, c. B-15, as amended, on January 27, 1983. PWAC is the sole owner of Canadian Airlines International Ltd. ("CDN") which is the successor to the former Pacific Western Airlines Ltd. ("PWAL") and Canadian Pacific Air Lines, Limited ("CPAL") by virtue of

an amalgamation effective January 1, 1988. CDN is one of the largest Canadian air carriers in Canada and serves a network of domestic, transborder and international routes. Prior to June 1, 1987, CPAL owned and operated a CRS called Pegasus 2000 ("Pegasus"). As of May 31, 1987, certain assets of Pegasus were transferred from CPAL to 154793 Canada Ltd. ("154793") in return for shares of 154793.

5. As of June 1, 1987, AC and PWAC merged Reservec and Pegasus to form a single CRS known as Gemini. AC and PWAC initially formed 153333 Canada Limited Partnership (now The Gemini Group Limited Partnership), ("Limited Partnership") and transferred the shares of Air Canada Services Inc. and 154793 and the assets of Reservec and Pegasus, not previously transferred to Air Canada Services Inc. and 154793 to the Limited Partnership. 153333 Canada Inc. (now The Gemini Group Automated Distribution Systems Inc.), ("the General Partner") was appointed to manage the business and affairs of the Limited Partnership. AC and PWAC each own 50% of both the Limited Partnership and the General Partner (collectively "Gemini").

6. Gemini is headquartered in Toronto where its system development activities are based. The computer mainframes are located in Winnipeg. Gemini employs 638 individuals throughout Canada.

(B) **The Airline Industry**

7. Prior to 1984 the Canadian airline industry was the subject of significant economic regulation and federal government policy.

8. From 1937, when AC was incorporated, to 1959, federal government policy provided for one national air carrier. Commencing in 1959, federal government policy recognized CPAL as a national carrier, but with limited operating authority. The Regional Air Carrier Policy of 1966 provided for five regional carriers in specified areas and in the north; Pacific Western Airlines in B.C. and Alberta, Transair on the Prairies, Nordair in Central Canada, Quebec Air in Quebec and Eastern Provincial Airways in the Maritimes.

9. Entry into the airline industry and fares charged by airlines were subject to government policy limiting the roles of CPAL and the regional carriers and extensive regulation by the Canadian Transport Commission, predecessor of the National Transportation Agency.

10. In May 1984, federal government policy was revised to remove the role distinctions between national and regional carriers. Restrictions on operating authorities of CPAL and the regional carriers were eliminated. Between 1984 and 1987 entry and fare regulation was relaxed and with the enactment of

the National Transportation Act, 1987, the industry was largely deregulated in southern Canada (in the north entry and fares continued to be the subject of regulation).

11. Commencing in 1984, CPAL expanded its national presence by acquiring Eastern Provincial Airways and Nordair. In December 1986, PWAC acquired CPAL and formed CDN. In March 1989, PWAC made an offer to acquire Wardair Inc., the parent of Wardair Canada Inc. which had entered the scheduled domestic passenger airline industry in 1985.

12. In 1987, AC represented 52.7 percent, CDN 40.7 percent and Wardair 6.6 percent of the domestic revenue passenger miles flown by those three carriers.

13. Since 1983, AC and CDN (or one of its predecessors) have established a network of affiliated airlines which provide local service and connecting services to and from points served by one of the national carriers. AC's "alliance carriers" are Air B.C., Northwest Territorial Airways, Air Ontario, Air Alliance and Air Nova. CDN's "commuter partner" affiliates are Time Air, Calm Air, Ontario Express, Inter-Canadien and Air Atlantic. All affiliates use the "AC" and "CP" designator codes, respectively.

14. Transborder and international commercial air services are the subject of bilateral air service agreements between Canada and other countries. These agreements provide, inter alia, for countries to designate the airlines to serve specific routes.

15. On all significant transborder and international routes, AC and CDN compete for traffic with carriers of other countries. Canadian carriers have less than 50 per cent of transborder and international passenger markets.

16. Major United States carriers are present at all significant Canadian centres. American Airlines serves Toronto, Montreal and Vancouver and has the greatest presence in Canada of all United States carriers.

(C) **The CRS Industry**

(i) **Description**

17. CRS vendors distribute information on schedules, fares, rules and seat availability to subscribers (usually travel agents) for the airlines which are hosted on or participate in the system. This is done electronically through a cathode ray tube terminal ("CRT terminal") that is usually located on the travel agent's premises. The CRT terminal displays the information requested and travel agents can book seats on the flights requested by their customers and issue travel documents to them.

18. CRS vendors distribute information on hotels, car rentals, tours, theatre tickets etc., to travel agents who are able to book these services through the CRS.

19. Travel agencies are the primary means for airlines to distribute their product to the travelling public. Approximately 70% of the airline tickets for scheduled services provided in Canada are sold through travel agencies and approximately 97% of these tickets are sold through travel agencies equipped with a CRS to make airline reservations and print tickets. The other 30% of the tickets sold in Canada are sold by the airlines directly to the travelling public.

20. CRS vendors enter into a contract with travel agents to supply them with CRS service including CRT terminals, related equipment, telecommunication lines and computer access. Travel agents pay subscriber fees for these services subject to the terms of the contracts.

21. Travel agents earn commissions from the airlines for each ticket sold on the airline and from hotels, car rental agencies and tour operators for the services they sell.

22. There is also a contractual relationship between the CRS vendors and participating airlines. In order to distribute their airline services effectively through travel agents,

airlines will participate in all CRS's that have a commercially significant number of travel agent subscribers. To make its CRS attractive to travel agents, a CRS vendor desires to attract participating airlines, hotels, car rental agencies etc. of relevance to the travel agents.

23. CRS vendors charge participating carriers booking fees for each flight segment booked on the CRS. A flight segment represents travel on one direct flight which may have intermediate stops but involves no connections.

24. An airline can be represented in a CRS, either as a "hosted carrier" or a "participating carrier". If it is hosted, it stores its complete airline inventory in the CRS. In this case, the CRS provides the carrier with both an internal reservation and a management system to manage its inventory and an external reservation system to distribute its product to travel agents and, ultimately, consumers. An airline can only host on one system. AC and CDN and their affiliates are now hosted with Gemini on Reservec and Pegasus respectively.

25. If the airline is a "participating carrier", the CRS provides the carrier with an external reservation system to distribute its product to travel agents, but does not provide that carrier with its internal reservation and management

system. AC and CDN and their respective affiliates who use common designator codes currently participate in Sabre, Apollo, Datas II, PARS and SystemOne. AC and CDN (and its predecessor CPAL) have participated without interruption in these CRS's since 1978 and 1984 respectively. AC and CDN's affiliates have participated in these CRS's since they began using the "AC" and "CP" designator codes.

26. The CRS lists the information on fares, schedules and seat availability which the carriers supply directly or which the CRS obtains from carrier supported central agencies such as Air Tariff Publishing Company ("ATP") and Official Airline Guide ("OAG"). ATP collects information on airline fares and OAG gathers information on airlines schedules. AC and CDN provide information regarding their schedules, fares and fare rules and that of their affiliates who utilize common designator codes to OAG and ATP.

27. Seat availability information is determined by the participating carrier. When the number of seats sold reaches a certain level, the internal reservation computer of the participating carrier will send a "closed for sale" message. If, for example, a flight has 100 seats for sale, a participating airline may close off further sale of seats through CRS systems in which it is not hosted at the 95th seat. This inventory buffer is required because the

communication messages that request a seat and confirm the reservation are ordinarily transmitted through a teletype switching system operated by Aeronautical Radio Inc.

("ARINC"). Delays in receipt of messages can be substantial and therefore an inventory buffer is required to prevent overselling a flight. If a carrier is hosted, no inventory buffer is required and its full inventory is normally displayed on the primary display.

28. The ability to make and confirm bookings on the last few seats of a flight (referred to as "last seat availability") allows travel agents to provide better service, particularly to the business market which desires seats on heavily booked flights. In order to have last seat availability, the travel agent must use a CRS on which that airline is hosted or use another CRS that has an electronic direct access link to the airline's database.

29. Direct access links are basically of two types, "look-but-not-book" and "look and book". "Look-but-not-book" links allow the travel agent subscriber to switch from the integrated display of the CRS and look at the seat availability shown by the internal reservation system of the participating airline. For example, the travel agent may see zero seats or a closed for sale message on the integrated display but by going into the direct access mode, may discover that there are in fact 5

seats available for sale. The agent then sends a teletype booking message from the CRS to the internal reservation system computer. It is standard practice in the United States that this booking message will have a special designator code that means that the participating airline will honour the reservation.

30. "Look and book" links have recently been developed to allow the CRS subscriber to look at the inventory of the participating airline and then instantaneously "book" and decrement the inventory. "Look and book" links provide participating carriers with CRS service comparable to that provided to the hosted carrier.

31. All of the CRS vendors in the United States have direct access "look-but-not-book" type links with the major U.S. carriers. Two CRS vendors (Pars and Apollo) have "look and book" links and two others (Sabre and System One) have indicated that they are under development. At the present time, only a few participating carriers in the United States are in fact using "look and book" links. There are presently no "look and book" links in operation in Canada. There are "look-but-not-book" links in place from AC to Pegasus, CDN to Reservec, Wardair to Reservec and Wardair to Sabre.

32. The standard booking fee charged in the United States is \$1.85 (US) per segment booked. In Canada, Gemini charges its participating and hosted carriers \$1.85 (US), except where lower booking fees are required in the case of a few participating carriers under pre-existing contracts.

33. In the United States, where direct access "look-but-not-book" links exist between an airline and a CRS, approximately 10 - 15% of the airline's bookings through that CRS are made utilizing the link and a premium of \$.25 (US) is charged for such bookings. If such a link had existed between AC and Sabre and CDN and Sabre during 1988, the incremental cost to AC and CDN respectively (assuming 10% of their 1988 Sabre bookings were made over such a "look-but-not-book link") would have been approximately \$61,000 (US) and \$39,000 (US).

34. In the United States, where "look and book" links (such as Apollo's "Inside Link" and Sabre's proposed "Air Link") exist between an airline and a CRS, all of that airline's bookings for that CRS are made through the link and a premium of \$.25 (US) is charged for all such bookings. If such a link had existed between AC and CDN and Sabre during 1988, the incremental cost to AC and CDN on all of their 1988 bookings through Sabre would have been approximately \$615,000 (US) and \$389,000 (US) respectively. By contrast, if a "look and book" link had existed between American Airlines and Gemini

during 1988 and a \$.25 (US) premium was charged, the incremental revenue to Gemini would have been approximately \$88,000 (US).

35. The U.S. CRS systems permit travel agents to select seats and issue advance boarding passes on some carriers. In Canada, Reservec travel agents can prereserve seats on AC and Pegasus travel agents can do so on CDN. At the present time, advance boarding passes on AC and CDN are not available through any CRS including Gemini.

(ii) **CRS Vendors/Joint Ventures - United States and International**

36. There are 5 CRS vendors presently operating in the United States, all of which are owned, individually or jointly by air carriers, as set out below in Table 1:

Table 1
US CRS VENDORS

<u>CRS</u>	<u>Owner</u>	<u>Air Carrier</u>	<u>Agency¹ Locations</u>	<u>CRTs¹ (000's)</u>	<u>Segments¹ Booked (000)</u>
Sabre	American Airlines Inc.	American Airlines Inc.	8,677	47.3	126,359
Apollo	Covia Corporation (now Covia Partnership)	United Airlines, US Air, British Airways, KLM, SwissAir, Alitalia	6,511	31.4	100,613
System One	System One Inc.	Continental Airlines, Eastern Airlines	4,271	16.8	32,159
PARS	Pars Travel Information Systems	TWA, Northwest Airlines	3,189	12.3	30,985
DATAS II	Delta Airlines Inc.	Delta Airlines	2,045	7.9	15,462
TOTALS			<u>24,693</u>	<u>115.7</u>	<u>305,618</u>

Source: Table 3.1, U.S. Department of Transport,
Study of Airline Computer Reservation System, May 1988

1. Based on 1986 data.

37. On January 27, 1989, American Airlines and Delta Airlines announced their intention to merge Sabre and Datas II, at a cost to Delta Airlines of \$650 million (U.S.) plus Datas II for a 50% interest in the consolidated CRS.

38. There are several CRS vendors presently operating in Europe owned by the national airlines of the European countries. Many of the European air carriers have now joined one of two consortia as set out in below in Table 2 in order to acquire the enhanced functionality offered by U.S. systems. (System One in the case of Amadeus and Apollo in the case of Galileo).

Table 2

<u>CRS</u>	<u>Air Carrier</u>
Amadeus	Lufthansa, Iberia, Air France, Air Inter, SAS, JAT, Finnair, Braathens, Icelandair, Adria, UTA
Galileo	British Airways, Alitalia, SwissAir, Olympic Airways, KLM, Sabena, TAP, Aer Lingus, Austrian Airlines

39. One CRS has already been established in Asia/Pacific (Abacus) and another is under negotiation (Fantasia). Abacus currently is jointly owned by a consortia of carriers, Singapore International Airlines and Cathay Pacific.

(iii) **CRS Regulation**

40. The U.S. experience has shown that CRS systems can be used by their airline owners to disadvantage airline competition through bias, discriminatory booking fees and other means. In 1984, the CAB implemented the first code of conduct to deal with these problems. The current text of these rules is included as Appendix I. The U.S. Department of Transportation is responsible for enforcement of the CAB rules. These rules expire on December 31, 1990 and are presently under reconsideration as required by the CAB ruling of 1984.

41. In 1985, the Trahan Commission examined the issue of CRS bias and concluded that there was no evidence of avoidable bias in the Canadian CRS systems.

42. In Europe, the European Civil Aviation Conference (ECAC) began work in mid-1987 to establish a code of conduct which has now been published. Thus far, the ECAC code is only a set of principles and has no force of law.

43. The European Commission has also published a draft CRS code (EEC) which, if adopted by the Council of Ministers, will be legally enforceable within the European Economic Community.

44. In Canada, at present, there are no rules regulating the conduct of CRS operations. Transport Canada has indicated that it intends to recommend to the Minister of Transport that the Canadian CRS industry be regulated. A policy statement is being developed for consideration by the Minister.

(iv) **Canadian CRS Market**

45. There are 5 CRS vendors presently operating in Canada, namely, Gemini, Sabre, Apollo, PARS and System One. Currently, Apollo, PARS and System One have a very small presence in the Canadian market.

46. AC has operated an automated reservation system known as Reservec since 1962. Prior to 1973, Reservec was used solely by AC's ticket offices and reservation centres. In 1973, AC began to provide internal reservation services to other airlines (hosting) and in 1975, expanded this service to include travel agencies and became a "CRS" in the sense that it provided automated reservation services to travel agents. Reservec was the only CRS in Canada until Sabre entered the market in 1983, followed by Pegasus in 1984.

47. Sabre, the largest CRS operator in the world, entered the Canadian CRS market in 1983, offering enhanced functionality over Reservec and a more extensive hotel and car rental database. It successfully penetrated the high volume

travel agencies located in the major urban metropolitan centres. It achieved the highest number of bookings per CRT location. In 1987, travel agencies with Sabre as their sole or primary CRS generated, on average, 2.5 times the average BSP airline revenues per location compared to travel agencies with another CRS.

48. Sabre has continued to increase its market share annually since it commenced operations in Canada. To date, Sabre has established a presence in eight of the ten provinces.

49. CPAL launched Pegasus 2000 in 1984 as an extension of its internal reservation system. Pegasus was less functional than Sabre and had a less extensive hotel and car rental database than either Reservec or Sabre. By early 1986, Pegasus had attracted only seven participating carriers.

50. Pegasus's market penetration was generally limited to smaller travel agencies and markets where CPAL had significant airline presence. Of the CRS's operating in Canada, Pegasus had the lowest number of flight segments booked per travel agency location or CRT. From the outset, more CPAL flight segments were booked through Reservec than through Pegasus. In February 1986, Sabre surpassed Pegasus in CPAL bookings.

51. In early 1986, CPAL determined that Pegasus was not satisfying its objectives and began to consider other alternatives.

52. In the national market, the historical market share positions of Sabre, Reservec and Pegasus, based on locations, terminals and segments booked are depicted in Tables 3A-C below.

Table 3A
TRAVEL AGENT LOCATIONS
(Canada)

	<u>1983</u>	%	<u>1984</u>	%	<u>1985</u>	%	<u>1986</u>	%	<u>June 1987</u>	%	<u>1988</u>	%
Reservec	2249	96.8	2702	87.9	2810	81.4	2885	74.3	2926	72.5	3089	70.0
Pegasus			196	6.4	392	11.4	669	17.2	<u>720</u>	<u>17.8</u>	<u>776</u>	<u>17.6</u>
Gemini									3646	90.3	3865	87.6
Sabre	<u>75</u>	3.2	<u>175</u>	5.7	<u>250</u>	7.2	<u>331</u>	8.5	<u>390</u>	9.7	<u>546</u>	12.4
	2324		3073		3452		3885		4036		4411	

Table 3B
NUMBER OF CRTs
(Canada)

	<u>1983</u>	%	<u>1984</u>	%	<u>1985</u>	%	<u>1986</u>	%	<u>June</u> <u>1987</u>	%	<u>Mid</u> <u>1988</u>	%
Reservec	3008	95.3	3509	92.1	4315	79.7	5115	75	6025	71	6557	66.7
Pegasus			300	7.9	600	11.1	951	14	<u>1362</u>	<u>16</u>	<u>1362*</u>	13.9
Gemini									7387	87	7919	80.6
Sabre	<u>150</u>	3.7	<u>350</u>	9.2	<u>500</u>	9.2	<u>743</u>	10.9	<u>1100</u>	13	<u>1911</u>	19.4
	3185		3809		5415		6809		8487		9830	

* 1987 figure used as 1988 figure unavailable

Table 3C
SEGMENTS BOOKED (ooo)
(Canada)

	<u>1985</u>	%	<u>1986</u>	%	<u>1987</u>	%	<u>1988</u>	%
Reservec			10301	71.6	13828	70.6	16429	68.8
Pegasus			<u>1555</u>	<u>10.8</u>	<u>2183</u>	<u>11.2</u>	<u>2621</u>	<u>11.0</u>
Gemini	10051*	85.1	11855	82.4	16011	81.8	19050	79.8
Sabre	<u>1756</u>	14.9	<u>2523</u>	17.6	<u>3567</u>	18.2	<u>4883</u>	20.2
	11807		14378		19578		23883	

* individual figures for Reservec and Pegasus unavailable

53. Appendix II contains a listing of 1988 CRS market shares in local Canadian markets again calculated on the basis of travel agent locations, CRTs and segments booked. Sabre currently provides competition to Gemini in 64 local markets, which markets accounted for approximately 75 percent of the total BSP revenues for all IATA travel agencies in Canada in 1987. [The market share data contained in Table 3 and Appendix II was prepared by the Director based on information provided by the Respondents and American Airlines Inc.]

54. Gemini is presently not able to comply with certain of the proposed CRS Rules regarding display, loading and enhancements due to technological limitations that exist in the Reservec and Pegasus systems resulting from the design and structure of those systems. For example, the existing Reservec display algorithm tends to advantage the flights of hosted carriers in Reservec over those of participating carriers.

55. It would not be possible to rectify these problems without an overall redesign, reprogramming and implementation of a new system. The same objective will be accomplished sooner by the implementation of the successor software referred to in paragraph 56 below. It is anticipated that such successor software will eliminate the limitations currently inherent in Reservec and Pegasus and enable Gemini to comply with the proposed CRS Rules.

56. AC and PWAC entered into a Memorandum of Understanding dated March 15, 1989 with Covia Partnership which contemplates that Covia will become a one-third owner of Gemini, along with AC and PWAC. Gemini will work with Covia to develop software based upon that utilized by Apollo in the United States, customized to meet the needs of Gemini's Canadian customers. It is anticipated that conversion of Gemini travel agents to the new system, offering the enhanced Apollo functionality, will commence in mid 1990.

57. Gemini maintains security procedures to ensure that AC and CDN cannot access each other's commercially sensitive information which is maintained in separate data bases. Clause 3.04 of the Computer Reservation Systems Contract dated May 28, 1987 and executed by AC, PWAC and Gemini provides:


To the extent reasonably and technically feasible, the Partnership shall keep confidential data and information relating to Air Canada, Canadian or other customers separate and unavailable to others.

Further, with the acquisition by Covia of a one third interest in Gemini, Gemini personnel will be answerable to an outside party who has no interest in facilitating collusive behaviour between AC and CDN.

All of which has been agreed to this 19th day of April,
1989.


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The Gemini Group Automated
Distribution Systems Inc.

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**code of
federal regulations**

**Aeronautics and
Space**

14

PARTS 200 TO 1199

Revised as of January 1, 1988

**CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT**

AS OF JANUARY 1, 1988

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**PART 255—CARRIER-OWNED
COMPUTER RESERVATION SYSTEMS**

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AUTHORITY: Secs. 102, 304, 404, 411, 419, 1102, Pub. L. 85-726 as amended, 72 Stat. 740, 743, 769, 799, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1802.

SOURCE: ER-1385, 49 FR 32662, Aug. 18, 1984, unless otherwise noted.

§ 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for operation by air carriers of computer reservation systems used by subscribers so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that own, control or operate computerized reservations systems for subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 255.3 Definitions.

"Affiliate" means any person owned by, controlled by, or under common control with a carrier.

"Availability" means information provided in display with respect to the seats a carrier holds out as available for sale on a particular flight.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 296.2(f), respectively that are engaged directly in the operation of aircraft in passenger air transportation.

"Discriminate", "discrimination," and "discriminatory" mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

"On-time performance code" means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR Part 234 that reflects the monthly on-time performance history of a non-stop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

"Participating carrier" means a carrier that has an agreement with a system vendor for display of its flight schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

"Primary display" means any display presented by a system vendor to comply with § 255.4.

"Service enhancement" means any product or service offered to subscribers or passengers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or to issue tickets for air transportation.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

"System" means a computerized airline reservation system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to make reservations and to issue tickets.

"System vendor" means a carrier or its affiliate that owns, controls or operates a system.

[ER-1385, 49 FR 32662, Aug. 18, 1984, as amended by Amdt. 204-4, 53 FR 34073, Sept. 9, 1987]

§ 255.4 Display of information.

(a) All systems shall provide a primary display or primary displays that include the schedules, fares, rules and availability of all carriers in accordance with the provisions of this section. Primary displays shall be at least as useful for subscribers, in terms of functions or enhancements offered, and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor.

(b) In ordering the information contained in a primary display, system vendors shall not use any factors directly or indirectly relating to carrier identity.

(1) System vendors may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including the system vendor, and to all markets.

(2) System vendors shall provide to any person upon request the current criteria used in ordering flights for the primary displays and the weight given to each criterion.

(c) System vendors shall not use any factors directly or indirectly relating to carrier identity in constructing the primary displays of connecting flights.

(1) System vendors may select the connecting points to be used in the construction of connection flights for each city pair on the basis of any service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor, and to all markets.

(2) System vendors may select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor.

(3) System vendors shall provide to any person upon request current information on:

(i) All connecting points used for each market;

(ii) All criteria used to select connecting points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in paragraphs (c)(3) (ii) and (iii) of this section.

(4) If system vendors select connecting points for use in constructing connecting flights they shall use at least nine points for each city-pair, except that vendors may select fewer than nine such connecting points for a city-pair where:

(i) Fewer than nine connecting points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The vendor has used all the points that meet those criteria, along with all additional connecting points requested by participating carriers.

(d) Upon receipt of information from any carrier, system vendors shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information.

(1) If a system vendor provides special loading capability to any other carrier, it shall offer the same capability to all participating carriers in a non-discriminatory fashion as soon as technically feasible.

(2) Each system vendor shall provide to any person upon request all current data base update procedures and data formats.

(e) System vendors shall use or display information concerning on-time performance of flights only in accordance with the provisions of this part.

(1) Within 10 days after receiving the information from participating carriers or third parties, each vendor shall include in all primary schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system vendor shall not use on-time flight performance as a ranking factor in ordering information contained in a primary display.

(3) Except as otherwise specifically provided in this part, a system vendor shall not provide any information about on-time performance in a CRS on any air carrier or foreign air carrier, unless that information is based on data reported to the Department. Any

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such information shall be displayed in an unbiased fashion and in the same manner for all participating carriers that report to the Department.

(Approved by the Office of Management and Budget under control number 3024-0075; the requirement in paragraph (e) was approved under 2106-0043)

(ER-1398, 49 FR 32862, Aug. 15, 1984, as amended by ER-1391, 49 FR 40401, Oct. 16, 1984; ER-1398, 49 FR 44488, Nov. 7, 1984; ER-1398, 49 FR 46380, Nov. 26, 1984; Amdt. 255-4, 52 FR 34073, Sept. 9, 1987; Amdt. 255-5, 52 FR 48397, Dec. 22, 1987)

§ 255.5 Contracts with participating carriers.

(a) No system vendor shall discriminate among participating carriers in the fees for participation in its system, or for system related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system vendor shall condition participation in its system on the purchase or sale of any other goods or services.

(c) System vendors shall provide upon request to carriers current information on their fee levels and fee arrangements with other participating carriers.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 3024-0075)

(ER-1398, 49 FR 32862, Aug. 15, 1984, as amended by ER-1391, 49 FR 40401, Oct. 16, 1984)

§ 255.6 Contracts with subscribers.

(a) No subscriber contract shall have a term in excess of five years.

(b) No system vendor shall directly or indirectly prohibit a subscriber from obtaining or using any other system.

(c) No system vendor shall require use of its system, by the subscriber in any sale of its air transportation services.

(d) No system vendor shall require that a travel agent use its system as a condition for the receipt of any commission for the sale of its air transportation services.

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(e) No system vendor shall charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.7 Service enhancements.

In the event that a system vendor offers a service enhancement to any participating carrier, it shall offer it to all participating carriers on non-discriminatory terms.

§ 255.8 Marketing information.

(a) With the exception of marketing, booking, and sales data relating to the international operations of any carrier, each system vendor shall make available to all U.S. participating carriers on non-discriminatory terms all marketing, booking, and sales data relating to U.S. carriers that it elects to generate from its system.

(b) System vendors and participating carriers shall not release marketing, booking, and sales data they generate or receive relating to international operations of any carrier, absent authorization to do so by the carrier.

(Approved by the Office of Management and Budget under control number 3024-0075)

(ER-1398, 49 FR 46380, Nov. 26, 1984)

§ 255.9 Exceptions.

(a) The obligations of a system vendor under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a non-discriminatory fee. A system vendor shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system vendor under this part shall not apply to any foreign air carrier that operates or whose affiliate operates an airline computer reservation system for travel agents outside the United States that does not display the flights of all United States carriers equally with the flights of the foreign carrier.

§ 255.10 Review and termination.

(a) The Federal agency administering this rule shall conduct a review within 5 years after its effective date.

(b) Unless extended on the basis of the review specified above, this rule shall terminate on December 31, 1990.

PART 256—DISPLAY OF JOINT OPERATIONS IN CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.

256.1 Purpose.

256.2 Applicability.

256.3 Definitions.

256.4 Display of Information.

AUTHORITY: Secs. 102, 204, 404, 411, 412, 419, 1102 Pub. L. 86-726 as amended, 72 Stat. 740, 743, 760, 769, 770, 797; 92 Stat. 1732; 94 Stat. 42; 49 U.S.C. 1302, 1324, 1374, 1381, 1382, 1389, 1402.

SOURCE: ER-1377, 49 FR 12677, Mar. 20, 1984, unless otherwise noted.

§ 256.1 Purpose.

The purpose of this part is to set forth a requirement for operation by air carriers of computer reservation systems used by travel agents so as to prevent unfair, predatory, and anti-competitive practices in air transportation.

§ 256.2 Applicability.

This rule applies to air carriers or foreign air carriers that own, control, or operate computerized reservation systems for travel agent subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

§ 256.3 Definitions.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and § 298.2(f) of this chapter, respectively that is engaged directly in the operation of aircraft in passenger air transportation.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of computer terminal.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry in general, and that has entered into an agreement for the use of a system.

"System" means a computerized airline reservation system offered by a carrier to subscribers, for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to issue tickets.

"System vendor" means a carrier that owns, controls or operates a system.

"Designator code" means the airline designations allotted and administered pursuant to Agreements CAB 24606 and 26064.

§ 256.4 Display of Information.

(a) A system vendor shall not deny access to its system to two or more carriers whose flights share a single designator code, absent a determination by the Board that the use of the code constitutes a violation of 49 U.S.C. 1381.

(b) A system vendor shall not discriminate against any carrier on the basis of that carrier's using the same designator code as another carrier, either by display bias, or any other means relating to providing the system.

PART 263—PARTICIPATION OF AIR CARRIER ASSOCIATIONS IN BOARD PROCEEDINGS

Sec.

263.1 Definitions.

263.2 (Reserved)

263.3 Participation.

AUTHORITY: Secs. 102, 204, 412, and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 740, 743, 770, and 788, 49 U.S.C. 1302, 1324, 1382, and 1481.

SOURCE: ER-1000, 43 FR 60670, Dec. 20, 1978, unless otherwise noted.

§ 263.1 Definitions.

(a) "Air carrier association" means an association composed entirely or in part of direct air carriers.