PREPARED REMARKS OF DAVID SCHWARTE
BRUSSELS, BELGIUM – SEPTEMBER 20, 2007

ON MAY 2 OF THIS YEAR KEY STAKEHOLDERS IN THE TRAVEL INDUSTRY ATTENDED A HEARING ON THE CRS CODE OF CONDUCT CHAIRED BY DG-TREN. AT THAT HEARING, REPRESENTATIVE OF CORPORATE TRAVEL MANAGERS, OF CONSUMERS, OF TRAVEL AGENTS AND OF ALL THE CRSS – SAVE ONE – CALLED ON THE COMMISSION TO MAINTAIN THE PARENT CARRIER OBLIGATIONS UNDER THE CODE OF AIR FRANCE, IBERIA AND LUFTHANSA.

IN UNISON THOSE STAKEHOLDERS EXPLAINED HOW THOSE REGULATORY SAFEGUARDS WERE ESSENTIAL SO LONG AS ANY CARRIER HELD AN OWNERSHIP STAKE IN A CRS. SPECIFICALLY, COMMENTOR AFTER COMMENTOR EXPLAINED THAT WITHOUT MANDATORY PARTICIPATION AND THE RELATED BAN ON LINKING AIRLINE COMMISSIONS TO THE USE OF THE CRS THESE THREE AIRLINES OWNED, COMPETITION IN THE THREE AMADEUS HOME MARKETS WITH AMADEUS WOULD DISAPPEAR AND CONSUMERS AND BUSINESS TRAVELERS WOULD SUFFER.

THE COMMISSION SEEMED TO BE LISTENING ATTENTIVELY TO THIS CHORUS OF VOICES. BUT WITHIN A FEW SHORT WEEKS, IT BECAME EVIDENT THAT THE ENTIRE EXERCISE MAY WELL HAVE BEEN PURELY ACADEMIC. WHY?

BECAUSE DG-TREN HAS APPARENTLY DECIDED TO INTERPRET THE DEFINITION OF PARENT CARRIER IN AN UNPRECEDENTED AND UNSUPPORTABLE WAY SO THAT -- TO THE TOTAL SURPRISE OF NEARLY EVERYONE IN THE INDUSTRY -- THERE LIKELY AREN'T ANY PARENT CARRIERS. IN FACT, AMADEUS NOW SAYS THERE HAVEN'T BEEN ANY FOR YEARS.

I TOO HAVE SEEN THE RECENT PRESS REPORTS IN WHICH DG-TREN DENIES HAVING "CHANGED ITS INTEPRETATION" OF THE PARENT CARRIER DEFINITION. BUT LET'S TAKE A CLOSE LOOK, A REALLY CLOSE LOOK, AT THE CAREFULLY CRAFTED LANGUAGE THAT DG-TREN USED IN ITS LETTER OF AUGUST 6, 2007 TO THE LETTER FROM BTC A FULL MONTH BEFORE.

THE LETTER FOR DG-TREN SAID, AND I QUOTE:

> "ARTICLE 2(I) OF TODAY'S CODE OF CONDUCT DEFINES A 'PARENT CARRIER' AS '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.'"

THE LETTER CONTINUED (AND I WILL EMPHASIZE THE KEY WORDS):

"THE 'OR' IN THE PHRASE 'OWNS OR EFFECTIVELY CONTROLS' DOES NOT MEAN THAT EVERY OWNERSHIP STAKE AT ANY LEVEL IN A CRS IS REGARDED AS AN ALTERNATIVE TO CONTROL. THE NOTION OF CONTROL IS THE KEY CRITERION TO DETERMINE WHETHER AN AIRLINE IS A PARENT CARRIER OF A CRS. THE CONTROL MAY BE ACQUIRED VIA OWNERSHIP OR VIA OTHER MEANS.

AS FOR THE TERMS 'ALONE OR JOINTLY WITH OTHERS', THEY SPECIFICALLY REFER TO THE POSSIBILITY OF AN AIRLINE INDIVIDUALLY HOLDING A MINOR SHAREHOLDING BUT, WITH OTHERS, CONTROLLING THE COMPANY. AN AIR CARRIER WHO OWNS A MINORITY PARTICIPATION IN A CRS VENDOR WILL BE CONSIDERED AS A 'PARENT CARRIER' IF SUCH PARTICIPATION CONFERS INDIVIDUAL OR JOINT CONTROL OVER A CRS SYSTEM VENDOR. THEREFORE, AN AIR CARRIER HOLDING SIGNIFICANTLY LESS THAN 50% OF THE CAPITAL OF A CRS MAY STILL BE A 'PARENT CARRIER' IF, ALONE, OR JOINTLY WITH OTHERS, THIS PARTICIPATION CONFERS IT CONTROL OF THE CRS."

LADIES AND GENTLEMEN, THAT'S RIGHT CONFERS CONTROL ON "IT" NOT "THEM." CAN THERE BE ANY DOUBT THAT THE COMMISSION IS POISED TO SAY THAT NONE OF THE THREE OWNERS OF AMADEUS ARE IN FACT PARENT CARRIERS UNDER THE CODE -- DESPITE THEIR SHARES OF 23% FOR AF, AND 11.5% FOR IB AND LH -- BECAUSE NONE OF THEM "CONTROL" AMADEUS?

THOSE OF YOU WHO ATTENDED THE HEARING ON MAY 2, 2007 AS I DID MAY SAY,"NOT ONCE DURING THE HEARING DID TREN EVER SUGGEST THAT ONE OR MORE OF THE AMADEUS OWNING CARRIERS MIGHT NOT BE PARENT CARRIERS." AND YOU WOULD BE RIGHT. AND YOU WOULD ALSO BE CORRECT IN SAYING THAT NOWHERE IN THE CONSULTATION PAPER THAT BEGAN THIS CONSULTATION PROCESS DID DG-TREN CALL FOR COMMENTS ON THE ISSUE OF WHO MIGHT OR MIGHT NOT BE A PARENT CARRIER.

NOR DID ANY OF US THINK THAT SILENCE ON THIS SUBJECT EVEN A BIT ODD AT THE TIME – BECAUSE WE ALL KNEW AIR FRANCE, IBERIA AND LUFTHANSA WERE PARENT CARRIERS OF AMADEUS SINCE THEY ALL OWNED A STAKE IN AMADEUS. DESPITE TREN'S APPARENT READINESS NOW TO TAKE THE FACIALLY INVALID POSITION THAT IN A REGULATION

"OR" ACTUALLY MEANS "AND," IN THE TWO YEARS SINCE AMADEUS TOOK ON PRIVATE EQUITY OWNERS TO JOIN THE THREE AIRLINES OWNERS, AS WE HAD MANY INTERACTIONS WITH TREN ON THE CODE DISCUSSING THE NECESSITY OF KEEPING MANDATORY PARTICIPATION FOR THESE THREE AIRLINES, NOT ONCE DID DG-TREN EVER SUGGEST THAT ONE OF MORE OF THEM MIGHT NOT BE PARENT CARRIERS BOUND BY THE CODE. NOT ONCE. FOR THE MANY OTHERS WHO HAVE MET WITH TREN ON THIS SUBJECT, DID TREN EVER EVEN INTIMATE SUCH AN OUTCOME TO YOU?

ADDING TO THE IRONY IS THE FACT THAT IN THE PUBLICLY AVAILABLE COMMENTS THAT THE THREE AMADEUS OWNERS FILED DAYS BEFORE THAT MAY 2 HEARING NOT A ONE OF THEM CLAIMED NOT TO BE A "PARENT CARRIER." IN FACT, EACH SAID (IN RESPONSE TO COMMISSION 4) THAT SPECIAL OBLIGATIONS FOR PARENT CARRIERS WERE NO LONGER NEEDED – NOT THAT THERE WEREN'T ANY PARENT CARRIERS. AS PROOF POSITIVE OF THE FACT THAT THE CODE DEFINES AS "PARENT CARRIERS" ANY AIRLINE WITH AN OWNERSHIP STAKE AND THAT THE INTERPRETATION NEWLY ADVANCED BY DG-TREN WOULD REQUIRE A SUBSTANTIVE CHANGE IN THE TEXT OF THE REGULATION, I WOULD POINT YOU TO THE COMMENTS OF LUFTHANSA. LUFTHANSA SAID:

> "THE OBLIGATIONS [OF PARENT CARRIERS] SHOULD DEFINITELY BE LIFTED. OWNERSHIP WITHOUT CONTROL IN GENERAL DOES NOT CAUSE ANY RISK REGARDING MARKET FORECLOSURE. EFFECTIVE CONTROL SHOULD BE REGARDED IN THE WAY IT IS HANDLED IN COMPETITION CASES AND THUS BE REGARDED AS EXISTENT OR NOT. MINORITY SHAREHOLDERS IN CRS PROVIDERS DO NOT HAVE EFFECTIVE CONTROL. THEREFORE THE DEFINITION OF PARENT CARRIERS IN THE CODE OF CONDUCT IS OBSOLETE."

IN SHORT, IT IS ABUNDANTLY CLEAR, EVEN TO THE AMADEUS OWNERS, THAT THE CURRENT DEFINTION OF PARENT CARRIER, THOUGH PERHAPS REGARDED BY THEM AS "OBSOLETE," REQUIRES ONLY OWNERSHIP AND DECIDELY NOT CONTROL AS WELL.
THE MEANING OF PARENT CARRIER NOW SUGGESTED BY DG-TREN IS PATENTLY A VERY RECENT EPIPHANY. IT IS ALSO CONTRARY TO THE UNAMBIGUOUS TEXT, HISTORICAL APPLICATION, AND FUNDAMENTAL POLICIES OF THE CODE. I WILL SPEND A FEW MINUTES ON EACH OF THESE POINTS.

OBVIOUSLY REVIEWING THE RELEVANT TEXT THAT I READ A FEW MOMENTS AGO, "OWNS" OR "EFFECTIVELY CONTROLS" ARE ALTERNATIVE TESTS, MEANING EITHER AN OWNERSHIP STAKE IN OR

EFFECTIVE CONTROL OF A CRS BY AN AIRLINE IS ALL THAT IS REQUIRED TO CAUSE THAT CARRIER TO BE TREATED AS A “PARENT CARRIER.” TO CLAIM THAT A CARRIER HOLDING AN OWNERSHIP INTEREST IN A CRS IS NOT A “PARENT CARRIER” UNLESS IT “EFFECTIVELY CONTROLS” THAT SAME CRS AS WELL IS A THREADBARE ATTEMPT TO REVISE THE CLEAR REGULATORY TEXT -- AND TO DO SO IN A VERY SUBSTATIVE WAY TO SAY AN AIRLINE THAT “OWNS AND EFFECTIVELY CONTROLS” A CRS. THIS IS THE EXACT CHANGE LUFTHANSA SUGGESTED BE MADE TO REPLACE THE CURRENT “OBSOLETE” (IN ITS VIEW) DEFINITION.

LADIES AND GENTLEMAN, PUT IN ANOTHER AND MORE SIMPLE WAY: CAN THERE REALLY BE ANY SERIOUS ARGUMENT THAT “OR” IN A REGULATION IN FACT MEANS “AND”?

NEXT, THE CLAIM THAT CARRIERS THAT OWN BUT DO NOT CONTROL A CRS CAN EVADE THE OBLIGATIONS OF PARENT CARRIERS IS DIRECTLY AT ODDS WITH THE CENTRAL POLICIES ON WHICH THE CODE IS FOUNDED.

THE REASON THE DUTY OF MANDATORY PARTICIPATION WAS ADOPTED IN THE FIRST PLACE WAS BECAUSE OF THE FOLLOWING HARD-LEARNED AND UNIVERSAL LESSON: AN OWNERSHIP INTEREST OF EVEN A SMALL STAKE BY AN AIRLINE IN A CRS HAS ALWAYS CREATED THE INCENTIVE AND ABILITY TO COMMIT ABUSES IN BOTH THE AIR TRANSPORT AND AIR TRANSPORT DISTRIBUTION MARKETS. IT BEARS MENTIONING THAT THE DUTY OF PARENT CARRIERS TO TREAT OTHER CRSS AND THEIR USERS FAIRLY WAS ADDED IN 1993 BECAUSE THE ORIGINAL RULES, ADOPTED IN 1989 WITHOUT SUCH OBLIGATIONS, HAD RESULTED IN RAMPANT DISCRIMINATION BY OWNING AIRLINES, MANY OF WHICH HAD VERY SMALL OWNERSHIP STAKES IN CRSS.

AS A POLICY MATTER, IT IS ABUNDANTLY CLEAR THAT WHETHER AN AIRLINE "CONTROLLED" A CRS IS NOT AND HAS NEVER BEEN THE RELEVANT QUESTION TO ASK TO MEASURE THE LIKELIHOOD AND RISKS OF MISCONDUCT. RATHER, IT IS FINANCIAL INCENTIVES AND NOT CONTROL THAT ARE THE SOURCE OF ABUSIVE CONDUCT WHENEVER AIRLINES HOLD AN OWNERSHIP INTEREST IN CRSS.

BUT DON’T TAKE MY WORD FOR IT. TAKE AMADEUS’S.

LET’S TURN TO A FILING MADE BY AMADEUS WITH THE US DEPARTMENT OF TRANSPORTATION ON APRIL 28, 2000 IN THE US CRS RULEMAKING. THE QUICK BACKGROUND IS THAT UNITED AIRLINES, WHICH OWNED 17% OF GALILEO (WITH ROUGHLY 75% OF GALILEO OWNED BY NON-AIRLINE ENTITIES) HAD ARGUED THAT IT SHOULD NOT BE SUBJECT TO

THE US PARENT CARRIER (CALLED "SYSTEM OWNER") OBLIGATIONS SUCH AS MANDATORY PARTICIPATION. THE REASON, UNITED ASSERTED, WAS THAT WITH JUST A 17% SHARE, IT DID NOT "CONTROL" GALILEO. SOUND FAMILIAR? HERE'S WHAT AMADEUS SAID ABOUT THE MERITS OF THAT ARGUMENT:

> "IN ITS DECEMBER 13, 1999 REPLY TO UNITED'S PRIOR SUBMISSION ON THIS ISSUE, AMADEUS POINTED OUT THAT, TO THE EXTENT THAT AN AIRLINE RETAINS MORE THAN A *DE MINIMIS* (I.E., 5% OR MORE) OWNERSHIP INTEREST IN A CRS, CHANGES IN THE OWNERSHIP STRUCTURE OF THAT SYSTEM ARE IRRELEVANT TO THE PURPOSE AND OPERATION OF THE SYSTEM OWNER RULES. EVEN IF SUCH AN AIRLINE DOES NOT 'CONTROL' THE CRS, IT HAS BOTH THE INCENTIVE AND ABILITY TO ALTER *ITS* BEHAVIOR TO DISTORT COMPETITION BY FAVORING THE SYSTEM IN WHICH IT HOLDS AN OWNERSHIP INTEREST."

AMADEUS ALSO PAINTED A STARK PICTURE OF WHAT HAPPENS WHEN LARGE CARRIERS WITH EVEN SMALL OWNERSHIP SHARES ARE UNFETTERED BY THE DUTY OF MANDATORY PARTICIPATION. AMADEUS WARNED:

> ELIMINATING THESE RULES WOULD ALLOW UNITED (WHICH MASKS ITS OWN ECONOMIC INTERESTS IN THIS PROCEEDING) TO UNFAIRLY EXPLOIT ITS SUBSTANTIAL MARKET POWER, REDUCE ITS LEVEL OF PARTICIPATION LEVEL IN OTHER SYSTEMS OR WITHDRAW FROM SUCH PARTICIPATION ALTOGETHER TO INCREASE APOLLO'S [THE PRIOR NAME FOR THE GALILEO CRS IN THE US] MARKET SHARE IN AREAS WHERE UNITED IS THE DOMINANT CARRIER. THE RESULTING INCREASE IN UNITED SALES, THROUGH THE HALO EFFECT ALONE, WOULD DISTORT AIRLINE COMPETITION, STRENGTHEN UNITED'S SUPERIOR MARKET POSITION IN AREAS WHERE IT IS ALREADY DOMINANT, AND FORTIFY BARRIERS TO ENTRY IN THOSE SAME AREAS…. THE ELIMINATION OF THESE RULES WOULD ALSO LIMIT CONSUMERS' ACCESS TO INFORMATION.

LET'S FAST FORWARD TO TODAY. THE THREE OWNERS OF AMADEUS EACH HOLD VERY STRONG POSITIONS AS AIR CARRIERS IN ENTIRE MEMBER STATES AS OPPOSED TO JUST AREAS OF A COUNTRY. SO, IF AS AMADEUS ARGUED – RIGHTLY I EMPHASIZE - AIRLINE AND CRS COMPETITION AND CONSUMERS WOULD BE HARMED IF UNITED, WITH A 17% SHARE OF APOLLO, WERE RELIEVED OF ITS DUTIES AS A PARENT CARRIER UNDER THE US CRS RULES, WHAT DO YOU THINK WOULD HAPPEN HERE IN EUROPE IF AIR FRANCE, IBERIA AND LUFTHANSA

WERE GIVEN THE GREEN LIGHT TO DISCRIMINATE IN FAVOUR OF AMADEUS.

THE CLEAR LANGUAGE OF THE CODE – "OWNS OR CONTROLS" -- SHOULD DISPOSE OF THE CLAIM THAT IT IS ONLY CONTROL AND AN NOT OWNERSHIP STAKE THAT MATTER IN DECIDING WHO IS A PARENT CARRIER. HOWEVER, EVEN A QUICK LOOK AT PAST STATEMENTS AND REPORTS OF DG-TREN FURTHER DESTROY THIS VERY RECENT VIEW THAT PARENT CARRIERS SUBJECT TO THE MANDATORY PARTICIPATION AND OTHER SAFEGUARDS OF THE CODE ARE ONLY THOSE AIRLINES THAT EFFECTIVELY CONTROL A CRS.

ON SEPTEMBER 23, 1992, THE COMMISSION ISSUED A PRESS RELEASE EXPLAINING THE AMENDMENTS IT WAS PROPOSING TO THE ORIGINAL CODE THAT HAD BEEN ADOPTED IN 1989 IN ORDER TO STRENGTHEN IT AGAINST PARENT CARRIER ABUSES. IN RELEVANT PART, THE COMMISSION SAID:

> "…THE AIM OF THE PROPOSAL IS TO ADAPT THE CURRENT CODE OF CONDUCT SO AS TO IMPROVE COMPETITION BETWEEN AIR CARRIERS AND TO PROVIDE USERS WITH BETTER INFORMATION BY TAKING MEASURES WHICH WILL ENSURE THAT:
> ***
> - AIRLINES OWNING CRSS DO NOT EXPLOIT THEIR PRIVILEGED POSITION IN A DISCRIMINATORY WAY TO THE DETRIMENT OF OTHER AIRLINES USING THEIR CRSS;
> - AIRLINES OWNING CRSS COMPLY WITH THE REQUIREMENTS OF NON-DISCRIMINATION AGAINST OTHER COMPANIES AS REGARDS INFORMATION DISPLAYS ON THEIR COMPUTER SYSTEM."

THE COMMISSION NAMED IN THE PRESS RELEASE "AIRLINES OWNING CRSS." AMONG THOSE IT LISTED AS OWNERS OF GALILEO WERE TAP, SABENA, SWISS AIR, AND AER LINGUS.

NO ONE COULD SERIOUSLY CONTEND THAT TAP, SABENA, SWISS AIR, OR AER LINGUS, "EFFECTIVELY CONTROLLED" GALILEO IN 1992 -- OR AT ANY TIME FOR THAT MATTER. I URGE YOU TO LOOK AT THE RELEASE. IF YOU DO, YOU TELL ME IF THE COMMISSION SUGGESTED ANY CONDITION FOR BEING A PARENT CARRIER OTHER THAN OWNING A STAKE IN A CRS.

IT IS ALSO HIGHLY INSTRUCTIVE THAT WHEN THE FINAL AMENDMENTS TO THE CODE WERE ADOPTED IN 1993, THE COMMISSION COULD HAVE CHOSEN TO FOLLOW THE APPROACH OF THE US DOT A YEAR EARLIER WHEN IT FINALIZED ITS PARENT CARRIER RULES. IN THE US, DOT DECIDED TO APPLY THE DUTIES OF PARENT CARRIERS TO ONLY

AIRLINES THAT HELD 5% OR MORE OF THE EQUITY OF A CRS. BY DECIDING NOT TO CRAFT SUCH A PERCENTAGE OWNERSHIP EXCEPTION ON TO ITS DEFINITION OF PARENT CARRIER, THE EU OBVIOUSLY KNEW THAT BY CONTRAST ITS FINAL RULE WOULD CAPTURE OWNERSHIP AT ANY LEVEL.

ON MORE RECENT OCCASIONS, DG-TREN OR ITS CONSULTANTS HAVE MADE UNAMBIGUOUS REPRESENTATIONS THAT OWNERSHIP IN A CRS SATIFIES THE TEST FOR BEING A "PARENT CARRIER" UNDER THE CODE, WITHOUT ANY ADDED REQUIREMENT THAT THE CARRIER ALSO CONTROL THE CRS.

IN THE INTEREST OF BREVITY, I WILL GIVE YOU JUST ONE HERE, BUT IT IS THE MOST RECENT. IN THE CONSULTATION PAPER OF FEBRUARY 2007 INVITING COMMENTS ON THE CODE AND KICKING OFF THE CONSULTATION PROCESS, DG-TREN DESCRIBED PARENT CARRIERS IN EXACTLY THE WAY THAT THOSE FAMILIAR WITH THE HISTORY AND APPLICATION OF THE CODE WOULD HAVE EXPECTED. AT PARAGRAPH 3, DG-TREN SAID:

> THE CODE OF CONDUCT RECOGNISED THAT COMPUTERISED RESERVATION SYSTEMS REQUIRED A CERTAIN DEGREE OF REGULATION IN ORDER TO ENSURE THAT ALL AIRLINES ENJOY THE SAME LEVEL OF ACCESS TO TRAVEL AGENTS AND CONSUMERS. IT WAS ESTABLISHED WITH THE AIM OF IMPROVING TRANSPARENCY AND PREVENTING DISCRIMINATORY BEHAVIOUR BOTH BY THE SYSTEM VENDORS THEMSELVES AND ALSO BY AIRLINES, ESPECIALLY THOSE WHICH HAVE A STAKE IN THE OWNERSHIP AND CONTROL OF A CRS. ON THE ONE HAND, SYSTEM VENDORS WERE REQUIRED TO DEAL IN AN EVEN-HANDED MANNER WITH ALL CARRIERS AND TRAVEL AGENTS, WHILE, ON THE OTHER, CARRIERS WITH A FINANCIAL STAKE IN A CRS WERE REQUIRED NOT TO FAVOUR THAT SYSTEM OVER THE OTHERS.

OF COURSE, HAVING "A STAKE IN THE OWNERSHIP AND CONTROL OF A CRS" OR HAVING "A FINANCIAL STAKE IN A CRS" IS LIGHT YEARS AWAY FROM DG-TREN'S APPARENT RECENT REVELATION THAT AN AIRLINE CAN ONLY BE A PARENT CARRIER IF IT "EFFECTIVELY CONTROLS" A CRS. IN FACT, THAT HAS NEVER BEEN THE INTERPRETATION OF THIS CRITICAL DEFINITION APPLIED BY DG-TREN.

THERE ARE OTHER SIMILAR DOCUMENTS THAT FOR THE SAKE OF TIME, I WILL SKIP.

LET ME CLOSE BY ASKING MY COLLEAGUE FROM AIR FRANCE AN IMPORTANT QUESTION THAT I THINK WE ALL NEED ANSWERED: ARE YOU ASKING THIS GROUP TO BELIEVE THAT THE FACT THAT AIR FRANCE HAS A RIGHT TO ALMOST ONE-QUARTER OF ALL PROFITS AMADEUS MAKES DOES NOT GIVE AIR FRANCE AN INCENTIVE TO FAVOR AMADEUS?

LADIES AND GENTLEMEN, I THANK YOU FOR ALLOWING ME TO SPEAK WITH YOU ABOUT THIS VERY IMPORTANT ISSUE. I LOOK FORWARD TO YOUR QUESTIONS.