



EUROPEAN COMMISSION
Competition DG

Brussels, 09/12/2002.
SG (2002) D/233068

BY COURIER SERVICE

TQ3 Travel Solutions GmbH
Gustav-Deentjen-Allee 2-6
D – 28215 Bremen
Germany
For the attn. of Dr. Andreas Karsten
Chief Financial Officer

**Subject: Case COMP/A.38321/D2 – TQ3 Travel Solutions GmbH / Opodo Limited
Commission decision rejecting a complaint**

Dear Sir,

1. I refer to your application of 20 December 2001 pursuant to Article 3(2) of Council Regulation No. 17, regarding alleged infringements of Articles 81 and 82 of the Treaty by Opodo Limited, a joint venture by nine European airlines in the field of travel agency services, and its shareholders.
2. By this decision, I inform you that, for the reasons set out below, there are insufficient grounds for granting your application.

A. PROCEDURE

3. TQ3 Travel Solutions GmbH (hereafter referred to as “TQ3”) is a German travel agent. It is a subsidiary of the TUI group. TUI and its subsidiaries control around 25 % of the German travel agency market. TQ3 is also active on the Austrian, Danish, Swedish, Norwegian, Finnish, Belgian, Dutch, Spanish and Greek markets.
4. Opodo Limited (hereafter referred to as “Opodo”), previously named OTP, is an online travel portal created as a joint venture by nine of the largest European airlines, i.e. Air France, British Airways, Lufthansa, Aer Lingus, Alitalia, Austrian Airlines, Finnair, Iberia

and KLM. Opodo offers internet travel agency services including airline ticket sales, hotel bookings, car hire and insurance. Opodo has already launched its website in Germany, the UK and in France. It intends to offer its services on a pan-European basis.

5. On 3 November 2000, the joint venture agreement setting up Opodo was notified to the Commission under Council Regulation 17/62. The Commission published a notice requesting comments on Opodo on 2 February 2001.¹
6. In order to remedy the possible concerns raised by Opodo under Article 81 and 82 of the Treaty, the notifying parties proposed a set of undertakings to the Commission. On 20 November 2001, the Commission published a 19(3) Notice setting out the proposed undertakings and noting its intention to clear the agreement on this basis, subject to any comments from third parties.² It is in the context of this ongoing procedure that TQ3's complaint against Opodo was lodged.
7. The Commission received a number of comments in response to the 19(3) Notice. In the light of these comments, the parties agreed to revise the undertakings.³ Interested third parties having provided comments in response to 19(3) Notice were consulted on this revised set. Third parties have therefore had several occasions to express their views on the notified agreements and on the proposed undertakings, and the great majority of their comments were taken into account by the Commission.
8. On 14 June 2002, the Commission sent to TQ3 a letter pursuant to Article 6 of Regulation 2842/98⁴ (hereafter referred to as "the Article 6 letter"), in which the Commission took the preliminary view that, in the light of the undertakings proposed by the parties, there were insufficient grounds for granting TQ3's application. The Commission's preliminary view was that the arguments put forward in the complaint were the same as those raised by other travel agents in response to the notification and would therefore be dealt adequately with in the final package of undertakings proposed by the parties.
9. On 19 July, TQ3 provided the Commission with comments on the Article 6 letter and asked for a meeting in order to orally express its views. A meeting took place on 1 August, where TQ3 presented to the Commission some examples of alleged discriminations by the airlines in favour of Opodo. These examples came in addition to those already provided in the complaint. TQ3 agreed to confirm and substantiate them in writing, notably to allow the Commission to send them to Opodo for comment. The Commission received this further submission on 25 September. In the letter, TQ3 also confirms that it is not asking for a formal hearing within the meaning of Article 5 of Regulation 2842/98.

¹ OJ C 35, 2.2.2001, p.6.

² OJ C 323, 20.11.2001, p. 6-8.

³ The final package of undertakings is attached to this letter.

⁴ OJ L 354, 30.12.1998, p. 18-21.

B. THE COMPLAINT

10. In the complaint, TQ3 alleges that Opodo is in breach of both Articles 81 and 82 of the Treaty and should be prohibited, for the main following reasons:

- Opodo's owners are dominant on the market for air transport (60-70% of the total EEA market);
- competition in the travel agency services market is already dampened by the IATA passenger agency programme;
- Opodo's owners are already active on the travel agency market through their own direct sales and through equity interests in travel agencies;
- Opodo will increase transparency on the air transport market and enable the airline owners to co-ordinate prices;
- Opodo's shareholders will leverage their dominant position on the air transport market to gain a dominant position on the travel agency market. In particular, they will ensure Opodo always has lower fares available than other travel agents and therefore rapidly gains market share.

11. In its reply to the Commission's Article 6 letter, TQ3 confirms that it does not share the Commission's preliminary conclusions and that it maintains its request to prohibit the establishment and operation of Opodo, as long as it is owned by airline shareholders.

C. LEGAL ASSESSMENT

1. Market definition

Relevant markets

12. The product market on which Opodo will operate is the market for travel agency services which comprises the marketing and distribution of airline seats and other travel and travel-related services. Opodo offers internet travel agency services including airline ticket sales, hotel bookings, car hire and travel insurance. In several recent merger cases the Commission has considered whether the market for on-line travel agency services should be considered as separate from the travel agency market as a whole.⁵ This issue has not been investigated in this case, however, since the possible competition concerns are the same whether Opodo is considered to be operating only on a narrowly-defined on-line travel agency services market or on a broader travel agency services market.

13. In the above-mentioned cases, the Commission considered that the geographical market for virtual travel agencies was national in scope. This definition was based on language barriers and the need to set up national distribution arrangements for tickets. The Commission believes that this geographical market definition remains valid, although an EU-wide travel agency market may develop with the adoption of the Euro and the growth of on-line agents.

14. A related market is the market for air transport. The Commission generally defines passenger transport markets in terms of city pairs, with service between any pair of cities

⁵ Case COMP/M 1812 Telefónica Terra/Amadeus, decision of 27 April 2000.

Case COMP/M 2149 T-Online/TUI/C&N international (withdrawn 13/6/2001). Press release IP/01/670.

being a separate market. The position airlines have on the air transport market also influences their position as purchasers of travel agency services in their home markets.

Position of Opodo's owners on the relevant markets

15. None of the airlines currently has a significant share of the travel agency services market in any Member State although some of them have equity stakes in traditional "bricks and mortar" travel agents.
16. Opodo's nine parent companies are all EU carriers with strong positions in their home market, and consequently on certain air transport markets. They may also be dominant purchasers of travel agency services in their home markets, as BA was found to be in the UK in the *Virgin/BA* travel agents case.⁶

Arguments raised by the complainant

17. The main argument raised by TQ3 with regard to market definition is that the two relevant markets identified (i.e. the market for air transport and the market for travel agency services) by the Commission cannot be separated for the purposes of a comprehensive competition assessment. TQ3 argues notably that the shareholders of Opodo offer online booking services and are, as a consequence, already present in the market for travel agency services.
18. The Commission cannot agree with TQ3's view. Airlines have the choice to sell their tickets directly (either offline or online) or to use indirect distribution channels such as travel agents. In past decisions, the Commission has taken the view that the sale of air transportation to passengers through intermediaries (or "air travel agency services") constitutes a relevant product market.⁷ In the *Virgin-BA* decision, the Commission has also underscored that "*the essence of the service provided by a travel agent and its ability to attract member of the public is that it can arrange travel by all means and via all carriers*".⁸ By definition, an airline which sells its own tickets directly does not provide the range of services of a travel agent.
19. The complainant further illustrates its claim that the shareholders of Opodo are present on the market for travel agency services through their direct online sales by referring to BA's package holiday website (<http://www.baholidays.viator.com/>), on which the airline offers package holidays (including flights, hotels, car hire and insurance). The Commission considers that this example is irrelevant to support the complainant's argument. On this website, BA sells its own air transport services as part of package holidays. It does not sell any other airlines' products and does consequently not provide the range of services of a

⁶ Commission decision 2000/74/EC of 14 July 1999, *Virgin/British Airways*, OJ L 030 of 04.02.2000, p. 0001-0024.

⁷ See for example, Commission Decision 91/480/EEC of 30 July 2001, *IATA Passenger Agency Programme*, OJ L 258, 16.9.1991. p.18.

⁸ Commission decision 2000/74/EC of 14 July 1999, *Virgin/British Airways*, OJ L 030 of 04.02.2000, p. 0001-0024, para. 32.

travel agency. Moreover, in several previous decisions, the Commission has considered that (foreign) package holidays constitute a separate product market.

20. TQ3 generally argues that the Commission should have analysed more carefully the impacts of the establishment of Opodo on the markets concerned, in a context of ongoing concentration in the airline industry. It particularly refers to the proposed alliance between two shareholders of Opodo, Air France and Alitalia, and stresses that competition between the two companies will further be eliminated through their co-operation in Opodo. TQ3 explains that the both companies offer flights between Paris and Rome through Opodo at exactly the same price (557,91 euros).
21. The Commission considers that this example is not relevant to its assessment of the joint venture. In its comments on the complainant's reply to the Article 6 letter, Opodo stresses that the fares referred to are published fares, plus taxes.⁹ These fares are available to all travel agents, and not just to Opodo, on CRSs¹⁰ and the fact that they are the same for each airline arises from their alliance and not from their participation in Opodo. This alliance, which notably includes price co-ordination for flights between France and Italy, is currently being investigated by the Commission.¹¹

2. Assessment of the complaint under Article 81

22. TQ3's central argument is that Opodo is a joint selling joint venture, the mere creation of which will lead to price co-ordination between the shareholders. In the Article 6 letter, the Commission states that it does not share the complainant's view that Opodo constitutes a joint selling joint venture. The Commission refers to the Notice on horizontal restraints¹², according to which joint selling leads to a joint determination of all commercial aspects related to the sale of the product including price. It explains that, according to the facts as set out by Opodo, Opodo operates as an independent travel agency and on an arms-length basis from its shareholders. Notably, marketing agreements and any other agreements between Opodo and the participating airlines (shareholders and non-shareholders) are negotiated individually and confidentially between Opodo and each of the airlines.
23. The complainant does not agree with the Commission's preliminary position as stated in the Article 6 letter, for the two main following reasons. First, the fact that Opodo will operate as an independent travel agency and on arms-length basis from its shareholders" does not exclude the anti-competitive effects of joint selling agreements. The complainant refers to case law where the Commission found that the mere joint appointment of a distributor might infringe Article 81.¹³ Second, the establishment of a joint distribution

⁹ "Published fares" are fares which are sold by the airlines directly to the public and through IATA accredited travel agents. By contrast, "net fares" are fares which are not sold directly to the public but only made available to intermediaries for onward sale.

¹⁰ CRS stands for Computer Reservation System. It is a distribution platform - a high speed network - through which airlines sell tickets to travellers, via traditional or online agents.

¹¹ See Commission Notice pursuant to Article 5 of Regulation (EEC) No 3975/87 of 14 December 1987 concerning case COMP/38.284/D2 (Air France/Alitalia), OJ C 111 of 8 May 2002. See also the press release issued by the Commission on 1 July 2002 (IP/02/966).

¹² Guidelines on the applicability of Article 81 to horizontal co-operation agreements, OJ C3/2 06.01.2001, para. 139.

¹³ SCPA – Kali und Salz, OJ 1973, L 217/3.

channel will automatically lead to the shareholders refraining from individual selling efforts.¹⁴

24. The Commission considers that the case law relating to joint selling agreements on which the complainant has relied is not relevant to the factual basis upon which Opodo has been established and operates.
25. The agreement at issue in the SCPA - Kali und Salz decision for example established close co-operation between SCPA and Kali und Salz, both at the commercial and at the industrial level. It involved, in particular, joint decisions on the quantities and qualities of salt to be exported by each company and co-ordination of deliveries and distribution of the products of both companies within the common market. There are no such kind of joint decisions between Opodo's shareholders. As already mentioned, marketing agreements and any other agreements between Opodo and the participating airlines (shareholders and non-shareholders) are negotiated individually and confidentially between Opodo and each of the airlines.
26. In addition, in the SCPA - Kali und Salz decision, the undertakings concerned had appointed the same sole distributor in two countries, which was considered by the Commission as implying an agreement not to compete on the markets in question. Opodo is not the sole distributor of its shareholder airlines, on the contrary. It is an accredited IATA agent which distributes the products of shareholder as well as non-shareholder airlines. Around 80% of traditional airlines' inventory of seats is still sold through travel agents and, by definition, travel agents distribute the products of a high number of airlines. The great majority of airlines therefore have the same distribution channels. IATA accredited agents are even able to sell tickets on behalf of all IATA airlines, without entering into bilateral arrangements with each of them.
27. The Commission also considers that the complainant has failed to adduce evidence that the shareholders will bundle their sales through Opodo. First, the agreements do not place restrictions on shareholder (or non-shareholder) airlines with regard to the distribution of their products. Second, it is neither realistic nor in the airlines' commercial interest to refrain from individual selling efforts:
 - as far as direct sales are concerned, many shareholder airlines have invested into their own websites and are actively promoting the direct sales of flights with a view to reducing their distribution costs. Direct selling indeed remains the cheapest way for airlines to distribute their products.
 - as mentioned before, the shareholder airlines however continue to distribute the vast majority (around 80%) of their tickets indirectly, through travel agents. There also, it would not be in the airlines' interest to seek to distribute all of their inventory through a single channel of distribution, nor is it corroborated by the facts. In certain countries, some shareholder airlines have equity stakes in travel agents which compete with Opodo. In some cases, they have also invested indirectly in online travel agents competing with Opodo.¹⁵

¹⁴ Floral, OJ 1980 L39/51.

¹⁵ One might for example refer to the recent investments made by Amadeus, which is owned by three shareholders of Opodo (Air France, Lufthansa and Iberia):

The Floral case to which the complainant refers to support its claim is therefore irrelevant in this regard. In Floral, the parties channelled all their exports to Germany through Floral for a period of more than five years, even if they had not explicitly agreed to do so. In addition, the products offered for sale were absolutely interchangeable and packed goods all uniformly bear the additional Floral trademark. This notably explained why the products were offered for sale by Floral at identical prices and on identical terms.

28. In the light of the foregoing, the Commission cannot accept the complainant's argument that Opodo is a joint selling joint venture, the mere creation of which will lead to the coordination of the competitive behaviour of its shareholder airlines. The Commission does not agree either that Opodo will have the same effects as a joint selling joint venture in the sense that it would (i) increase transparency on the market, (ii) allow the exchange of commercially sensitive information and (iii) influence a significant part of the parties' final costs.

Transparency

29. The Commission does not share the complainant's view that the creation of Opodo will give rise to increased transparency on the upstream market for passenger transport services. First, the market is already transparent with regard to published fares, as these fares are available to all travel agents on the CRSs. Second, in the case of net fares provided by the airlines to Opodo, the level of the original fares is normally not transparent to competing airlines. The individual agreements between the airlines and Opodo are confidential and, in addition, travel agents generally determine the mark-up they apply to net fares. Eventually, and contrary to what TQ3 is arguing in the complaint (para. 54), airlines which want to be present on Opodo do not have to commit themselves to provide Opodo with all low fares provided to any other on-line travel agent (MFN status). The undertakings provided by the parties indeed specifically provide that neither shareholder airlines nor others will be obliged to sign a MFN clause in order to be present on Opodo.

Exchange of sensitive commercial information

30. For the reasons set out in the preceding paragraphs, the Commission considers that the SCPA - Kali und Salz decision referred to by the complainant in its comments on the Article 6 letter and which concerns the exchange of information inherent in joint selling is irrelevant.
31. The Commission is satisfied that the undertakings provided by the parties, which are in accordance with the principles established in the *Volbroker.com* case¹⁶, will ensure that Opodo is not used as a means for the airlines to exchange commercially sensitive

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- in France, an online travel agency joint venture between Amadeus and a subsidiary of the French retail group Galeries Lafayette (Case COMP/M.2794 – Amadeus/GGL/JV, non-opposition decision of 21 May 2002).
 - In Spain and Portugal, an online travel agency joint venture between Amadeus and the Spanish Internet company Terra, a subsidiary of Telefonica (Case COMP/M.1812 – Telefonica/Terra/Amadeus, non-opposition decision of 27 April 2000).

¹⁶ Press release IP/00/896 of 31/07/2000.

information. These safeguards have been reinforced in the light of the comments received by third parties in the course of the procedure.

Impact on distribution costs

32. In the complaint, TQ3 argues that distribution of air tickets corresponds to an important share of airlines' total costs and that Opodo will lead to an alignment of distribution costs. The reasoning behind is that this could limit the actual scope for price competition at the final sales level.
33. The Commission does not see why the creation of Opodo should lead to an alignment of the shareholders' distribution costs. As stated above, each shareholder (and non-shareholder) airline deals with Opodo on a confidential and bilateral basis - which means that the remuneration of Opodo will depend on the deal agreed between Opodo and each shareholder airline.
34. Moreover, as a new entrant, Opodo only has a very small market share. In addition, each shareholder will continue to sell direct and through other distribution channels. It is therefore unlikely that the shareholders' participation in Opodo will result in an influence on their overall cost significant enough to limit their scope for price competition at the final sales level.

IATA Passenger Agency Programme

35. The rest of the complaint under Article 81 relates less to Opodo than to the IATA Passenger Agency Programme (IPAP). The main argument is that competition in the travel agency services market is dampened by the IPAP.
36. The IPAP defines the conditions for IATA accreditation of travel agents and for ticket sales by these agents. It also provides for a system for managing the reporting and payment of ticket sales. The Commission is separately investigating whether this agreement may impose unfair restrictions on travel agents and infringe both Articles 81 and 82. TQ3's concerns about the effects of the IPAP do not relate to Opodo and should be dealt with as part of the investigation in the IPAP.

Conclusion under Article 81 (1)

37. In the light of the undertakings provided by the parties, the Commission takes the view that the joint venture will not be used as a vehicle for the shareholders to co-ordinate their competitive behaviour. The joint venture therefore does not restrict competition under Article 81 (1).

3. Assessment of the complaint under Article 82

38. TQ3 takes the view that Opodo is designed to take advantage of the dominant position its shareholders have on the air transport market in order to squeeze independent travel agents out of the market, which constitutes an abuse.
39. In the complaint (para. 83), TQ3 compares certain low fares offered for certain routes and carriers on Opodo with those offered to/via TQ3. Some further examples were provided in TQ3's comments on the Article 6 letter and at a meeting which took place on 1 August 2002. The complainant substantiated and confirmed the comparisons made at the meeting in a further submission dated 20 September 2002. According to the complainant, the examples show that Opodo is granted better conditions than TQ3 and therefore illustrate

the shareholder airlines' intention to drive other travel agents out of the market by discriminating in favour of Opodo.

40. The Commission considers that the fare comparisons made by the complainant are not conclusive.

- Several fare comparisons made by TQ3 in the complaint and in its comments on the Article 6 letter concern non-shareholder carriers. The Commission does not see why the commercial relationship between Opodo and these airlines would be biased in favour of Opodo. Anyway, these examples are irrelevant to support the complainant's claim that the shareholder airlines are discriminating in favour of Opodo.
- Contrary to Opodo, TQ3 is a travel agent focusing on business travellers (at least, it is how the company positions itself on its website). In its comments on the complaint, Opodo had explained that it might be the case that airlines do not consider TQ3 as a suitable sales channel for the airlines' cheaper fares. The complainant did not react to this argument in its response to the Article 6 letter.
- As already mentioned in the Article 6 letter, it is not clear that the complainant is comparing like with like. For example, the comparisons do not take into account the commercial deal between TQ3 and the airline in question. Opodo might indeed have been able to offer more favourable commercial terms or distribution arrangements than TQ3, which would have enabled Opodo to obtain lower fares.
- Under Article 82, discrimination, if any, in favour of Opodo by one of its shareholders could constitute an abuse only if this shareholder is proved dominant on the relevant market. All fare comparisons provided by TQ3 are for flights out/to Germany. The shareholder airline which is the most likely to be in a dominant position on the routes at issue is therefore Lufthansa. However, all examples but one concern other airlines' fares. For example, the fare comparisons presented at the August meeting and in the complainant's last submission concern BA and Iberia. When asked, TQ3 explained that they had not been able to find a "pattern" of discriminations as far as Lufthansa was concerned. In addition, all of the flights in question are on long-haul routes from Germany to destinations such as the United States, South Africa and South America, of which the shareholder airlines in question do not have a significant share.

Conclusion under Article 82

41. In the light of the foregoing, the Commission takes the view that the examples given by TQ3 do not constitute sufficient evidence of discrimination by the shareholder airlines in favour of Opodo. In addition, the Commission is satisfied that the final package of undertakings offered by the parties will ensure that shareholders do not discriminate in favour of Opodo.

D. CONCLUSION

42. As there are, for the reasons set out above, insufficient grounds for granting your application, the Commission rejects your application.
43. An action challenging this Decision may be brought before the Court of First Instance of the European Communities in accordance with Article 230 of the Treaty. Such actions shall not, pursuant to Article 242 of the EC Treaty, have suspensory effect unless the Court otherwise order.

Yours faithfully,

For the Commission

Mario Monti
Member of the Commission

Enclosure: - final package of undertakings submitted by Opodo and its shareholders

UNDERTAKINGS

1 Commitments offered by the shareholders

Each shareholder of Opodo undertakes that it shall not contract with Opodo or treat Opodo differently or more favourably than any other travel agent unless such treatment is objectively justified by reference to the commercial basis on which that shareholder airline normally deals with travel agents, for example, in relation to:

- determining the remuneration to be paid to travel agents;
- agreeing to file fares on behalf of travel agents;
- providing information to travel agents (e.g. market and customer data);
- providing marketing refunds to travel agents; or
- providing travel agents with exclusive or preferential access to fares.

In particular, each shareholder of Opodo undertakes that it shall:

Exclusive rights

- not contract with Opodo in respect of particular categories of products, services or geographic markets to afford it terms, including but not limited to terms in relation to fares, booking conditions, access to inventory and product-related services, on an exclusive basis (**exclusive rights**), unless such exclusive rights are objectively justified by reference to the commercial basis on which that shareholder normally deals with travel agents. This basis may reflect, for example, financial or technical benefits or market penetration afforded to such shareholder by Opodo, but excluding any benefits arising from equity ownership of Opodo.
- not refuse a request from any travel agent to contract on the same basis as had been agreed by that shareholder with Opodo with respect to exclusive rights if that travel agent agrees to provide to the shareholder comparable or more advantageous benefits than those regarded by that shareholder as objective justification for affording Opodo the exclusive rights.

MFN Status

- not contract with Opodo in respect of particular categories of products, services or geographic markets to afford it terms, including but not limited to terms in relation to fares, booking conditions, access to inventory and product-related services, on at least as favourable a basis as it offers to any other travel agent in respect of such categories of products, services or geographic markets (**MFN Status**), unless MFN Status is objectively justified by reference to the commercial basis on which that shareholder normally deals with travel agents. This basis may reflect, for example, financial or technical benefits or market penetration afforded to such shareholder by Opodo, but excluding any benefits arising from equity ownership of Opodo.
- not be prevented from offering fares, booking conditions, access to inventory and product-related services to any other travel agent on a more favourable basis than it offers to Opodo by reason of any MFN Status granted to Opodo in circumstances where another travel agent agrees to provide the shareholder with benefits that are more advantageous than those offered by Opodo.

- not refuse a request from any travel agent to contract on the same basis as had been agreed by that shareholder with Opodo with respect to MFN Status if that travel agent agrees to provide to the shareholder comparable or more advantageous benefits than those regarded by that shareholder as objective justification for affording Opodo the MFN Status.

Maintenance of a memorandum

- maintain a memorandum recording the benefits upon which it has assessed the commercial justification for affording Opodo exclusive rights or MFN Status in respect of particular categories of products, services, or geographic markets. Where a shareholder which grants Opodo exclusive rights or MFN Status refuses a request from any travel agent to contract on the same basis with respect to the exclusive rights or MFN Status, the shareholder shall also record in the memorandum the reasons for the difference in treatment between Opodo and such travel agent. Each shareholder of Opodo shall produce its memorandum and copies of all relevant agreements to the Commission six months following the date of the comfort letter issued by the Commission to the notifying parties, and thereafter on an annual basis or upon request by the Commission. Each shareholder shall ensure that it shall not disclose the contents of its memorandum to Opodo or the other shareholders of Opodo.

No exchange of confidential information

- not to disclose to Opodo the contents or terms of its agreements with other travel agents, or any other commercially sensitive information belonging to travel agents or other third parties.

2 Commitments offered by Opodo

Opodo undertakes:

- that it is not necessary to be a shareholder of Opodo in order to sell inventory as an airline through Opodo, and that Opodo will not discriminate against non-shareholder airlines but will offer fair and open access, under objective and equal conditions, to all airlines whether or not they are shareholders.
- that shareholders are not obliged to confer MFN Status or exclusive rights on Opodo and that agreements conferring MFN Status or exclusive rights on Opodo will not be a requirement for shareholders or non-shareholder airlines wishing to sell their inventory through Opodo.
- that it will maintain in place various safeguards against the exchange of commercially sensitive information between shareholders including that:
 - Opodo will be managed separately from the shareholders and none of the management or staff will have any contractual obligation to any of the shareholders;
 - all agreements with both shareholder and non-shareholder airlines will be negotiated on a confidential basis by Opodo's staff and no information relating to the contents of individual airline agreements will be disclosed to Opodo's directors or shareholders;
 - Opodo's staff and management will be located in premises which are separate from those of its shareholders;
 - the shareholders will not have access to the information technology systems of Opodo nor to commercially sensitive information belonging to Opodo or to other shareholders;
 - Opodo will ensure that its management and personnel are fully informed of the importance of maintaining the confidentiality of sensitive commercial information relating to its shareholders.

- that it will ensure that commercially sensitive information relating to shareholders (other than the shareholder which appointed the relevant director) of Opodo or non-shareholder airlines is not disclosed to the directors of Opodo. In this context, "commercially sensitive information" shall mean confidential or proprietary information held or acquired by Opodo in relation to the customers, business, finances, assets or affairs of its shareholders or non-shareholder airlines including the bilateral contractual arrangements between a shareholder or non-shareholder airline and Opodo relating to the supply of information, customer data, goods or services by that shareholder or non-shareholder airline to Opodo.
- that aside from Opodo's obligation to comply with the currently applicable CRS Code of Conduct¹⁷ (**the Code**) as a subscriber and to the extent that Opodo is not to be considered as a CRS for the purpose of the Code, in addition, it will apply those parts of the Code relating to non-discrimination, transparency and neutral display of information, save and to the extent that those provisions of the Code that are not relevant to Opodo as a travel agent, and subject to any change in the scope of the Code that may come into effect in the future.¹⁸
- That, upon becoming an accredited IATA member, it will apply, in so far as they are applicable to online travel agents, the provisions of the standard IATA Passenger Sales Agreement and will not agree any different or more favourable treatment from its shareholders than any other travel agency nor will it utilise principles different to those employed by websites of offline agents.
- That it will not agree with Amadeus (or any other CRS in which a shareholder may have an equity interest) that it will provide its CRS services to Opodo other than at market rates and on market terms and conditions and on a non-exclusive basis.

¹⁷ Council Regulation (EEC) No. 2299 of 24 July 1989 on a Code of Conduct for Computerised Reservation Systems.

¹⁸ Opodo and its shareholders have provided the Commission with a list of the provisions of the Code they undertake to respect by analogy.