American Society of Travel Advisors

January 7, 2025

Garrett Windle
Competition Policy and Advocacy Section
U.S. Department of Justice, Antitrust Division
950 Pennsylvania Avenue NW, Suite 3311
Washington, DC 20530

RE: Request for Information on Competition in Air Transportation
Docket No. ATR 103

Dear Mr. Windle:

On behalf of the American Society of Travel Advisors, Inc. (ASTA) and the 190,000 Americans who work at travel agencies across the country, I am writing to express ASTA's viewpoints with respect to the above-referenced Request for Information (the "Request") relating to the state of competition in air transportation.

Established in 1931, ASTA is the world's leading professional travel trade organization. Our current membership consists of more than 8,000 businesses, from the smallest home-based travel agencies to traditional brick-and-mortar storefront agencies to the largest travel management companies (TMCs) and online travel agencies.

As one of the primary distribution channels for airlines, cruises and hotels, travel advisors support more than 700,000 U.S. jobs in the travel sector.[1] In 2023, travel advisors were responsible for over $115 billion in leisure bookings, and by 2026, U.S. travel agency sales are projected to reach $141.3 billion.[2] Consequently, the profession is growing and, anecdotally, agency owners are sharing that they are looking to hire at an even faster rate.

No advanced technology can replace the empathy, support, and discernment of a travel planning professional. Dynamic pricing, changing regulations, increasingly complex itineraries, and travel envy fueled by social media have caused more Americans to trust a travel advisor to manage their most precious asset—their hard-earned and too-often-neglected leisure time. Likewise, corporations look to travel agencies and TMCs to efficiently manage their employees' travel requirements within budgets and in accordance with their travel policies.

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[1] *The State of the Travel Industry*. U.S. Travel Association. https://www.ustravel.org/sites/default/files/2023-04/answersheet_2023_final.pdf (accessed January 7, 2025).
[2] *U.S. Travel Agents: Proving to be Resilient and Thriving*. PhocusWire. https://www.phocuswire.com/us-travel-agents-proving-to-be-resilient-and-thriving (accessed January 7, 2025).

As the largest single distribution channel for the sale of air tickets, travel advisors serve a critical and indispensable role in the broader travel and tourism industry. In 2023, travel agencies sold nearly 735,000 airline tickets per day, representing 40 percent of total ticket sales and aggregate spending of more than $95 billion.[3] As such, we welcome the opportunity to provide our members' perspective on competition with the requesting agencies.

As a preliminary matter, it is important to differentiate the state of competition among the airlines themselves from competition among air ticket distributors and sales channels, as separate developments with respect to each have contributed to the current state of affairs in the industry as a whole. For example, while there are just a handful of airlines serving the domestic market today, far fewer than a generation ago, the number of participants on the distribution side remains substantial and is actually growing, albeit modestly.[4]

Moreover, there is a significant degree of interdependence between the airlines and the various intermediaries, such as the global distribution systems (GDSs), traditional travel agencies and TMCs, adding a layer of complexity to the analysis. For this reason, and to provide the necessary historical context, rather than answer individually each of the questions posed in the Request, ASTA elects to share its perspective in a narrative form that we believe will be more effective in bringing its members' concerns to light.

<u>Airline Deregulation</u>

A logical starting point for discussion of the current state of competition in air transportation is the passage of the Airline Deregulation Act of 1978.[5] Initially, there was great hope that deregulation was going to produce all the benefits that had been claimed to arise from dismantling the intrusive regime of regulation that had previously existed under the Federal Aviation Act of 1958.[6] Under that system, virtually every critical aspect of air carrier operation, including entry and pricing, was subjected to lengthy examination processes. Every competitive move by any carrier was subject to challenge by its competitors, often leading to hearings and other administrative proceeding lasting years. Price initiatives were rare because disclosure had to be made in advance and were therefore subject to challenge by other airlines and the government, among others.

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[3] Airlines Reporting Corporation (ARC). Airline Sales Statistics.
[4] The Bureau of Labor Statistics estimates that employment of travel advisors is projected to grow 3 percent over the next decade. https://www.bls.gov/ooh/sales/travel-agents.htm (accessed January 3, 2025).
[5] 49 U.S.C. § 1371, *et seq.*
[6] 49 U.S.C. § 1301, *et seq*.

Retail travel agents, now known as travel advisors, were also subject to entry and detailed operating restrictions enforced by draconian penalties collectively imposed by the airline industry under agreements that were granted antitrust immunity. The overall effect on the industry was a regime characterized by excessive restrictions on competition and, concomitantly, significant harm to consumers in the form of both above-market prices and limited services.

The period immediately following deregulation saw an explosion of competitive initiatives among existing air carriers and the entry of new carriers aspiring to challenge the incumbents in multiple markets throughout the country. Free entry and exit combined with unrestricted price power created an environment of robust competition, aggressively fostered by the Civil Aeronautics Board before its sunset in 1985 and the transition of limited residual regulatory authority to the Department of Transportation (DOT). Average price per passenger mile declined.

However, it did not take long for a new reality to set in. Unforeseen and unplanned-for economic forces led to multiple airline failures among both the incumbents and the new entrants. The emergence of Computerized Reservations Systems (CRSs) to book air tickets produced new efficiencies in the distribution of air travel but not without raising their own competitive concerns. By 1999, travel agents were selling close to 75 percent of all airline tickets, 93 percent of which were made through an airline-controlled CRS for domestic flights.[7]

Predictably, the CRS-owning airlines used them to advantage their own sales over those of the non-CRS-owning airlines, thus undermining some of the competitive vitality of the deregulated market. To address that shortcoming, the first CRS regulations were adopted by DOT in 1984, on the principle that each CRS was an "essential facility" that must be made available on equal terms to all airlines and travel agents.[8]

The effects of airline ownership of the CRSs diminished over time as carriers divested much of their ownership and shifted their attention to the distribution opportunities provided by the emergence of the Internet. The CRS regulations ended entirely in mid-2004. Internet distribution enabled airlines to reach end-customers directly and facilitated the success of non-

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[7] Ravich, Timothy. *Deregulation of the Airline Computer Reservation Systems (CRS) Industry*, 69 Journal of Air Law and Commerce No. 2 (2004), at 392.

[8] *Id.* at 394. The essential facilities doctrine is a mandatory access remedy that imposes a duty on a monopolist entity to provide competitors with access to a "facility" that the monopolist controls and is deemed necessary for effective competition. *Disruptive Competition Project*. https://www.project-disco.org/competition/040418antitrust-in-60-seconds-what-is-the-essential-facilities-doctrine-in-the-u-s/ (accessed July 11, 2023).

traditional airline models exemplified by Southwest Airlines. This evolution was aided by advances in personal and business computers such that travel agencies had multiple technical solutions by which to access the data needed to research and book flights.

Air Carrier Consolidation

Despite the pro-competition deregulatory actions taken by both government and industry, the peculiarities of the air travel marketplace affected the airlines' ability to compete effectively. The result was a massive and rapid consolidation among the major air carriers. In 2010 alone, two major mergers occurred, with Southwest absorbing AirTran and Delta acquiring Northwest Airlines. Within three years thereafter, United had merged with Continental and American acquired U.S. Airways.

The result today is that the domestic air travel market is largely oligopolistic, with just four carriers – American, Delta, Southwest and United – representing more than two-thirds of the market, specifically, 68.3 percent in 2023, with each holding between 16 and 18 percent of the overall market.[9] Six much smaller airlines account for a total share of 24.0% with the balance representing a handful of branded codeshare partner lines of the larger carriers.[10]

Largest Domestic Airlines (May 2024)[11]

Carrier	Passengers (millions)*	Revenue (billions)	Profit (billions)	Assets (billions)	Market Share*
Delta Air Lines	161.6	$59.0	$5.0	$75.0	17.8%
American Airlines	164.4	$53.2	$0.5	$64.4	17.3%
Southwest Airlines	171.8	$26.7	$0.4	$36.0	17.2%
United Airlines	134.0	$54.8	$2.7	$71.9	16.0%

* *2023 data. These four carriers together represented 77 percent of all passenger enplanements.*

Clearly, the dominant four carriers determine the competitive temperature of the U.S. airline industry as a whole. Moreover, the current state of affairs is unlikely to reverse given the well-known barriers to entry associated with oligopolistic industries. For the airline industry, these

[9] *Domestic Market Share of Leading U.S. Airlines.* Statista.com. *https://www.statista.com/statistics/250577/domestic-market-share-of-leading-us-airlines/* (accessed January 7, 2025).
[10] *Id*.
[11] *The Global 2000 – 2024*. Forbes. https://www.forbes.com/lists/global2000/.

include high startup costs (for example, a new Boeing 737 can cost upwards of $80 million), intense competition for airport gates, and large economies of scale.[12]

While these statistics establish the preeminent position of the four largest carriers, they fail to capture just how dominant they are in comparison to their rivals in their respective hub airports, which serve many of the nation's largest cities. For example, at the Dallas-Fort Worth (DFW) airport, American Airlines (AA) operates 85 percent of the flights.[13] Likewise, a staggering 89 percent of flights in Charlotte are operated by AA. American has also attained substantial dominance over its rival carriers in cities such as Philadelphia (68 percent), Miami (67 percent), Washington-DCA (58 percent) and Phoenix (43 percent), among others.[14]

And looking at city pairings, it is clear that American dominates hundreds of routes in the United States. For example, in the Department of Justice's antitrust case against AA and JetBlue, it alleged, based on 2019 revenues, that AA had a 72% share of BOS to CLT, 69% share of BOS to PHX, 67% of BOS to DFW and 57% of BOS to PHL.[15]

And American is not alone in this regard. United and Delta have achieved similar levels of dominance on routes into and out of their respective hub cities and airports. When viewed in light of these numbers, evidencing near monopoly power in key markets, the largest airlines' ability to effectively impose their will on consumers and other stakeholders without fear of any meaningful response becomes clearer, and even more alarming from a competitive standpoint.

Airport Capacity and Access

It is critical to stress the important role airport slots play in maintaining this anti-competitive status quo in many of the nation's busiest airports. Airport slots, the permissions granted by the airport operator or other regulator for airlines to take off or land at a specific time, are used to limit scheduled air traffic at certain high-volume airports in order to maintain efficient operations.[16] While airports operating well below capacity do not utilize slots, those airports

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[12] *The Economics of Flying: How Competitive Are the Friendly Skies?* Federal Reserve Bank of St. Louis. https://research.stlouisfed.org/publications/page1-econ/2018/11/01/the-economics-of-flying-how-competitive-are-the-friendly-skies (accessed July 11, 2023). It seems the barriers to entry must indeed be significant given the billions of dollars available and spent to fund new ventures in other domestic industries, such as pharmaceuticals, artificial intelligence and clean energy, to name a few, and the relative dearth of airline start-ups.
[13] *OAG Megahubs 2022.* OAG Aviation Worldwide Limited. www.oag.com (accessed March 22, 2023).
[14] *Id*.
[15] Complaint, *United States v. American Airlines et al.*, case no. 1:21-cv-11558 (D. Mass, filed September 21, 2021) (Appendices A, B, and C).
[16] *Inside Airport Slots - How They Work And Why They're So Expensive.* Simple Flying. *https://simpleflying.com/inside-airport-slots/* (accessed September 18, 2023).

where capacity is constrained – categorized by the International Air Transport Association (IATA) as Level 3 airports – do require slot management in order to handle the higher flight volumes and associated infrastructure needs.[17]

Currently, the Federal Aviation Administration (FAA) uses slots to limit scheduled air traffic at Washington National Airport (DCA), John F. Kennedy International Airport (JFK) and LaGuardia Airport (LGA). In addition, the FAA monitors scheduled air traffic demand and has a formal review and approval process at several other airports, namely Chicago O'Hare International Airport (ORD), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO).[18]

By obtaining a majority of the available slots at a given airport, an airline can effectively control a market, preventing other air carriers from establishing a significant presence.[19] An assessment of the situation at Washington National Airport (DCA) will be instructive. As of June 2022, there were 881 slots at DCA divided among the nine air carriers with regular service to the airport. Of those, 503 – fully 57 percent – were held by a single carrier, American.[20] The airline with the second-most slots, Delta Air Lines, had only 114, less than one-quarter of AA's total.[21] It is little wonder then that American has, by far, the greatest number of scheduled weekly departures from DCA, currently 1,749, four times as many as its nearest competitor, Delta.[22] And given the limitation associated with a finite number of slots, the competitive situation at DCA will almost certainly remain static regardless of what steps other carriers may wish to take in an effort to change it.

We are firmly of the opinion, and believe it logically follows, that at airports where the FAA imposes slot controls or has a formal review and approval process, any action taken by federal regulators to restore meaningful competition in monopoly markets must necessarily include

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[17] For comparison, Level 1 and 2 airports, formal 'slots' are not required, and arrivals and departures are managed by the airport and through airline cooperation. At a level 3 airport, the number of flights and available airport infrastructure mean closer management is needed, so slots are used.
[18] *Slot Administration*. Federal Aviation Administration. https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration (accessed September 18, 2023). At EWR, JFK, LAX, ORD, and SFO, the FAA generally follows IATA's Worldwide Slot Guides (WSG) protocols to the extent they do not conflict with U.S. laws, rules, or procedures. *Id.*
[19] *FAA will offer Newark slots to low-cost airline, spurring competition for United*. The Points Guy. https://thepointsguy.com/news/faa-newark-slots/ (accessed September 18, 2023).
[20] *Slot Administration Data*. Federal Aviation Administration. https://cms.faa.gov/sites/faa.gov/files/2023-01/dca-oper-totals-s22.pdf (accessed September 20, 2023).
[21] *Id*.
[22] *All scheduled direct (non-stop) flights from Washington (DCA).* FlightsFrom.com. https://www.flightsfrom.com/DCA (accessed September 18, 2023).

divestment by the dominant carriers of a portion of their slots at the airports serving these markets.

Immunized International Alliances

Exacerbating an already unhealthy competitive landscape, a similar process was playing out in the international air market. Airlines were allowed to consolidate operations into global alliances that were provided with antitrust immunity. As of 2023, the largest three such alliances – Star, SkyTeam and Oneworld® – collectively included 59 participating airlines operating in 195 countries.[23] These partnerships allow airlines to expand their routes by sharing resources to ostensibly provide a more seamless travel experience for international passengers who benefit from access to multiple destinations and more convenient connections. Among other things, the participating airlines execute mutually agreed policies, coordinate scheduled flights and maintain uniform standards of services and security, while at the same time operating independently to preserve brand identity.[24]

The collective impact of these developments can hardly be overstated. In 2022, there were 853 million systemwide enplanements in the U.S., 102 million of which were international.[25] Interestingly, global alliances were largely promoted by IATA and others as pro-consumer but, in reality, have greatly diminished the competitive vigor of the international air transportation market. So, what the largest carriers' dominant position allows them to do in the domestic market to the detriment of consumers and other stakeholders is also happening in an increasingly uncompetitive international market.

The Department of Transportation has published four studies regarding the price and service effects of alliances and joint ventures.[26] It appears the current view of the federal government is that alliances, including those granted antitrust immunity, are beneficial for consumers in that they provide more service at lower prices than would occur without them being in place. That conclusion seems somewhat counterintuitive insofar as antitrust-immunized combinations benefiting from *reduced* competition would ordinarily not be expected to yield either price or service benefits to consumers. Indeed, it defies logic that an airline or a business in any other

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[23] *Airline Alliances Explained: Benefits, Major Players, and Other Types of Partnership.* AltexSoft. https://www.altexsoft.com/blog/airline-alliances-explained/ (accessed July 11, 2023).
[24] *Id.*
[25] *Bureau of Transportation Statistics.* U.S. Department of Transportation. https://www.bts.gov/newsroom/full-year-2022-us-airline-traffic-data (accessed July 27, 2023).
[26] *Alliances and Codeshares.* U.S. Department of Transportation. https://www.transportation.gov/policy/aviation-policy/competition-data-analysis/alliance-codeshares#ResearchandReports (accessed July 10, 2023).

industry, when faced with reduced competition would be motivated to provide consumers with greater and better service at a lower price.

The analyses ASTA has reviewed did not address the competitive effects of the alliances on air ticket pricing and airline service in the domestic U.S. markets served by the carriers that are alliance members, and who are again immunized from antitrust scrutiny. No public review of this question appears to have been conducted since the various alliances were created beginning in the late 1990s and thereafter. This omission is all the more glaring given the parallel development by IATA of New Distribution Capability beginning in 2012, discussed in detail below, and the potential for one or all of the dominant air carriers to impose, and impose with impunity, drastic changes on air ticket distribution with predictable and plainly monopolistic anti-consumer impacts.

New Distribution Capability

Separately, air ticket distribution was undergoing a revolution because the airlines collectively decided over a decade ago that a different technological approach was necessary to capture greater control of their product and its presentation to the traveling public. IATA Resolution 787 established a process for developing a new technical standard using Extensible Markup Language (XML) for data exchange in the air transportation marketplace to replace the existing EDIFACT protocol, which had been in use since the 1980s.[27]

IATA established certain goals for the proposed new standard, including the capability to provide personalized pricing offers to consumers who shop for air transportation. These goals were referred to as the New Distribution Capability, or NDC. Resolution 787 was adopted by IATA in 2012, and thereafter IATA applied for DOT approval on March 11, 2013.

IATA's application generated contentious negotiations with numerous industry stakeholders with varying interests in how retail air travel sales occur, and the systems employed to make such sales efficient and ubiquitously available to everyone on substantially equal terms. Wide and strong resistance developed against what was understood to be a joint airline effort to unilaterally impose a new business model on the industry and by extension onto the public, one with potentially grave consequences. Twenty-six travel agencies and related tour and travel associations filed formal opposition to approval of Resolution 787 with the DOT.[28]

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[27] EDIFACT stands for Electronic Data Interchange for Administration, Commerce, and Transport. It is a set of standards for businesses that follow the EDI framework established by the United Nations. *What is EDIFACT – History, Structure, & Use*. Zenbridge. https://zenbridge.io/insights/what-is-edifact/ (accessed July 11, 2023).
[28] U.S. Department of Transportation. *Order 2014-5-7 (Order to Show Cause)* (served May 21, 2014), at 5.

Among the most serious objections to NDC voiced by opponents were concerns that approval of NDC would lead to:

1. anti-competitive price discrimination by offering fares based on the consumer's personal information and shared preferences;
2. decreased fare transparency and the inhibition of effective comparison shopping, attributable to the absence of publicly filed fare information;
3. compromised privacy because consumers would be required to disclose personal information to receive a fare offer;
4. obstacles to efficient distribution of interline and code-share tickets when making bookings involving participating (NDC-adopting) and non-participating airlines; and
5. a substantial reduction in competition between airlines and others in the retail distribution market.[29]

In May 2014, the Department issued an Order to Show Cause why Resolution 787 should not be approved.[30] Of particular interest considering subsequent developments, DOT noted the support of an aviation professor who accurately foresaw that "the marketplace will determine the pace of adoption of the XML standards and development of the functional capabilities the Resolution anticipates."[31]

DOT tentatively concluded that NDC would create modern, industry-wide technical standards and protocols for data transmission throughout the distribution chain. This would in turn facilitate the marketplace development of distribution practices and channels that would make it easier for consumers to compare competing carriers' fares and ancillary products across multiple distribution channels, make purchasing more convenient, allow carriers to customize service and amenity offers, and increase transparency, efficiency, and competition.[32]
The Department also believed that all of the participants in the air ticket distribution chain – airlines, travel agents, GDSs, and consumers – could speak the same electronic language in their communications with each other. In other words, adoption of modern, industry-wide XML data standards would promote efficiency, cost savings, and innovation.[33]

Modernized technical data exchange standards and practices also promised to improve comparison shopping by allowing travel agents and other third-party distribution channel agents to aggregate content from multiple sources, enabling cross-airline comparisons of like products, including the price of the ticket itself as well as desired ancillaries such as checked

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[29] DOT-OST-2013-0048-0388 (comments of the American Antitrust Institute).
[30] U.S. Department of Transportation. Order 2014-5-7 (served May 21, 2014).
[31] *Id*. at 7.
[32] *Id*. at 9.
[33] *Id.* at 10.

baggage, seat selection, premium seating, boarding priority, meals, in-flight entertainment and Wi-Fi. Hence, it was believed travel agencies would have access to a wider range of products to offer to their customers.[34]

After a lengthy review process, and over the objections of other industry stakeholders, the Department approved Resolution 787. Significantly, however, DOT made its approval subject to a number of specified conditions it deemed necessary to constrain the possible negative effects of NDC and to produce the promised benefits. Eight such conditions were ultimately imposed in the Final Order.[35] Most relevant for present purposes, DOT stated that its "approval [was] limited to the creation of an XML communications standard and that any future agreement among IATA member airlines regarding business models for the distribution of air transportation shall not be implemented without prior compliance with any applicable government approval or notification process,"[36] and it imposed conditions on anonymous shopping to protect passenger privacy.[37]

In the intervening years, conceptual resistance to NDC largely dissipated, aided in no small part by the efforts of the major GDSs, upon which all independent retailers depend, to develop NDC-compliant application programming interfaces (APIs) and links. However, despite these efforts, and although collaboration to implement NDC had been underway since even before the DOT's conditional grant of approval, the years of work did not yield the single integrated system contemplated by NDC's proponents but rather a patchwork of schemas that have massively complicated the adoption process for everyone involved in the distribution process.

Channel Price Discrimination

The competitive implications associated with the absence of the unified standard NDC's advocates envisioned can scarcely be overstated, as evidenced by the actions taken by one of the four dominant carriers, American, beginning in late 2022. At that time, AA publicly announced that beginning the following April it would revoke "established" (EDIFACT) channel access to 40 percent of the fares that historically had been purchased through longstanding GDS connections.[38]

[34] *Id.* at 11.
[35] U.S. Department of Transportation. Order 2014-8-1 (served August 6, 2014).
[36] *Id*. at 4.
[37] *Id*. at Appendix, page 2.
[38] Airoldi, Donna. American Tells TMCs to Be NDC-Ready by April or Lose Some Content Access. *Business Travel News* (December 5, 2022).

Seemingly without regard for other stakeholders' commercial readiness or the feasibility of a smooth transition, American maintained that it would forge ahead as planned, despite the fact that most of the key players, including TMCs, GDSs and third-party technology partners such as SAP Concur, had made clear that they were not fully prepared to facilitate AA's NDC implementation. Without key front-, mid- and back-office travel fulfillment systems ready and able to process NDC transactions, significant disruptions to shopping, booking and servicing tickets were all but assured.

Prior to the April 2023 implementation date, it was unclear which fares AA intended to remove from the EDIFACT channel,[39] though the suspicion – later confirmed – was that lower-cost fares would predominate so as to create a strong disincentive to book via intermediaries using the established channel. Access to all fare inventory was unaffected when using an NDC-enabled channel or booking directly via aa.com. This naturally placed AA's air ticket distribution competitors – travel agencies and TMCs – at a serious competitive disadvantage, so much so that ASTA was compelled to file an unfair practices complaint with the DOT in September 2023.

It seems that an airline taking so much of its low-cost fare inventory out of the hands of the very distributors responsible for 40 percent of all air ticket sales would expect to suffer a substantial loss of market share vis-à-vis its competitor airlines. However, given the state of competition in the industry, both overall and with respect to specific routes into and out of its hubs, AA didn't suffer meaningfully, as in many cases American is, practically speaking, the only choice.[40] Indeed, it is precisely because of the dominant position it occupies that AA could take such a drastic step with relative impunity.

While removing the lower cost fares from EDIFACT had an immediate and drastic negative effect on AA's competitors in the ticket distribution space, the impact on the traveling public was no less detrimental. Although consumers inclined to book directly through aa.com could access American's lowest fares, that meant forgoing the benefits of working with an advisor. In other words, the lower fare came at a higher non-economic price, specifically, the loss of the service and support that agencies provide to their clients.[41]

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[39] *See* Boehmer, Jay. AA 'Firm in Our Resolve' on NDC Plans, as ASTA Issues Plea for Delay. *The Beat* (March 9, 2023) ("Several agencies still weren't clear on what exactly to expect in April: what specific content stays, what goes and what degree of price differentials will be flowing via NDC-connected versus EDIFACT-connected [established] channels").
[40] Recall that in some city pairs, for example, Dallas (DFW) to Miami or Charlotte to Washington D.C. (DCA), American operates close to 90 percent of all the flights.
[41] The tradeoff was even worse for corporate travelers, whose companies owe them a duty of care which was impossible to effectively fulfill outside of a managed travel program offered by a TMC.

Airline Rewards Programs

American later found another way to disadvantage the indirect sales channel and, by extension, its competition in the distribution space. Specifically, in February 2024, AA announced that starting in May consumers who booked their tickets using a so-called "non-preferred" travel agency would no longer be eligible to earn the company's AAdvantage reward miles.[42] Because preferred status was made contingent on an agency booking at least 30 percent of its AA tickets via NDC channels, most travel agencies did not – and could not – qualify. At the same time, American announced that the booking threshold for preferred status would increase significantly in the coming months, to 50 percent and later 70 percent, within a year.[43]

As was the case with the removal of fare inventory from the EDIFACT channel, the change to AA's rewards program threatened to not only place traditional travel agencies and TMCs at a competitive disadvantage, it also would work a substantial harm on the public, as those consumers that chose to continue utilizing the services of an advisor when booking an AA flight would no longer accrue rewards points, effectively increasing the overall cost of travel for frequent flyers. And once again, consumers booking direct via aa.com would continue accruing AAdvantage miles in the usual manner.

In our view, all such efforts to discriminate on the basis of distribution channel, with the purpose and effect of disadvantaging competitors, and with no countervailing consumer benefit, should be prohibited as unfair and deceptive practices pursuant to DOT's existing statutory authority.[44]

Intermediary Aggregation

It should be noted that American ultimately reversed its distribution strategy disfavoring travel agencies and TMCs with respect to both restoring access to most fare inventory to EDIFACT and abandonment of its preferred agency reward miles program restrictions. These are, of course, encouraging and positive developments for our members and, more importantly, for the hundreds of millions of consumers of domestic air transportation.

That being said, the prior discussions underscore the integral role distribution intermediaries – travel agencies and TMCs as well as the major GDSs – play in protecting the interests of consumers. Aggregation of a full range of content from all sources and all airlines, including

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[42] American Expands Its War Against Travel Agents to Now Punish Travelers. *Cranky Flyer* (February 26, 2024).
[43] *Id*.
[44] 49 U.S.C. § 41712. Specifically, subsection (a) of the cited statute empowers DOT to investigate and determine whether an air carrier is engaged in an unfair or deceptive practice in the sale of air transportation.

flight schedules, base fare and ancillary fee information, among other things, by the GDSs, followed by its dissemination to consumers by travel advisors, is indispensable to efficient and meaningful comparison shopping.

In this important respect, the consumer's experience when assisted by an advisor or TMC stands in stark contrast to booking directly with a single carrier via its website, an environment where such comparisons cannot be made. And, in the absence of greater overall competition, which is sorely needed but difficult to prescribe, for the reasons previously stated, this transparency is essential if the air transportation market is to function in a manner most likely to consistently deliver a high level of service at the lowest possible price.

For these reasons, and to ensure that air ticket distribution intermediaries can compete on an equal footing with the airlines themselves, regulators must ensure that air carriers provide the GDSs with full access to fare, ancillary, schedule, and availability information.[45] Likewise, the airlines must not be permitted to utilize their substantial market power to disadvantage, pricewise or otherwise, the 40 percent of all consumers who prefer to book air tickets through the agency distribution channel.

Thank you for considering ASTA's views on these critically important issues. If you or your staff have any questions regarding our comments, the role travel agencies play in air ticket distribution, or any other aspect of competition in the industry, please do not hesitate to contact me at (703) 739-6854 or plobasso@asta.org.

Sincerely,

Peter N. Lobasso
Senior Vice President & General Counsel
American Society of Travel Advisors, Inc. (ASTA)

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[45] For a comprehensive discussion of ASTA's position on intermediary access to airline content, including ancillary fee information, please see comments to *Enhancing Transparency of Airline Ancillary Service Fees,* DOT-OST-2022-0109, accessible at https://www.asta.org/docs/default-source/testimony-filings/2023/asta-comments-on-dot-ancillary-fees-nprm-1.23.2023-final.pdf.