

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Docket No. DOT-OST-2016-0204

Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT)

ACTION: Request for Information (RFI)

SUMMARY: The industry group for travel sites, a number of its members which include online travel booking sites, and certain members of Congress have expressed concerns to the Department of Transportation (DOT or Department) regarding airline restrictions on the distribution and display of airline flight schedule, fare, and availability information (“flight information”). Specifically, concerns were raised about practices by some airlines to restrict the distribution and/or display of flight information by certain online travel agencies (OTAs), metasearch entities that operate flight search tools, and other stakeholders involved in the distribution of flight information and sale of air transportation. Airlines state that it is important for them to maintain control over the display and distribution of airline flight information while OTAs and metasearch entities that operate flight search tools state that actions taken by airlines to restrict the distribution or display of flight information are anticompetitive and harming consumers.

The Department is interested in learning more about this issue. Pursuant to the Department’s aviation consumer protection authority, we are requesting information on whether

airline restrictions on the distribution or display of airline flight information harm consumers and constitute an unfair and deceptive business practice and/or an unfair method of competition. The Department is also requesting information on whether any entities are blocking access to critical resources needed for competitive entry into the air transportation industry. Finally, we are requesting information on whether Department action is unnecessary or whether Department action in these areas would promote a more competitive air transportation marketplace or help ensure that consumers have access to the information needed to make informed air transportation choices.

DATES: Responses should be filed by [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may file responses identified by the docket number DOT-OST-2016-0204 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251

Instructions: You must include the agency name and docket number DOT-OST-2016-0204 at the beginning of your submission. All submissions received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all submissions received in any of our dockets by the name of the individual submitting the document (or signing the submission, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kyle-Etienne Joseph, Trial Attorney, or Kimberly Graber, Chief, Consumer Protection and Competition Law Branch, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC, 20590, 202-366-9342, 202-366-7152 (fax), kyle-etienne.joseph@dot.gov or kimberly.graber@dot.gov (e-mail).

SUPPLEMENTAL INFORMATION:

Background

Various entities have raised concerns to the Department regarding airlines restricting the distribution or display of information on their flights. We initially became aware of the issue in connection with certain airlines placing restrictions on flight information being displayed by metasearch sites that operate flight search tools. In a proposed rule, the Transparency of Airline Ancillary Fees and Other Consumer Protection Issues (“Consumer Rule III NPRM”), the Department sought information relating to a wide variety of distribution issues including information about the relationships between entities involved in the distribution of air transportation information. 79 Fed. Reg. 29974 (May 23, 2014). In the Consumer Rule III

NPRM, the Department posed questions related to airline restrictions on the display of flight schedule, fare, and availability information. The Department stated that it was "considering whether carriers should be prohibited from restricting the information provided by ticket agents when those ticket agents do not sell air transportation directly to consumers but rather provide consumers with different airlines' flight information for comparison shopping." 79 FR 29970, 29974 (May 23, 2014).

While the rulemaking was pending, representatives of certain OTAs and representatives of metasearch sites focused on travel, and their outside counsel, met with Department representatives and urged the Department to consider taking action. Those entities stated that airlines that restrict distribution of airline fare, schedule, and availability information to metasearch sites are engaging in unfair practices and unfair methods of competition. They further stated that they were focused on enforcement action or industry guidance rather than rulemaking. See Docket item DOT-OST-2014-0056-0776.

Subsequently, many questions and concerns have been raised with the Department by members of Congress as well as various stakeholders regarding airline restrictions on the distribution and display of flight information by third parties. The Department met with representatives from OTAs, metasearch entities, airlines, and other industry stakeholders to learn about the issue and how airline decisions to place restrictions on the distribution and display of airline flight information may impact both consumers and the broader air transportation industry. The Department wanted to understand whether the issue of primary concern to industry stakeholders was (1) airlines refusing to provide any flight information to non-airline entities such as an OTA or metasearch entity; (2) airlines providing flight information to non-airline entities but placing restrictions on how that information is displayed; or (3) airlines providing

flight information to an OTA but restricting the OTA from distributing that information to a metasearch entity that operates a flight search tool but does not itself sell tickets. In addition, the Department wanted to understand the impact on consumers.

In meetings with representatives of airlines and online travel entities, the Department asked about the restrictions and why some airlines are restricting some OTAs, metasearch entities that operate flight search tools, or other industry stakeholders from accessing flight information or from distributing and displaying flight information. The Department also asked how such restrictions may impact consumers who use OTA and metasearch websites to research and book air travel.

The Department learned that some airlines have issued cease and desist letters to some OTAs demanding that these companies stop distributing airline flight information to some metasearch entities that operate flight search tools or have included language in their contracts with OTAs prohibiting them from sharing airline flight information with any metasearch entity that has not been approved by the airline. Additionally, some airlines have issued letters to metasearch entities operating flight search tools demanding that these companies stop displaying the airline's flight information or limiting how the entities display the airline's flight information on their flight search tools.

Some airlines have explained that such actions are because there are certain websites marketing air transportation operated by entities with which the airline does not want to be associated because the entities provide inaccurate or incomplete information, or provide poor customer service. Additionally, certain airlines have alleged that some of these entities may have engaged in fraud. Further, several airlines have stated that they wish to control how the information regarding their flights is distributed so that the airline can market services the way it

chooses, through the outlets it chooses. Some airlines also state that controlling the outlets through which information on their flights is distributed helps control their distribution costs.

Historically, competition in airline distribution has contributed to technological and retail innovation that has benefited both industry stakeholders and business and leisure air travelers and further enhanced airline competition. Meanwhile, airlines and ticket agents had commercial incentives to display airline information to consumers as widely as possible. Generally, market forces should ensure that airlines will continue to display their fares in the outlets where consumers want to find them and that those same market forces would then result in airlines accruing the commercial benefits of displaying their services in as many reputable outlets as possible. However, some stakeholders have argued that the marketplace is no longer balanced and consumers are being harmed so the Department should not rely on market forces to resolve these distribution and display issues.

On April 15, 2016, the White House issued Executive Order 13725: Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy (the “Executive Order”). The Executive Order expresses the importance of a fair, efficient, and competitive marketplace and notes that consumers need both competitive markets and information to make informed choices. The Department shares the goal of ensuring consumers are provided with information they need to make informed choices. In particular, as directed in the Executive Order, the DOT wants to identify any specific practices in connection with air transportation, such as blocking access to critical resources, that may impede informed consumer choice or unduly stifle new market entrants and determine whether the Department can potentially address those practices in appropriate instances. The issues raised in connection with airlines restricting ticket agents’ ability to distribute or display flight information may potentially

create the type of undue burdens on competition that the Executive Order has directed agencies to address. However, the Department needs to learn more about the issue to understand whether Department action is appropriate.

Departmental Authority under 49 U.S.C. 41712 and 40101

Under 49 U.S.C. 41712, the Department has authority to prevent unfair or deceptive practices and unfair methods of competition. Certain OTAs and metasearch entities have stated that airline restrictions on the distribution and display of flight information amount to an unfair, deceptive, or anticompetitive practice that harms consumers and an unfair method of competition, therefore the Department has authority to act under 49 U.S.C. 41712. Meanwhile, airlines have stated that the manner in which they distribute their fare, schedule, and availability information is a private contractual matter between airlines and third parties. Airlines further contend that they have the right to determine who they do business with and where and when their content is displayed. They state that the Department has no role in this issue because airlines are not engaging in any unfair or deceptive practices or unfair methods of competition.

The Department also is mandated to encourage and enhance consumer welfare through the benefits of a deregulated, competitive air transportation industry under the Airline Deregulation Act of 1978. The Department places maximum reliance on competitive market forces and on actual and potential competition while preventing unfair, deceptive, predatory, or anti-competitive practices in air transportation pursuant to 49 U.S.C. 40101. As a general rule, the Department does not intervene in private contractual agreements between airlines and third parties unless there is a market failure. However, to the extent commercial arrangements constitute or further an unfair or deceptive practice or unfair method of competition, resulting in harm to consumers, it would be within the Department's authority to prohibit parties from implementing such agreements or place restrictions on such agreements. As a part of any review

of potentially unfair or deceptive practices or anti-competitive behavior by an airline or ticket agent, the Department considers legal precedent to make sure that any action taken is within the boundaries of Departmental authority.

Accordingly, the Department is requesting information on whether any entities are blocking access to critical resources needed for competitive entry into the air transportation industry, whether Department action in this area would promote or hinder a more competitive air transportation marketplace, or whether Department action would help ensure that consumers have access to the information needed to make informed air transportation choices.

Distribution of Airline Flight Information and Airline Restrictions

The distribution of airline flight information is a complicated process that involves a number of industry stakeholders but for consumers it is currently relatively simple to obtain flight information from airline websites and to find and compare flight information on online travel entity websites. Consumers routinely book air transportation through direct and indirect (non-airline) channels, including through websites that operate flight search tools that either lead consumers directly to airline websites or to an OTA with the authority to book tickets on behalf of an airline.

Airlines make flight information available through their own channels, such as airline websites, call centers, and airport agents, as well as outlets that range from traditional “brick and mortar” travel agents and corporate travel agencies to OTAs. Although airlines with sufficient market presence and high load factors may have incentives to limit the outlets through which their fares are displayed, airlines are generally motivated to ensure their flight information is widely available to increase consumer exposure and generate sales. Historically, the most efficient and cost effective way for airlines to distribute flight information was to provide it to

entities that consolidated the information of multiple airlines and made it available to interested parties. Accordingly airlines have in the past provided information on their flights with few or no contract restrictions on the redistribution of flight information.

Industry participants, such as travel agents and metasearch entities that want the flight information of multiple carriers, have in the past been able to obtain flight information by subscribing to distributors of schedule information such as the Official Airline Guide (OAG) and Innovata, distributors of fare and fare related data such as the Airline Tariff Publishing Company (ATPCO) and Societe Internationale de Telecommunications Aeronautiques (SITA), and global distribution systems (“GDS”), which aggregate and distribute combined flight information that generally includes schedules, fares, and availability to subscribers. It is our understanding that in most cases, OTAs that market flight information directly to the public through website displays obtain that information from GDSs as their primary non-airline source. OTAs sometimes distribute flight information obtained from GDSs and other entities onward to metasearch entities that operate flight search tools. These metasearch entities often combine information obtained from OTAs with information obtained directly from GDSs and other distributors and/or airlines. Regardless of the source, the information is generally combined and displayed on online travel sites marketed to consumers in flight search tools displaying flight information for multiple airlines.

Just as airlines have financial incentives to widely distribute and display information on their flights, OTAs and metasearch engines operating flight search tools have financial incentives to distribute and display airline information. It is common for metasearch entities that operate flight search tools to include in search results links to OTAs that are able to sell air transportation on behalf of an airline. Stakeholders have informed the Department that there are a number of

fee structures that exist between metasearch entities operating flight search tools and the entities that provide them flight information, whether airlines or OTAs. In connection with the relationship between an OTA and a metasearch engine, although fee structures may vary, generally speaking, when consumers follow a link from a metasearch entity flight search tool to an OTA website that allows consumers to book flights, the OTA pays the metasearch site a referral fee. Additionally, OTAs generally receive payments from GDSs for bookings made directly on OTA websites. GDSs in turn are paid a fee by airlines for such bookings. Accordingly, although airlines often benefit from having their flights marketed through a variety of outlets, airlines prefer to have consumers book directly through an airline channel, for which the airline generally bears the cost of operating its own channel but avoids paying booking fees to others such as GDSs, OTAs, or metasearch entities.

Certain airlines have placed restrictions on certain third party industry stakeholders such as GDSs and data aggregators, prohibiting them from distributing information to any entities that the airline does not approve. Additionally, certain airlines are prohibiting OTAs from distributing flight information on to metasearch entities, although it is not clear how many airlines have imposed these prohibitions. Some airlines are also prohibiting particular OTAs or metasearch entities from displaying flight information for an airline's codeshare partners, and at times, preventing OTAs and metasearch entities from displaying an airline's flight information altogether. In other instances, some airlines are prohibiting metasearch entities operating flight search tools from displaying flight information for that airline with any links to OTA websites. Instead, the only links must be to airline websites. As discussed below, representatives of ticket agents allege these airline restrictions harm consumers whereas airlines argue that they have legitimate business reasons for imposing these restrictions.

Availability of Flight Information and Concerns Regarding Proprietary Nature of Flight Information

In connection with airline restrictions on ticket agent distribution or display of flight information, some ticket agents have stated to the Department that they believe flight information is public information and that airlines should not be allowed to place restrictions on it. Conversely, airlines believe flight information is both proprietary and protected under intellectual property laws and that airlines have the right to maintain control over its distribution and display.

As a result of the availability of airline flight information through so many outlets (e.g. GDSs, OAG, ATPCO, Innovata, etc.), some industry stakeholders believe that airline schedule, fare, and availability information is not airline property and is instead similar to bus or train schedules that are widely available to the public. Some OTAs and metasearch entities that operate flight search tools have stated that airlines have historically provided airline flight information to the general public and that it is purely factual data; therefore, according to these entities, airline flight information has historically not been, and still should not be, considered the intellectual property of airlines.

On the other hand, airlines state that despite the fact that airline flight information has historically been disseminated and available to the general public, airlines have invested significant money in developing methods to set schedules and fares, to effectively market air transportation, and ultimately to fill as many seats as possible on the flights an airline operates. Further, unlike bus or train fares and schedules that change infrequently, airline fares, schedules, and availability can change many times a day in response to a competitive marketplace. According to many airlines, as a result of the investment that airlines have made in developing

flight prices, schedules, and availability, the flight information that they produce and distribute to the air transportation industry is proprietary information.

Additionally, airlines have indicated that they have an interest in controlling where and how flight information is displayed in order to control airline distribution costs and ensure adequate customer service. Unlike service providers and makers of consumer products that do not sell directly to the public and only sell through an intermediary, airlines sell their services directly to consumers as well as through agents. Despite this distribution model of direct and indirect channels, airlines generally retain control of fares, particularly in domestic air transportation, and do not allow agents to discount or increase fares or to play any role in establishing schedules or seat availability. As such, some airlines believe that because they control fares and the related services, they are entitled to retain ultimate control over how and where this information is distributed and/or displayed.

Consumer Options for Researching and Purchasing Air Transportation

Some ticket agents have indicated to the Department that a potential consumer harm that may stem from allowing airlines to restrict the display and distribution of flight information is a reduction in consumers' ability to view a full range of flight options in one location. They also state that ticket agents that operate flight search tools typically display information in a manner that is helpful to travelers seeking to purchase air transportation. Flight search tools consolidate flight options for consumers on one website so that consumers do not need to visit multiple websites to identify the options for air travel on a number of airlines for a given itinerary. Such flight search tools may also combine the flights of multiple airlines or various one-way fares for consumers in an attempt to identify the most cost-effective and efficient itinerary. According to ticket agents, combining carriers, one way tickets, or both are options that average consumers

would be unlikely to find on their own when searching multiple airline websites. These flight search tools often default to ranking flight options in order from the lowest to highest cost flight option but offer other ranking options as well, such as by particular airline, arrival time, or travel time. Consumers visiting these websites can determine which flight options best suit their needs and preferences, for example, by taking a flight at a less popular time, enduring a long layover in order to save money on air fare, or paying more for the convenience of a non-stop flight.

Further, according to ticket agents, some flight options offered are only offered by ticket agents and not airlines. However, according to ticket agents, this is an area in which airlines are increasingly imposing restrictions on OTAs and metasearch entities operating flight search tools. These entities state that certain airlines are prohibiting ticket agents from offering flight options combining one way fares for different flight segments or from combining segments and fares from multiple carriers. For example, if a consumer wished to fly from Buffalo, New York to Hartford, Connecticut, and then to Washington, D.C., and then return to Buffalo, it is often significantly less expensive to buy multiple one way tickets for this itinerary on different carriers as opposed to purchasing this itinerary as one group of flights from one carrier. Some airlines have limited the ability of ticket agents to book this itinerary as a series of one way flights. Flight search tools that combine one way fares may save consumers time and provide options the consumer would otherwise not be aware of. Searching for one way tickets on multiple carrier websites to find a multi-carrier itinerary that fits a consumer's needs might not yield as consumer-beneficial results.

In addition, discounted tickets that OTAs offer as part of tour packages are not presented on airline websites. According to ticket agents, without the ability to efficiently view flight information across multiple airlines on a ticket agent website, transactions are less efficient.

Consumers may need to visit numerous websites more than once in the days before purchasing air transportation to find a current fare for the most cost effective itinerary to match their travel plans. Ticket agents also note that some websites offer consumers the ability to review trends in pricing for various flights so that consumers can theoretically identify the optimal date to purchase a ticket before traveling, on-time performance information for flights, customer reviews of specific itineraries, optimal seat ratings¹ for various aircraft, as well as hotel options, rental cars, and other products like entertainment. Additionally, according to ticket agents, research suggests that the more time-consuming it is for consumers to research and select airfare, the more burdensome, and potentially costly, air travel becomes for consumers.

On the other hand, many airlines state that airline limitations placed on OTAs and metasearch sites operating flight search tools do not harm consumers. Airlines note that they also provide on-time performance information and tour package options. Airlines observe that ticket agents are not alleging that airlines are attempting to place limitations on OTAs or metasearch entity product offerings unrelated to air transportation, nor have they alleged that airlines are trying to restrict displays of customer reviews of itineraries or airline seat ratings. Further, despite placing limitations on some OTAs and metasearch entities operating flight search tools, most airlines allow what they consider to be “desirable” OTAs and metasearch entities to distribute and display the airline’s flight information. Meanwhile, some airlines note that one of the largest airlines in the U.S. does not distribute its flight information through GDSs or OTAs. Most consumers, particularly the most price sensitive consumers, generally search multiple websites, including those operated by airlines as well as ticket agent flight search tools, before purchasing air transportation. According to the airlines, their actions have not had a

¹ Optimal seat ratings indicate which seats on an aircraft are the best seats to sit in during travel for a specific aircraft type and configuration.

significant impact on the search process that consumers use to identify and purchase or reserve air transportation.

Airlines also observe that there has been a significant consolidation in the ownership of OTAs. Most leisure consumer bookings come through a small number of OTAs. Airlines assert that although consumers may believe they are comparing multiple outlets, several of those outlets are owned by the same parent company. According to airlines, the consolidation of OTAs is significant to flight option distribution and consumers may be harmed by limited OTA competition as those entities consolidate and no longer innovate to compete with each other.

Moreover, many airlines state that they should maintain ultimate control over how their airline product is offered and displayed to consumers because the flying experience that airlines offer to consumers is a unique product that individual airlines have invested significant resources to develop. For example, airlines state that some ticket agent websites do not display airline information in a way that optimizes the product that airlines are offering to consumers. Specifically, some ticket agent websites have included outdated airline logos, presented information in what airlines believe to be a disorganized and suboptimal way, and failed to offer customers the tailored experience that airlines offer. Airlines have expressed concern about improper display of airline information or poor customer service experiences that they believe may negatively impact consumer perception of the airlines' brand. Airlines have stated that some examples of poor experiences include excessively long layovers that customers are unaware of when booking through ticket agents, the failure of ticket agents to process refund requests, an inability of ticket agents to accurately relay flight status and other important information to consumers in a timely fashion, and other negative interactions that consumers may attribute to airlines. Some airlines also allege they are concerned about entities that engage

in fraudulent activity by selling fraudulent tickets for travel on well-known airlines. In some of these instances, consumers contact the airlines directly to request a refund for an invalid ticket. Airlines are concerned that consumers defrauded by such entities may believe that the airlines are to blame. Certain airlines have demanded that entities that they consider undesirable cease displaying the airline's flights. They have also placed contractual limitations on the ability of GDSs and OTAs to distribute flight information to unapproved entities.

Further, airlines state that they allow access to their products through numerous OTAs and metasearch entities in addition to their own sites and that consumers are able to shop for air transportation on or through many of those websites. Airlines believe that the purchase of air transportation via the internet is an efficient process regardless of whether consumers access flight information through OTAs, metasearch entities that operate flight search tools, or airlines' websites. Accordingly, airlines assert that any Department action limiting airlines' ability to control how and where airline flight information is displayed would harm both consumers and the airline's brand. Several airlines also point out that it is in their financial interest to allow reputable OTAs and metasearch entities to display and distribute airline flight information despite a desire to have as many passengers book directly with the airline as possible. Airlines need to make their services available through the outlets that consumers choose to use. Bookings via OTAs in many instances account for a large percentage of airline sales and referrals from metasearch entities that operate flight search tools are also important. Meanwhile, GDSs have historically included provisions in contracts with airlines that require airlines to offer all of the same fares that the airline offers to ticket agents that subscribe to the GDS. Therefore, in many instances, airlines are not able to offer discount fares only available from the airline to drive consumers from purchasing through ticket agents to purchasing from the airline based on pricing.

Accordingly, some airlines assert that it is not in their interest or even commercially viable to remove flight information from OTA or metasearch entity websites entirely. Some airlines have stated that, due to the quantity of bookings that originate on OTA or metasearch entity websites, it is unlikely that airlines would ever prevent all OTAs and metasearch sites that operate flight search tools from displaying and/or distributing airline flight information.

Competition in the Airline Industry and Price Competition

Some ticket agents assert that websites such as theirs can potentially better position new entrant airlines to compete with larger and more established airlines, especially considering recent airline consolidation. They state that new entrant airlines often offer consumers low ticket prices and increase the number of flight options for a given itinerary. This increase in air travel options tends to drive down airfares, which in turn allows more consumers to take advantage of air transportation. Some ticket agents also believe that new entrant airlines benefit from the exposure that they gain by advertising airfares on ticket agent websites alongside the fares offered by larger more established carriers. Some ticket agents allege that by allowing them to display and distribute flight information for all airlines that offer service for a given itinerary, ticket agent websites will promote price competition in some of the more concentrated markets where the dominance of legacy airlines and other larger airlines would otherwise lead to higher airfares for consumers.

Airlines state that airline restrictions on the distribution and display of flight information is unrelated to airline market power. Accordingly, airlines assert that consolidation within the airline industry should not be taken into account when considering the issue of airline restrictions on ticket agent distribution or the display of flight information.

Ticket agents also argue that by displaying flight combinations such as one way flights or flights on multiple carriers that are not offered by airlines, OTAs and metasearch entities operating flight search tools are creating price competition and improving consumer access to information.

Airlines counter that not all carriers use non-airline distribution channels such as OTAs or metasearch entities operating flight search tools. According to some airlines, the fact that not every flight option is available through every non-airline flight information outlet does not support the idea that price competition is harmed. According to the airlines, flight information for most airlines is available through a variety of outlets, but more importantly, flight information for every airline is readily available on the airline's own website. Moreover, airlines have to publish information on their flights in order to sell tickets. Therefore, they do not believe price competition is harmed simply by some airlines limiting where that airline's flight information is displayed when the information is available elsewhere, such as an airline website.

Request for Information

The Department has considered the information that has been provided thus far and now requests additional information from all stakeholders -- airlines, ticket agents, consumers, and other affected parties. The Department is not proposing to take any specific action at this time. Rather, the Department is requesting information that will assist the Department in determining whether airline restrictions on the distribution and display of flight information are causing consumer harm, are unfair or deceptive in some way, or are anticompetitive. If airline restrictions are causing consumer harm or are unfair, deceptive, or anticompetitive, the comments would assist the Department in determining what action is appropriate, if any. Also, consistent with 49 U.S.C. 40101, the Department places maximum reliance on competitive

market forces and on actual and potential competition while preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation. We are also requesting information on the extent to which airline practices to restrict the distribution and display of information on its flights benefits consumers. Further, the Department is specifically requesting information on whether any entities are blocking access to critical resources needed for competitive entry into the air transportation industry and whether Department action in this area would promote a more competitive air transportation marketplace. In addition, the Department is seeking information on whether action in this area would improve consumer access to the information needed to make informed air transportation choices. Information that provides historical or statistical data or peer-reviewed studies will be particularly helpful for determining whether or not Departmental action is appropriate in this area.

As an initial matter, the Department requests information on the proprietary nature of flight information and whether the wide-spread availability of that information is relevant to airline restrictions on the distribution or display of flight information. Specifically, when flight information is released to consumers by airlines and made generally available to the public (e.g., published on an airline's website), do stakeholders consider this flight information to be factual non-proprietary information? Do stakeholders consider the airline schedule, fare or availability information, singularly or in combination, the proprietary information of the airline that produces the information? Do stakeholders consider the schedule, fare, and availability information proprietary only when this information is combined in one product but not when distributed separately?

Consumer Access to Information Needed to Make Informed Air Transportation Choices

In connection with consumer options for researching and purchasing air transportation, what is the value that OTA or metasearch entity flight search tools provide? To what extent do consumers, including leisure travelers, small businesses and corporate customers, benefit from saved search costs, greater confidence in search results, access to lower fares, or more travel options than they would have obtained from separate searches of individual airline websites? In this request for information, have we accurately described the types of actions airlines have taken that impact OTA and metasearch entity websites? If not, what are those actions and how do they impact OTA and metasearch entity websites? What effect do those actions have on the utility of OTA and metasearch entity websites for consumers? Do ticket agents that provide flight search tools offer consumers any flight information that consumers cannot obtain by visiting multiple airline websites? What effect does an inability to display schedule, fare or seat availability information of a large, well-known airline, or group of airlines, have on the utility of air travel comparison sites for consumers? Would access to one or two of those categories of airline information without, e.g., seat availability information, be of any practical use on its own?

It has been pointed out that not all airlines currently distribute information on their flights through OTAs or metasearch entities operating flight search tools and that those tools do not necessarily have the same level of information that is available on airline websites. Do airline restrictions currently placed on the distribution and/or display of airline flight information limit the ability of consumers to identify the best flight options available to meet consumer needs? If yes, how? Are the existing limitations of OTA or metasearch entity websites relevant to the ability of consumers who use those websites to identify the best flight options available to meet consumer needs?

Airlines Stated Reasons for Restricting Flight Information

As explained above, airlines have stated that in some cases they are restricting the sharing and use of their flight information by some websites or entities that airlines believe are disreputable or simply do not market the airline's flights in a manner that the airline would like. Some airlines have indicated that OTAs or metasearch entities have provided inaccurate or incomplete information about airline services and products, provided poor customer service, or engaged in marketing practices the airline does not approve of, and have in some cases engaged in fraud. Airlines say such conduct tarnishes the airline brand, and for these reasons airlines are trying to prevent or restrict these entities from marketing and selling their airline's products and services. Thus, airlines claim that their actions to restrict use of their flight information benefit both airlines and consumers. Some airlines also acknowledge that they are attempting to direct more consumers to their own websites for financial reasons as well as marketing reasons. Are there any other reasons why airlines are restricting the sharing and use of their flight information? What information is available to determine the scope and magnitude of the problems described by airlines? How many entities engage in the practices as described by airlines, and what portion of the OTA and metasearch market do these entities represent? How many consumers use these websites? What is the average number of consumer complaints for each of these issues regarding such entities that airlines receive each year? How would DOT appropriately measure and evaluate the effects of the problems as described by airlines? Is action by DOT necessary to allow airlines to protect their legitimate interests and also ensure that consumers are able to make informed flight choices?

Effects of Airlines Restricting Use of Flight Information

We note that flight information is available through airline websites. Would a reduction in the availability of airline flight information on non-airline websites due to airline restrictions on the distribution and/or display of such information have a significant negative impact on consumers? If so, what are those impacts, and do they disproportionately affect some subsets of consumers? According to the information provided to the Department, no airline has indicated an intent to withdraw completely from ticket agent websites. However, if an airline that currently distributes flight information through ticket agent websites withdrew completely from those websites, would that reduce or eliminate the ability of consumers to identify the most suitable flight options? If not, how many airlines would have to withdraw from ticket agent websites to eliminate the ability of consumers to identify the most suitable flight options?

Is there information to suggest that many airlines will eventually withhold flight information entirely from all or most websites that offer flight search tools? How many consumers would fail to investigate more than one airline website, with the result that they may not locate the optimal itinerary or fare?

If it is essential for consumers to be able to view as many airline flight options as possible on OTA and metasearch entity websites to identify the best flight options, what information is essential? Is schedule information sufficient or are both schedule and fare information necessary? Do consumers need availability information to identify the best flight options?

We note that airlines create fare rules and generally do not allow certain combinations of flight segments. Are consumers less likely to combine one-way fares when searching for an itinerary on multiple airline websites rather than a ticket agent website due to the amount of time it may take to identify these flights and pair them together by making multiple purchases?

We note that some airlines are placing restrictions on OTAs and metasearch entity websites preventing them from displaying codeshare flights, which at times may be the cheapest or most efficient flight options for consumers. Are consumers less likely to discover these codeshare flight options when airlines restrict the display of these flights on OTA and metasearch websites? Can consumers gain access to the same information by visiting airline websites directly?

Is Department action in connection with airline distribution practices necessary to ensure consumers have the information they need to make informed choices?

Competitive Air Transportation Marketplace

In connection with competition between airlines, we are requesting information on the impact of airline restrictions on the distribution or display of flight information on competition. What value, if any, do OTA and metasearch entity websites that operate flight search tools provide in facilitating or enabling competition among airlines? Does having airline information available through multiple outlets, including ticket agent outlets, impact price competition? Would the absence of several airlines that currently participate in ticket agent outlets impact price competition? Does the ability or inability of metasearch entities that operate flight search tools to provide links to OTAs impact price competition?

If restrictions placed on the distribution and/or display of airline flight information limits the flight options available on websites operating flight search tools that market multiple airlines, has that limitation in options lead to higher prices for consumers? If so, how? How would restrictions in the future potentially lead to higher prices?

It is our understanding that most airlines do not permit fare “discounting” by OTAs. Are OTAs or metasearch entities that operate flight search tools able to identify fares that are lower

than fares that can be found on airline websites? Do OTAs receive discounts from GDSs which allow them to then price flights lower than airlines?

Some ticket agents have stated that flight search tools are able to identify lower prices on OTA websites than are available on airline websites and that the lower fare or both fares are displayed absent any airline restriction. If lower prices are identified by OTAs, do these prices serve as a competitive check on airline prices when displayed on flight search tools adjacent to the prices offered by airlines?

In the past, OTAs negotiated special deals, rates, and promotions from airlines that resulted in consumers obtaining discounted fares. More recently, it is our understanding that contractual arrangements between airlines, GDSs, and OTAs generally include provisions that prevent OTAs or airlines from offering discounted fares that are not available through all other outlets. Accordingly, discounted fares that might otherwise be available to consumers are no longer offered. We request information on how these types of private contractual arrangements impact consumers and whether they are unfair or anticompetitive.

Resources Needed for Competitive Entry

Some stakeholders have argued that having flight information for multiple airlines available through the flight search tools of OTAs and metasearch entities operates a platform for smaller and new entrant airlines to compete with larger, better known airlines. They suggest that absent ticket agent websites that offer the flight information of multiple airlines, consumers will fly only well-known carriers that they recognize from advertisements and the airline's continuous length of operation in a given market. If OTA and metasearch entity websites do not provide the flight information of larger, better known airlines, will consumers stop using those websites? If consumers do not use those websites, and instead search only airline websites, will

that impact the ability of smaller or new entrant airlines to compete with larger, better known airlines because consumers will not search websites that do not include largest airlines?

Conversely, would the ability of new entrant airlines to compete with larger airlines be enhanced by the lack of competition if large, well-known airlines limit or do not permit information on their flights to be displayed on OTA or metasearch entity websites and therefore consumers find only smaller airline flight options on those sites? Is Department action in this area necessary to ensure airline restrictions on the distribution or display of flight information does not harm competition? If so, what action is appropriate?

We are requesting information on all of the issues and concerns identified above and any information relevant to this issue.

ISSUED THIS 18TH DAY OF OCTOBER, 2016, IN WASHINGTON, D.C.

-ORIGINAL SIGNED-

Molly J. Moran
Acting General Counsel