

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**COMPLAINT OF THE AMERICAN SOCIETY OF
TRAVEL ADVISORS, INC. AGAINST AMERICAN
AIRLINES ALLEGING UNFAIR PRACTICES AND
REQUEST FOR RELIEF PURSUANT TO 49 U.S.C. §
41712**

Docket No. _____

Communications with respect to this submission should be directed to:

Peter N. Lobasso
Senior Vice President & General Counsel
American Society of Travel Advisors, Inc.
123 N. Pitt Street, Suite 400
Alexandria, VA 22314
(703) 739-6854
plobasso@asta.org

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TABLE OF CONTENTS

I. INTRODUCTION AND PARTIES 3

II. RELEVANT RECENT HISTORY OF THE DOMESTIC AIRLINE INDUSTRY 5

III. THE CURRENT COMPETITIVE LANDSCAPE OF THE INDUSTRY 6

IV. HISTORY OF NDC AND INDUSTRY READINESS TO ADOPT IT 9

V. ASTA'S EFFORTS TO DATE 12

VI. SPECIFIC ACTIONS TAKEN BY AA IN IMPLEMENTING NDC AND THEIR EFFECTS 14

 A. Channel Discrimination and Resulting Price Discrepancies 14

 B. Non-Economic Effects on Air Ticket Distribution Since April 3 16

 C. Other Anti-Competitive Actions Taken by American 19

VII. LEGAL STANDARD AND ARGUMENT 21

VIII. REQUEST FOR RELIEF 24

 EXHIBIT A – NDC FUNCTIONALITY ASSESSMENT 26

 EXHIBIT B – LETTER TO VASU RAJA, AMERICAN AIRLINES CHIEF COMMERCIAL OFFICER 28

 EXHIBIT C – LETTER TO CONSUMER AND ANTITRUST DIVISIONS OF DEPARTMENT OF JUSTICE 30

COMPLAINT OF THE AMERICAN SOCIETY OF TRAVEL ADVISORS, INC. AGAINST AMERICAN AIRLINES ALLEGING UNFAIR PRACTICES AND REQUEST FOR RELIEF PURSUANT TO 49 U.S.C. § 41712

I. INTRODUCTION AND PARTIES

The American Society of Travel Advisors, Inc. (“ASTA”) is a § 501(c)(6) not-for-profit organization whose primary purpose is to facilitate the business of selling travel through effective representation, shared knowledge and the enhancement of professionalism. Established in 1931, ASTA is the world’s leading association of travel advisors (also referred to as travel agents), representing agencies of all sizes, from the smallest home-based independent advisors to storefront retail agencies to travel management companies such as CWT, as well as the largest household-name online travel agencies such as Expedia.

ASTA’s membership, over 8,000 strong currently, also includes travel suppliers, including airlines, hotels, car rental companies, cruise lines and tour operators, among others. According to the latest data from the U.S. Census Bureau, there are close to 15,000 retail travel agency locations in the U.S. employing over 102,000 people, plus an additional 60,000 self-employed travel advisors. The vast majority of these businesses (98 percent) are small according to the U.S. Small Business Administration’s (SBA) size standards, and over two-thirds of them are owned and operated by women. As of 2019, they collectively accounted for an annual payroll output of \$5.5 billion and annual revenues of \$17.7 billion. In 2019, travel agencies sold nearly 830,000 airline tickets *per day*, representing 48 percent of total sales and aggregate spending of more than \$97 billion.¹

American Airlines (hereinafter referred to as “American” or “AA”) is a domestic airline headquartered in Fort Worth, Texas. As of January 2023, it was the largest airline in the world when measured by scheduled passengers carried and revenue passenger miles.² American, together with its regional partners and affiliates, employs over 130,000 and operates an extensive international and domestic network to more than 350 destinations in 60 countries.³ AA is a member of the Oneworld® Alliance.⁴

Regional service is provided by independent subsidiary carriers operating under the name American Eagle. AMR Corporation is the parent company of both American Airlines and American Eagle. Together, American Airlines and American Eagle operate out of ten domestic hubs, with Dallas/Fort Worth (DFW) being its largest.⁵ The airline transports nearly 200 million passengers annually with an average of more than 500,000 passengers daily.⁶

¹ Airlines Reporting Corporation (ARC). [Airline Sales Statistics](#).

² A revenue passenger mile (RPM) is a transportation industry metric that shows the number of miles traveled by paying passengers and is typically an airline traffic statistic. Revenue passenger miles are calculated by multiplying the number of paying passengers by the distance traveled. For example, an airplane with 100 passengers that flies 250 miles has generated 25,000 RPM. *Investopedia.com*, <https://www.investopedia.com/terms/r/revenue-passenger-mile-rpm.asp> (accessed July 10, 2023).

³ "American Airlines Group – About us – American Airlines". *aa.com*, <https://www.aa.com/i18n/customer-service/about-us/american-airlines-group.jsp> (accessed July 10, 2023).

⁴ *Id.* Thirteen air carriers currently comprise the Oneworld Alliance, including British Airways, Cathay Pacific Airways and Qantas Airways. Together they operate more than 4 million flights annually to more than 900 destinations in 170 territories globally. *Id.*

⁵ The others are Charlotte (CLT), Chicago–O’Hare (ORD), Los Angeles (LAX), Miami (MIA), New York (JFK and LGA), Philadelphia (PHL), Phoenix–Sky Harbor (PHX), and Washington–National (DCA).

⁶ *Airwaysmag.com*, <https://airwaysmag.com/airlines-with-the-largest-workforce/> (accessed July 10, 2023).

ASTA writes once again to bring more fully to the attention of the Department of Transportation (DOT) our grave concerns regarding AA's implementation of New Distribution Capability (NDC) technology which began on April 3, 2023. NDC is a technology communication standard developed by the International Air Transport Association (IATA) that fundamentally changes how airlines provide fare and ancillary content to travel agencies, travel management companies (TMCs) and other ticket distributors through a set of application programming interfaces, or APIs. NDC is anticipated to eventually replace the current EDIFACT protocol, which has been in use since the 1980s.⁷

As will be detailed below, while NDC may hold much promise for the future of air ticketing, the impact of its adoption on the entire air ticket distribution ecosystem – and in the manner imposed on the industry by AA – can scarcely be overstated. Among other things, as promised, American immediately removed over 40 percent of its fare inventory from traditional, *i.e.*, non-NDC booking channels. As we predicted would occur in our letter of March 28, 2023 to Secretary Buttigieg, because the travel industry as a whole was (and remains) largely unprepared to fully adopt NDC, American's decision has already caused widespread disruption to the air ticket distribution ecosystem and serious consumer harm in the form of higher airfares and further reduced competition, in terms of both airline travel itself as well as air ticket distribution.

We will also establish in the discussion that follows that the continued erosion of meaningful competition in the airline industry, a trend which regrettably shows no sign of abating, has greatly contributed to the ability of AA to abuse its dominant market power to the detriment of not only consumers, which are rightfully DOT's primary concern, but also its competitor airlines and air ticket distributors, not to mention the thousands of businesses who book travel through a TMC, all of whom owe a duty of care to their traveling employees.

Since early this year, and both before and after the launch of the NDC initiative by AA on April 3, 2023, ASTA has brought its concerns to American on multiple occasions to urge a reasonable and temporary delay in its NDC implementation and to restore all fare inventory to the EDIFACT channel until such time as all of the necessary technology, systems, training and processes are in place. Doing so would allow for a smooth transition to NDC, one that does not inflict egregious harm on either consumers or other key stakeholders in the travel industry. Unfortunately, however, the repeated and reasonable calls of ASTA and others in the industry to pause NDC have been ignored by AA, and if anything, AA appears more determined than ever to maintain its present course. Having exhausted these good faith efforts, ASTA is now compelled to seek the Department's intervention.

Authority to investigate and take appropriate action to prohibit unfair and deceptive practices in air transportation and the sale of air transportation is vested in the Department pursuant to 49 U.S.C. § 41712 and its implementing regulations. Specifically, subsection (a) of the cited statute empowers the Department to investigate and decide whether an air carrier, foreign air carrier, or ticket agent is

⁷ 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).

engaged in an unfair or deceptive practice in air transportation or the sale of air transportation.⁸ As the balance of this submission will conclusively establish, ASTA respectfully submits that there is overwhelming evidence that AA's actions constitute an ongoing unfair practice that warrants swift and decisive action by the Department.

II. RELEVANT RECENT HISTORY OF THE DOMESTIC AIRLINE INDUSTRY

The predicate for this complaint is the systemic collapse of airline competition in the years following the passage of the Airline Deregulation Act of 1978.⁹ 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 1958.¹⁰ Under that system, virtually every critical aspect of air carrier operation was subjected to lengthy and costly processes of examination, including entry and pricing. Every competitive move by any carrier was subject to challenge by competing carriers, often leading to hearings and other administrative procedures lasting years. Price initiatives were rare because disclosure had to be made in advance and were therefore subject to challenge by both competitors and by the government, and others as well.

Retail travel sellers, then known as travel agents and now also 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 immediate post-deregulation period saw an explosion of competitive initiatives among existing air carriers and the entry of new carriers aspiring to challenge the incumbent carriers 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 ultimate sunset in 1985 and the transition of residual and limited regulatory authority to the Department of Transportation. Average price per passenger mile declined. Free entry led to the emergence of many new airlines and to often frantic challenges to incumbent carriers in multiple markets.

However, it did not take long for a new reality to set in. Unforeseen and unplanned-for economic forces led to multiple carrier failures among both incumbent carriers 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.¹¹ The CRS-owning airlines used them to advantage their own sales over those of 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

⁸ In addition to Section 41712, DOT's authority to regulate unfair and deceptive practices is based in the Department's rulemaking authority under 49 U.S.C. § 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations.

⁹ 49 U.S.C. § 1371, *et seq.*

¹⁰ 49 U.S.C. § 1301, *et seq.*

¹¹ Ravich, Timothy. *Deregulation of the Airline Computer Reservation Systems (CRS) Industry*, 69 *Journal of Air Law and Commerce* No. 2, (2004) at 392.

by DOT in 1984, on the principle that each CRS was a “essential facility” that must be made available on equal terms to all airlines and travel agents.¹²

The effects of airline ownership of the CRSs eventually changed 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 were finally ended entirely in mid-2004. Internet distribution enabled airlines to reach end-customers directly and facilitated the entry and success of non-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 for researching and booking flights.

III. THE CURRENT COMPETITIVE LANDSCAPE OF THE INDUSTRY

Despite these and other pro-competition deregulatory actions by both the government and the industry, the peculiarities of the air travel marketplace affected 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 U.S. 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, 67.2 percent in 2022.¹³ And of these four airlines, AA’s share is the largest, standing at slightly under 18 percent of the overall market:

American	17.6%
Southwest	17.1%
Delta	17.1%
United	15.4%

Six much smaller airlines account for a total share of 25.4% with the balance representing a handful of branded codeshare partner lines of the larger carriers.¹⁴ 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 include high startup costs (*e.g.*, a new Boeing 737 can cost upwards of \$80 million), intense competition for airport gates, and large economies of scale.¹⁵

¹² *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).

¹³ *Airline Industry Statistics [2023]: 28 Facts To Know Before You Fly*. <https://www.zippia.com/advice/airline-industry-statistics/> (accessed March 23, 2023). Market share data current as of 2022.

¹⁴ *Id.*

¹⁵ *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).

While the above-cited statistics establish AA's preeminent position in the market, they fail to fully capture the extent of AA's dominance over its rivals in its hubs, which serve many of the nation's largest cities. For example, in Dallas-DFW, American Airlines operates 85 percent of the flights.¹⁶ Likewise, a staggering 89 percent of flights in Charlotte are operated by AA. AA 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.¹⁷

And looking at city pairings, it is clear that AA dominates thousands of routes in the United States and worldwide. For example, in the Department of Justice's antitrust case against AA and JetBlue, it alleges, 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, 57% of BOS to PHL, 64% of Nashville (BNA) to Martha's Vineyard (MVY), 65% of New Orleans (MSY) to MVY, and 63% of Buffalo (BUF) to Palm Springs (PSP).¹⁸ When viewed in light of these numbers, evidencing AA's monopoly power in several key markets, its ability to effectively impose its will on consumers and other stakeholders without fear of any meaningful response becomes clearer, and even more alarming from a competitive standpoint.

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. The largest three such alliances – Star, SkyTeam and Oneworld® – collectively include 59 participating airlines operating in 195 countries.¹⁹ 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 a maintain uniform standards of services and security, while at the same time operating independently to preserve brand identity.²⁰

The impact of these developments can hardly be overstated. In 2022, there were 853 million systemwide enplanements in the U.S., 102 million of which international.²¹ Interestingly, as was the case with NDC, 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. Put another way, what AA's dominant position allows it 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 has published four studies of the price and service effects of alliances and joint ventures.²² It also monitors some of the effects of these alliances, although most of the reports are not available for public evaluation. That said, it appears the current view of the government is that alliances, including those granted antitrust immunity, are beneficial for consumers in that they provide more

¹⁶OAG Megahubs 2022. OAG Aviation Worldwide Limited. www.oag.com (accessed March 22, 2023).

¹⁷ *Id.*

¹⁸ 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).

¹⁹ *Airline Alliances Explained: Benefits, Major Players, and Other Types of Partnership*. AltexSoft. <https://www.altexsoft.com/blog/airline-alliances-explained/> (accessed July 11, 2023).

²⁰ *Id.*

²¹ *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).

²² *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).

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

It is also noteworthy that the analyses ASTA was able to review do 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 continuing into the following decade. This omission is all the more glaring given the parallel development by IATA of NDC beginning in 2012, discussed in detail below, and the potential for any 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.

In 2009, the Department of Justice (DOJ) recognized that an overly cautious approach to anti-competitive concerns raised by single-firm conduct was dangerous for consumers and for market competition generally.²³ Because relevant antitrust markets are defined by routes or city pairs, AA's share is extremely high in a vast number of routes (such as Dallas-Fort Worth to Charlotte or Miami to New York). But pursuing a complaint with DOJ, such as under Section 2 of the Sherman Antitrust Act, may lead to a lengthy investigation and an acceptable remedy too far down the road – assuming that DOJ has the bandwidth to undertake the matter, in light of their robust enforcement efforts against big tech companies and others. This underscores the need for DOT to take prompt regulatory action.

Air travel distribution is certainly undergoing something of a revolution because the airlines have collectively decided that a different technological approach to air ticket distribution – NDC – is necessary to capture more control of their product and how it is presented to the traveling public. At this point, few within the industry realistically oppose this move, and in that sense the die is already cast. However, the understanding of what is afoot changes when one of the four dominant carriers elects, in a classic monopolist's move, to withhold a large share of its product from a portion of the market to effect an immediate change in the way the product is presented. Clearly, much more is at stake here than just a fight over new technology, as AA's reckless implementation has served to further reduce competitive pressure on the airlines, a move that should be extremely concerning to the government.

The power to withhold so much inventory, combined with the limitations on the number of airline competitors in any given city-pair market, and with little if any concern for negative economic repercussions, is powerful evidence of monopoly-type power. This is particularly true in the post-pandemic marketplace where the airlines' competitive initiatives are severely constrained, with no end in sight, by shortages in everything from pilots to airport workers to aircraft and gates. And that is precisely what American is doing in its calculated approach to adoption of NDC. As will be detailed later, AA's actions have already had serious negative effects on the large share of the retail travel market that historically has preferred, and indeed insisted on, buying through independent distribution channels such as travel agencies and TMCs.

²³ *Justice Department Withdraws Report on Antitrust Monopoly Law*. Office of Public Affairs, U.S. Department of Justice. <https://www.justice.gov/opa/pr/justice-department-withdraws-report-antitrust-monopoly-law>

IV. HISTORY OF NDC AND INDUSTRY READINESS TO ADOPT IT

IATA Resolution 787 established a process for developing a technical standard for data exchange in the air transportation marketplace using Extensible Markup Language (XML) and established certain goals associated with use of the new technical 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 inspired often-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 on to 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.²⁴

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.²⁵

In May 2014, the Department issued an Order to Show Cause why Resolution 787 should not be approved.²⁶ 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."²⁷

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.²⁸

²⁴ U.S. Department of Transportation. *Order 2014-5-7 (Order to Show Cause)* (served May 21, 2014), at 5.

²⁵ DOT-OST-2013-0048-0388 (comments of the American Antitrust Institute).

²⁶ U.S. Department of Transportation. *Order 2014-5-7* (served May 21, 2014).

²⁷ *Id.* at 7.

²⁸ *Id.* at 9.

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.²⁹

Modernized technical data exchange standards and practices could also 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 amenities such as extra baggage, seat selection, premium seating, boarding priority, meals, in-flight entertainment and Wi-Fi. Hence, travel agents would have access to a wider range of products to offer to their customers.³⁰

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.³¹ 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,”³² and it imposed conditions on anonymous shopping to protect passenger privacy.³³

In the intervening years, conceptual resistance to NDC has largely dissipated, aided in no small part by the efforts of the major global distribution systems (GDSs), upon which all independent retailers depend, to develop NDC-compliant APIs and links. However, 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.

To illustrate, attached hereto as Exhibit A is a matrix showing some of the significant functionality disparities that currently exist among the three major GDSs, parties that we cannot overstate are critical actors in the distribution ecosystem that have long been committed to adoption of NDC. The matrix also indicates that for many key functionalities currently not supported by one or more of the GDSs, there is no anticipated timeline stated for such support. Plainly, the industry remains unprepared for an immediate and full transition to NDC-only air ticket distribution and complete functionality is likely years, not months, away.

Notwithstanding the foregoing, all of which American was and is well aware of, in early December 2022 it publicly announced that as of the following April it would revoke “established” channel access to what it estimated at the time could be more than 40 percent of the fares that

²⁹ *Id.* at 10.

³⁰ *Id.* at 11.

³¹ U.S. Department of Transportation. Order 2014-8-1 (served August 6, 2014).

³² *Id.* at 4.

³³ *Id.* at Appendix, page 2.

historically had been purchased through longstanding GDS connections.³⁴ Prior to the April implementation date, it was unclear which fares AA intended to remove from the EDIFACT channel³⁵ though the suspicion was – and has since been confirmed – that lower-cost fares would predominate so as to create a strong disincentive to book via the established channel.³⁶ Even if that were not the case, however, given American’s market share the scale of the fare removal alone virtually guaranteed a massive disruption to domestic air ticket distribution, even if all of the relevant stakeholders were fully prepared to implement NDC.³⁷ That, of course, was not the case in April nor is it the case today.

Seemingly without any regard for other stakeholders’ commercial readiness or the feasibility of a smooth transition, American maintained that it would forge ahead as planned, this despite the fact that most of the key players, including TMCs, GDSs and third-party technology partners such as SAP Concur, had communicated unequivocally that they would not be fully prepared to facilitate NDC implementation by April. 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. To illustrate, according to a *Business Travel News* survey of TMCs conducted in February, only about 31 percent of those responding at the time stated they were fully prepared to support increased buyer demand and airline requirements for NDC content.³⁸ Another 44 percent indicated that they would be ready at some point in 2023, while one in four said it would take even longer to be NDC-ready.³⁹

In the week prior to the April 3 NDC implementation date, BCD Travel released an open letter seemingly critical of American’s dogged intention to impose the technology on the industry despite persistent readiness concerns, stating “while BCD is confident in its readiness, no one can offer a seamless customer solution by April 1.”⁴⁰ Continuing, BCD observed that the situation “puts customers at risk and harms the ecosystem.” Mark Stansbury, Manager of Global Travel and Events for Lockheed Martin Corp., also quoted in the letter, put it more bluntly: “Unilaterally driven changes will drive further disruption as other partners in the ecosystem seek to compensate for poorly planned changes . . . [t]he changes will entail additional costs to the end user—with no known substantive value to compensate.”⁴¹

Other voices within the industry have been similarly harsh in their assessment of AA’s imposition of NDC on an unready industry, citing myriad functional issues that have resulted in serious operational difficulties for travel agencies and TMCs. In an article for *Business Travel News*, a Sabre spokesperson stated, “[a]gencies are faced with the tricky reality of managing multiple technology partners, such as

³⁴ Airoldi, Donna. [American Tells TMCs to Be NDC-Ready by April or Lose Some Content Access](#). *Business Travel News* (December 5, 2022).

³⁵ 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”).

³⁶ A detailed comparison of the serious price discrepancies reported between NDC and non-NDC enabled booking channels appears in Section VI, *infra*.

³⁷ Using [Airlines Reporting Corporation](#) (the best proxy for overall travel agency airline sales) and 2022 data from the [Bureau of Transportation Statistics](#), ASTA estimated that over 17 million tickets annually would be impacted by AA’s initiative.

³⁸ Airoldi, Donna. [What Does Being NDC-Ready Mean?](#) *Business Travel News* (March 21, 2023).

³⁹ *Id.*

⁴⁰ Airoldi, Donna. [BCD Decries “Forcing Solutions” as AA Deadline Looms](#). *Business Travel News* (March 27, 2023).

⁴¹ *Id.*

mid- and back-office solutions, corporate booking tools and other operational systems. Each of those technology companies has work to do to advance NDC—no one company has a silver bullet.”⁴² Among the specific problems cited by TMCs in the article were the inability to exchange “an EDIFACT ticket for an NDC one, keeping control of unused tickets and the inability to use re-shopping tools for NDC bookings.”⁴³

The ability to service bookings using third-party tools, such as SAP Concur’s TripLink, relied upon by many TMCs, is also compromised in an NDC environment.⁴⁴ TMC representatives cited numerous additional pain points, including booking multileg trips that are not a pure roundtrip (e.g., “open jaw” itineraries), various auto-servicing functions that do not work the same way in NDC as they do in EDIFACT and the inability to upgrade NDC bookings to a higher class of service.⁴⁵ These challenges “put[] the onus on human intervention to address each situation.”⁴⁶

In the intervening three-plus months since American went live with its NDC initiative, there has been little, if any, material progress with respect to the industry’s readiness. To cite one more example, in late June, Andrew Crawley, President of American Express Global Business Travel, acknowledged the complexity associated with the lack of uniformity among NDC APIs, stating, “[f]or every airline API, we have to implement by GDS, by country, by airline.” Continuing, he added, “[t]he implementation and the cost are going to be a lot more complicated and longer than the airlines would like, the TMCs would like and the customers would like.”⁴⁷

The foregoing establishes that NDC represents a quantum shift in how airline inventory is presented to buyers and how it is priced, a shift for which most of the key players were and remain largely unprepared. However reasonable the Department’s beliefs concerning the benefits of NDC may have been when Resolution 787 was approved, the reality of its implementation nearly a decade later stands in stark contrast to that optimistic view. Worse still, American was fully aware of the industry’s lack of readiness to implement its NDC “solution,” and the serious harm it would inevitably cause, but proceeded anyway simply because its dominant market position permitted it to do so.

V. ASTA’S EFFORTS TO DATE

Shortly after American’s December 5, 2022 public announcement concerning its intention to implement NDC the following April, numerous ASTA member agencies and TMCs began voicing concerns about the serious disruption to their customers’ travel, and their ability to support customer travel within their own business operations, they foresaw should AA proceed as intended. Sensing the urgency of the situation, its members’ vested interest in the matter, and its sincere desire to avoid the likely

⁴² Airoldi, Donna. [TMCs Wrestle with New NDC Reality](#). *Business Travel News* (May 23, 2023).

⁴³ *Id.* It has been reported that a third-party technology platform, namely, Spotnana, has integrated ticket exchange functionality; however, the majority of ticket agents do not utilize the platform and as such this remains a serious ongoing limitation.

⁴⁴ *Id.*

⁴⁵ For yet another independent take on the lack of industry readiness and the servicing capabilities currently lacking in NDC’s present state, see Pestronk, Mark. [NDC is Wanting But There’s No Avoiding it](#). *Travel Weekly* (June 29, 2023).

⁴⁶ *Id.*

⁴⁷ Baker, Michael. [Amex GBT’s Crawley Warns of NDC “Distraction.”](#) *Business Travel News* (June 28, 2023).

negative outcomes, ASTA privately reached out to appropriate senior leadership at AA to request a meeting on the subject.

On February 15, 2023, a select group of the largest ASTA member agencies and TMCs met with Anthony Rader, American's Director of Airline Retailing Technology, to candidly share their concerns about the impending NDC implementation date given their collective knowledge and assessment of the readiness of the industry as a whole. And while we appreciated Mr. Rader making himself available for a discussion, the meeting only served to confirm the participants' suspicion that AA's statements regarding implementation readiness were exaggerated, with a number of crucial questions remaining unanswered.

Thereafter, on February 23, ASTA President and CEO Zane Kerby sent a letter to Vasu Raja, American's Chief Commercial Officer to formally request that AA "postpone full NDC implementation through the end of 2023." A copy of the letter is annexed as Exhibit B. As the rationale for the request, the letter expressed ASTA's view that "significant hurdles to a smooth transition to NDC stubbornly remain" and specifically raised the industry's lack of readiness for the anticipated April implementation. Importantly, Mr. Kerby also warned that "much more work need[ed] to be done if NDC implementation is to be achieved successfully and without massive disruption to the air ticket distribution ecosystem..." No substantive response from Mr. Raja, or anyone acting on his behalf at AA, was ever received.

A second meeting between Mr. Rader and ASTA member agencies and TMCs, as well as corporate travel buyer customers was held on March 3, and once again the information shared with the attendees did little, if anything, to ease their concerns. Moreover, American communicated nothing to suggest that it, despite its knowledge of ASTA's position that greater industry readiness was essential, had any intention of modifying its announced timeframe for NDC implementation.

Its private efforts to achieve a reasonable resolution with American having borne no fruit, on March 8, ASTA issued a press release publicly calling on AA to postpone NDC implementation through the end of 2023.⁴⁸ In it, ASTA reiterated that key industry players were not technologically ready to process NDC transactions and that as a consequence "significant disruptions to shopping and booking, including ticketing, refunds and re-ticketing [were] inevitable." Once again, there was no direct response from American, only reports in the trade press indicating that AA was committed to stay the course.⁴⁹

As noted in the introduction, on March 28 ASTA President and CEO sent a letter to Transportation Secretary Pete Buttigieg to bring ASTA's ongoing concerns about AA to the Department's attention and to seek its intervention. That correspondence resulted in two subsequent meetings, held on April 14 and June 5, between selected ASTA staff and members and several DOT representatives in the Office of Aviation Consumer Protection, during which the industry's concerns regarding NDC implementation were addressed.⁵⁰

Given the plain and serious consumer harm likely to occur and the obvious antitrust implications associated with American's intended actions, it was believed that in addition to DOT, review by the U.S.

⁴⁸ American Society of Travel Advisors. [American Society of Travel Advisors Requests American Airlines Delay Plan to Implement New Distribution Capability in April 2023](#) (March 8, 2023).

⁴⁹ See, Boehmer, Jay. [AA 'Firm in Our Resolve' on NDC Plans, as ASTA Issues Plea for Delay](#). *The Beat* (March 9, 2023).

⁵⁰ Insofar as the Department participated in those meetings, we see no need to recapitulate here the specifics of the discussions that were had.

Department of Justice (DOJ) was warranted. Accordingly, on March 30 ASTA also sent a letter to the DOJ's Consumer Protection and Antitrust Divisions. A copy of the letter is annexed as Exhibit C. Among other things, the letter stressed that AA's intended anti-competitive conduct must be viewed not only from the perspective of its status as an airline, but also as an *air ticket distributor*. Specifically, we wrote:

[W]ith respect to the distribution of airline tickets, as opposed to the provision of air travel itself, the other carriers are not AA's only competitors. To the contrary, travel agencies, TMCs, GDSs and other intermediaries not only compete with the airlines on this basis, they also play an indispensable role in air ticket distribution, without which the airlines would be unable to serve their passengers. In 2019, travel agencies sold nearly 830,000 airline tickets per day, representing fully 48 percent of total sales . . . [i]t goes without saying that withholding 40 percent of AA's fare inventory from non-NDC channels will therefore place our members and other [distribution] intermediaries at a very substantial competitive disadvantage. Plainly, AA's action, when viewed in the context of air ticket distribution . . . warrants close scrutiny from an antitrust perspective.

In the light of what it characterized as a "clear abuse" of its market power, ASTA concluded the letter by calling on DOJ to "immediately commence an investigation into the anticompetitive effects of AA's decision, particularly as it relates to those markets where it has monopoly or near-monopoly power." We continue to await a response from DOJ.

VI. SPECIFIC ACTIONS TAKEN BY AA IN IMPLEMENTING NDC AND THEIR EFFECTS

Despite vocal protestations expressing their legitimate concerns and warnings of serious negative effects on consumers by ASTA numerous other travel industry stakeholders, American nevertheless proceeded as it promised it would. On April 3, AA implemented its version of NDC and in connection therewith removed a substantial portion – which it previously stated would be "at least" 40 percent – of its fare inventory out of the traditional EDIFACT channel.

This immediately had two substantial effects: 1) significant observed price discrepancies between fares for the same flights booked via NDC-enabled channels or AA's website and those booked via the established channel, with the established channel almost invariably being the higher-priced option; and 2) difficulty, and in many cases, an impossibility to shop for, book and service bookings in the traditional manner, resulting in, among other things, extreme operational inefficiencies resulting in higher transactional costs⁵¹ and an impairment of the ability of both TMCs and their corporate clients to fulfill the duty of care owed to business travelers. These are discussed in detail below.

A. Channel Discrimination and Resulting Price Discrepancies

Almost immediately following the April 3 implementation date, ASTA began to receive reports from its members about significant variations in American ticket prices when comparing the fares available via EDIFACT versus those published on NDC-enabled channel or American's website, aa.com. The following table displays a sampling, by no means exhaustive, of the routes for which significant differences were reported in the 45 days following NDC implementation. It is noteworthy that the NDC-

⁵¹ It is noteworthy that AA contractually prohibits agencies from recouping these higher transactional costs from their clients. This will be discussed in subsection (C) below.

channel price advantage is not limited to any particular fare class, as both economy fares and first-class fares were higher when booked via the EDIFACT channel.

Table 1: Pricing Discrepancies Reported by ASTA Members (May 2023)

Departure Date	Route (Round Trip)	Flight No.	Cabin	Non-NDC Channel	NDC/AA.com	Difference
10 April	HOU-MIA	1465	Main	\$474	\$380	\$96
11 April	ATL-DFW	980	Main	\$430	\$260	\$170
17 April	ORF-DFW	1847	Main	\$1,228	\$681	\$547
21 April	MEM-ASE	1827/3291	First	\$1,766	\$1,207	\$559
24 April	DFW-LAX	1953	First	\$1,655	\$1,255	\$400
30 April	ATL-PHX	1311	Main	\$448	\$338	\$110
8 May	DCA-MSP	3884	First	\$1247	\$977	\$270
14 May	DCA-MSY	4367	First	\$1155	\$647	\$508
15 May	DFW-PDX	2655	First	\$1,716	\$1,388	\$328

ASTA members were not the only ones sharing alarming reports of price discrepancies between NDC and non-NDC channels. Even within the first full month of AA’s NDC implementation, it was already apparent to many others that NDC fares were enjoying a material price advantage over the EDIFACT fare inventory. As of May 6, 2023, business travel platform Amtrav reported that economy fares were cheaper via NDC channels 35 percent of the time, with an average fare advantage of \$62. Disparities were even more prevalent and acute with respect to first class tickets where the NDC channel offered the lower fare a whopping 88 percent of the time, with an average fare differential of \$302 as compared with the established channel fare. To date, and across all fare classes, Amtrav reported NDC fares being lower on 36 percent of all bookings, with an average price advantage of \$115 in favor of the NDC channel.⁵²

This disturbing trend has continued unabated into the third quarter of the year, and reports of price discrimination between the two channels have only become more widespread. In late July and at ASTA’s request, a respected third-party fare data aggregator compared EDIFACT and NDC-channel fares for 142 different domestic city pairs as well as several international routes flown by American.⁵³ For each route, the aggregator also compared fares across different cabin classes (main cabin, main cabin extra, business and first class) where fares in both channels were published. Across the board, and without exception, the average NDC channel fare was substantially lower.⁵⁴ The findings are summarized in Table 2 below.

⁵² *NDC is Affecting Corporate Travel*. [AmTrav](#) (accessed July 12, 2023). Statistics concerning price discrepancies are updated daily.

⁵³ Due to concerns of commercial repercussions, the aggregator in question, whose services are used by numerous travel agencies, TMCs and other industry stakeholders, provided the information on the condition that ASTA would not publicly attribute the data to it by name.

⁵⁴ Comparison data based upon published fares for 142 domestic routes on July 24, 2023 for one-way travel on August 14, 2023. Not all route and cabin class combinations were available for comparison in both NDC and EDIFACT channels on that date.

Table 2: Third-Party Aggregator Fare Pricing Comparison (July 2023)

Cabin Class	Restriction	Average NDC Price Advantage*
Main Cabin	Restricted	17.0%
Main Cabin Extra	Unrestricted	57.8%
Business Class	Restricted	40.5%
Business Class	Unrestricted	29.3%
First Class	Restricted	47.6%
First Class	Unrestricted	36.3%

* Expressed as a percentage of the comparable EDIFACT channel fare.

The conclusion is clear and indisputable: the removal by American of 40 percent of its fares has produced, based on fares offered and fares sold, *significantly* higher prices for travelers that are either unwilling or unable to buy through the channels that American demands. Having determined that this is indeed what AA is doing, it is natural to question *why* it has committed to this reckless course of action. We believe American has made a strategic decision to forsake short-term profits⁵⁵ to achieve an even stronger, anticompetitive business position long-term, one secured by denying access to fare inventory. It inevitably follows that withholding such a substantial portion of its fares from critical independent distribution channels is having, and will continue to have, a serious negative impact on the traveling public, with corporate travel buyers in particular bearing a disproportionate degree of the pain.

B. Non-Economic Effects on Air Ticket Distribution Since April 3

Whatever AA’s ultimate objective may be, the significant price penalty consumers will generally incur when booking air tickets on AA via an established channel is not the sole disadvantage associated with American’s actions. Far from it. To the contrary, equally or perhaps even more disruptive is the impact on an agency’s ability to service their clients in the manner that both the agency and the consumer have come to expect.

Based on extensive consultation with our travel agency and TMC members, particularly those focused primarily or exclusively on business travel over the last three-plus months, ASTA has confirmed that nearly all of the anticipated difficulties associated with booking AA tickets and servicing existing American bookings since the April 3 implementation have indeed been experienced. Worse, given that the industry as a whole remains far from “NDC ready,” there is no immediate relief on the horizon.

ASTA members and other stakeholders, as reported in the travel media and elsewhere, have reported the following significant functional shortcomings that result in a direct negative consumer impact and have made AA bookings unduly burdensome as compared to the *status quo ante*:

Comparison Shopping – The ability to accurately perform comparison shopping for the best airfares has been severely compromised, as 40 percent of the largest U.S. carrier’s EDIFACT content has disappeared from view. Now, review of airline website content will be required,

⁵⁵ In this regard, based on early anecdotal reports received from ASTA members, it seems thus far that the impact of AA’s actions on its overall market share has been negligible. This we attribute not to the insignificance of its actions but rather to the already dominant, near monopoly, market power AA exerts over its competitors. If this is any indication of the long-term outlook, it appears market forces will not be effective and regulatory action will be necessary to restore the competitive balance.

which will cost consumers both time and money. No better, in some instances content will be visible on an online booking tool but not actually bookable by the agent, which invariably leads to complaints and dissatisfied clients. This is a far cry from the streamlined process promised by NDC proponents a decade ago.

Ticket Servicing – Travel agency “servicing” of tickets on their clients’ behalf – the process of cancelling, changing and making other modifications to the client’s itinerary, is often a manual one that requires a phone call to the carrier in question – has become far more challenging for agencies and TMCs. This in turn has resulted in a significant reduction in the quality and responsiveness of customer service.

Ticket Exchanges – In some systems, consumers are not able to exchange a ticket issued via established channels for one issued through NDC-enabled channels, and vice versa. This introduces unnecessary friction and consumer dissatisfaction into the servicing relationship and often strictly limits consumer options when travel plans change, as they frequently do. Consumers should not have to be concerned about which channel a ticket was purchased through in order to affect a routine transaction that was simple to process via the established channel.

Cancelled/Partially Used Tickets – Again, in some systems, consumers cannot utilize flight credits for past cancelled, unused or partially used tickets for new tickets through NDC connections. Thus, these consumers will forfeit, at least temporarily, and possibly permanently, the value of these tickets.

Note too that this is far from an exhaustive list of the problems encountered. To the contrary, these are simply the issues most commonly reported by our member companies and other relevant stakeholders. Other identifiable impacts of AA’s imposition of NDC on an unready industry include limitations with respect to multi-passenger bookings, certain multi-city and stopover bookings, including for example, “open-jaw” itineraries, the ability for an advisor to search for fares within a three-day window, the ability to add special service requests (SSRs) to certain bookings and the ability to restrict ticketing to certain destinations (due to embargoes, sanctions, and the like).

Beyond the shopping- and servicing-related difficulties associated with American’s NDC implementation, another critical concern is the interference with certain obligations owed to employees when they travel on behalf of their employer to fulfill job responsibilities. Specifically, the term “duty of care” refers to an “employer’s legal obligation to assess and mitigate risks to employees” when traveling for the benefit of the employer.⁵⁶ Under U.S. tort law, the duty of care arises out of a common law or codified obligation between two parties, in this case the employer and the employee.⁵⁷ The party owing the duty can be held liable to the other when the following showing is made: 1) a duty to protect a party exists; 2) that duty was breached; 3) there is a direct or proximate causal link between the protecting parties and the breach; and 4) actual damages result from the breach.⁵⁸

⁵⁶ Claus, Lisbeth and Caulfield, Amber. *Employees Abroad: The U.S. Legal Context of Employer Duty of Care to Internationally Traveling Employees*, 25 Willamette J. Int’l & Dispute Res. 1, 3 (2017).

⁵⁷ *Id.* at 4.

⁵⁸ *Id.* (quoting *Black’s Law Dictionary*, <http://thelawdictionary.org/tort/>).

The case law developed around the duty of care makes evident that the scope of this duty in the employer-employee context is notably broad. Employers generally will be considered responsible for ensuring that all conditions of work are free from recognized hazards that may cause or are likely to cause death or serious physical harm to employees. The obligation also typically extends to all risks that are “reasonably foreseeable,” even where the employer may not have actual knowledge of the specific risk.⁵⁹

Given the scope of the corporation’s duty to their employees when traveling for business purposes, prudent management dictates that they have a responsibility to know where their employees are any time in order to assess whether they may be in harm’s way due to health, safety or security issues, a natural disaster, act of terror, or myriad other possible threatening situations. And if such a situation were to arise necessitating evacuation or other emergency action to extricate the employee from the threat, the corporation would have a responsibility to act diligently in doing so. TMCs provide invaluable assistance to their client businesses in fulfilling this important obligation and this is one of the chief reasons why managed travel programs are widely used by large and medium-sized companies.⁶⁰

However, while the EDIFACT established channel exclusively used by travel agencies and TMCs up to now was well suited for tracking employee whereabouts and thus played a critical role in fulfilling the duty of care, forced use of underdeveloped NDC technology represents a sea change in this regard. By requiring bookings to be made outside of the GDS, for example, via aa.com, in order to obtain the lowest available fare, the TMCs’ ability to meaningfully track employee whereabouts and, by extension, the corporation’s ability to fulfill its duty of care, is severely curtailed.

It is significant to note that even proponents of NDC share ASTA’s view on the detrimental impact of AA’s NDC solution on the duty of care. The following statement of Lee Thomas, Chief Operating Officer and President of Business Travel at ALTOUR, is fairly representative of the sentiment of the industry as a whole and as such is instructive:

While I support the American Airlines NDC initiative, the marketplace technology is simply not ready. Because these third parties are not ready, the TMC role in duty of care is compromised. Supplier direct bookings. . . are not part of our duty of care solution. Businesses serious about corporate responsibility and duty of care for their travelers know an unmanaged travel program weakens their ability to fulfill this responsibility.

Practically speaking, this means that in the event of a severe service disruption, weather event or other natural disaster, strike, civil unrest, or any other unforeseeable force majeure occurrence, an employee traveling on company business won't be served by the employer’s chosen travel agency even though it was selected for precisely this kind of support. In many cases, the employee’s whereabouts won’t even be known. And all of this happened because the ticket was booked on aa.com by the employee himself to obtain a lower fare (recall that the GTAA prohibits agencies from using AA’s websites). What they spent, where they are now, and how they'll get home, is anyone’s guess.

In short, the role travel agencies and TMCs play is nothing less than a critical one as it pertains to fulfillment of the corporate duty of care. Accordingly, intervention by the Department to enjoin AA’s

⁵⁹ Claus, Lisbeth and Caulfield, Amber. *Employees Abroad: The U.S. Legal Context of Employer Duty of Care to Internationally Traveling Employees*, 25 Willamette J. Int’l & Dispute Res. 1, 4-5 (2017).

⁶⁰ *Id.* at 20-21.

actions would be warranted even if there were no other deleterious effects of its NDC implementation, which is plainly not the case.

C. Other Anti-Competitive Actions Taken by American

In conjunction with its implementation of NDC, American has taken other steps that the Department also must be made aware of, as they dramatically impact the ability of travel agencies and TMCs to compete with AA as an air ticket distributor on a level playing field. Specifically, we refer to the extensive changes recently made to American's Addendum to its Governing Travel Agency Agreements ("GTAA").⁶¹

Insofar as all agencies accredited by the Airlines Reporting Corporation (ARC) and IATA must enter into the GTAA in order to sell American Airlines tickets, the GTAA and, by extension, the Addendum is essentially a contract of adhesion, with its terms offered to most agencies on a take-it-or-leave-it basis and with little, if any, opportunity to negotiate commercially reasonable changes. Among the most blatantly one-sided and draconian provisions that appear now in the Addendum are the following:

1. Any violation of any provision of the Addendum – presumably no matter how trivial or immaterial – will “invalidate all commission obligations” to the agent.
2. Automated re-shopping, whether conducted by the agent directly or through an authorized third party, is now a prohibited “abusive practice” by AA. Automated re-shopping involves the use of an automated technology tool to rebook a ticketed passenger on the same flight and in the same cabin class in order to take advantage of a lower fare that has become available.⁶² AA should not be able to prevent an agent or customer from using software capable of identifying fare changes and making ticket changes. This software is especially critical now given that AA's actions have created such significant fare discrepancies between the NDC and EDIFACT channels.

Moreover, ASTA believes that in many cases an attempt by AA to enforce this provision would constitute a violation of the Department's 24-hour reservation requirement, which requires U.S. and foreign air carriers to hold a reservation at the quoted fare for 24 hours without payment or allow a reservation to be cancelled within 24 hours without penalty.⁶³ The presence of this language in the GTAA also creates a chilling effect on the exercise of the consumer's statutory right to cancel or change a flight when he or she is being assisted by an agent.

⁶¹ American Airlines Addendum to Governing Travel Agency Agreements. <https://www.aa.com/i18n/customer-service/addendum-governing-travel-agreements.jsp> (accessed July 14, 2023).

⁶² Silk, Robert. [American Airlines Bans Automated Fare Reshopping](#). *Travel Weekly* (May 2, 2023).

⁶³ The 24-hour reservation requirement is mandated by the Department's consumer rule “Enhancing Airline Passenger Protections” (14 CFR 259.5(b)(4), 76 Fed. Reg. 23110, 23166, Apr. 25, 2011) and applies to all reservations made seven days or more prior to the flight's scheduled departure time. To comply with the regulation, carriers may not deceive consumers about the 24-hour reservation requirement when consumers inquire about cancelling or changing a reservation within 24 hours of making or paying for that reservation. This guidance also clarifies that the Department's Office of Aviation Enforcement and Proceedings considers the failure to notify such consumers of the 24-hour reservation requirement to be unfair and deceptive in violation of 49 U.S.C. § 41712.

3. The agent agrees that, unless otherwise expressly authorized by AA, it will not use “any American-owned website,” *e.g.*, aa.com, or app for any commercial purpose. The agent further must expressly acknowledge that such websites and apps are strictly for use by passengers not acting through an agency. Note that this provision, in conjunction with the removal of 40 percent of the fare inventory from the EDIFACT channel, will in most cases preclude an intermediary from obtaining the lowest available fare for his or her client. This in turn greatly diminishes the value proposition associated with booking through an agent, a result that we posit serves no commercial purpose other than excluding travel agencies from fairly competing with AA in the distribution of its tickets.

4. The agent is also prohibited from imposing service fees based on the method of distribution or the technology underlying American’s products or services that are higher than those imposed by the agent when booking other air carriers. As noted, the unready state of NDC has resulted in substantially higher transaction costs for agencies for those bookings as compared with bookings made via the established channels. This provision renders it impossible to recoup those higher costs via assessment of a correspondingly higher service fee only for AA NDC transactions.

5. AA may, in its sole discretion and at any time, terminate the agency’s ticketing authority. This provision creates for American (and only American) a unilateral right to terminate the contract in the absence of a breach by the agency. Reservation of such an absolute right to only one party, *i.e.*, is not mutual, in our view renders the entire agreement illusory and therefore void and unenforceable for lack of consideration.

Significantly, and not coincidentally in our view, the above changes went into effect on May 1, 2023, less than one month after AA’s forced implementation of NDC. Recall too that given that the agency distribution channel is responsible for nearly half (48 percent) of all air ticket bookings, the impact of these contractual changes can scarcely be overstated.

If travel agencies and TMCs had equal or relatively equal bargaining position vis-à-vis American with respect to the GTAA, they would simply decline to enter into it on the offered terms. The fact that they nonetheless do enter into the GTAA on these overly one-sided terms illustrates the power wielded by AA as the largest domestic air carrier and one with near-monopoly power in many airports and city pairs.⁶⁴ Put another way, the travel agency that declines to enter into the GTAA, despite its obvious unfairness, will have for all intents and purposes effectively shut itself out from the sale of air tickets in several of the nation’s largest markets.

That AA can impose such draconian terms on a take-it-or-leave-it basis establishes – conclusively in our view – that AA is abusing its market power to the detriment of competition from agencies, TMCs and all other distribution intermediaries, just as its reckless NDC implementation has done to the detriment of consumers. Moreover, precisely because these provisions are so onerous and commercially unreasonable, it seems fair to conclude that AA no longer has any interest in acting as a partner to travel agencies in air ticket distribution. Rather, by all appearances, American’s true objective is the elimination of the agency distribution channel altogether.

⁶⁴ For an independent assessment of AA’s outsized market power in selected cities, see “[American’s Shift Toward a Fortress Network](#).” *Cranky Flier* (Mar 14, 2023).

The longer-term impact of AA's conduct (and that of the rest of the industry, if other carriers adopt the same course of conduct), will not only be to raise the costs of travel agencies and other intermediaries, but to raise prices to American consumers and businesses which will no longer be able readily to cross shop fares, but will be presented with individualized offers calculated to extract the highest possible price. In the context of an oligopolistic industry in which prices have already been rapidly increasing, this is a dangerous course of conduct that requires close scrutiny by the Department.

VII. LEGAL STANDARD AND ARGUMENT

The Department's statutory authority to regulate unfair and deceptive practices in air transportation or the sale of air transportation is found at 49 U.S.C. § 41712. This statute provides, in pertinent part:

On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, air ambulance consumer (as defined by the Secretary of Transportation), or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.⁶⁵

Note that pursuant to subsection (a) of the statute, an investigation into the practices of an air carrier may be commenced upon either the initiative of the Secretary or upon the complaint of a ticket agent, among others. ASTA is the national trade association for individual travel advisors and travel agencies of all sizes, the majority of whom qualify as a "ticket agent" as that term is defined in the statute.⁶⁶ As such, it is respectfully submitted that ASTA has standing in a representational capacity to assert this complaint on behalf of its members.

While § 41712(a) authorizes the Department to investigate and decide whether an air carrier is engaged in an unfair or deceptive practice in the sale of air transportation, pursuant to 49 U.S.C. § 40113, Congress also vested authority in the DOT to take action to carry out that regulatory authority, including prescribing regulations. As such, should the Department determine that AA's actions indeed constitute an unfair practice in the sale of air transportation, it has the authority to temporarily or permanently enjoin such conduct without any need of further Congressional sanction or approval.

In 2022 the Department issued guidance to inform the public and regulated entities about its interpretation of the terms "unfair" and "deceptive," neither of which is expressly defined in § 41712.⁶⁷ Noting that § 41712 was modeled on section 5 of the Federal Trade Commission (FTC) Act,⁶⁸ the Department found that in promulgating its own 2020 final rule (the "UDP Final Rule") it was appropriate

⁶⁵ 49 U.S.C. § 41712(a).

⁶⁶ The term "ticket agent" means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation. 49 U.S.C. § 40102(a)(45).

⁶⁷ *Guidance Regarding Interpretation of Unfair and Deceptive Practices*, 87 Fed. Reg. 52667 (August 29, 2022).

⁶⁸ 15 U.S.C. § 45.

to define those terms in a manner reflective of FTC precedent and DOT's own long-standing interpretation of those terms. Applying that methodology, the DOT defined a practice as being unfair to consumers if *"it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition."*⁶⁹ The Department then provides further guidance by separately analyzing each element of the unfairness claim under the above definition. Following the DOT's guidance as to each element, ASTA will recite the specific actions taken by American in connection with its implementation of NDC, and the resulting effects to establish that an actionable violation of § 41712 has taken indeed place.

1. *"Causes or is Likely to Cause"* – DOT takes the position that it is not required to wait for substantial injury to take place before taking action against an unfair practice. The Department may take action against practices which are "likely to cause" substantial injury as well.⁷⁰

In the instant case, it cannot be seriously argued that AA is not the cause of the harm complained of. American is the only carrier that has set an arbitrary NDC implementation timeframe for which the industry is unprepared. And while the record is clear that significant harm as set forth below has already occurred since April, the guidance makes clear that DOT is not obligated to await further proof of injury and in fact could have acted even before April 3 had it wished to do so.

2. *"Substantial" Injury* – The Department finds that substantial injury may be established either by demonstrating a small amount of harm to a large number of people, as well as a large amount of harm to a small number of people. Moreover, while the harm is usually economic in nature, that need not be the case in every circumstance.⁷¹

American's conduct has unquestionably caused substantial injury to consumers, which includes both individual travelers who wish to use a travel agency to book their air travel as well as businesses that retain an agency or TMC to do the same for their employees. For them, the economic injury takes the form of substantially higher air ticket prices for tickets not booked via aa.com or an NDC-enabled channel, this because it is overwhelmingly lower-priced content that was removed from the EDIFACT channel.

Both individuals and corporations also have suffered and continue to suffer economic harm relating to the loss of use of value of canceled tickets, as well as the inability in many cases to exchange tickets. In addition, AA's actions have imposed significant transactional costs on retail distributors and the companies whose technology enables them. Among other things, travel agencies and TMCs must add additional personnel to service bookings in order to compensate for the critical technical gaps in the NDC solution. Recall that despite the fact that forced NDC implementation has made AA bookings and servicing of bookings substantially more inefficient and time consuming, American prohibits agencies and TMCs from passing on any portion of that cost to passengers.

AA has also caused substantial non-economic injury to consumers as well as travel agencies, TMSs and business interests. Consumers have been injured by a reduced level of service from the agencies they retain, due to the inherent inefficiencies created by the inability to book all fares via the existing established channel. Another non-economic harm of consequence relates to the difficulty and,

⁶⁹ 87 Fed. Reg. at 52678.

⁷⁰ *Id.*

⁷¹ *Id.*

in some cases, the outright inability to service bookings in the manner travel agency clients have become accustomed to, along with reduced price transparency as compared to booking via the GDS. This has compromised the value proposition associated with working with an agency or TMC, though through no fault of their own.

And, as detailed in the previous section, businesses – all of whom owe a common law duty of care to their employees when traveling for business – have far less support from their TMCs in that regard when fares are booked outside of the EDIFACT channel, which they are compelled to do if they are to obtain the lowest-price fare. Requiring booking outside of traditional channels frustrates this critical function and exposes businesses to legal risk. It goes without saying that businesses should not be placed in the position of having to choose between a low fare and fulfilling their obligations to their traveling employees, but AA's actions have forced them to do just that.

3. *Not Reasonably Avoidable* – The Department takes the view that for a practice to be unfair, the harm must not have been reasonably avoidable by the consumer.⁷² Citing the position expressed by the FTC in its *Policy Statement on Unfairness*,⁷³ DOT appears to concur with FTC that regulatory action is appropriate to in order to “halt seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.”⁷⁴

When viewed in light of the dominant market position American holds in domestic air travel throughout thousands of city pairs, the lack of readiness of the NDC channel is just such an obstacle which frustrates consumer choice in a manner that is not reasonably avoidable. AA might argue in response that consumers can avoid the harm associated with higher airfares by simply booking via aa.com or other NDC-enabled channel. The response to that argument is in order to obtain the lower fare, they will necessarily be required to forgo the services of their trusted travel advisor or travel agency.

As noted, nearly half of all air ticket bookings are made via the agency distribution channel. This means that travelers, by their conduct, have unmistakably expressed a clear preference for not booking directly with the airlines. This is largely a recognition of the fact that advisors not only render trip planning services but are there to provide support when things do not go according to the plan. It goes without saying that travel – particularly air travel – can be unpredictable, and unexpected situations can and do arise. In such cases, an advisor's ability to render assistance – in rebooking flights, for example – is invaluable. In short, deciding between obtaining a low fare and receiving the support associated with collaborating with an advisor is a choice consumers should not have to make.

Likewise, businesses cannot secure lower fares for their employees' travel without forgoing the services of the TMC, jeopardizing their ability to fulfill the duty of care. In short, given the current state of industry unreadiness, and the associated tradeoffs with booking one channel or the other, travel agencies and TMCs simply cannot reasonably avoid the harm.

4. *Harm Not Outweighed by Benefits to Consumers or Competition* – Department guidance on this point makes clear that the harm suffered must not be outweighed by benefits to consumers or to

⁷² 87 Fed. Reg. at 52679.

⁷³ <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>

⁷⁴ *Id.*

competition.⁷⁵ The guidance adds that “some practices may be harmful to consumers in some respects, but beneficial to consumers in other respects. For example, offsetting benefits may include lower prices or a wider availability of products and services...” In other words, the net effect on consumers is to be examined in determining whether the practice is unfair.⁷⁶

In our view, there is *nothing* AA could plausibly point to that suggests any benefits that offset the demonstrated harm that its decision concerning NDC implementation has created in the nearly four months since the policy went into effect. Consumers have gained no benefit whatsoever from aggressive price channel discrimination to offset the increased costs. Travel agencies and TMCs remain largely unable to book via NDC-enabled channels due to the industry’s unreadiness and are contractually prohibited from using aa.com to book their clients on the lower-cost options. Similarly, businesses must seriously compromise their ability to fulfill the duty of care obligations if they wish to avoid substantially higher travel costs. And even AA’s competitor airlines, such as Delta and United, have not reaped any significant benefit, as American’s near monopoly power in many major markets and city pairs means that its overall market share to date has only been minimally impacted.

5. *Public Policy Considerations* – The 2022 guidance also notes that the Department “has a broad statutory responsibility to consider a wide variety of public policies enumerated by Congress.”⁷⁷ Among the factors specifically enumerated by Congress is “the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination...”⁷⁸ Once again, this factor weighs plainly against American. In removing 40 percent of its fare inventory from the EDIFACT channel, American has acted in opposition to the stated public interest by severely curtailing the availability of low-price services, particularly so in those cities where AA has a dominant market share.

ASTA firmly believes that the foregoing establishes that it has sustained its burden to demonstrate that American has engaged in, and continues to engage in, unfair practices as that term is defined under the relevant statute and the interpretive guidance thereto. As such, we assert that immediate action by the Department is both warranted and necessary to enjoin further consumer harm.

VIII. REQUEST FOR RELIEF

But for American Airlines’ dominant market position, a situation created in no small part to insufficient regulatory oversight, approval of an imprudent number of airline mergers and a grant of widespread antitrust immunity, it would not have the ability to effectively bludgeon an entire industry into adopting their NDC model on their terms and on their timeline. That AA’s actions have inflicted a substantial injury on consumers, however broadly – or narrowly – one may wish to define that term, with no countervailing competitive benefit whatsoever, cannot be seriously disputed. Accordingly, the Department can, and indeed must, take immediate action to address the current situation.

To that end, ASTA respectfully requests that the Department take the following steps as soon as is practicable under the circumstances: 1) issue an order temporarily directing American to immediately restore all fare inventory to the EDIFACT distribution channel, thus restoring fare parity with NDC-enabled channels and aa.com; 2) prevent AA from banning in its agency agreements the use of

⁷⁵ 87 Fed. Reg. at 52679.

⁷⁶ *Id.*

⁷⁷ 87 Fed. Reg. at 52679 (*quoting* 85 Fed. Reg. 78710).

⁷⁸ 87 Fed. Reg. at 52679 (*quoting* 49 U.S.C. § 40101(a)).

technology software to identify lower fares, at a minimum within the first 24 hours of a ticket booking as a violation of 14 CFR 259.5(b)(4); 3) undertake a comprehensive review of the current state of competition in the domestic airline industry; and 4) upon completion of a separate review, consider whether revocation of the previous approval of global carrier alliances and the grant of antitrust immunity is appropriate to restore meaningful competition in the airline industry. We appreciate the Department's careful and thoughtful consideration of this critically important matter and urge that it grant the immediate requested relief and thereafter commence its review without undue delay.

Respectfully submitted,

AMERICAN SOCIETY OF TRAVEL ADVISORS, INC.

By its counsel:
Peter N. Lobasso

DRAFT

EXHIBIT A

NDC FUNCTIONALITY ASSESSMENT

Functionality	Sabre	Amadeus	Galileo
Initial Shop and Book			
Blocking Basic Economy Fares	No	No	No
Shop NET Fares (PFA, JCB, SEA, etc)	Q2	Not PFA	No
Mixed Net/Pub in 1 Offer	No	No	No
Shop Snap/Corporate Codes	Q4	Yes	Yes
Multiple PAX	Q2	Yes	Yes
NDC and ATPCO Content in Same PNR	Yes	No	No
Multiple NDC Orders per PNR	No		No
Open Jaw/Multi City	Q3	Yes	Yes
Interline/Add On Carriers	No	No	No
Codeshares	Yes	Yes	Yes
By Cabin	Yes	Yes	Yes
Mixed Cabin	No		Yes
TTL Displayed at Time of Shopping	No		No
Shop with TTL Requirement	No	?	No
Shop with Time Requirements	No	Yes	No
Price Upsell Offers	No		Yes
View Penalty/Change/Cancel Fees			
Add Contract OSIs/SSRs	No	?	Yes
TSA Required at Time of Order		Yes	No
Shop with FFN	Yes		Yes
Add Frequent Flier # to Order to Accrue Miles	No		Yes - Fare attribute
Frequent Flier #s for Other Carriers	No	No	By Airline
Request Wheelchair	Q3	No	Yes
Request Meal/Dietary Restrictions	Q2	No	Yes
Add Remarks	No	Yes	
Accounting Line	Yes	Yes	
Free Seats	Generic Only	Yes	Yes
Multiple PAX Seats	Q3	Yes	Yes
Groups	No	No	No
Change			
Pre-Ticket Change of Order	Yes	No	No
Post Ticket Change of Order	Yes	Yes	Yes
Change a Trip/Part of a PNR	No	No	No
Name Change Before Ticketing	Q3	No	Yes
Name Change After Ticketing	Q4	No	Yes
Add Generic SSR	No	No	
Add Frequent Flier # Before Ticketing	No	No	No
Add Frequent Flier # After Ticketing	No	No	No
Add PAX Contact Info Before Ticketing	Yes	No	Yes
Add PAX Contact Info After Ticketing	Yes	No	
Add TSA Information Before Ticketing		No	
Add TSA Information After Ticketing		No	
Divide and Modify/Split	No	No	Yes
Seats	No		Yes
Clone PNR	No	No	No
Cancelation Notification	No	No	No
Viewing of changes through .com	No	No	No

NDC FUNCTIONALITY ASSESSMENT (continued)

Schedule Changes			
Notification via Queue	Yes	Yes	Yes
Voluntary Changes with a waiver code	No	No	No
Involuntary Changes with a waiver code	Q2	No	No
Notification of Cancelled Flights (HX)	Yes	Yes	No
Ticketing			
Delayed Ticketing/TTL	Yes	Yes	Yes
Ability to Ticket Order Immediately	No		Yes
Price Variation Time Limit	No	Yes	No
Ticket in Different PCC than Booked	Airlines specific		No
Bulk Ticketing	No		No
Split Ticketing	No		No
Fare Guarantee Support	No	No	No
Service Fees	Yes		No
FOPs of Cash or CC	Yes	Yes	Yes
Multiple FOPs	No	No	No
Voids/Refunds/Exchanges			
Multi PAX Void/Refund/Exchange Capabili	Q3	Yes	Yes
Refund - Partial	No	No	No
Received Credit to FOP on Refund	No	Yes	Yes, but belongs to pa
Same Day Void	Q2		
Void and Retain Itinerary	Q3		No
Exchange Ticket	Q3	Yes	Yes
Support Shopping Qualifiers in Exchanges	Q4- Need example		No
Refund of an Exchanged Ticket	Q3	No	Yes
Viewing of Open Tickets			No - Only through ARC
Waiver Code During Exchange	Q2	No	Q2
No Shows	No	No	No
Other			
Queueing	Yes	Yes	Yes
Seats after Ticketing	No	No	Yes
Autodrop Queue/PNR Update Notification	Maybe Q3?		No

Source: United States Tour Operators Association (April 2023).

EXHIBIT B



675 N Washington St, Ste 490
Alexandria, VA, 22314

703.739.2782
askasta@asta.org

ASTA.org
Travelsense.org
@ASTAagents

February 23, 2023

Vasu Raja
Chief Commercial Officer
American Airlines
1 Skyview Drive
Fort Worth, TX 76155

VIA EMAIL: vasu.raja@aa.com

RE: New Distribution Capability Implementation

Dear Mr. Raja:

On behalf of the American Society of Travel Advisors, Inc. (ASTA) and the more than 160,000 Americans who work at travel agencies across the country, I am writing to express our members' concerns with respect to the impending full implementation of New Distribution Capability (NDC) technology by American Airlines (AA) beginning this April.

As you may be aware, last week a select group of the largest ASTA member agencies and travel management companies (TMCs) met with Anthony Rader, AA's Director of Airline Retailing Technology, to answer some of our members' questions about NDC and American's specific plan. And while we sincerely appreciate Mr. Rader taking the time to make himself available, and his most recent offer to speak with us again, the meeting only served to confirm our members' fears that many crucial questions remain without satisfactory answers. Clearly, significant hurdles to a smooth transition to NDC stubbornly remain.

Since at least as early as last fall, AA has publicly stated that at least 40 percent of its existing content would be accessible only through NDC-ready channels. Leaving aside the open question of what that 40 percent represents, the number suggests that the impending changes will have a significant impact on air ticket distribution even if all of the relevant stakeholders were fully prepared to adopt NDC. However, and unfortunately, that simply is not the reality today.

To the contrary, most of the key players, including the TMCs, the global distribution systems (GDSs), and third-party booking technology partners, such as Concur, have stated – either publicly or privately – that they are not fully prepared to facilitate NDC implementation and will not be ready to do so by April 2023. In particular, the slow progress made by some GDSs in integrating NDC functionality means that agents will need to book and service clients in multiple systems. And without significant and key mid-office travel fulfillment systems ready

Vasu Raja
Chief Commercial Officer
American Airlines
February 23, 2023
Page 2 of 2

and able to fully process NDC transactions, many U.S. corporations will be unable to achieve the cost savings, corporate traveler satisfaction, and corporate traveler policy compliance critical to their businesses. Visibility into the corporations' travel spend required becomes inadequate at best. Moreover, that state of affairs for these entities certainly will not change materially in less than two months.

Beyond the technology piece of the puzzle, processes that do not currently exist for servicing NDC bookings will need to be developed and implemented. In their absence and in the interim, transactional support, and by extension and as highlighted above, the satisfaction of our mutual customers, will be inevitably damaged.


And while it is our understanding that it is not going to be adopted immediately, our members also have concerns about continuous pricing for bookings made through NDC channels, specifically, the negative impact it may have by causing, in many cases, higher air ticket prices.

ASTA understands, and appreciates, that AA has been working with all stakeholders to prepare for the coming changes for some time. We are also not unmindful of the promise NDC holds for the future of air ticketing. However, given the scope of this undertaking, it is clear that much more work needs to be done if NDC implementation is to be achieved successfully and without massive disruption to the air ticket distribution ecosystem of which we are all a part.

For the foregoing at reasons, we respectfully request that AA postpone full NDC implementation through the end of 2023. We are hopeful that by this time significant strides will have been made in all areas for which greater readiness is essential to a successful transition. As we understand that you likely will be unable to join Mr. Rader when we meet with him again, we would appreciate a response by March 3, 2023.

We thank you in advance for your thoughtful consideration of our members' concerns on this critically important issue. Should you have any questions or wish to discuss our concerns in greater detail, please do not hesitate to contact me at (703) 739-6804 or zkerby@asta.org.

Sincerely,



Zane Kerby
President & CEO
American Society of Travel Advisors, Inc. (ASTA)



March 30, 2023

Jonathan Kanter
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Amanda N. Liskamm
Director
Consumer Protection Branch
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

VIA OVERNIGHT MAIL

RE: American Airlines/New Distribution Capability Implementation

Dear Mr. Kanter and Ms. Liskamm:

On behalf of the American Society of Travel Advisors, Inc. (ASTA) and the more than 160,000 Americans who work at travel agencies across the country, I am writing to express our members' serious concerns with respect to the impending full implementation of New Distribution Capability (NDC) technology by American Airlines (AA) beginning in early April.

NDC is a technology communication standard developed by the International Air Transport Association (IATA) that fundamentally changes how airlines provide fare and ancillary content to travel agencies, travel management companies (TMCs) and other ticket distributors through a set of application programming interfaces. NDC is anticipated to eventually replace the current EDIFACT (Electronic Data Interchange for Administration, Commerce, and Transport) protocol, which has been in use since the 1980s.

While NDC holds much promise for the future of air ticketing, the impact of its adoption on the entire air ticket distribution ecosystem can scarcely be overstated. Moreover, since as early as last fall, AA has publicly stated that at least 40 percent of its existing content would be accessible only through NDC-ready channels.¹ That number alone suggests that the impending changes will have a significant impact on air ticket distribution even if all the relevant stakeholders were fully prepared to adopt NDC. However, that simply is not the case, and it is for this reason that we write to you today.

¹ Airoidi, Donna. "[American Tells TMCs to Be NDC-Ready by April or Lose Some Content Access.](#)" *Business Travel News* (December 5, 2022).

Most of the key players, including the global distribution systems (GDSs), TMCs and third-party booking technology partners have stated that they are not adequately prepared to facilitate full NDC implementation. Given the slow pace of progress made by some technology providers in integrating NDC functionality, meaningful progress can be reasonably expected to take many more months, at a minimum.

Furthermore, without significant front-, mid- and back-office travel fulfillment systems ready and able to fully process NDC transactions, significant disruptions to shopping and booking, including ticketing, refunds and re-ticketing are inevitable. Beyond the technology piece of the puzzle, processes that do not currently exist for servicing NDC bookings will need to be developed and implemented. In their absence and in the interim, businesses will be unable to achieve the cost savings, corporate traveler satisfaction and corporate traveler policy compliance critical to their operations.

While much of this may seem somewhat speculative or indefinite, our members and others in the industry are convinced that the impact of AA's actions will be both real and very disruptive. Among other things, because agents will need to book and service clients in multiple systems, the time spent in servicing AA ticket bookings will increase dramatically. This in turn may lead some intermediaries to charge higher service fees to their clients to offset the additional time spent. Comparison shopping among carriers operating the same routes to provide clients with the best option, a routine part of the agent's booking process, will likewise become much more complex and time consuming.

Once booked, making changes to AA reservations and tracking canceled (unused) tickets will also present substantial new challenges that currently do not exist. Exchanging tickets when travel plans change, a common occurrence, especially with respect to business travel, will be further complicated by the fact that NDC channel-issued tickets will not be interchangeable with EDIFACT channel-issued tickets. Collectively, this alone is likely to cost travelers millions of dollars annually.

And, because all of the requisite fulfillment systems are not yet in place, client support in the event of widespread travel disruption, whether attributable to technology glitches, staffing issues, extreme weather and the like – as has been the case far too often in recent memory – will prove far more challenging than it already is. According to one ASTA member agency owner, this in turn could lead to wait times up to four times longer than presently, an outcome that will only increase the public's already elevated level of frustration with the current state of air travel.

In short, for the foreseeable future, AA's unilateral imposition of NDC on an industry largely unprepared for its adoption will place a substantial burden on all key stakeholders in the travel ecosystem with predictable serious negative effects on consumers all of which, in our view, are entirely avoidable.

ASTA has raised with AA, both privately and publicly, its members' concerns regarding the industry's state of unreadiness and the near certainty of an adverse impact on consumers, particularly, but not limited to, business travelers. For this reason, we called upon AA to voluntarily postpone implementation until the end of 2023.²

Unfortunately, however, to date AA has refused to consider any reasonable revisions to its timetable. To the contrary, despite ASTA's clear warning and the pleas of other knowledgeable industry stakeholders, AA remains committed to its unilateral breakneck-speed implementation of NDC. In the interest of avoiding yet another massive disruption to consumer travel, we feel constrained to bring this matter to the Department's attention and to urge that appropriate action be taken.

Beyond the clearly foreseeable adverse impact on consumers as detailed above, forced adoption of NDC on an industry plainly unprepared also raises serious anticompetitive concerns which we respectfully submit also warrant review by the Department.

It is well known that the domestic air travel market is at the present largely oligopolistic, with just four carriers – American, Delta, Southwest and United – representing more than two-thirds of the market, specifically, 67.2 percent in 2022.³ And of these four airlines, AA's share is the largest, standing at just under 18 percent of the overall market.⁴

While the above-cited statistics establish AA's preeminent position in the market, they fail to fully capture the extent of AA's dominance over its rivals in airports serving several of the nation's largest cities. For example, in Dallas-DFW, AA American Airlines operates 85 percent of the flights.⁵ Likewise, a staggering 89 percent of flights in Charlotte are operated by AA. AA 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.⁶

² American Society of Travel Advisors. "[ASTA Requests American Airlines Delay Plan to Implement New Distribution Capability in April 2023](#)" (March 8, 2023).

³ <https://www.zippia.com/advice/airline-industry-statistics/> (accessed March 23, 2023).

⁴ *Id.*

⁵ OAG Aviation Worldwide Limited. *OAG Megahubs 2022*, www.oag.com (accessed March 22, 2023).

⁶ *Id.*

When viewed in light of these numbers, evidencing AA's near monopoly power in several markets, its intention to remove at least 40 percent of its inventory from non-NDC distribution channels becomes even more alarming from a competitive standpoint. Indeed, if low-cost fares represent even a modest portion of the content AA intends to remove from its bookable inventory, consumers in these cities face the prospect of substantially air ticket higher prices with, in many cases few, if any, viable alternatives.⁷

To summarize, we suspect that AA has made a strategic decision to forsake short-term profits to achieve a stronger competitive position in the long term, one secured by denying complete access to its fare inventory.

Moreover, it is important to note that with respect to the distribution of airline tickets, as opposed to the provision of air travel itself, the other carriers are not AA's only competitors. To the contrary, travel agencies, TMCs, GDSs and other intermediaries not only compete with the airlines on this basis, they also play an indispensable role in air ticket distribution, without which the airlines would be unable to serve their passengers. In 2019, travel agencies sold nearly 830,000 airline tickets *per day*, representing fully 48 percent of total sales and aggregate spending of more than \$97 billion.⁸ It goes without saying that withholding 40 percent of AA's fare inventory from non-NDC channels will therefore place our members and other intermediaries at a very substantial competitive disadvantage. Plainly, AA's action, when viewed in the context of air ticket distribution, also warrants close scrutiny from an antitrust perspective.

For these reasons, it is evident that the course AA appears determined to continue on, despite repeated calls from ASTA and others in the industry for a reasonable delay in its arbitrary implementation timeframe, represents a clear abuse of its market power which threatens irreparable damage to competitors and consumer alike. If allowed to proceed unchecked, AA's actions will result in diminished consumer service, travel disruptions and, inevitably, higher prices for the traveling public. Therefore, ASTA respectfully requests that the Department immediately commence an investigation into the anticompetitive effects of AA's decision, particularly as it relates to those markets where it has monopoly or near-monopoly power.

We thank you for taking the time to consider ASTA's views on this critically important issue. If either of you require additional information concerning the impact of NDC implementation on

⁷ For an independent assessment of AA's outsized market power in selected cities, see "[American's Shift Toward a Fortress Network](#)," *Cranky Flier* (Mar 14, 2023).

⁸ Airlines Reporting Corporation (ARC). [Airline Sales Statistics](#).

Jonathan Kanter
Amanda N. Liskamm
U.S. Department of Justice
March 30, 2023
Page 5 of 5

consumers or its anticompetitive effects, please do not hesitate to contact me at (703) 739-6804 or zkerby@asta.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Zane Kerby". The signature is fluid and cursive, with the first name "Zane" and last name "Kerby" clearly distinguishable.

Zane Kerby
President & Chief Executive Officer
American Society of Travel Advisors, Inc. (ASTA)