



American Society of Travel Agents
1101 King Street, Suite 200
Alexandria, VA 22314

Tel 703.739.2782
Fax 703.684.8319
800.ASK.ASTA

askasta@asta.org
www.ASTA.org

February 28, 2012

United States Department of Commerce
International Trade Commission
c/o Jennifer Pilat
1401 Constitution Avenue NW
Suite 4043
Washington, DC 20230

Re: Request for Stakeholder Comments on "National Travel and
Tourism Strategy," 77 Fed. Reg. 8216, February 14, 2012.

Dear Ms. Pilat:

The American Society of Travel Agents ("ASTA"), a national trade association with global reach, joined by the Interactive Travel Services Association ("ITSA"), the National Tour Association ("NTA"), the Business Travel Coalition ("BTC") and the Open Allies for Airfare Transparency coalition ("OAAT"), submits these comments in the referenced matter.

The instant comment is focused on a single issue of overriding importance to the effort to facilitate and stimulate travel domestically and internationally. This is the issue of transparency and transactability of airline ancillary services and the fees that pay for them. The gravity of this question for national transportation policy is illustrated by the inclusion of mandated transparency, as Recommendation No. 11, in the *Final Report of the Future of Aviation Advisory Committee*, submitted to the Department of Transportation on April 11, 2011, at p. 36.

Since about 2008 the airlines broadly have unbundled from the historical package of "airline fare" a growing multitude of separate charges, earning more than \$32 billion globally in 2011 from the optional fees alone. All agree that these fees are a

permanent feature of air travel around the globe.¹ But the airlines have not made adequate disclosures to consumers about these fees, resulting in widespread consumer dissatisfaction.² Despite enactment of limited compulsory disclosure regulations by the Department of Transportation, airlines continue to withhold access to most optional fees from consumers who purchase through independent third parties such as travel agencies.

The signatories to this comment submit that the transportation policy of the United States should be that air fares are transparent, complete, and purchasable by consumers at any point where air fares are sold, including airlines directly, travel agents or any other third party.

* * *

ASTA is headquartered in Alexandria, VA and has members in all fifty states and in 170 foreign countries. While the core membership is travel agencies, the scope and importance of ASTA's work attracts membership from tour operators, independent travel sellers, receptive operators, host agencies, online agencies and an array of travel suppliers. ASTA often works through networks of like-minded associations on virtually every major aspect of travel and tourism policy. ASTA is a regular participant in Department of Transportation proceedings³ and is a member of the World Travel Agent Associations Alliance and of the Travel Association Coalition working under the auspices of the World Travel & Tourism Council.

ITSA is the trade association for Global Distribution Systems ("GDSs") and online travel companies ("OTSS"), and is their voice on matters of public policy. ITSA seeks to promote consumer choice, access, confidence, protection and information in the world of online travel.

¹ We are not raising concerns about whether airlines should or should not charge these fees – the issue is only that they should be disclosed and transactable at the point of fare sale by consumers.

² For example, in September, 2010, more than 50,000 consumers signed a petition to Secretary Ray LaHood of the Department of Transportation demanding an end to "hidden" airline fees. Subsequent surveys conducted by the Consumer Travel Alliance and others documented the concern among air travelers broadly.

³ See, e.g., Comments of the American Society of Travel Agents in *Enhancing Airline Passenger Protections*, Docket No. OST-2007-0022, filed January 22, 2008, March 4, 2009 and August 25, 2009; Comments of the American Society of Travel Agents in *Oversales and Denied Boarding Compensation*, Docket No. OST-01-9325, filed September 7, 2007 and January 22, 2008, among others. A representative of ASTA also was a member of the 2008 National Task Force to Develop Model Contingency Plans to Deal With Lengthy Airline On-Board Ground Delays.

NTA is one of the leading associations for professionals serving travelers to, from and within North America. Since its founding in 1951, the association has helped members expand market reach with innovative business tools, strategic relationships and collaboration within the industry. NTA membership represents 1,500 tour operators and tour suppliers in more than 40 countries representing over 600 destinations.

BTC was founded in 1994. Its mission is to interpret industry and government policies and practices so that the managed travel community can influence issues of strategic importance to their organizations.

OAAT is a coalition of individuals, companies, and organizations that believe that all airline fares and fees should be transparent to, and purchasable by, the traveling public at all points of sale. Open Allies members include 380 of the world's leading travel management companies, corporate travel departments, consumer groups, and travel agencies. The members of Open Allies submit the traveling public is entitled to buy airline tickets, including fees for baggage, seating or other services they select, based on clear, complete and simple-to-understand information.

* * *

ASTA has co-signed three other papers responding to the call for comments on tourism strategy and policy. The first is a joint effort by a large group of travel industry associations with whom ASTA regularly works on various aspects of national travel policy, under the auspices of the United States Travel Association. Second, we have joined the separate comments of ITSA containing three recommendations which, importantly, are aligned with ASTA's treatment of the issue of access to optional airline fee information. Finally, there is a discussion of issues arising from the Travel Regional Investment Partnership Act, HR 3484/S 1663 submitted jointly with the National Tour Association and many others.

* * *

The issue here is whether it should be the policy of the United States that the airline industry, one of the central engines of commerce and a key component of economic development across the country, must provide consumers, working through every channel in which the airlines have elected to distribute their fares, with full transparency of all mandatory and optional charges of consequence and with the ability to buy those optional services from the same channel through which the consumer wants to buy a ticket. Stated differently, should not the airlines be required to provide the information to consumers in a form that enables consumers to make "all in" full-price comparisons incorporating the optional services that

interest them and most importantly to do so before they have committed to a ticket purchase?

Independent travel distributors sell more than half of the air travel performed in the United States, so that the result of current airline practices is that tens of millions of travelers are deprived of usable and timely information about optional services. They are often surprised by the need to pay them when they arrive at the airport seeking to check luggage or to have seats adjacent to their children or other family members.

Even when the third party distributor has managed to find accurate information about optional services with which to inform its customers, the distributor cannot consummate the entire transaction. This often deprives the consumer of the chance to save money by paying in advance for bag fees or to reserve the seats needed for the convenient transportation of family members. And, of course, consumers who try to buy a ticket from a travel agent, because they value the advice they get, and separately buy optional services from the airline, will not find technology designed to help them. While incurring additional search costs, they will often be unable to obtain the seat reservations or other optional services they wanted.

On a macro scale, the result of these airline practices is that optional fees are not subject to the same competitive pressures as air fares generally. The optional fees are thus almost certainly higher than a competitive market would produce and may be more ubiquitous and burdensome in terms than would be true if competition were working effectively.

It is widely known that air travelers are highly price sensitive, with a fare differential of even a few dollars regarded by airlines as sufficient to drive consumers to choose one alternative over another. Since consumer behavior has demonstrated irrefutably the criticality of even a few dollars in making an air travel buying decision, any pricing regime that fails to ensure that travel agencies are equipped with this key information about charges for add-ons, which often reach 30 percent or more of the original base ticket price, is fraught with the risk of consumer deception on a grand scale.

Travel agencies and the GDSs have repeatedly called upon the airlines to release their stranglehold on optional service and fee information, to no avail. There are several reasons for this, rooted both in practice and economic theory. In practice, each carrier wants to appear to be the “low cost provider,” and so no one wants to go first. The punishment for being the first to add ancillary fees is likely to be substantial in the market, as consumers are likely to switch to other airlines that appear to be cheaper. In terms of economic theory, studies have found that if all providers can hide total costs, and make search costs significant, they will be able to

charge supra-competitive prices. Thus, there is a market failure both in practice and in theory, and only regulatory action can make the changes necessary.

The Department of Transportation has announced that it is considering proposing a regulation on this subject, but the scope of the proposed rules is not known and will remain unknown until next August when the proposed rules are published for comment.

ASTA believes that it is necessary and appropriate for the Administration to declare its policy on this issue now as guidance to the Department of Transportation in its consideration of the proposed rules. Travel agents and other third party sellers of air travel want to be a source of information and purchase for optional services for the millions of travelers they serve, but travel agents cannot disclose that to which they do not have access. It is commercially absurd to suggest that travel agents can simply hunt down the ancillary fee information, transaction-by-transaction, on airline websites whenever they need to know.

The Airlines Reporting Corporation shows over 170 participating airlines in its accreditation and settlement regime. Self-evidently, forcing agents to research manually and repetitively over such a huge network of carriers would impose a huge and unacceptable increase in the time it takes an agent to conduct a comparative analysis of flight/fare/fee options on behalf of an inquiring customer. No agency, large or small, could afford to do it and no consumer is going to stand for it.

We do not argue that this information must be provided to GDSs with whom an airline has not otherwise chosen to distribute airfares, nor do we ask for an exclusive regime in which airlines would be restricted in alternative ways they might offer to reveal "optional services." They would have every marketing and sales option open to them, including control over the manner in which unbundled and rebundled packages of travel services are developed, but they will not have the option to choke off the flow of optional fee information to independent distributors whom they have appointed to sell their products by withholding that data from the GDSs and other distributors in which they otherwise participate.

The disclosure regime we support is completely consistent with the recommendations of the Government Accountability Office in its July, 2010 report on airline-imposed fees:

...customers using online travel agencies and traditional or corporate travel agents, which together sell 60 percent of all airline tickets, cannot readily obtain and compare information on complete trip prices that include both the fare and selected service fees. This lack of

information also makes it impossible for customers using online travel agencies or for travel agents using a GDS to select or make payment for optional services at the time of booking....⁴

GAO's thorough analysis ends with the recommendation that the Department compel the airlines to disclose optional fees "consistently ... across all distribution channels used by the airline."⁵

The GAO report indicates that DOT had expressed some concern about the "disadvantages of government interference with airline competition and the deregulated GDS environment."⁶ If these concerns exist, we respectfully suggest that they are misplaced. Airline competition is failing with respect to disclosure of optional fee information, creating a classic case for government intervention to protect the consumer.

Testimony by one of the most aggressive imposers of optional fees, Spirit Airlines, has conceded that every airline has a powerful incentive to avoid being the first to disclose optional fees in a way that would permit comparative shopping. The cause of the disincentive is simple: adding fees to the airline's base price would make its fares appear higher than those of competitors who are not making similar disclosures. In such circumstances the only solution is to compel all airlines to make the same type of disclosure, thereby removing the competitive disincentive.

As for interfering with the deregulated GDS environment, there is no risk because the rules we support would not require any airline to do business with any particular GDS. The principles behind deregulation of the GDS sector, which occurred in 2004 with ASTA's support, would be preserved. The mandatory disclosure would only apply with respect to GDSs through which the airline was already disclosing its fares.

Finally, there is no technological or cost obstacle to implementation of the national policy we urge. The needed industry standards for enabling the communication to GDSs by airlines of all of these separate elements of the all-in price of air travel have been implemented by airlines and GDSs. These standards are now provided by the Airline Tariff Publishing Company ("ATPCO") through a recently-launched product called "ATPCO OC" (for Optional Services and Branded Fares). ATPCO OC established over 100 unique fields that can be used by airlines to identify, and file

⁴ *COMMERCIAL AVIATION: Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees*, United States Government Accountability Office, July 2010, at 16, emphasis added.

⁵ *Id.* at 35.

⁶ *Id.* at 20.

their fees and services for, any particular optional service fee they choose to assess. Yet no airline has thus far indicated an intention to use this service in the United States.

Failure to require the airlines to share their ancillary fee data will leave literally millions of consumers without the ability to use their preferred channel and have the benefit of full comparative price shopping. ASTA strongly urges the Task Force to submit a recommendation to the President that the new national strategy for increasing travel and tourism include a requirement for full transparency and transactability of airline optional services and fees, as described above.

Respectfully submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS



By: _____

Paul M. Ruden
Senior Vice President
Legal & Industry Affairs