

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**ENHANCING TRANSPARENCY OF  
AIRLINE ANCILLARY SERVICE FEES**

**Docket DOT-OST-2022-0109**

**COMMENTS OF  
THE TRAVEL TECHNOLOGY ASSOCIATION**

Laura Chadwick  
President & CEO  
The Travel Technology Association  
3033 Wilson Blvd., Suite 700  
Arlington, VA 22201  
202-550-8939

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

I. DISCLOSURE OF CRITICAL ANCILLARY FEE INFORMATION BY AIRLINES TO TICKET AGENTS AND OTHER INTERMEDIARIES IS LONG OVERDUE AND OF CENTRAL IMPORTANCE ..... 5

    A. Airlines Should be Required to Provide Critical Ancillary Fee Data to All Intermediaries to Which they Provide their Fare, Schedule or Availability Data .. 6

    B. The Rules Should Require Airlines to Provide Ancillary Fee Information to GDSs ..... 7

II. DOT SHOULD NOT ADOPT PRESCRIPTIVE DISPLAY RULES OF THE SORT PROPOSED ..... 13

    A. DOT Should Replace its Proposed Prescriptive Display Rules with a More Performance-Oriented Approach ..... 14

    B. Certain of the Proposed DOT Requirements are Infeasible..... 20

    C. If DOT Prescribes First Search Results Page Ancillary Fee Displays, Only Baggage Fees Should be Required to be Displayed on the First Search Results Page..... 22

    D. DOT Should Allow the Use of Links for Critical Ancillary Fee Disclosure..... 23

    E. Flexible display rules are even more imperative in the mobile setting..... 25

    F. DOT Should Exclude Mobile Apps from the Proposed Rule..... 26

    G. Ticket Agents Will be Unable to Display Passenger-Specific Ancillary Fee Information Until The Systems for Airlines to Provide the Essential Information are Developed ..... 27

    H. DOT Should Provide an Opt-Out Option ..... 29

III. DOT SHOULD ADOPT CERTAIN REQUIREMENTS TO ENSURE THAT CONSUMERS ACHIEVE THE BENEFITS OF ANY NEW RULES..... 30

    A. Fee Information Must be Provided by Airlines without Conditions..... 30

    B. DOT Should Clarify the Requirement that Data Be “Useable”..... 31

    C. Ticket Agents Should Not Be Responsible for Inaccurate or Unusable Fee Information Provided by Airlines or Precluded from Displaying Fares if An Airline Fails to Provide Fee Information ..... 32

IV. THE SCOPE OF ANY FINAL RULES SHOULD EXCLUDE CORPORATE TRAVEL AGENCIES, METASEARCH SITES AND WEBSITES NOT INTENDED FOR USE BY U.S. CONSUMERS ..... 34

    A. Corporate Travel Agencies Should Be Excluded from the Rule ..... 34

    B. Metasearch Sites Are Not Ticket Agents and Therefore Should Not be Subject to the Display Requirements of Any Final Rules ..... 37

    C. The Rules Should Only Apply to Websites Designed for U.S. Consumers ..... 40

V.	THE DEPARTMENT SHOULD INCLUDE ALL SEAT FEES WITHIN THE SCOPE OF ANY FINAL RULES. ....	41
VI.	DOT SHOULD REQUIRE THAT ALL CRITICAL ANCILLARY FEES COVERED BY THE FINAL RULES BE PROVIDED IN A TRANSACTABLE FORMAT, BUT SHOULD NOT MANDATE THAT AGENTS MUST SELL ANY PARTICULAR ANCILLARY SERVICE.....	43
VII.	IMPLEMENTATION.....	46
	CONCLUSION.....	48

## **COMMENTS OF THE TRAVEL TECHNOLOGY ASSOCIATION**

The Travel Technology Association (“Travel Tech”) hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the U.S. Department of Transportation (“DOT”) in this proceeding and published at 87 Fed. Reg. 63718 (Oct. 20, 2022) (“NPRM”). Travel Tech represents the world’s leaders in independent travel distribution. Travel Tech’s members include online travel agencies (“OTAs”), metasearch sites, travel management companies, and global distribution systems (“GDSs”) that enable consumers to search, compare, and book travel easily.<sup>1</sup> These technology innovators have created the infrastructure and industry from which travelers, suppliers, and intermediaries benefit today. Travel Tech members provide suppliers with access to the vast and diverse travel industry while offering consumers transparency, a wide range of options, and a superb customer experience when purchasing and managing their travel. Our members are on the frontlines of travel and tourism and recognize the great benefit affordable travel brings to consumers, suppliers, and the travel and tourism economy. More information about Travel Tech is at [www.traveltech.org](http://www.traveltech.org).

Travel Tech limits its comments to issues that implicate the interests of our members that are ticket agents or otherwise engaged in the sale or marketing of air transportation. Travel Tech does not address every issue in the NPRM. DOT should draw no conclusion as to whether Travel Tech supports or opposes a position in the NPRM on which Travel Tech chooses not to comment.

### **INTRODUCTION**

Travel Tech has consistently advocated for transparency and enhanced disclosure to consumers of all aspects of air travel costs. Travel Tech accordingly supports the NPRM’s goal to provide consumers with useable, accurate and complete information about certain ancillary fees

---

<sup>1</sup> The members of Travel Tech are identified on its website at [www.traveltech.org](http://www.traveltech.org)

that will allow like-for-like comparison before a consumer decides to purchase air travel. Transparency about ancillary fees will enable a consumer to know the “true cost” of different flight options, 87 Fed. Reg. at 63719, and, thus, find the best flight options for his or her individual situation. The ancillary fees at issue in this proceeding – which DOT has labeled as “critical” ancillary fees – are baggage fees, change/cancellation fees and family seating fees.

In 2014, Travel Tech supported DOT’s proposal at the time to require airlines<sup>3</sup> to share certain ancillary fee information (specifically, baggage and advance seating fees) with ticket agents so that consumers could have increased visibility into the cost of their flight options, regardless of whether they use a direct or indirect channel to book their air travel.<sup>2</sup> DOT determined in its 2014 ancillary fee NPRM, as it did in its 2017 Supplemental Notice of Proposed Rulemaking<sup>3</sup> and most recently in the current NPRM, that the lack of transparency in the disclosure of ancillary fee information is an unfair and deceptive practice under 49 U.S.C. § 41712 because it deprives consumers of the ability to fully understand the cost and conditions of the air travel they seek to purchase.

While DOT did not finalize the rules proposed in 2014 or 2017, the need for transparency has not dissipated over the years. The transparency sought to be achieved in this proceeding has been stymied because airlines still do not universally provide their ancillary fee information to ticket agents and other entities through which they distribute air travel information. Their failure to do so continues to harm and frustrate consumers who use the indirect channel to book travel, and the passage of time has underscored that the industry will not fix this problem.

---

<sup>2</sup> See Docket No. DOT-OST-2014-0056, *Transparency of Airline Ancillary Fees and Other Consumer Protection Issues*, 79 Fed. Reg. 29970 (May 23, 2014) (“2014 NPRM”).

<sup>3</sup> Docket No. DOT-OST-2017-0007, *Transparency of Airline Ancillary Service Fees*, 82 Fed. Reg. 7536 (Jan. 19, 2017) (“2017 SNPRM”).

Resolution of this issue requires that DOT mandate that ancillary fees be provided by airlines, without condition, to all ticket agents (including GDSs), metasearch sites and other distribution intermediaries to which airlines provide their fares for distribution. The inclusion of GDSs in the category of entities required to be provided with fee data by airlines is a notable omission in the DOT rules and for a variety of reasons needs to be fixed if the DOT's transparency goals are to be met.

While DOT's proposal to enhance the transparency of ancillary fees is an important and overdue step in the right direction, DOT's accompanying proposals that would require the display of baggage fees, change and cancellation fees and family seating fees on the first search results page are counterproductive and should not be adopted. In seeking to prescribe exactly where, when and how such fees must be displayed during the search and booking process, DOT's proposals would greatly complicate matters for consumers, ticket agents and carriers. A performance requirement that critical ancillary information must be made available before a consumer makes a purchase would be reasonable, but DOT's effort to prescribe exactly the place, time and manner for displaying such information intrudes deeply and improperly into matters best left to the industry to resolve. Travel Tech's members are in the business of creating useable and consumer-friendly travel information displays; their expertise should not be displaced by DOT mandate.

Below, Travel Tech will discuss this point in detail and also explain why certain elements of DOT's "first search results page" proposals are infeasible because fee levels cannot be determined at that early stage. We will also address other changes to the proposals that we believe will enhance the interests of consumers and competition, including expanding the definition of critical ancillary fees to include all seat fees, extending the requirement that fees be provided in a

transactable format to all critical ancillary fees and providing greater guidance on the requirement that fee data be transmitted by airlines in a manner that is useable, free of unreasonable conditions and consistent with industry standards. Specifically, Travel Tech will address the following key points, among others:

- The fee data dissemination requirement imposed on U.S. and foreign airlines subject to any final rules should be extended beyond ticket agents with which the airline does business so that any intermediary to which the airline provides fare data is also a required recipient of such data.
- In particular, absent an assurance that GDSs will receive fee data from airlines, it would be difficult, costly and time-consuming for sufficient direct connect arrangements between an airline and an agent or other alternative data dissemination systems to be developed or implemented so that fee data could reach all ticket agents as efficiently as it can through GDSs.
- Any display rules adopted by DOT must allow for flexibility in the manner of display, including the use of links, in lieu of prescriptive first search results page requirements. Such first search results page requirements are unworkable and would require substantial technology development to the extent that they could be implemented at all.
- DOT should defer any requirement that tickets agents display passenger-specific fees because this will require the time-consuming development of new systems for airline-agent data sharing.
- DOT should require that the fee data provided by airlines to ticket agents be provided to all agents and intermediaries without unreasonable conditions on its use, including re-distribution conditions, and in a readily useable format.
- To the extent that airlines provide inaccurate fee data or data that is not readily useable without significant processing time and cost, or fail to provide any fee data to ticket agents, such ticket agents should not be held responsible for any errors or for any failure to display information that has not been provided. Nor should ticket agents be barred from displaying fare, schedule and availability information for flight options if airlines have failed to supply required fee data.
- Corporate travel agencies that service business entities pursuant to a written contract for the management of the business travel of their employees should be excluded from the rule.

- Metasearch sites are not ticket agents or otherwise subject to DOT jurisdiction and thus should not be made subject to any display rules.
- All seat fees should be included among the critical ancillary fees required to be shared with ticket agents, not just seat fees for children traveling with adults.
- All of the critical ancillary fees required to be shared with ticket agents should be provided to agents in a transactable format, not just seat fees for children traveling with adults as currently proposed. This will not only enhance competition, but also ensure that there is no confusion among passengers as to when and where they may purchase services for which fees are displayed. However, transactability should not be mandated for ticket agents, who should retain the business discretion to decide what they wish to sell.
- The implementation period for any final rules will exceed the six months proposed. An implementation period of no less than 24 months is more realistic if the rules are adopted as proposed, but a shorter implementation period is likely possible if the final rule: (i) ensures GDSs receive the fee data from airlines, (ii) allows greater flexibility of search result displays, and (iii) eliminates certain infeasible elements of the proposals.

Below, Travel Tech expands on these and other suggested revisions, which will make attaining the NPRM’s goal more feasible, will enhance consumers’ ticket-purchasing experience, and will ensure that ticket agents have the flexibility needed to continue providing innovative and user-friendly ticket purchasing experiences that consumers have come to expect.

**I. DISCLOSURE OF CRITICAL ANCILLARY FEE INFORMATION BY AIRLINES TO TICKET AGENTS AND OTHER INTERMEDIARIES IS LONG OVERDUE AND OF CENTRAL IMPORTANCE**

DOT’s proposed rule at 399.85(j) entitled, “Fee information distribution to ticket agents,” is the heart of this rulemaking proceeding. The proposed rules in this section require airlines to provide ticket agents with “useable, current and accurate information of the” critical ancillary fees covered by the rulemaking, i.e., baggage fees, change and cancellation fees, and certain seat fees. Such a requirement is essential to attaining the goal of arming consumers with more and better air travel cost information. And it is long overdue. In this section of its Comments, Travel Tech will address the scope of the data distribution requirement that DOT should impose on airlines.



**A. Airlines Should be Required to Provide Critical Ancillary Fee Data to All Intermediaries to Which they Provide their Fare, Schedule or Availability Data**

DOT needs to go further than the rule it has proposed and require that airlines provide their fee data not only to ticket agents, but also to any intermediary entity through which an airline's fare, schedule or availability data is distributed. Although DOT has concluded that, post-deregulation, airlines are free to choose their own distribution channels (e.g., *Third-Party Complaint of ARTA*, Order 99-4-19, at 5 (Apr. 29, 1999)), that does not mean that once a channel is selected airlines cannot and should not be required by DOT to provide all information relevant to consumer decision-making via that channel. Indeed, the premise of this ancillary fee disclosure proceeding is that it can be an unfair and deceptive practice for a consumer not to be timely advised of the true total cost of air travel, including fees for critical ancillary services.

Consumers who choose to deal with an indirect channel entity should have the same opportunity as consumers who deal directly with airlines to access information regarding the total cost of travel, fares, and fees. Likewise, intermediaries on which the indirect channel rely for the information displayed to consumers need the ancillary fee information no less. DOT thus should require airlines to provide critical ancillary fee information to all of their sales and marketing outlets and other intermediaries. And DOT's final rule should provide that such information must be provided without unreasonable conditions, including conditions on its redistribution. In fact, in its most recent expression on the issue, Congress in 2018 found that,

Whether consumers are purchasing directly from the airlines or through ticket agents, consumers should have clear and accurate pricing information when choosing among various air transportation options. Currently, fees for additional services can be difficult to determine when searching for airfares, and, as a result, consumers

may be unable to understand the true cost of travel when comparing prices.<sup>4</sup>

The same Congressional report proceeded to direct the Department to collaborate with airlines and other stakeholders to ensure that “all the charges should be clear to the consumer, at the time of the initial search, and the anticipated total charges fully disclosed.” The proposed rules would implement (at least partially) this Congressional directive.

As discussed next, GDSs should not be excluded from the rules adopted by DOT. Due to their vital role in the provision of airline fare and other data to indirect channels, the proposed exclusion of GDS ticket agents from the requirement that airlines provide fee information to ticket agents would be a counterproductive step that would diminish the value of any final rules in this area.

**B. The Rules Should Require Airlines to Provide Ancillary Fee Information to GDSs**

DOT has raised the question of whether its proposed rules should cover GDSs, i.e., whether airlines should be required to share ancillary fee data with GDSs. *See* 87 Fed. Reg. at 63724, 63729. The answer is clearly yes.

As the NPRM correctly states, “While fare, schedule, and availability information are currently provided by the airlines to the GDSs, and by GDSs to the agents that display and sell to consumers, information about the cost of ancillary services is not typically shared.” 87 Fed. Reg. at 63725. This statement is accurate in two respects: (1) GDSs provide critical IT infrastructure in the form of a single, user-friendly digital interface which aggregates content, offers innovative functionality and allows seamless booking across travel services,, and (2) airlines are not routinely sharing ancillary fee information with GDSs or, for that matter, with ticket agents generally. A

---

<sup>4</sup> 164 CONG. REC. H2872 (Mar. 28, 2018); *see also* Consolidated Appropriations Act, 2018, H.R.1625, 115th Cong. Sec. 2, sub-Sec. 4, "Explanatory Statement" (2018).

key goal of this rulemaking is to solve the latter problem by requiring the sharing of ancillary fee information. But that goal cannot be readily achieved unless DOT's rule requires that the information is first shared by airlines with all distribution sources utilized by ticket agents. This includes GDSs, along with other intermediaries that agencies use as a source for fare and fee data.

While DOT would not preclude GDSs from receiving ancillary fee information from airlines under the proposed rules, it also tentatively would not require airlines to provide such information to GDSs because "GDSs arrange for air transportation and do not sell or display a carrier's tickets directly to consumers." *Id.* at 63729. Travel Tech submits that this reasoning is flawed. The Department has previously held, and the D.C. Circuit has affirmed, that GDSs are ticket agents. *See Computer Reservations System Regulations*, 69 Fed. Reg. 976, 995-98 (January 7, 2004) ("CRS Decision"), *aff'd Sabre, Inc. v. Dep't of Transp.*, 429 F.3d 1113 (D.C. Cir. 2005). As the Department reasoned in the CRS Decision, GDSs meet the definition of ticket agent when they sell and offer for sale air transportation as principals because they 'present the travel agent with air service options that the agent can purchase through the system'; each system 'enables the travel agent to book the seat and pay for it on the customer's behalf by entering specified keystrokes'; and when the travel agent follows the applicable procedures, "the airline is obligated by its contract [with the system] to accept the booking as valid, whether or not any record of the transaction appears in the airline's internal reservations system." CRS Decision, 69 Fed. Reg. at 996. And as the D.C. Circuit stated in affirming DOT's decision, "the statutory definition [of ticket agent] does not require that a ticket agent offer to sell air transportation directly to the public . . ." 429 F.3d. at 1123.

The Department's focus on the fact that GDSs are not consumer-facing is thus flawed. GDSs are centrally involved in the sale and distribution of airline services; GDSs serve a critical

function in the distribution of flight schedule, availability, and fare information by receiving such information from airlines with which they have distribution contracts, making the information available to agencies who use their software and providing the platform through which agencies can make bookings. In the context of what the Department is seeking to accomplish in this proceeding, their centrally-important data distribution role should dispose of any question as to whether they should be required recipients of the ancillary fee data in question. As the Department accurately states at page 63729 of the NPRM:

GDSs may provide the lowest cost and most efficient way of distributing this [ancillary fee] information to ticket agents that sell or display the carrier's ancillary services. Most ticket agents currently receive airline fare information through GDSs and rely on GDSs as an efficient source of data. Using GDSs may facilitate display of critical airline ancillary services.

Despite its understanding that GDSs may facilitate the display of ancillary fee information by agencies, the Department, at least tentatively, has offered another flawed reason why it has tentatively determined that it will not require airlines to provide their ancillary fee data with GDSs, namely, "the Department is attempting to minimize government interference with business relationships." *Id.* at 63729. Respectfully, the Department's reasoning is backwards because if GDSs did not receive ancillary fee information agencies would be forced to contract with airlines directly to obtain this information. It is far from clear whether or how this will happen, but without GDSs involved, it is certain to take a long time and require the use of a lot of duplicative technology and numerous new contractual arrangements for agents to be able to display ancillary fee data provided by hundreds of airlines. There are potentially more than 200 carriers serving the U.S. and hundreds more globally that could be covered by the rule. It would be physically and technologically impossible for all ticket agents to negotiate connection agreements with each one.

If each ticket agent and each airline are required to negotiate whether and how critical ancillary fee information will be communicated between them, there will be much variation across the industry.

This is highly problematic. For example, consumers who visit one ticket agent's website may see less accurate critical ancillary fee information than on another ticket agent's website if the former fails to secure a quick exchange of information with the airline. This leaves the former agent's consumers at a disadvantage and unequally protected under the proposed rule. Also, a heightened degree of inconsistency in the accuracy and thoroughness of the displayed fee information is much more likely where agents and airlines operate in a non-GDS setting, where individual arrangements between airlines and agents are the norm. Agents should be free to focus on searching and providing travel options to consumers, not on spending time and money to duplicate systems that GDSs have already developed over the course of many years. GDSs are in a much better position to obtain and provide consistent information from airlines across the industry.

Moreover, because technology costs already borne by GDSs will need to be reproduced by new entities if GDSs do not receive the fee data from airlines, the cost for the agency community to obtain the fee data is likely to be more than many agencies, particularly small ones, are able or willing to bear. Direct connect arrangements impose their own technology costs that make them unrealistic (i) for most agencies, and (ii) certainly for achieving the broad dissemination of fee data that the Department seeks.

At a December 8, 2022 meeting of the Aviation Consumer Protection Advisory Committee ("ACPAC"), IATA's representative acknowledged that GDSs are the only means today that can efficiently deliver fee data to airlines: "...the GDSs are the only entities capable of delivering this

connectivity in the short term.” He further acknowledged that GDSs are “best positioned” to deliver dynamic fee information to travel agencies.

This IATA acknowledgement of the role of GDSs should put to rest any question that GDSs should be among the required recipients of fee data. If GDSs are the only entities capable of delivering the connectivity, then why would DOT *not* include them in the fee sharing mandate and ensure completely that this mandate can and will be implemented? If, however, DOT excludes GDSs, and the airlines intend *not* to provide GDSs with all ancillary fee information, then the outcome will be that the burdens on the ticket agent sector will be unmanageable, and consumers will continue to complain to DOT about a lack of transparency. DOT should act to remove any doubt on this score.

Airlines, which are generally opposed to any rule on ancillary fee distribution, are not likely to voluntarily share all their ancillary fee data with GDSs. Failing or refusing to do so could be viewed by airlines as one means to thwart the Department’s rule since the airlines know full well that absent GDS involvement, the Department’s rule will be difficult and much more time-consuming to implement. Further, some airlines might be willing to voluntarily provide GDSs with fee information but only in return for unacceptable conditions or for the purpose of obtaining concessions. DOT’s current proposal would incentivize such behavior, none of which serves the interests of consumers. The better course is to adopt the pro-transparency requirement that airlines disseminate the fee information to GDSs and other intermediaries to which they provide their fares.

Nor should DOT be misled by airlines to believe that IATA’s New Distribution Capability or NDC is itself a full answer to the ancillary fee distribution issue. NDC is merely a standard for the transmission of information, not a new technology that supplants the need for GDSs or other intermediaries to broadly distribute fare and fee data. Again, even with increasing use of NDC, if

GDSs were not involved in the dissemination of fee data, airlines and ticket agents would have to establish new connections, including bringing online more server space to facilitate the hundreds of data inquiries that would be necessary to provide real-time and/or passenger-specific information for a single passenger. By contrast, utilizing the already-existing efficient distribution system provided by GDSs, airlines and ticket agents will not have to develop new expensive infrastructure to disseminate and receive ancillary services information depending on the degree of flexibility with the display requirements.

DOT grappled with this same GDS question in its 2017 SNPRM in which it proposed that baggage fee information be provided by airlines to ticket agents. There, DOT proposed requiring that fee information be provided by airlines to any entity to which fare and schedule information is provided, which included GDSs. *See* 82 Fed. Reg. at 7560 (Jan. 19, 2017) at proposed section 399.90(g). In that rulemaking proceeding, DOT came to several conclusions that are directly relevant to the current proceeding:

In addition, we find persuasive some ticket agent comments that they rely on receiving information through the GDS channel, that alternative distribution methods would be practically disruptive and technically difficult if not impossible to implement, and would cause them to incur significant costs.

*Id.* at 7545. Also:

After carefully considering all of the comments submitted, the Department has decided to propose requiring carriers to provide information on fees for one carry-on item and first and second checked bag to all ticket agents to which it provides fare and schedule information, including GDSs and other intermediaries in the air transportation marketplace. This option provides for wide distribution with the least disruption to existing business models and the shortest implementation time.

*Id.* at 7546.

Specifically on the question of interference with business relationships, DOT “acknowledge[d] that almost any distribution and disclosure requirement will involve Department intervention into business and contractual arrangements.” *Id.* Notably, DOT already sets requirements for the distribution of data via GDSs, including that airlines provide code-share and change-of-gauge information, as well as the prohibition of bias. *See* 14 C.F.R. §§ 256.4, 257.5, 258.5.

For the same reasons as DOT itself articulated in the 2017 SNPRM, Travel Tech strongly urges DOT to require that critical ancillary fee information follow airline fares and schedule information wherever this information is distributed, including GDSs, among other intermediaries. There is no reason to draw the line arbitrarily at GDSs, thereby forcing other ticket agents to take on the development and business costs that have already been assumed by the GDSs.

## **II. DOT SHOULD NOT ADOPT PRESCRIPTIVE DISPLAY RULES OF THE SORT PROPOSED**

In this section of these comments, Travel Tech will address DOT’s proposed rules governing the display of ancillary fee information on consumer-facing ticket agency websites. Travel Tech appreciates the Department’s goal to require that fee data be easily accessible to consumers at an early stage in the search and booking process, allowing the total cost of travel to be more transparent. But that goal would not be achieved with the rules that have been proposed. It would, in fact, be thwarted for numerous reasons that are addressed here.

Travel Tech will explain here that greater transparency can be achieved without adopting prescriptive rules that would stifle innovation and supplant the website design expertise of Travel Tech’s members with a government mandate. In lieu of its proposed rules, DOT should instead opt for a requirement that critical ancillary fee data be made available on consumer-facing ticket agent websites so as to allow transparent pricing of flight options to be shown early in the search



process and prior to purchase. Beyond imposing that broad requirement, DOT should not intrude on the flexibility of ticket agents to design appropriate displays of ancillary fees, including for mobile displays, as well as allow the use of links and other shortcuts. In addition, mobile apps should be excluded from any display requirements and opt-outs should be allowed.

**A. DOT Should Replace its Proposed Prescriptive Display Rules with a More Performance-Oriented Approach**

Travel Tech concurs with DOT that consumers should be entitled to understand the full cost of their air travel – including fares and critical ancillary fees – *before* they make their booking decisions. However, the proposed rules that would require that critical ancillary fees be provided at the time search results are initially displayed and without hyperlinks or rollovers on the first page of such results are far too prescriptive, and would be counter-productive by limiting the space available to display more flight options.

Ticket agents display considerable volumes of travel information to consumers in a useable and consumer-friendly format that is designed to provide a comparative shopping experience. A simpler, performance-oriented requirement that such critical ancillary fee information be provided in a manner that allows users to readily locate the information early in the search/booking process, and in advance of having to make a purchase decision, is all that is needed. Such a requirement is sufficient to ensure that passengers understand the cost of their air travel before they buy. Industry dynamics and business incentives of the ticket agent will ensure that consumers are well-informed before they choose one flight option over another, fulfilling DOT's goal in this proceeding.

Were the display rules imposed in the manner set forth in the NPRM at 388.85(b) and (c) (applicable to baggage and change/cancellation fees), several problems would result that will offset any consumer benefit that DOT is seeking to promote. Specifically, the problems are: (1)

cluttered search results pages that will require significant scrolling; (2) much slower loading of search results and (3) a significant degrading of the value of mobile sites.

**First**, the first search results page would be cluttered with additional information to the point of rendering the information unreadable and unusable.<sup>5</sup> Unlike an airline website that displays a more limited array of information only for the specific airline operating the site, ticket agent websites by their nature display multiple airlines on any search results webpage. Displaying information for numerous airlines makes it impossible to show in any kind of useable format all of the ancillary fee information covered by the proposed rules on a single search results page. For metasearch sites (which as discussed below should not be subject to any display rules because they are not regulated by DOT), there is an additional layer of complication because they not only provide information for numerous airlines, but also for numerous on-line agencies offering flights for any particular itinerary.

Were the proposed display rules adopted without change, the consumer would see on a single page *fewer* flight options for the itinerary for which the search was conducted because, whether the information is desired by the consumer or not, the display would need to include for each option: carry-on and checked baggage fees, change and cancellation fees, and child adjacent seating fees. This additional information will consume valuable space on which the site would otherwise display additional flight options, thus decreasing the utility of the search to the consumer and reducing the comparative benefit that the consumer seeks when using a ticket agent website.

Typically, initial search results on ticket agent websites can return more than a dozen flight pairs for any given itinerary on the first search results page. With so much critical ancillary fee information displayed for each flight option, this number will necessarily vastly be reduced, quite

---

<sup>5</sup> We discuss below why certain of the fee display requirements, notably those pertaining to first results page display of change fees and seat fees, are also infeasible.

possibly to a single result on the first search results page. The consumer will therefore need to scroll through numerous search result pages to see the full array of flight options. While the consumer may know more about each flight option in one glance at the search results page, he or she would actually know *less* about the *range* of flight options without scrolling through page after page of search results. But doing so makes it more difficult to compare options, particularly since the large volume of data presented could be confusing or overwhelming. In other words, the current proposals may provide more disclosure about each flight option but would do so at the expense of consumers having useable, informative, and more readily comparative information about the range of flight options. Information overload has traditionally been a concern of DOT. *See, e.g., Disclosure of Code-Sharing and Long-Term Wet Lease Arrangements, Final Rule*, 70 Fed. Reg. 44848, 44850 (Aug. 4, 2005) ("requiring the provision of too much information in a necessarily complicated format can result in increased customer confusion"). In fact, the Regulatory Impact Analysis ("RIA") that was prepared for this proceeding states as follows:

In the case of disclosures, more information is not always better. When consumers have access to substantial amounts of information, there is a risk that mandated disclosures could displace other information relevant to a consumer's decision and increase search costs.<sup>6</sup>

Information overload also can lead to purchasing decisions that are sub-optimal for consumers, as the RIA and academic researchers have recognized.<sup>7</sup>

**Second**, not only will consumers be overwhelmed by the information they see on the first search result page, they may never reach it in the first place. The glut of new information required

---

<sup>6</sup> *See* OFF. OF THE GEN. COUNS., OFF. OF REGULATION, U.S. DEP'T OF TRANSP., ENHANCING TRANSPARENCY OF AIRLINE ANCILLARY SERVICE FEES REGULATORY IMPACT ANALYSIS, RIN 2105-AF10, at 23 (Sept. 2022).

<sup>7</sup> *See, e.g.,* Lee, Byung-Kwan and Lee, Wei-Na, "The Effect of Information Overload on Consumer Choice Quality in an On-Line Environment," *Psychology and Marketing* 21 (2004) (finding consumers faced with information overload are "less satisfied, less confident, and more confused").

by the Department will cause ticket agent web pages to load and react more slowly. Studies have shown that each and every second added to website load times results in a 7 percent loss in sales and 11 percent fewer page views. Under the Department's proposed new requirements, for every single flight search sought by a consumer, far more information than is provided today will need to be queried and pulled from hundreds of airfare content channels all at once so that they appear on the first-page search results. If the proposed rules were adopted, each query would need to seek the following additional information for each of the itineraries:

- Fee for carry-on bag
- Fees for 1 or 2 checked bags
- Fee for seat selection for each seat on each flight, including connecting flights (this could be thousands of flights) and many flights have various prices for seats in different locations on the plane
- Fee to seat child with adult
- Fees for cancellation/changes

Today, these more detailed queries and pulls from airfare content channels are only conducted after a consumer indicates interest in a particular flight, thereby conserving computing power to optimize initial search website load times.

This mandated expansion in the information provided on the first-page search results will considerably challenge both inputs of website load times: i) the network and server time and ii) the browser time. The network and server time relates to the strength of the internet connection between the user and consumer-facing website and then the back end of the website to the source of the website's content, which in the case of ticket agents is hundreds of airfare content channels. The browser time is the amount of time it takes to render on the web page the content that the

customer has sought. By requiring so much more information to be queried, retrieved, and shown all at once, ticket agent sites will undoubtedly slow and become “laggy,” frustrating consumers and driving business away. Indeed, Google found that 53% of mobile site visitors will leave a page that takes over three seconds to load.

Given the volume of information required to be provided by the proposed rules, the required queries could possibly number in the thousands or even the hundreds of thousands, particularly for itineraries that include several airlines and several passengers. Such queries are of course made today during a consumer search on an agency site, but today the queries are made only after a particular itinerary is chosen. Under today’s system, therefore, the number of queries is limited to a particular itinerary and the system is not burdened with gathering data on potentially hundreds or even thousands of flight options.

**Third**, these problems for consumers would be compounded on mobile web displays, which would be rendered virtually useless. Consumers who value the ability to conduct flight searches on their phones – and that is a significant and growing number of persons – would be stymied by the fewer flight options they would see without a considerable amount of scrolling. The Department’s goal of greater transparency would be lost in a clutter of too much first page information and too few flight search options displayed.<sup>8</sup> This point is discussed in more detail below in these Comments.

For all of these reasons, in lieu of adopting any prescriptive display rules, ticket agents should have the freedom to display critical ancillary fee information at any appropriate point early in the search and booking process, before the point in the process at which a booking decision must be made. To the extent that such information is provided to them by airlines, which is far

---

<sup>8</sup> See, e.g., Soegaard, Mads, “[Hick’s Law: Making the Choice Easier for Users](https://www.interaction-design.org/literature/article/hick-s-law-making-the-choice-easier-for-users),” <https://www.interaction-design.org/literature/article/hick-s-law-making-the-choice-easier-for-users>

from universal, most ticket agent sites today provide baggage, a range of change/cancellation fees (together with criteria for determining what a fee might be under the different circumstances that would cause fee levels to vary) and seat fee information for each flight option within one or two clicks of the search results page. Given the opportunity for flexibility, Travel Tech's members can display fee information in a manner that is both useable and readable, and that promotes the transparency sought to be achieved.

It is not an unfair or deceptive practice to transparently display this information early in the search and booking process; nothing in the relevant statute at 49 U.S.C. § 41712 requires that it be displayed on the first search results page. The consumer will still have the opportunity to compare the cost of travel with the ancillary fees included and to choose the best price. As the Department notes in its NPRM at 63722, "the practice of not disclosing these fees early in the process and prior to ticket purchases causes substantial injury to consumers . . . ." While the quoted comment refers specifically to change/cancel fees, Travel Tech's proposal here that disclosure of any critical ancillary fee be allowed to be made "early in the process and prior to ticket purchases" (as opposed to on the first search results page) is fully in synch with the quoted views of the Department and with the governing law.

Further, for seat information the use of links to seat maps or other relevant information is commonplace and, given the typical volume of information on seat fees, is a preferred method of display. DOT offers no rationale for its proposal to bar the use of links or rollovers or any future display innovations. As discussed in greater detail below, DOT has proposed in prior proceedings concerning ancillary fees that links could be used in fee displays and Travel Tech respectfully submits that there is no reason not to follow that precedent here. Website users generally

understand how to use such features and thus can readily gather the information they need without issues.

Finally, Travel Tech is simultaneously submitting a petition seeking a hearing in this proceeding under the Department's rules at 14 C.F.R. § 399.75. One of the grounds for seeking that hearing is to allow for a fuller exploration than written comments allow of impacts of the proposals on consumers, as well as the difficult technology and other issues raised by DOT's display proposals as currently framed. Travel Tech believes that a hearing would provide an opportunity for its members to display in a visual and interactive format many of the issues with the DOT proposals discussed in these Comments and thus allow for appropriate modification of the proposals to address those issues. In addition, a hearing will allow ticket agents to demonstrate how they too will be harmed by the proposals because, among other reasons, they will need to bear the significant cost of more computing power that will be needed to make the additional queries to gather the fee data for each flight option to make a first search results page display, at least to the extent even feasible. These costs will be considerable and require that funds be diverted from other uses that could otherwise enhance the consumer experience.

**B. Certain of the Proposed DOT Requirements are Infeasible**

The proposed display rules are not only counter-productive but in some respects are entirely unworkable. For example, the proposal that specific change fees be displayed on the first search page cannot feasibly be implemented because for many airlines the level of change fees will vary based on when the change is made (e.g., within 24 hours of booking or at some later time but before travel commences or once travel has already commenced) and could also vary based on the nature of the change sought to be made (e.g., a travel date change versus an itinerary change). The fees are thus too variable to allow for a specific fee to be displayed on a first search results page at a point when any potential future change is merely speculative. By contrast, it may be

feasible to provide a link to a page where information about a range of change fees on the specific airline is shown. The proposed rule, however, would not allow a link to be used or allow a range of possible fees to be shown. To that extent, the rule is not workable.

The proposed family seating rule is equally problematic. As the NPRM observes at page 63723, “prices for seats are often dynamic and change based on availability and time of purchase.” It is for these very reasons that a specific fee for two adjacent seats chosen from among the large number of different and ever-changing seat fees offered by many airlines cannot be feasibly shown on the first search results page. Rather, ticket agents should have the flexibility to display seat fees at the point in the process when the passenger can make an informed choice from among available options on a specific aircraft about where in the airplane he or she wishes to sit. This information is simply not suited for display on the first search results page. Also, the adult who wishes to sit next to his or her child will generally want to first decide where in the aircraft they wish to sit and how much they wish to pay, after being informed of the available options during the process. A choice on adjacent seats can then follow, as opposed to a first search results page display of fees for adjacent seats which, were it feasible at all, would not provide for that more informed choice.

In this regard, we note that there may be some ambiguity in the NPRM on whether DOT intends such information to be displayed on the first page of search results. The proposed rule at section 399.85(e) states that adjacent seat fees must be displayed “alongside the quoted fare associated with each itinerary search result,” without specific reference to the first page of search results. However, the summary of the rule at page 63724 of the NPRM refers to such displays being made “typically [on the] first page of search results.” If in fact the Department is not requiring first page displays, this should be made explicit. As shown here, it is an important point to clarify.



The proposed fee display rules would also come with a high price tag. Even if the above issues could somehow be resolved, substantial technology resources would be needed to develop the systems to make first search return displays possible. Such systems would need to be capable of identifying and displaying, from among multiple possible baggage, change, cancellation and seat fees, the appropriate fees to display on the first search results page, including the lowest-priced family seating option. Such systems simply do not exist today and the cost and resources needed to develop them would be considerable.

**C. If DOT Prescribes First Search Results Page Ancillary Fee Displays, Only Baggage Fees Should be Required to be Displayed on the First Search Results Page**

While DOT should avoid prescriptive rules for the above reasons, if any prescriptive rules are nonetheless adopted, those rules should be limited to requiring that only critical baggage fees (fees for one or two checked bags and carry-on bag fees) be displayed on the first search results page, with the remaining critical ancillary fees allowed to be displayed early in the search process but beyond the first search results page. By so limiting the amount of information required to be displayed on the first search results page, DOT can largely avoid the information overload and page clutter problems described above. As to information about critical ancillary fees other than baggage fees displayed on the first page of search results, Travel Tech recommends that if any prescriptive display rules are adopted (and for reasons stated above it opposes any such display rules), ticket agents should be allowed to display such information within no more than a few clicks of the first page. Travel Tech would not object to a requirement that passengers be notified on the first search results page that specific fee information about the other critical ancillary fees can be obtained by clicking on any of the flights shown on the first search results page, thus allowing for easy comparisons of the total cost of travel, including the applicable critical ancillary fees, for any one flight option versus any other returned option. As long as that fee information is

made readily available early in the search process and without any extensive further searching, the goal that DOT seeks to achieve in this proceeding of fully informing passengers of the fees prior to booking will have been achieved.

For most consumers, baggage fees are the most important ancillary fees. Almost all airline passengers travel with some amount of baggage, whether carry-on or checked, and baggage fees often constitute a practical limit on what consumers can carry with them on trips or on what they can bring back from a destination. Further, unlike change and cancellation fees and child adjacent seating fees, baggage fees are relevant to most trips.

**D. DOT Should Allow the Use of Links for Critical Ancillary Fee Disclosure**

While the Department's proposals would not allow the use of links or rollovers for the display of the three kinds of critical ancillary fees, the NPRM seeks comment on whether links should be allowed. NPRM at 63726, 63727, 63728. The short answer is yes. DOT has offered no explanation for imposing a bar on the use of links and rollovers (or future display innovations) for the display of ancillary fees. That element of its proposal, together with the other prescriptive display requirements proposed, should be reconsidered and abandoned.

In fact, DOT should allow the use of any kind of current or future shortcuts that will reduce information clutter – e.g., hyperlinks or pop-ups – to provide critical ancillary fee information. Notably, such shortcuts were not prohibited in either the 2014 NPRM or the 2017 SNPRM. In the 2014 NPRM at 29978, DOT described its fee disclosure proposal as follows in terms that plainly allow for the use of links and rollovers:

Airlines and agents that have Web sites marketed towards U.S. consumers must disclose, *or at a minimum display by a link or rollover*, the fees for these basic ancillary services on the first page on which a fare is displayed in response to a specific flight itinerary search request in a schedule/fare database.

Since the prior ancillary fee rulemakings, no technological changes have made links or rollovers or other shorthand means of displaying data any less useful for presenting large amounts of information in a useable format. Also, in the current NPRM, DOT proposes allowing links and rollovers for ancillary fee information other than the fees themselves. *See* NPRM at 63728 (“[This NPRM] permits the use of links or rollovers for other pieces of information.”). If links and rollovers are not inherently unfair, deceptive, anti-competitive, or anti-transparent for this other ancillary fee data – and they clearly are not – it is hard to understand how they or other means of providing consumers with the relevant information could be inadequate for critical ancillary fees.

Travel Tech’s goal is to ensure, consistent with DOT’s expression, that ticket agents have “the necessary flexibility to allow for design displays that would enhance the user experience and encourage innovation as technology changes.” NPRM at 63728. Over the past two decades, ticket agents have revolutionized the way consumers shop for airline tickets. This is due, in large part, to ticket agents’ innovative techniques of gathering and displaying travel options online, especially options across multiple airlines. The display limitations imposed by DOT’s proposed rule, therefore, more directly affect ticket agents than airlines -- and in turn impact consumers who rely upon agents as an independent and comprehensive source of information. As noted above, while airlines display only their own flight options, ticket agents display options for multiple carriers, which means that ticket agents’ websites already contain much more information. Not allowing the use of links and rollovers or other pages within a click or two of the first search results page would unnecessarily constrain ticket agents’ ability to display the wide range of travel options consumers have come to expect, especially for carriers that use “low cost” or “ultra low cost” pricing models.

In addition, as technology develops ways to display large amounts of information in a single viewing, DOT's proposed requirement limiting the display of critical ancillary fees in a text-only format on a single page will inevitably hinder technological development and creative display options. This is especially true if transactability is required for family seating or if ticket agents and airlines independently negotiate for transactability of other services. By dictating prescriptive, text-only displays, DOT is limiting the innovation that online ticket agents bring to the air transportation industry. Permitting display flexibility, including the use of links and rollovers, "would provide the necessary flexibility to allow for design displays that would enhance the user experience and encourage innovation as technology changes." *Id.* at 63728.

**E. Flexible display rules are even more imperative in the mobile setting.**

DOT has also asked for input on how its proposed rule will affect mobile websites. NPRM at 63728 ("Considering the screen size of mobile devices, would the proposed display requirement work on mobile platforms? ... Should the disclosure requirements be limited to websites accessed through desktop applications and not apply to those accessed through mobile applications?"). Travel Tech believes that the proposed rule not only should apply to mobile websites, since they are increasingly used by consumers, but also that the proposed rule necessarily will apply to mobile websites, since mobile websites are usually only scaled-down versions of desktop websites. Consequently, mobile websites are not a peripheral issue; their more restricted screen size is *the* practical limiting factor for any proposed rule

Accordingly, Travel Tech's previously-described concerns regarding the proposed requirement to display all critical ancillary fee information on the first search results page apply with full force to the mobile setting, and are in fact amplified in that setting. Flexibility of ancillary fee display, provided that fee information for critical ancillaries is provided early in the search

process, is essential and will allow ticket agents the freedom to develop displays that are both useable and not overly confusing or cluttered for consumers' easy use.

And there is an additional complication that mobile websites add: the need to accommodate screen readers for disabled persons. This is already a difficult technological task on mobile websites' small screens. DOT's current proposed requirement would make this task even more challenging by overwhelming this small screen with too much ancillary fee and other information. Ticket agents need to retain the ability to display the fee information in a manner that meets the goals of the proposals without (i) sacrificing utility for those with disabilities, (ii) limiting the number of flight options shown, or (iii) any need for excessive scrolling.

**F. DOT Should Exclude Mobile Apps from the Proposed Rule.**

All the technological challenges previously mentioned in regard to mobile websites also apply to mobile apps. But unlike mobile websites, mobile apps are not scaled-down versions of desktop websites but rather use display formats that are uniquely designed to make information more accessible.

Travel Tech submits that mobile apps should be excluded from the proposed rule. This exclusion is unlikely to undermine the goals of the NPRM because the whole point of mobile apps is to provide information in a more accessible format than mobile websites. Further, if airlines and ticket agents conspicuously provide critical ancillary fee information on their desktop and mobile websites, consumers will begin to expect this information on mobile apps as well. And without the website-focused strictures of the proposed rule, mobile app developers will have the flexibility to develop new and better ways to provide critical ancillary fee information during the search process.

**G. Ticket Agents Will be Unable to Display Passenger-Specific Ancillary Fee Information Until The Systems for Airlines to Provide the Essential Information are Developed**

With respect to at least baggage fees and change/cancellation fees covered by the proposed rules, DOT proposes to require that consumers be offered the option to conduct a “passenger-specific” itinerary search along with the option to conduct an “anonymous” itinerary search. *See* proposed sections 399.85(b)(1); (c).<sup>9</sup> For passenger-specific searches, the proposed rules contemplate that the consumer will have provided information such as participation in an airline’s frequent flyer program, military status, or whether the passenger holds a particular type of credit card. Such information might allow the website to return specific fee information applicable to that consumer.

DOT’s proposal, however, assumes that tools are available that would allow ticket agents to readily determine passenger-specific fee information. That is not the case. First, the magnitude of the issue is much bigger than DOT has assumed. Even beyond the fee variances that are based on frequent flyer, credit card or other status elements for a particular passenger is the fact that each airline has its own unique policies that can determine the levels charged to any specific passenger, including membership in certain associations, entitlement to various airline award levels, etc. Thus, for any passenger-specific fee requirement to work, the ticket agent would need to collect an array of information from the passenger before the search process even gets underway. That is obviously not feasible absent a paradigm shift in the way that consumers interface with travel websites. Indeed, asking consumers for detailed personal information at the outset of a search would do nothing but dissuade passengers from engaging in the search, which serves no stakeholder interest.

---

<sup>9</sup> The same “passenger-specific” display requirements are not proposed for family seating fees addressed in proposed section 399.85(e).

But there is an even more fundamental problem with the passenger-specific proposal: ticket agents would need to receive a huge volume of data from airlines for this proposal to work, but systems to exchange vast amounts of passenger-specific status information between airlines, agents and GDSs do not currently exist. Such systems would need to be developed from scratch at an undoubtedly enormous expense and commitment of resources. Some agents currently have the capability to provide frequent flyer data to airlines, but it is a one-way system that does not necessarily allow the agency to correlate the frequent flyer data with the appropriate baggage or other fees. Nor is there any existing system for the exchange of this information that is remotely scalable to meet DOT's proposed demands. Travel Tech is unable to estimate the costs of developing such systems, but is confident that the expense would be significant and the systems would take years to develop.

As DOT has correctly noted, "ticket agents cannot provide ancillary service fee information to consumers unless the information is first provided by carriers to ticket agents ...." NPRM at 63725. What its proposal overlooks is that ticket agents do not possess the needed information and there is no currently available means to obtain and process it so that an accurate passenger-specific fee can be delivered to the passenger.

Further, knowing the passenger's status, even assuming that the status information provided to the agent by the passenger is accurate, is not enough to allow for the display by the agent of a passenger-specific fee unless the agent understands the implications of the status information on the relevant fees. Any new system would need to deliver that information as well. And even if such a system could be developed, it would need to be a dynamic system capable of delivering up-to-date information on how the passenger's status affects fees, which of course could change over time. Developing such a system would likely be a years-long endeavor.

For this reason, Travel Tech urges DOT not to require that passenger-specific fee information be provided by ticket agents. Alternatively, were DOT to move forward with its proposals on this issue, it will need to: (1) require that airlines cooperate with ticket agents and other intermediaries to provide the information needed to allow for the display of passenger-specific data; (2) provide ample time (likely measured in years) for implementation of a passenger-specific requirement for ticket agents; and (3) in the interim, make any passenger-specific fee displays optional for ticket agents.

#### **H. DOT Should Provide an Opt-Out Option**

As the NPRM is currently written, there is no option for a consumer to skip disclosures that the consumer indicates are irrelevant to his or her particular situation. For instance, if a consumer is traveling with only a carry-on, there is no option for the consumer not to be provided checked bag fee information, which this particular consumer neither wants nor needs. Such unnecessary disclosures will add time (multiple minutes) to each search and, of course, are likely to annoy the consumer.

In DOT's 2017 SNPRM on this issue, DOT's proposed rule stated that "[c]arriers and ticket agents may permit a consumer to opt out of being provided search results with the fees for a first checked bag, a second checked bag or one carry-on bag, or any single baggage fee (e.g., second checked bag) or any combination of baggage fees (e.g., carry-on and second checked bag)" as long as the opt-out was not "pre-selected" and "[made] clear which fee or fees will not be displayed." 2017 SNPRM at 7560 (proposed rule § 399.90(d)). As DOT recommended in 2017, so too Travel Tech recommends that consumers should be able to opt-out of the disclosures proposed in the NPRM, with the same stipulations, i.e., no pre-selected opt-out option and a clear statement as to the fees that will not be displayed.



### **III. DOT SHOULD ADOPT CERTAIN REQUIREMENTS TO ENSURE THAT CONSUMERS ACHIEVE THE BENEFITS OF ANY NEW RULES**

Travel Tech here identifies certain provisions that DOT should include in any final rules to ensure for consumers the full benefit of the transparency it appropriately seeks to promote. Specifically, ancillary fee information should be provided without conditions, the requirement that ancillary fee data be provided in a “useable” format should be clarified and DOT should protect ticket agents from any enforcement measures in the event that they fail to display ancillary fee data because it was either not provided to them or not provided in a useable format.

#### **A. Fee Information Must be Provided by Airlines without Conditions**

In Section 399.85(j) of its proposed rules, the Department appropriately requires that airlines provide “useable, current and accurate” fee information to ticket agents to which the airline provides fare, schedule and availability information. In proposed Section 399.85(k), the Department states that failure to provide the disclosures required by the proposed rule, and collecting fees without such disclosures, is an unfair and deceptive practice. Travel Tech has previously urged in these Comments that the Department should expand its proposed rules to require the provision of fee data to intermediaries that might not be ticket agents, including metasearch sites. Beyond that, any final rules should further provide that airlines are prohibited from imposing unreasonable conditions on the dissemination or redistribution of fee information covered by the rules.

In this regard, the Department should be aware that some airlines have imposed or sought to impose conditions that would limit, among other things, the manner in which fares are displayed, the sites on which they can be displayed, and the ability to display fares of other carriers. Travel Tech’s ticket agent members are concerned that certain airlines will do the same with respect to

ancillary fee information in order to achieve some sort of competitive advantage or commercial goal. The Department appropriately raised the issue for comment in its 2014 NPRM as follows:

As a related matter, the Department is considering whether carriers should be prohibited from restricting the information provided by ticket agents when those ticket agents do not sell air transportation directly to consumers but rather provide consumers with different airlines' flight information for comparison shopping. For example, the Department has been informed that some carriers may not allow certain entities with Web sites that operate flight search tools to display the carrier's fare, schedule and availability information. Should carriers be prohibited from imposing restrictions on ticket agents that prevent ticket agents from including a carrier's schedules, fares, rules, or availability information in an integrated display? Also, we understand that a number of carriers restrict the links ticket agents may place next to a particular flight itinerary on a display, and in many cases only permit a link to the carrier's own Web site. Why might carriers place such restrictions on travel agents? Should the Department require carriers to allow ticket agents to provide links to the Web sites of the entities listed in an integrated display, including non-carrier Web sites?

Travel Tech submits that the most likely reason for a carrier wanting to thwart the dissemination of its information through unreasonable conditions would be to shield itself from comparison shopping and competition. Such goals run directly counter to the Department's core principles of full fare disclosure and access, and clearly violate Section 41712. No basis exists to allow carriers to restrict or "cherry pick" access to otherwise available fare, schedule and fee information. Travel Tech urges the Department to determine that this type of anti-consumer and anti-competitive behavior is contrary to the dictates of Section 41712.

**B. DOT Should Clarify the Requirement that Data Be "Useable"**

Travel Tech appreciates that the proposed rules at section 399.85(i) would mandate that the fee data required to be provided by airlines be "useable." Travel Tech supports the useable data requirement, but believes that term needs some more specific definition.

By “useable,” Travel Tech assumes that DOT intends that airlines provide the data in a format such that ticket agents would not be required to perform extensive or costly manipulation of the data in order to prepare it for display to consumers. In other words, the data should be provided in essentially the same format as fare data is provided. Travel Tech urges the Department to clarify this point to ensure that there is no misunderstanding among the relevant stakeholders that the data should be provided in a format designed to facilitate its ready display by ticket agents. Otherwise, ticket agents might find themselves having to decipher data provided in multiple different formats by the hundreds of airlines that will be providing the data. Lack of data formatting uniformity could make the proposed rules virtually impossible to implement. Accordingly, spelling out its requirement that the data be “useable” in terms that will avoid costly and time-consuming data translation or manipulation will also facilitate faster and more effective implementation of any final rules. As a result, consumers will more quickly benefit from the transparency goals DOT is seeking to achieve.

There are currently no industry-wide standards governing the format for transmission of ancillary fee data. The development of such standards would be beneficial to all industry stakeholders and, most importantly, to consumers as it would facilitate the more efficient implementation of any final rules adopted here. Travel Tech would thus support any DOT initiative to promote the development of standards by airlines and other travel industry participants, as discussed further in the last section of these Comments, concerning the time needed for implementation of any final rules.

**C. Ticket Agents Should Not Be Responsible for Inaccurate or Unusable Fee Information Provided by Airlines or Precluded from Displaying Fares if An Airline Fails to Provide Fee Information**

The Department should clarify that ticket agents should not be found to be in violation of its rules for displaying or transacting any critical ancillary fee for which inaccurate information

has been provided by the airline. Because “ticket agents cannot provide ancillary service fee information to consumers unless the information is first provided by carriers to ticket agents,” 87 Fed. Reg. at 63725, it follows that ticket agents should not be liable for any inaccurate or unusable information that is provided by airlines, including non-U.S. airlines or airlines that might not even serve the U.S. consumers. Further, to the extent agents are at all obligated to provide refunds of fees that the Department determines were not properly disclosed, there should be a corresponding obligation for airlines to reimburse agents if the airline was at fault, e.g., the airline failed to provide the fee information required to be disclosed. DOT should clarify in its final rules that an airline’s failure to provide to an agent required information or its failure to provide the information in an usable format should not result in any financial penalty being imposed on that agent as a direct or indirect consequence of the airline’s lapse.

Travel Tech’s proposal in this regard is consistent with Congress’ determination in the 2018 FAA Reauthorization Act, PL 115–254 (Oct. 5, 2018), that ticket agents should not suffer enforcement penalties if their inability to comply with required rules results from an airline’s failure to provide data. *See* section 427(e) (providing that an agent cannot be held responsible for lack of compliance with requirements where the carrier has failed to provide the information needed for compliance).

In addition, if an airline fails to adhere to any rule requiring that ancillary fee information be provided to ticket agents, such agents who did not receive the information should not be precluded from displaying fare and schedule information in response to a consumer search. It would be unfair to deprive that agent of the ability to transact business where the failure to provide fee information rests with the airline. So too, consumers would be harmed if fewer flight options

were displayed on agency websites by virtue of an airline's failure to provide those agencies with fee data.

#### **IV. THE SCOPE OF ANY FINAL RULES SHOULD EXCLUDE CORPORATE TRAVEL AGENCIES, METASEARCH SITES AND WEBSITES NOT INTENDED FOR USE BY U.S. CONSUMERS**

Travel Tech here offers its views on which entities should be covered by any final rules adopted in this proceeding. Specifically, (i) any requirements for ticket agents adopted in this proceeding should not apply to corporate travel management companies because the displays provided by those entities are governed by contracts with their business customers, (ii) any such rules, including display requirements, should not apply to metasearch sites because they are not ticket agents and thus not subject to DOT jurisdiction, and (iii) the rules should only be made applicable to websites designed for use by U.S. consumers.

##### **A. Corporate Travel Agencies Should Be Excluded from the Rule**

The DOT solicited comment as to whether the proposed rule should "be more limited in scope" and, specifically, whether it should "exclude corporate travel agents because the display content [that they provide] is typically negotiated by the business involved?" 87 Fed. Reg. at 63724. Travel Tech believes that DOT should exclude corporate travel agencies from the proposed rule for the reason identified by DOT, among many others. First, the individuals served by a corporate travel agency are not the general public, who generally travel infrequently and are unfamiliar with ancillary fees associated with traveling. Instead, such individuals are the employees of the corporate travel agency's corporate clients and travel for business regularly. Second, corporate clients are generally sophisticated entities which have previously entered into travel-related contracts with the corporate travel agency they utilize to support the broad and frequent travel needs of their employees.

Third, such corporate clients separately agree in advance with their corporate travel agency exactly what kind of travel arrangements they will need and, thus, what kind of ancillary fee information they want included on flight displays designed to be used by their employees. By providing the information agreed upon with their clients, corporate travel agencies already meet the NPRM's goal of providing their corporate clients' employees with tailored information needed to make an informed decision when purchasing tickets. For many corporate clients, certain ancillary fees are either not relevant (e.g., child adjacent seating fees) or not a significant consideration for their purchasing decision (e.g., baggage, flight change, and other fees) given the reasons for traveling and the priorities of the corporate client (e.g., timing and reduction in carbon footprint). Given this, the corporate travelers served by the corporate travel agencies are not in need of the consumer protections at issue in this proceeding, which are designed to protect the occasional/leisure traveler.

Fourth, the exclusion of corporate travel agencies from this rule is in alignment with the view held by the European Commission, which has consistently considered the segments for leisure and business travel services to be distinct.<sup>10</sup> As defined by the Commission, "*business travel agency services meet the needs of companies for business travel of management and employees in accordance with corporate travel budgets and plans*" whereas leisure travel agents "*provide services to individuals in connection with their non-business vacation and personal travel*

---

<sup>10</sup> Case COMP/M.7238 *American Express Company/Qatar Holding/GBT*, Commission Decision of 20 June 2014, para. 23; Case COMP/M.4234 *Carlson/One Equity Partners/Carlson Wagonlit*, Commission Decision of 3 July 2006, paras. 12-13; Case COMP/M.2627 *Otto Versand/Sabre/Travelocity/JV*, Commission Decision of 19 February 2001, para. 12; Case M.2197 *Hilton/Accor/Forte/Travel Services/JV*, Commission Decision of 16 February 2001, para. 14; Case IV/M.988 *Maersk DFDS Travel*, Commission Decision of 4 November 1997, para. 9; Case IV/M.867 *Wagons-Lits/Carlson*, Commission Decision of 7 March 1997, para. 10; Case IV/M.229 *Thomas Cook/LTU/West LB*, Commission Decision of 14 July 1992, para. 12.

needs.”<sup>11</sup> The German and UK competition authorities have also consistently considered the segments for leisure and business travel services to be distinct.<sup>12</sup> As stated by the German Federal Cartel Office (*FCO*), “the differences between the two types of travel (in terms of target group, type of travel as well as type of booking process and different service providers) and the emergence of travel agents specialising in business travel justify the separation of the market into relevant submarkets for leisure on the one hand and business on the other hand.”<sup>13</sup>

Given these reasons, Travel Tech requests that the Department exclude corporate travel agencies from the proposed rule. Travel Tech recognizes that it will be necessary for DOT to develop a definition for a “corporate travel agency,” which is not currently defined in any DOT regulation. Travel Tech proposes that DOT define a corporate travel agency as “a travel agency engaged in the provision of travel services primarily to business entities pursuant to a written contract for the business travel of such business entities’ employees.” Travel Tech further requests that any final rule includes a provision along the following lines: “This rule does not apply to any ‘corporate travel agency’, which would include any travel agency engaged in the provision of travel services primarily to business entities pursuant to a written contract for the business travel

---

<sup>11</sup> Case COMP/M.7238 *American Express Company /Qatar Holding/GBT*, Commission Decision of 20 June 2014, para. 23; Case COMP/M.2197 *Hilton/Accor/Forte/Travel Services JV*, Commission Decision of 16 February 2001, para. 14; Case COMP/M.2627 *Otto Versand/Sabre/Travelocity/JV*, Commission Decision of 19 February 2001, para. 12. See also Case COMP/M.2794 *Amadeus/GGL/JV*, Commission Decision of 21 May 2002, para. 10 and Case IV/M.867 *Wagons-Lits/Carlson*, Commission Decision of 7 March 1997, para. 10.

<sup>12</sup> Case *Thomas Cook/Co-operative Group/Midlands Co-operative*, Competition Commission Decision of 16 August 2011; Case B 9 - 173/99 *REWE-Gruppe/Deutsches Reisebüro GmbH*, Federal Cartel Office Decision of 25 February 2000, para. 18; Case B9 - 7/02 *TUI Deutschland GmbH/Herr Betriebswirt Klaus D. Scheyer*, Federal Cartel Office Decision of 19 April 2002, para. 7; Case B9 – 214/02 *TUI Deutschland GmbH/Raiffeisen-Volksbank im Landkreis Altötting eG*, Federal Cartel Office Decision of 28 March 2003, para. 8; Case B9 - 55/06 *Amadeus IT Group SA / TravelTainment AG*, Federal Cartel Office Decision of 7 September 2006.

<sup>13</sup> Convenience translation. See Case B9 - 173/99 *REWE-Gruppe/Deutsches Reisebüro GmbH*, Federal Cartel Office Decision of 25 February 2000, para. 18.

of such business entities' employees.” This simple provision articulates the widely understood meaning of “corporate travel agency” and is consistent with the role of corporate travel agencies to serve their sophisticated corporate clients in accordance with their specific business travel needs, which are different from the personal travel needs of the general public.<sup>14</sup>

**B. Metasearch Sites Are Not Ticket Agents and Therefore Should Not be Subject to the Display Requirements of Any Final Rules**

Metasearch sites play an important role in enhancing consumer choice when shopping for air transportation online. Often, metasearch sites are a consumer's first stop in the process so that consumers can readily and easily learn of the available flights and booking options for a particular itinerary, whether that consumer subsequently chooses to book travel or not. However, while metasearch sites are compilers of flight data, they are not engaged in the selling, providing, or arranging of air transportation services. Therefore, metasearch sites do not fall under the statutory definition of “ticket agent” found at 49 U.S.C. § 40102(a)(45).<sup>15</sup> In fact, DOT has never held to the contrary.

Although DOT proposed to “clarify” the definition of “ticket agent” to include metasearch sites in the 2014 NPRM, DOT did not finalize its proposed rules in that proceeding. While DOT sought comment in the 2014 NPRM on whether metasearch sites should be covered in the definition of ticket agent, DOT has never explicitly held in any rulemaking proceeding that metasearch sites are ticket agents. In fact, the Department received extensive comments from

---

<sup>14</sup> Case COMP/M.7238 *American Express Company /Qatar Holding/GBT*, Commission Decision of 20 June 2014, para. 23; Case COMP/M.2197 *Hilton/Accor/Forte/Travel Services JV*, Commission Decision of 16 February 2001, para. 14; Case COMP/M.2627 *Otto Versand/Sabre/Travelocity/JV*, Commission Decision of 19 February 2001, para. 12. See also Case COMP/M.2794 *Amadeus/GGL/JV*, Commission Decision of 21 May 2002, para. 10 and Case IV/M.867 *Wagons-Lits/Carlson*, Commission Decision of 7 March 1997, para. 10.

<sup>15</sup> That section defines ticket agents as follows: “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.



metasearch sites and others in response to its 2014 NPRM arguing that such sites are neither principals nor agents as those terms are used in the statute defining the term “ticket agent” and also are not involved in the sale or booking of air travel, which is handled by airlines or on-line agencies whose information is merely displayed by the metasearch site. Nonetheless, with no explanation of why it believes metasearch sites are or should be regulated as ticket agents, DOT’s current proposals would regulate the display of ancillary fees by these sites as if they were ticket agents.

However, DOT’s action here is, at best, premature because DOT has left open the question of whether metasearch sites are or are not ticket agents. That question was explicitly raised in the 2014 NPRM, but left unresolved. DOT should not, without any consideration or discussion of the numerous comments filed at that time on this issue, resolve it here by, apparently, silently assuming in the text of the proposed rules that metasearch sites are agents. That issue deserves a full airing before DOT imposes on metasearch sites display rules plainly designed for ticket agents, including rules that appear to require transactability.

Metasearch sites display ticket options from multiple authorized sellers and provide consumers with links to the websites of these authorized sellers, which is where any transaction actually occurs. As such, metasearch sites are akin to electronic billboards; they do not sell or otherwise make any tickets or ancillary fees transactable on their own websites. If the Department’s intention is that metasearch sites will be made subject to the same rules to which regulated ticket agents are subject, DOT must first seek a change in the statute to give it regulatory authority over metasearch sites. Absent statutory authority to regulate metasearch sites or other entities that merely display flight data but do not sell or offer for sale air transportation, DOT cannot dictate how these sites must display either airline ancillary fee data or any other flight data.

Moreover, regulation of metasearch sites would be ill-advised. Metasearch sites, like on-line agencies, are experts at displaying information to consumers in easy-to-compare formats. Dictating prescriptive displays for metasearch sites or otherwise regulating them would diminish their utility and their purpose, thus decreasing the important benefits that they provide for consumers. The purpose of metasearch sites is for consumers to quickly assess the broad options available for transportation. As discussed above, by requiring cumbersome search result displays that will consume valuable screen real estate (as well as far more under-the-hood data inquiries before returning results), the proposed display rules would actually limit the number of flight options a metasearch site can efficiently show a consumer. Comparing flight options will thus be stymied by an over-abundance of information that is not necessarily relevant or important to a consumer who is simply scanning for flight options, while the time savings consumers enjoy from starting the search process at a metasearch site will be adversely impacted.

None of this is to suggest that metasearch sites should not be entitled to receive ancillary fee data from airlines. As discussed above, airlines should provide such data – without unreasonable conditions, including without conditions on its distribution or re-distribution – to any entity to which they provide fare and flight data for distribution. Metasearch sites would then have the ability to display fee data to consumers in a manner designed to be most useful to the consumer. Metasearch sites make it easier for consumers to compare the available options (whether they ultimately book directly with airlines or through a ticket agent) for their air transportation. Doing so requires metasearch sites to incorporate as much data as possible into readable, useable, and consumer-friendly formats. DOT’s goal of enabling more robust disclosure of ancillary service fees can be achieved through widespread distribution of this information to all channels through which airlines distribute fare, schedule and other information. Requiring such broad distribution

by airlines will solve the current industry failure that has led to ancillary fee data not being widely available. In the case of metasearch sites, it will also allow industry incentives to ensure that consumers will be informed of such fees, albeit in a manner best left to each site to design.

If DOT disregards its statutory limitations and endeavors to treat metasearch sites as a form of ticket agent, the proposal must be modified to accommodate the reality that no booking of transportation takes place through metasearch sites. Thus, if DOT determines, contrary to its current statutory authority, that metasearch sites are subject to its regulatory jurisdiction, it should: (1) provide a full explanation of why it believes it can regulate such sites; (2) allow such sites flexibility to display ancillary fee data in the manner that they choose; and (3) ensure that there is no transactability requirement (even for family seating fees) made applicable to metasearch sites, which by definition do not provide for any transactability.

Concerning display flexibility, compliance with any requirement to display all of the critical ancillary services fees at the first search results page would be especially challenging for metasearch sites. That is because their business model is predicated on not just airline to airline price comparison but also comparison of prices for airline and non-airline sellers within each itinerary. This renders the amount of information required to be displayed very challenging were the rules to be adopted as proposed. In short, the need for greater flexibility to show the required information becomes even more important in the metasearch context.

### **C. The Rules Should Only Apply to Websites Designed for U.S. Consumers**

At pages 63724-25, the NPRM proposes that all U.S. airlines, foreign airlines and ticket agents that have websites marketing to consumers in the U.S. that “display schedule, fare and availability information for flights to, from and within the United States” would be covered by the proposed rules. Travel Tech generally agrees with this statement of applicability, but suggests that DOT clarify that displaying information for flights to, from or within the United States is, by itself,

not sufficient to warrant coverage. There are many websites operated throughout the world that display such information but that are not designed for use by U.S. consumers and thus should not be covered. These include foreign-facing websites operated by U.S.-based entities, including Travel Tech members.

Travel Tech submits that the key to coverage by any final rules in this proceeding should be whether the website is designed to be used by U.S.-based consumers based on the factors that the Department identifies at page 63725 of the NPRM. Such factors include whether the website is in English, displays prices in U.S. dollars and provides the option of showing pages designed for consumers in the United States (which should be covered by any rules) versus non-U.S. consumers (which portion of the website should not be covered).

**V. THE DEPARTMENT SHOULD INCLUDE ALL SEAT FEES WITHIN THE SCOPE OF ANY FINAL RULES.**

Under the proposed rule, only a fee for securing a seat adjacent to a child with which one is traveling, where the child is at most 13 years old, is required to be conspicuously displayed and to be transactable. DOT reasons that failure to disclose such fees “causes substantial harm to consumers in that passengers may face situations in which they are unexpectedly separated from their children on flights or must pay unexpected fees to remain with their children.” NPRM at 63722-23. Travel Tech appreciates fully the importance of seating children with their parents or guardians, and also appreciates the attention that particular issue has received from Congress and in complaints filed with the Department. But the same rationale also applies to many other passengers who need or wish to sit together or in a particular seat.

For example, certain passengers may prefer to travel with a family member or caregiver, but do not qualify for an adjoining seat under the Department’s existing seating accommodation rules at 14 C.F.R. § 382.81(b). The inability to sit together could cause harm similar to that

associated with separating a parent and a young child, including for consumers traveling with an elderly family member or a child older than thirteen who for any number of reasons wishes to sit with a parent or siblings. In other circumstances, some pairs of passengers would lose most of their flight's value if they are unable to sit together, such as a newly-wed couple on a 17-hour honeymoon flight or business partners who need to sit together to work during the flight. And some passengers have strong reasons for selecting a particular seat even if traveling alone, for instance passengers who need to sit near the front of the plane to make a connecting flight or passengers who need to be near the restroom for health reasons. For all these passengers, knowing the price of these particular seat assignments is material to their purchase decision.

Travel Tech accordingly believes that airlines should be required to provide ticket agents and other intermediaries covered by any final rules with relevant information on all advance seat fees in a transactable format, whether for persons traveling together or individual travelers. This expansion of the proposed rule's protection not only is the logical conclusion of DOT's goal to protect consumers who need to travel in particular seats relative to other passengers with whom they are traveling but also benefits consumers generally.

DOT was apparently of exactly this view in 2014. Recognizing the importance of all seat fees to travelers, the 2014 NPRM proposed to require that airlines provide both baggage and *all* seat fees to ticket agents. DOT stated in its 2014 proposal as follows:

*. . . there are certain basic services that are intrinsic to air transportation that carriers used to include in the cost of air transportation but that they now often break out from the airfare, and the cost of those services is a factor that weighs heavily into the decision-making process for many consumers. We consider these basic ancillary services to consist of the first and second checked bag, one carry-on item and advance seat selection. This rulemaking would require U.S. and foreign air carriers to distribute to ticket agents the fees for these basic ancillary services.*<sup>16</sup>

---

<sup>16</sup> 2014 NPRM at 29977 (emphasis supplied).

The importance of seat fees to consumer decision-making has not changed since 2014. On some airlines, the price of seats is often about \$20/seat or more, an amount that can significantly influence a consumer's choice of flights, particularly when several family members are flying together.

Not only should the final rules adopted in this proceeding apply to all seat fees, but as discussed in the next section of these Comments, all ancillary fees that are addressed in any final rules adopted in this proceeding should also be provided in a transactable format, not just family/youth seat fees.

**VI. DOT SHOULD REQUIRE THAT ALL CRITICAL ANCILLARY FEES COVERED BY THE FINAL RULES BE PROVIDED IN A TRANSACTABLE FORMAT, BUT SHOULD NOT MANDATE THAT AGENTS MUST SELL ANY PARTICULAR ANCILLARY SERVICE**

Airlines should be required by any final rule to provide *all* baggage and seat fees in a transactable format.<sup>17</sup> As explained below, allowing consumers the option to buy these services on agency websites would benefit consumers by eliminating the situation in which passengers seeking to pay for baggage and seats displayed on an agency website would need to use an airline website to effectuate the purchase. Requiring that all seat fees be provided in a transactable format would also effectively eliminate the risk of displayed services later costing more or being unavailable, while serving the pro-competitive purpose of removing a disadvantage suffered by the independent and indirect distribution system. And doing so would also ensure that the technological changes the NPRM will require are cost-effective within the air travel industry.

Requiring airlines to provide ancillary fee data in a transactable format will promote the goals of the NPRM by benefiting and protecting consumers. Transactability directly benefits

---

<sup>17</sup> When they are provided to ticket agents, change and cancellation fees are generally already transactable, and thus not discussed further here.

consumers by enabling one-stop shopping. Otherwise, consumers seeking to purchase air travel through the indirect channel would have to visit both ticket agent and airline websites to separately secure their flight and then, separately, certain ancillary services, which would add time and inconvenience to the purchasing experience. To achieve the Department's goal of enhancing transparency, it is therefore essential that all ancillary fee information be provided to ticket agents in the same transactable format as fares. Ticket agents provide a comparative shopping experience for consumers that they do not receive from airlines. If ancillary fee information is shared with ticket agents in a transactable format, ticket agents could offer consumers the ability to compare airline prices and schedules, including ancillary services, and complete their purchases all in one place. Consumers would have the advantage of knowing that they got the best all-in price for their needs and would be protected against unexpected potential increases in that price when they are forced to buy an ancillary service on the airline's site.

With respect to baggage fees specifically, the Department reasons that these do not need to be transactable because under DOT's existing rules, these fees cannot be increased beyond the level of fees that existed at the time the flight ticket was purchased. NPRM at 63732. In that setting, the harm of not allowing ticket agents the option of offering consumers the ability to transact is not necessarily that the passenger will pay more for transporting baggage, it is rather that the passenger, having bought a flight on an agency site, must spend more time going to the airline's own site to pay for a baggage fee that they can plainly see but cannot purchase on the agency site. Such disclosure without the possibility of transactability of ancillary service fees runs counter to the shopping experience to which consumers are accustomed; typically, if consumers can view products and services for sale on the internet, they are able to purchase them. And for good reason: advertising products and services without providing agents with the option of offering

consumers the opportunity to purchase them makes little competitive sense and suggests an underlying anticompetitive rationale.

Further, Travel Tech notes that, to the extent airlines are able to quote and charge different baggage fees depending on the timing of when the passenger pays for the bag (e.g., a higher fee applies if paid closer to the flight date or at the airport instead of at the time of booking), lack of transactability could also result in passengers paying higher baggage fees.

With respect to seat fees, requiring transactability of all seat fees protects consumers by preventing a consumer from experiencing a situation in which the seat fee displayed on the agency website has been increased by the time the consumer later attempts to pay for the seat on the airline site. Further, the limited number of seats in a favored location may mean that the ancillary service is no longer available at the later point of purchase. *See* NPRM at 63723 (“Transactability is necessary because consumers are not able to save the seat or lock in the price for adjacent seating at the time of ticket purchase.”). The consumer may lose that service completely or pay more for a similar but higher-priced seat. Transactability also comports with the normal online shopping experience consumers expect. If consumers view products and services for sale online, they are usually also able to purchase them,

Consumers will also benefit indirectly from transactability because it will promote industry competition. If only airlines’ websites make critical ancillary fees transactable, consumers will have an incentive to shop only on airlines’ websites. This unfair advantage will prevent competition in the industry and remove the downward pressure on prices that competition brings.

Requiring that *all* ancillary fees must be shared in a transactable format will also ensure that the technological changes the NPRM will require can be cost-effectively implemented. There will be very little, if any, profit to be made by ticket agents from selling ancillary services. Rather,



ticket agents are interested in offering ancillary services to better serve their customers who want to buy all travel services in a single transaction. If ticket agents must make the significant technological innovations needed so that child adjacent seating fees are transactable, it will require little additional effort to use the same technology to make other ancillary fees transactable, and it will also be *necessary* to do this so that ticket agents can recoup their expenses in developing this new technology. Indeed, since family seating fees will be critical for only a small portion of consumers, *see* NPRM at 63723 (“The number of family seating complaints that the Department receives against airlines is low ...”), it makes sense to offer the potential of transactability to more consumers to lower the cost of developing the systems to transact and ensure these changes are cost-effective within the industry.

It is noteworthy that the Department points to no reason why critical ancillary fees should not be transactable on agency websites. In view of the several reasons supporting broad transactability noted above, Travel Tech submits that airlines should be required to provide all baggage and seat fees to ticket agents in a transactable format.

Finally, Travel Tech opposes any requirement that ticket agents must offer transactability for any type of ancillary fee. Whether to do so or not is a business decision on which any form of DOT regulation would be inappropriate. If, for example, a ticket agent opted for legitimate business reasons not to offer the opportunity to transact certain types of fee options on its website, that is a matter for the ticket agent to decide based on its business judgment.

## **VII. IMPLEMENTATION**

As explained above, DOT’s current proposed rule will cause major disruptions to the way the industry operates. First, if retained, the requirement to display all critical ancillary fee information on the first page of search results will, to the extent such display is even feasible, require a significant and time-consuming investment of technology resources. Developing

systems that can pull from among dozens of fees offered by each of hundreds of airlines to almost instantaneously display an applicable baggage fee, change or cancellation fee or seat fee presents a new and substantial technological challenge. That challenge can only be met with very large development costs over an extended period likely measured in at least two years.

Second, beyond the time needed for development of technology systems, a first search results page display requirement will create clutter and confusion. To address this problem to the extent possible, airlines and ticket agents will have to redesign their web displays and, in order to display passenger-specific fee data, develop new technology to allow for the exchange of passenger-specific information between airlines and agencies. This too will take time.

Third, the proposed exclusion of GDSs from the requirement that airlines provide fee data to ticket agents with which they do business will not only add to development time (GDSs are by far the travel sector entities most capable of managing the necessary technology development work) but also require the industry to develop new means of transferring data between airlines and agencies, which will also take considerable time, likely considerably more than one year, and quite possibly more than two years, to fully implement the DOT proposals.

However, if the industry need not make these technological changes—which are problematic for the reasons explained above—and if DOT scales back the overly prescriptive mandates on website design, allows the leading technology companies in the travel sector the flexibility to display this information in consumer-friendly and innovative ways, and heeds our call to require fee dissemination to all existing channels of distribution, including the already-existing and efficient information distribution system provided by GDSs – then Travel Tech believes the industry can implement the proposed rule within a shorter period, perhaps eighteen months. But under no circumstances can it be done within six months.

Further, as discussed above, a standardized format for the transmission of fee data would greatly facilitate implementation of any final rules and shorten the implementation period. DOT should encourage airlines, ticket agents, GDSs and other intermediaries to collaborate in order to find feasible, efficient, and mutually-agreeable solutions to the technology challenges posed by any final rules. By that means, the transparency sought to be achieved by DOT could be achieved more quickly and efficiently.

### CONCLUSION

For all the reasons stated above, Travel Tech urges DOT to move forward to require airlines to provide transactable ancillary fee information to ticket agents provided that it otherwise modifies its proposed rules consistent with these comments.

Respectfully submitted,



Laura Chadwick  
President & CEO  
The Travel Technology Association  
3033 Wilson Blvd., Suite 700  
Arlington, VA 22201  
202-550-8939

January 23, 2023