

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**ENHANCING TRANSPARENCY OF  
AIRLINE ANCILLARY SERVICE FEES**

**Docket OST-2022-0109**

**SUPPLEMENTAL COMMENTS OF  
THE TRAVEL TECHNOLOGY ASSOCIATION  
AND RESPONSE TO THE RECOMMENDATIONS OF  
AVIATION CONSUMER PROTECTION ADVISORY COMMITTEE**

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The Travel Technology Association (“Travel Tech”) submits these supplemental comments. These supplemental comments are submitted at this time pursuant to the Department’s March 14, 2023 Notice reopening the comment period in this proceeding through April 6, 2023.<sup>1</sup> Two matters will be addressed here. First, Travel Tech will respond to the recommendations of the Aviation Consumer Protection Advisory Committee (“ACPAC”). Second, Travel Tech, as requested of its witness Travel Tech President Laura Chadwick at the March 30, 2023 hearing, will provide a copy of the consumer survey that was referenced during that testimony.

**I. Response to Recommendations of Aviation Consumer Protection Advisory Committee**

On January 23, 2023, the Department published the ACPAC’s recommendations with respect to various issues in this proceeding. See link at

<https://www.transportation.gov/sites/dot.gov/files/2023-01/2023-01-23%20Transparency%20NPRM%20-%20%20Information%20re%20Comment%20Period.pdf>

Before turning its response to each of those recommendations, Travel Tech observes that the ACPAC recommendations do not directly address two key issues.

First, the recommendations say nothing about the overly prescriptive display rules that have been proposed, including most notably the requirement that all of the critical ancillary fee information must be displayed on the first search results page. As Travel Tech urged in its Comments and urged during the March 30 hearing in this proceeding, that prescriptive requirement should be abandoned and any final rules should allow for flexibility in the manner in which critical

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<sup>1</sup> That Notice appeared in the Federal Register at 88 Fe. Reg. 15622 (March 14, 2023).

fees are displayed, provided that they are displayed early in the search process. As noted below, certain of the ACPAC recommendations appear to agree with the “early” display concept.

Second, the ACPAC recommendations appear to implicitly accept that airlines should make their critical fee information available to ticket agents and metasearch sites. In Travel Tech’s view, this is a crucial element of the Department’s proposals with which Travel Tech is in full agreement. Further, Travel Tech strongly favors requiring that such fee information also be provided by an airline to all intermediaries to which that airline provides its fare information for distribution, including intermediaries such as ATPCO and Global Distribution Systems (GDSs). Travel Tech observes that the comments jointly filed in this proceeding by several major consumer, public interest and other groups favor the sharing of airline fee data with GDSs:

To best promote the transparency and availability of airline fee data, DOT should require air carriers to share the covered fee categories with GDS and metasearch websites in an open and machine-readable format. Without such information sharing, legitimate third-party ticket sellers (such as online or brick-and mortar travel agencies) would be hampered in providing accurate fee data to consumers. Air carriers already publicly share fee data. Such data is necessary to evaluate the full cost of flying. Failure to require airlines to share the necessary data with GDS and metasearch websites would likely complicate the implementation of the proposed rule.<sup>2</sup>

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<sup>2</sup> See Comments of American Economic Liberties Project, Business Travel Coalition, Consumer Action, Consumer Federation of America, National Consumers League and Public Interest Research Group at 5-6.

Certain airlines argue that GDSs should not be required recipients of their fee data. They claim that GDSs are wed to old technology and will abuse market power if airlines are required to provide critical ancillary fee data to them. The fact is that airlines already provide their fare data to GDSs. Not sharing the critical fee data opens the door to the unfair and deceptive practices that DOT is trying to address here. Further, the market power concern that the airlines raise has no basis in fact; airlines and GDSs routinely negotiate agreements just as airlines negotiate agreements with on-line agencies and metasearch sites. Airlines have substantial leverage in such negotiations deriving in part from the increasingly numerous means of distributing their fares and services. Moreover, the airlines offer no answer to the question of how ticket agents that rely on GDSs will receive and process fee data from hundreds of airlines if not through the GDSs on which they rely for providing their fare and fee data.

Travel Tech will here set forth each ACPAC recommendation, followed by its response:

*Recommendation 1 (Baggage): Consumers should be given the opportunity to indicate how many bags they will be traveling with early in the itinerary search process, and the fees applicable to the consumers' selections should then be displayed.*

ACPAC is recommending a requirement for consumer-facing air travel websites that was not addressed in the NPRM, namely a requirement that the websites be designed so that consumers can indicate early in the search process how many bags they are traveling with so that applicable fees may be displayed. Because it was not included in the NPRM, and thus public comment was not solicited on it, the proposal that websites be re-designed to accommodate this recommendation is beyond the scope of this proceeding and should not be adopted.

While Travel Tech has not at this time formulated a position on the subject of this recommendation, a few points about it merit note. First, ticket agents subject to any final rule would need time to redesign websites to include an inquiry into the number of bags a traveler intends to use on his or her trip. This will require the investment of resources, which would need to be considered were a rule requiring such re-design to be proposed.

Second, fee information can only be displayed by ticket agents if that information is required by DOT rule to be provided by airlines to ticket agents. As explained at length in the Travel Tech Comments, such information must be supplied to all agents and intermediaries to which an airline provides its fares and other travel information for distribution, including GDSs. Second, such information must, consistent with ACPAC recommendation 17, be provided in a format that is "useable, current, and accessible in real-time," as well as accurate. Third, for all of the reasons discussed in the Travel Tech Comments, ticket agents and others subject to any final rules in this proceeding should have flexibility to request information on the number of bags the passenger intends to use and to display fee information subject only to a performance-based

requirement that the information be provided “early” in the booking process, consistent with the use of the term “early” in the ACPAC recommendation – and not necessarily on the first search results page, as the current NPRM proposal would require. Fourth, while the ACPAC recommendation is not explicit on the point, for the reasons urged by Travel Tech in its Comments, the Department should exclude corporate travel agencies, as well as metasearch sites and websites not intended for use by non-U.S. consumers, from any final rules adopted in this proceeding.<sup>3</sup>

*Recommendation 2 (Baggage): The Department’s proposal that pop-ups or links are acceptable for specific information about size and dimension allowances for baggage should be retained in any final rule that may be adopted.*

Travel Tech agrees with this recommendation, but for the reasons stated in its Comments urges the Department to go an important step further and allow not only baggage size and dimension allowances to be displayed via pop-ups or links or other short-cuts, but also the fee information itself. Provided that all this baggage information is required to be provided by airlines to ticket agents and intermediaries, Travel Tech supports a rule that allows the use by ticket agents of any kind of link, pop-up, rollover, or display method commonly understood by website users to display baggage fees and related information.

*Recommendation 3 (Baggage): The Department’s proposal that bag fee information be adjusted based on passenger-specific information should be retained in any final rule that may be adopted.*

Travel Tech explained in its Comments that there is currently no industry-wide means for the transfer by airlines to ticket agents of the vast amount of data (e.g., updated frequent flyer status and credit card data) that an agent would need to display passenger-specific fees for each passenger

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<sup>3</sup> Corporate agencies should be excluded from any final rules in this proceeding for all of the reasons stated in Travel Tech’s Comments and for the additional reason that Congress has recognized the distinction between corporate and other travel agents. *See* Section 427(e) of the FAA Reauthorization Act of 2018, Pub. L. No. 115–254 (Oct. 5, 2018).

undertaking an itinerary search. Until such systems are in place (which will take considerable time and resources), it is simply not possible for ticket agents to display passenger-specific fee data. This point is made in the submissions of several other commenters as well, including the Airline Tariff Publishing Company, which correctly observes in its comments that, “The proposal to require fee information to be disclosed to a consumer for critical ancillary services if the passenger elects to provide passenger-specific information to the airline or ticket agent, such as frequent flyer status, will be very difficult to implement in the indirect channel.”

*Recommendation 4 (Baggage): The Department’s proposal to require disclosure of baggage fees when a fare is quoted to a consumer during an in-person or telephone inquiry should be retained in any final rule that may be adopted.*

While Travel Tech did not address this issue in its Comments, Travel Tech agrees with the February 2, 2023 response of the American Society of Travel Advisors (ASTA) to this ACPAC recommendation, which reiterates ASTA’s view that flexibility should prevail here and that baggage fee information should be provided only “on request” in in-person or telephone inquiries, consistent with DOT’s 2017 rulemaking proposal. Otherwise, oral exchanges with consumers will be burdened with unnecessary disclosures.

*Recommendation 5 (Change and Cancellation): The Department’s proposal that change and cancellation fee information be displayed during the itinerary search selection process and not just before ticket purchase should be retained in any final rule that may be adopted.*

Travel Tech would support a proposal to display change and cancellation fees during the “itinerary search selection process” provided that such information need not be displayed on the first search results page, but rather under the more flexible standard of “early” in the search process. In addition, each of the other caveats identified in the above response to ACPAC Recommendation 1 should apply here too, including of course that airlines must provide the data to ticket agents and intermediaries that receive fare and related information. Further, since change

and cancellation fees vary based on the circumstances of the proposed change or cancellation at issue, it is infeasible to require that a single change or cancellation fee be displayed for any specific itinerary, as further explained in the Travel Tech Comments.

*Recommendation 6 (Change and Cancellation): The Department should require change and cancellation fee information of airlines that is displayed by travel agencies and metasearch entities be displayed in a consistent manner to avoid creating confusion for consumers.*

This recommendation, like Recommendation 1, goes beyond the proposals in the NPRM. Nothing in the NPRM would impose on agents and others a requirement to display change and cancellation fee information “in a consistent manner.” Beyond that point, the recommendation fails to recognize that ticket agents do not receive fee information from airlines in a consistent manner; many airlines provide data in a manner that is not consistent with the format used by other airlines. Travel agents and metasearch entities often lack the resources to format the data received from airlines in a consistent manner. Doing so requires data processing skills and resources that not all agents have. Also, change and cancellation fees are highly variable based on the circumstances. For these reasons, Travel Tech would not have agreed with this recommendation even if it had been proposed as part of the current NPRM.

*Recommendation 7 (Change and Cancellation): The Department should not provide the option for consumers to opt-out of receiving change and cancellation fee information.*

Travel Tech disagrees with this recommendation. As Travel Tech explained in its Comments, consumers are capable of deciding whether they want to hear (in oral communication settings) or see (on websites) information about specific types of ancillary fees, including change/cancellation fees during the itinerary search process. Allowing consumers to opt-out would provide a more streamlined search process and more customized results for such consumers. DOT proposed an opt-out option in its 2017 rulemaking and DOT should adopt such an option in this proceeding.

*Recommendation 8 (Change and Cancellation): The Department's proposal that additional change or cancellation policy information may be displayed by links or pop-ups should be retained in any final rule that may be adopted.*

Travel Tech agrees with this recommendation, but as discussed in response to Recommendation 2 above, Travel Tech further submits that change and cancellation fees themselves (as well as the policy information that is addressed by this recommendation) should be displayable by links, pop-ups or other commonly used website conventions given the variability in such fees and to reduce clutter and allow the experts to design their own displays.

*Recommendation 9 (Change and Cancellation): The Department should provide greater clarification on the specific location rollovers or pop-ups should be placed for consumers to view additional change or cancellation policy information.*

Travel Tech does not agree that the Department needs to provide greater clarification on the specific location of rollovers or pop-ups (or any similar shortcuts) on websites to view additional change/cancellation policy information. To the contrary, as Travel Tech has consistently argued in this proceeding, the Department should not adopt prescriptive rules regarding the display of ancillary fee information, but rather allow flexibility for online agencies and metasearch engines (should the latter be covered by any final rules) to display fee and related information in a manner that is useable and understandable by consumers but not specifically prescribed by rules. Travel Tech's members are in the business of website design to benefit their customers; specific government rules on where to place information on their sites is simply not necessary or appropriate.

*Recommendation 10 (Change and Cancellation): The Department's proposal that change and cancellation fees be adjusted based on passenger-specific information should be retained in any final rule that may be adopted.*

See Travel Tech's response to Recommendation 3. The provision of passenger-specific change and cancellation fees is no less challenging than the provision of passenger-specific



baggage fees. For the reasons stated in Travel Tech’s Comments, the NPRM’s proposals with respect to the provision of passenger-specific fees by ticket agents should not be adopted at this time.

*Recommendation 11 (Change and Cancellation): The Department’s proposal to require disclosure of change and cancellation fees when a fare is quoted to a consumer during an in-person or telephone inquiry should be retained in any final rule that may be adopted.*

See Travel Tech’s response to Recommendation 4. The same reasoning applies here.

*Recommendation 12 (Family Seating): The Department’s proposal regarding the disclosure of family seat fee information should be retained in any final rule that may be adopted.*

Following the submission of comments in this proceeding, on February 1, 2023, the White House announced that the Department would launch a new rulemaking proceeding “to ban the practice of family seating fees.”<sup>4</sup> The President also announced at the same time that he would seek legislation from Congress to accomplish this same goal.<sup>5</sup> Given this development, the Department’s intentions with respect to the proposed requirement in the NPRM for the disclosure of family seating fee information appear to have been placed into doubt. Travel Tech thus looks forward to the Department’s clarification of where matters stand on the family seating fee disclosure proposal.

Assuming that the current NPRM were to move forward on the family seating issue, Travel Tech’s Comments urged DOT to require airlines to provide *all* seating fees to ticket agents and intermediaries to which fares are supplied. That is because all seating fees, not just those involving a child sitting with an accompanying adult, should be considered critical to booking decisions and thus should be covered by any final disclosure rules.

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<sup>4</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/>.

<sup>5</sup> *Id.*

*Recommendation 13 (Family Seating): The Department should not provide the option for consumers traveling with young children to opt-out of receiving family seating fee information.*

As noted in response to Recommendation 12, Travel Tech is uncertain as to whether the Department plans to proceed with the family seating portion of the current rulemaking. However, assuming that the current rulemaking does move forward on this issue and that a family seating fee rule is adopted, Travel Tech would not oppose a final rule that prohibited a family seating fee opt-out option for consumers who indicate that they are traveling with young children.

*Recommendation 14 (Family Seating): The Department's proposal that family seating fees be adjusted based on passenger-specific information should be retained in any final rule that may be adopted.*

For the reasons stated in response to Recommendation 3 above, Travel Tech disagrees with this recommendation.

*Recommendation 15 (Family Seating): The Department's proposal to require disclosure of family seating fees when a fare is quoted to a consumer during an in-person or telephone inquiry should be retained in any final rule that may be adopted.*

For the reasons stated in response to Recommendation 4 above, Travel Tech disagrees with this recommendation.

*Recommendation 16 (Family Seating): The Department's proposal to require that family seating fees be transactable during the ticket purchase process should be retained in any final rule that may be adopted.*

Travel Tech explained in its Comments that all of the critical ancillary fees should be provided to ticket agents by airlines in transactable format so that agents can, at their option, offer such fees for purchase. Transactability of displayed fares and fees information is the norm that consumers expect when they use websites. The lack of transactability for any fees that are displayed would not only be confusing to customers, but would force them to spend additional time navigating to airline websites to complete a transaction that they would expect to complete on the site of the ticket agent that they chose. Further, since fees are dynamic and can be adjusted

based on numerous factors, a consumer might end up paying more for any particular service if it is not purchased at the time it is displayed. The absence of transactability by ticket agents can not only cost the consumer time and money, but can reduce competitive options by making use of the indirect channel less attractive.

*Recommendation 17 (Data Sharing): The Department should clarify and refine what is meant by “useable, current, and accessible in real-time” and “non-static dynamic fashion” when describing how data is to be shared by airlines to ticket agents.*

Travel Tech agrees with this recommendation. As stated in its Comments, the Department should spell out that “useable” data in this context is data provided by airlines 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. The Department’s clarification of the “useable” standard is particularly appropriate given that agents might be forced to deal with multiple different formats by the hundreds of airlines that will be providing the data. The Department should encourage airlines to work toward data formatting uniformity in order to allow any final rules to be implemented more readily and quickly than would otherwise be possible.

*Recommendation 18 (Compliance Date): The Department, in determining the time frame for compliance of a final rule on ancillary fee transparency, should consider what can be done realistically as well as the need for consumers to have this information as soon as possible.*

As a general proposition, Travel Tech does not disagree with this recommendation, but Travel Tech also recognizes that there are some significant technical challenges that would be posed with respect to implementation of the rules as proposed by the Department and recommended by the ACPAC. There are several steps that DOT can take to facilitate more rapid implementation. These include: (i) allowing for greater flexibility in display as opposed to mandatory first search page display; (ii) allowing the use of links, rollovers and other shortcuts, (iii) requiring fee data to be provided to GDSs and (iv) deferring implementation of passenger-

specific fee display requirements until systems are in place to facilitate such displays by ticket agents on a broad-scale basis. In no circumstances, however, is six months a sufficient time frame for implementation.

## **II. The Consumer Survey**

At the March 30, 2023 hearing, Travel Tech President Laura Chadwick, as part of her oral testimony, presented findings from a recent online survey of over 1,000 U.S. adult consumers from March 24, 2023 to March 26, 2023 commissioned by Travel Tech. The results presented were weighted to be representative of the overall population.

The following was excerpted directly from Chadwick’s testimony:

“Our survey found that nearly 90% of all U.S. adults know they may have to pay additional fees for optional services beyond the cost of their airline ticket. This includes Baby Boomers at 92% and 87% of the so-called “Silent Generation” (adults aged 78-95).

We found out that 60% of U.S. adults have used travel comparison sites, and of those who likely use Travel Tech member websites, 96% of consumers know they may have to pay additional fees for optional services (e.g., checked bags, specific seat selection, carry-on bag, etc.) beyond the cost of their ticket.

Further, we found that consumers’ satisfaction with travel comparison sites was closely tied to how fares are currently presented on these sites and their ability to get relevant flight information quickly and easily.

We asked consumers and they told us that they use travel comparison sites to compare airline flight costs. And then we asked consumers all the reasons why they stop using websites, 50% said because the website was difficult to navigate, 49% said the page took too long to load and 40% said the site was too hard to use.

Lastly, we asked consumers about whether they'd like to purchase ancillary fee services on the same travel comparison sites where they purchased their airline ticket, and 86% said yes.”

Respectfully submitted,

A handwritten signature in black ink that reads "Laura Chadwick". The signature is written in a cursive, flowing style.

Laura Chadwick  
President & CEO  
The Travel Technology Association

April 6, 2023