

**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 IN RESPONSE TO SUPPLEMENTAL
COMMENTS OF AIRLINES FOR AMERICA**

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In these Supplemental Reply Comments, The Travel Technology Association (“Travel Tech”) responds to certain specific points in the Supplemental Comments of Airlines for America (“A4A”).¹ A4A’s overall claim in its Supplemental Comments is that this rulemaking is not needed because the market is healthy, with no evidence of a market failure or unfair or deceptive airline practice.² As is evident from the below, A4A’s arguments in support of this claim do not hold up.

A4A asserts that “more than two-thirds of consumers travel without purchasing any ancillaries at all,” and cites to Frontier’s hearing presentation.³ This statement not only relies on a single airline’s information (A4A apparently did not poll its other airline members) but also distorts that information. Frontier’s figures showed the percentage of its passengers that purchased each of a separate kind of critical ancillary fee (not all such fees, as A4A claims).⁴ It noted that less than 30% of its passengers purchase a first checked bag, and less than 20% purchase a carry-on bag.⁵ These might be entirely different passengers, which would mean that nearly 50% of Frontier’s passengers purchase either a first checked bag or a carry-on bag. In addition, Frontier completely excluded seat fees – which it charges – because it recently (in early 2023) stopped charging family seating fees in response to pressure from the Department.⁶ And

¹ See Supplemental Comments of Airlines for America (“A4A Supplemental Comments”) filed in Docket DOT-OST-2022-0109 on May 8, 2023 in response to the Department’s notice of proposed rulemaking in this docket, *Enhancing Transparency of Airline Ancillary Service Fees*, 87 Fed. Reg. 63,718 (Oct. 20, 2022) (“NPRM”).

² A4A Supplemental Comments at 3.

³ *Id.* at 3.

⁴ Frontier Airlines March 30, 2023 Hearing Presentation, Docket DOT-OST-2022-0109, at 4.

⁵ *Id.*

⁶ *Id.* at 5. Frontier noted that over 40% of its passengers do not pay baggage or seat fees and that a significant majority do not purchase critical ancillary fees (again, it excluded seat fees from this measure). *Id.* at 3-4. Even by Frontier’s own admission, these numbers do not translate to more than two-thirds of consumers not purchasing any ancillaries at all.

Frontier ignores the fact that its ancillary fees are substantial; notably, in the 4th quarter of 2022 Frontier received *more than 60%* of its passenger revenues from the sale of ancillary services,⁷ with the other 40% coming from what A4A refers to as the “advertised full, base/core fare.” Frontier also reported that in the 4th quarter of 2022 its *per-passenger* ancillary revenue rose to a record \$82, which was 41% higher than the same quarter two years earlier.⁸

A4A also points out that ancillary fees are “optional.” While there is no dispute that fees for ancillary services are not mandatory for a passenger to receive air transportation, it also cannot be disputed that passengers may *need* to purchase such services. That is, passengers may need to change or cancel their travel plans. They may be going on a trip for which they need to bring a carry-on that is larger than a personal item, or a suitcase that must be checked because it is too big to carry on. They may need to purchase seats because, for example, they are traveling with a young child, an elderly person, a person with disabilities, someone who is anxious or afraid to fly, or maybe even a new spouse. And it cannot be disputed that such fees can account for a significant part of the overall price of the flights, as Frontier’s own figures cited above demonstrate.

In any event, the proposed rule does not seek to eliminate or regulate fees for ancillary services. Unbundling is not at issue in this proceeding, even though A4A repeatedly suggests otherwise. Instead, the Department’s proposal is focused on transparency and the ability of passengers to know, and to compare, the true cost of their air travel before they purchase it. A4A points out that “the vast majority of passengers – even those who only travel once a year” are

⁷ See <https://ir.flyfrontier.com/news-releases/news-release-details/frontier-airlines-reports-fourth-quarter-profit-strong-revenue>.

⁸ *Id.* These trends continued in 2023, with Frontier’s most recent quarterly report for second quarter 2023 showing 54% of passenger revenue from ancillary sales and \$80 per-passenger ancillary revenue. See <https://ir.flyfrontier.com/news-releases/news-release-details/frontier-airlines-reports-second-quarter-2023-financial-results>.

aware that airlines charge fees for ancillary services.⁹ However, such general awareness is not the same as a passenger being able to know what a particular flight is going to cost based on that passenger's needs. In this respect, while A4A notes that Travel Tech "testified that over 90% of travelers are aware of unbundling and ancillary products,"¹⁰ A4A disregards Travel Tech's further testimony – also based on the same survey conducted by Travel Tech – that consumers said they use online travel sites to compare airline flight costs and that 86% of consumers responded "yes" when asked if they would like to purchase ancillary fee services on the same travel comparison sites where they purchased their airline tickets.¹¹

A4A also notes that passengers can obtain ancillary fee information "with just a few clicks on most airlines' websites." This A4A assertion gets to the heart of the problem. About half of all airline tickets are sold via the indirect channel, meaning that a substantial percentage of passengers prefer to book through the indirect channel. An even greater percentage review online travel agency and other non-airline sites for comparative price and schedule information prior to making a booking, either on or through such a site or directly with an airline. The fact that ancillary fee information is available "with just a few clicks on most airlines' websites," but is *not* fully available to ticket agents, makes comparative shopping more challenging and time-consuming and thus far more costly and less efficient for consumers. This, in turn, inevitably leads to sub-optimal outcomes as consumers end up making booking decisions without fully appreciating the total price of their air travel.

A4A seems to acknowledge this problem by observing that "the evidence presented at the Hearing and in the docket indicates [that] any harm that may exist is most likely to occur" in

⁹ A4A Supplemental Comments at 4.

¹⁰ *Id.*

¹¹ See Travel Tech Supplemental Comments filed in Docket DOT-OST-2022-0109 on April 6, 2023 at 12.

indirect distribution channels.¹² Its offered solution – i.e., that the information is available with just a few clicks on most airlines’ websites – is no solution at all. Transparency can only be achieved if airlines provide their ancillary fee information to the indirect channel, allowing consumers to comparison shop among competing airlines and know the true cost of their air travel, regardless of where they choose to book their tickets.

In a glass-half-full way, A4A attempts to make much of Amadeus’ statement that about 50% of its airline clients currently provide ancillary fee information to Amadeus.¹³ But A4A’s cheery view cannot take away from the fact that, even as to Amadeus and its travel agency customers, the glass is still half empty, meaning that consumers do not have access to all the information they need in the indirect channel – which is the only channel that facilitates comparative shopping – to make fully-informed purchasing decisions. This is the very definition of a market failure.¹⁴ Further, of the 50% of Amadeus airline customers that provide ancillary service fee information, a significant portion only makes available information on one category of ancillary services (e.g., baggage fees), so A4A’s suggestion that those airlines make all their ancillary fee information available to Amadeus is misleading.

¹² A4A Supplemental Comments at 5.

¹³ *Id.* at 7, 15.

¹⁴ Travel Tech strongly disagrees that the A4A hearing presentation “provided conclusive evidence that consumers are not harmed by current carrier disclosure practices,” as A4A claims. *Id.* at 4. The A4A presentation was, unsurprisingly, airline-focused and primarily addressed the challenges and downsides of displaying ancillary fee information on the first search results page, with which Travel Tech largely agrees. It did not address the need for the indirect channel to receive ancillary service fee information so that passengers can efficiently and effectively compare airline prices and know the total cost of their air travel. Also, A4A’s claim of no consumer harm is belied by comments submitted by consumer groups, *see, e.g.*, Comments of American Economic Liberties Project, Business Travel Coalition, Consumer Action, Consumer Federation of America, National Consumers League, and Public Interest Research Group filed in Docket DOT-OST-2022-0109 on January 23, 2023, and various state consumer protection entities, as well as the recommendations of the Aviation Consumer Protection Advisory Committee (“ACPAC”).

A4A lauds the “significant market-driven progress in sharing of information between air carriers and GDSs,” noting that the number of airline clients who have negotiated a contract including ancillaries with Amadeus has doubled in the last five years, which A4A says shows that “the market is clearly working.”¹⁵ Travel Tech agrees with A4A that GDS-airline contracts that include ancillaries are a positive development, but progress has been slow and incomplete and has been happening in the shadow of DOT’s repeated efforts to address the lack of pricing transparency caused by airline unbundling. Travel Tech respectfully urges that now is the time for the Department to act and to effectively address this issue. It should do so, as Travel Tech argued in its January 23, 2023 Comments in this proceeding, by requiring that an airline not only make its fee data available to ticket agents (as DOT has proposed in this proceeding), but also to the entities that such agents rely on to obtain that vast volume of data in a useable manner. Specifically, an airline that makes its *fare* data available to a GDS or non-GDS intermediary for distribution to agencies should also be required to make its *critical ancillary fee* data available to such GDSs and non-GDS intermediaries.

A4A complains that “GDSs and ticket agents” (the latter of which includes GDSs) “boldly” asked for more fees to be covered than what was proposed by the Department “without rational justification.”¹⁶ For its part, Travel Tech, whose members include GDSs and other ticket agents, requested that the Department expand “critical” ancillary fees to include all seat fees, and not just so-called family seating fees. Travel Tech explained that it does not make sense to single out family seating fees when there are many other reasons why passengers may need to sit

¹⁵ A4A Supplemental Comments at 15. A4A similarly cites as “progress” the availability of certain ancillary data, particularly change and cancellation fees, through ATPCO. *Id.* at 17. Change and cancellation fees are generally included in fare rules, which ATPCO usually receives from airlines. The Department has long taken the view that consumers should be informed of change and cancel fees prior to ticket purchase, which requires airlines to provide such information to ticket agents.

¹⁶ *Id.* at 10.

together. Such reasons may include disability, safety, anxiety, fear, or caregiving of any kind. In fact, it is fair to assume that nearly all passengers strongly prefer to be seated next to their traveling companions so that they can talk, share food and drink, collaborate on work, lean on each other while sleeping, use items that might be in a companion's carry-on, and everything else passengers do when traveling together on a plane. Passengers traveling alone also may have compelling reasons for selecting a particular seat, for example needing extra legroom, proximity to the restroom, or a seat toward the front of the aircraft because of a tight connection. For these reasons, as Travel Tech pointed out, the Department has identified advance seat selection as "intrinsic" to air transportation, the cost of which "weighs heavily" in consumer decision-making.¹⁷ Clearly, Travel Tech provided a rational justification for its request.¹⁸

A4A has a lot to say about GDSs. Travel Tech will address here only a couple of points and not those points that have already been debated at length in various proceedings before the Department. A4A claims that "[r]equiring GDSs as an intermediary is not within the proposed scope of this rulemaking, requiring additional notice and comment and cost/benefit analysis."¹⁹ First of all, no one – and certainly not Travel Tech – has proposed "requiring GDSs as an intermediary." Rather, Travel Tech has made the point that GDSs should be treated like other ticket agents. If airlines choose to provide *fare information* to a ticket agent, they should be required also to provide critical *ancillary fee information* to that ticket agent so that consumers can effectively comparison shop and know the full cost of their air travel. The Department

¹⁷ See Docket No. DOT-OST-2014-0056, Transparency of Airline Ancillary Fees and Other Consumer Protection Issues, 79 Fed. Reg. 29970, 29977 (May 23, 2014).

¹⁸ A4A again argues that there is no need or justification since airlines publish ancillary fee information on their websites. A4A Supplemental Comments at 10. This misses the point, as discussed above.

¹⁹ *Id.* at 7.

would not be requiring anyone to use a GDS as an intermediary.²⁰ But neither should GDSs be treated differently than any other ticket agent. Again, airlines should be required to provide critical ancillary fee data to *all* GDSs and to non-GDS intermediaries that they use to distribute their fare data. Otherwise, the goals sought by the proposal will not be met because consumer-facing ticket agents depend on such entities.

Second, the issue of whether airlines should be required to provide ancillary service fee information to GDSs was clearly within the scope of the rulemaking notice. The Department expressly raised, and solicited comments on, this issue: “The Department seeks comment on whether the Department should require that carriers provide fee information about critical ancillary services to GDSs. Why or why not?”²¹ Therefore, it is simply incorrect that additional notice and comment would be required for the Department to adopt such a requirement.

Travel Tech again urges the Department to include all ticket agents – including GDSs – in the proposed requirement that airlines provide useable, current and accurate critical ancillary fee information to ticket agents through which the airline chooses to disseminate its fare information.²² Currently, many airlines choose to provide fare information to GDSs but withhold their ancillary fee information. This prevents consumers from engaging in efficient and effective comparison shopping, thereby reducing competition and producing sub-optimal outcomes, and prevents consumers who choose to use the indirect channel from knowing the full cost of their air travel.

²⁰ A4A also erroneously characterizes a requirement that airlines must provide ancillary fee information to GDSs through which they choose to disseminate their fare information as “the adoption of . . . one compliance method.” *Id.* at 5. Yet A4A acknowledges that airlines have a number of options for distributing their tickets, *id.* at 14, and such a requirement would not foreclose any of these options.

²¹ NPRM at 63,729.

²² For the reasons set forth in its original comments, Travel Tech continues to support an exemption of Travel Management Companies (TMCs) from the proposed rule as posited by the Department in the NPRM.

GDSs remain the primary means by which travel agents receive fare and ancillary fee information. When airlines withhold ancillary fee information from GDSs or from non-GDS intermediaries, travel agents are deprived of the most efficient way for them to obtain such information, as the Department recognized in the NPRM.²³ If the Department were to adopt a rule requiring travel agents to display critical ancillary fees but exclude GDSs (or non-GDS intermediaries) from the ticket agents to which airlines must provide ancillary service fee information – even when airlines choose to distribute their other pricing (i.e., fare) information through GDSs – ticket agents will incur huge costs to comply with the rule and implementation will be significantly delayed. Essentially, the industry would have to replicate at great expense of resources the distribution systems that GDSs and other entities already provide.

The cost burden that the Department would be placing on the indirect channel by excluding GDSs and non-GDS intermediaries from the requirement that fee data be provided would be enormous, and would far outweigh any undefined concern about government interference with business relationships. To the extent the concern is that GDSs will use access to ancillary fees to disadvantage airlines in airline-GDS contract negotiations, that concern is misplaced. The Department has rightly determined that a problem exists for consumers that it should address. A4A does not dispute that providing fee data to GDSs will benefit consumers by advancing the goal of enhanced transparency of the cost of air travel. That is the guidepost DOT should use in making a decision here, and A4A has not shown otherwise.

²³ See NPRM at 63,729 (“GDSs may provide the lowest cost and most efficient way of distributing this 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.”).

A4A correctly observes that most travel agencies rely on one or more of the three major GDSs.²⁴ But that fact only serves to prove the point that not requiring the provision of the fee data to GDSs, while at the same time requiring travel agencies to disclose the fee data, will be highly problematic for agencies. A4A also correctly observes that there are GDS alternatives, including direct connect arrangements and several non-GDS aggregators.²⁵ But this fact does not detract from the point that the many thousands of ticket agents that rely on GDSs will be effectively unable to comply with the proposed rules unless GDSs can provide them with the fee data.

Further, A4A's discussion of GDS market power is a red herring. A4A's admission about the presence of GDS alternatives in itself contradicts A4A's statement that "three GDSs – Amadeus, Sabre, and Travelport – comprise 97% of all indirect travel bookings worldwide." This statement is drawn from an opinion piece that states – without any supporting evidence – that 97% of all travel bookings worldwide are processed by GDSs, which is blatantly wrong because it looks only at Global Distribution Systems, without taking into account any other distribution channels. Air ticket distribution is comprised of airline direct channels – on which about half of airline tickets are booked – as well as a number of indirect distribution channels. GDSs are only a part of a much larger airline distribution market and collectively represent less than 25% of all air bookings worldwide.

The A4A Supplemental Comments include a confusing discussion of distribution technology, apparently in support of A4A's unsupported and erroneous contention that GDSs will somehow abandon technological advancement if the airlines are required to provide them

²⁴ A4A Supplemental Comments at 11. Ticket agents also rely on non-GDS intermediaries to receive fare and fee data.

²⁵ *Id.* at 14..

with ancillary fee data. That argument makes no sense on its face. Any GDS that fails to update its technology will not long remain relevant in a distribution market that all parties agree is competitive. In that regard, the indirect channel competes every day with direct airline distribution. GDSs fuel that competition and have every incentive to use the latest technology. The Department's role here is not to pick winners or losers in that competition, but simply to make sure that airlines fully and fairly distribute their ancillary fee information so that consumers can determine the cost of travel. The proposed rule, modified as Travel Tech has urged to require the provision of data to the entities on which ticket agents rely for data, will accomplish that goal.

Finally, A4A takes issue with Travel Tech's statement that "the ACPAC recommendations appear to implicitly accept that airlines should make their critical fee information available to ticket agents and metasearch sites,"²⁶ asserting that "[n]ot one of the ACPAC recommendations overtly or implicitly recommended what [Travel Tech] claimed in its supplemental comments."²⁷ A4A's assertion is mystifying, and wrong. The ACPAC recommendations support the Department's proposed ancillary service fee disclosure requirements, specifically mention ticket agents and metasearch sites (*see, e.g.*, Recommendation 6), and plainly contemplate that airlines will be required to share ancillary fee data with ticket agents (*see* 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.*") (emphasis added). There is no basis for A4A's claim.

²⁶ *Id.* at 13 (quoting Travel Tech Supplemental Comments at 2).

²⁷ *Id.*

Respectfully submitted,

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