

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of)
)
Unfair or Deceptive Fees NPRM) Matter No. R207011
) Docket No. FTC-2023-0064
)

COMMENTS OF THE TRAVEL TECHNOLOGY ASSOCIATION

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COMMENTS OF THE TRAVEL TECHNOLOGY ASSOCIATION

The Travel Technology Association (“Travel Tech”) respectfully responds to the Federal Trade Commission’s (“Commission’s”) Notice of Proposed Rulemaking (“NPRM” or the “Proposed Rule”) on deceptive or unfair acts or practices relating to fees.¹ Travel Tech and its member companies share the Commission’s goals in this proceeding of facilitating competition and pricing transparency for consumers. Travel Tech agrees with the Commission’s common-sense view that these goals are promoted when consumers receive accurate and complete pricing information. In these comments, Travel Tech details the complex, multilayered travel ecosystem, focusing on the indirect distribution channel in which its members and other companies – collectively known as “Intermediaries” – directly or indirectly provide to consumers pricing information originated and provided by Travel Service Providers like hotels and other short-term lodging suppliers. In view of this complexity, Travel Tech demonstrates that the Proposed Rule should be revised to make clear that Intermediaries are not liable when Travel Service Providers fail to provide accurate, complete, and timely mandatory fee information as long as Intermediaries make reasonable efforts to receive such information.² Such a change in the final

¹ See Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023).

² For the purposes of these comments, Travel Tech uses the term “Travel Service Providers” to mean those entities that furnish a travel service to consumers, such as hotels providing hotel rooms, car rental companies providing rental cars, or cruise lines providing cruises.

While Travel Tech members work with many types of Travel Service Providers across the travel industry, the hotel sector is especially important for the Commission to consider when judging the outcome of this rule. Indeed, the Commission focuses on hotels and short-term lodging in various parts of the Proposed Rule, even asking whether the rule should apply only to such suppliers. For these reasons, Travel Tech’s comments will largely focus on the hotel sector; however, the Commission should be mindful of the broader impacts to all Travel Service Providers, especially those that charge mandatory fees to consumers.

rule would be consistent with Congressional and state action in similar circumstances, as discussed below.

I. INTRODUCTION

Travel Tech is the voice of the travel technology industry, advocating for public policy that promotes transparency and competition in the marketplace to empower consumer choice and encourage innovation. Travel Tech and its member companies have consistently advocated for these values in public policies impacting the travel sector since its founding nearly 25 years ago. We represent the leading innovators in the indirect distribution channel, including Online Travel Agencies (“OTAs”), Metasearch Engines, Short-Term Rental Platforms, Travel Management Companies (“TMCs”), and Global Distribution Systems (“GDSs”), each of which is described in detail in Section III of these comments.

Travel Tech agrees with the Commission that transparency is essential for consumers to make informed decisions about travel accommodations and services without unexpected costs and expenses and that a nationwide framework would best serve consumers and businesses by avoiding a patchwork of regulation and leveling the playing field.³ Travel Tech member companies are hubs of insight into competitive travel options for consumers that operate on a national and international scale in the complex and multi-layered travel ecosystem. Travel

The term “indirect distribution channel” refers to an intermediary that shares travel pricing information or any other entity that is not a Travel Service Provider who advertises, displays, markets, or otherwise offers a price of a reservation for a place of short-term lodging.

³ NPRM at 77447 (claiming that one of the benefits of the NPRM is that it proposes a “harmonized, nation-wide compliance requirements”).

Service Providers, including hotels, freely choose to utilize Travel Tech members to advertise and sell their inventories. Travel Tech’s member companies depend on the accuracy, completeness and timeliness of rate, occupancy tax, and mandatory fees information (“pricing information”) and availability information that is originated and provided by Travel Service Providers, information that only they know and possess.⁴ In turn, Travel Tech members and other Intermediaries receive and ingest this information and either directly provide it to consumers utilizing their services or websites, or pass it along to other Intermediaries in the indirect distribution channel as inputs into those companies’ services or websites, or in many cases, they do both simultaneously, serving in business-to-consumer and business-to-business capacities.

The passing along of pricing information from Travel Service Providers to and among Travel Tech member companies and other Intermediaries is a common practice in the travel sector but completely unseen by consumers.⁵ Millions of Travel Service Providers’ price points regularly move through endless permutations of information chains that are constantly changing based on market conditions among Intermediaries to support customer choice wherever customers choose to access Travel Service Providers’ pricing beyond the providers’ direct channels. This is a critically important point in assessing the Proposed Rule's impact.

⁴ In these comments, Travel Tech uses the term “pricing information” to refer to all parts of the price that a consumer must pay, directly or indirectly, to a Travel Service Provider for short-term lodging, including the rate, occupancy tax and any other mandatory fees including resort or similar fees.

⁵ The complex and multi-layered indirect distribution channel is discussed in Section III. A diagram of the direct and indirect distribution as it relates to the sale of hotel inventory is provided in this same section and in the Appendix as well.

In this proceeding, the Commission should recognize that the Proposed Rule imposes an unfair and undue burden on Travel Tech members and other Intermediaries. Specifically, the Proposed Rule would expose each link in these Intermediary information chains to liability for the accuracy, entirety, and timeliness of mandatory fees and the rationale for such charges originated from and provided by Travel Service Providers. If adopted without changes, the Proposed Rule would effectively require Travel Tech members and other Intermediaries to engage in near-impossible compliance activities to avoid liability: they would be forced to determine the chains through which millions of individual price points moved before reaching them and then confirm the accuracy of the information itself. This overwhelming compliance burden would ultimately undermine consumers' access to information necessary to derive the most value from the pricing, availability, and quality comparison tools provided by Travel Tech members.

For these reasons, Travel Tech encourages the Commission to modify the Proposed Rule as applied to Travel Tech members and other Intermediaries to best achieve its goals for this rulemaking. Specifically, the Final Rule should:

- Recognize that Intermediaries, consistent with recent Congressional action and state tax laws, should not have liability when Travel Service Providers or upstream Intermediaries fail to provide accurate, complete, and timely pricing information and such downstream Intermediaries have made reasonable efforts to receive such information;
- Clarify that it is an unfair and deceptive trade practice for Travel Service Providers to deliberately provide inaccurate, incomplete, or untimely pricing information to Intermediaries or seek remuneration from Intermediaries for information necessary for them to comply with any final rule; and

- Adopt a final rule that establishes a nationwide framework for disclosing fee and pricing information that preempts inconsistent state laws to ensure that consumers shopping throughout the United States have a consistent experience.

As the Proposed Rule is focused on protecting consumers, the Commission should also find that certain Intermediaries – known as Travel Management Companies (“TMCs”) – which solely provide contracted travel booking services to large enterprises under a corporate contract, should be exempt from the Proposed Rule. Congress has previously recognized that such companies are distinct from other Intermediaries and created an exemption for them in the sale of airline fares made pursuant to a corporate contract. This will be further discussed in Section IV of these comments.

Travel Tech and its member companies are aligned with the Commission’s goals of providing accurate, complete, and timely information about prices and fees related to travel services. Modifying the Proposed Rule, as described herein, will enable our members to continue delivering the benefits of competition, transparency, and choice to consumers.

II. TRAVEL TECH MEMBERS DELIVER TOOLS AND TECHNOLOGIES THAT INCREASE PRICE TRANSPARENCY AND PROVIDE CONSUMERS WITH COMPETITIVE TRAVEL OFFERINGS.

Travel Tech members developed the infrastructure and marketplaces that provide travelers with hubs of insight into a vast array of potential travel options. Travel Tech member companies promote consumer choice by offering price and availability comparison tools that enhance much-needed transparency in the travel ecosystem. These tools offer consumers the ability to make informed decisions and obtain better value, including, critically, in the form of competitive prices combined with greater travel options.

Travel Tech member companies along with other Intermediaries provide Travel Service Providers with access to a global customer base while offering millions of consumers transparency, additional key information like reviews and photos, and a superb customer experience when purchasing and managing their travel. Market transparency and competition are keys to delivering these benefits to consumers, and Travel Tech has long promoted these goals. When travelers have complete pricing details, they can accurately compare different options and make choices that align with their preferences and budget. This transparency enables travelers to plan more effectively and promotes fair marketplace competition among Travel Service Providers.

At the same time, Travel Tech member companies and other Intermediaries rely on Travel Service Providers to provide accurate, complete, and timely pricing information in the first place, information that only they know and possess. Unfortunately, some Travel Service Providers have a track record of not providing accurate, complete, and timely mandatory fee information in advance to consumers. Instead, as the Commission has observed, hotels have been known to surprise their guests with “resort” or other mandatory fees in-person at the check-in desk when guests have no reasonable recourse but to pay them.⁶ Travel Tech members and other Intermediaries are similarly situated to consumers in that they are also dependent on Travel Service Providers such as hotels to provide accurate, complete, and timely information before booking.

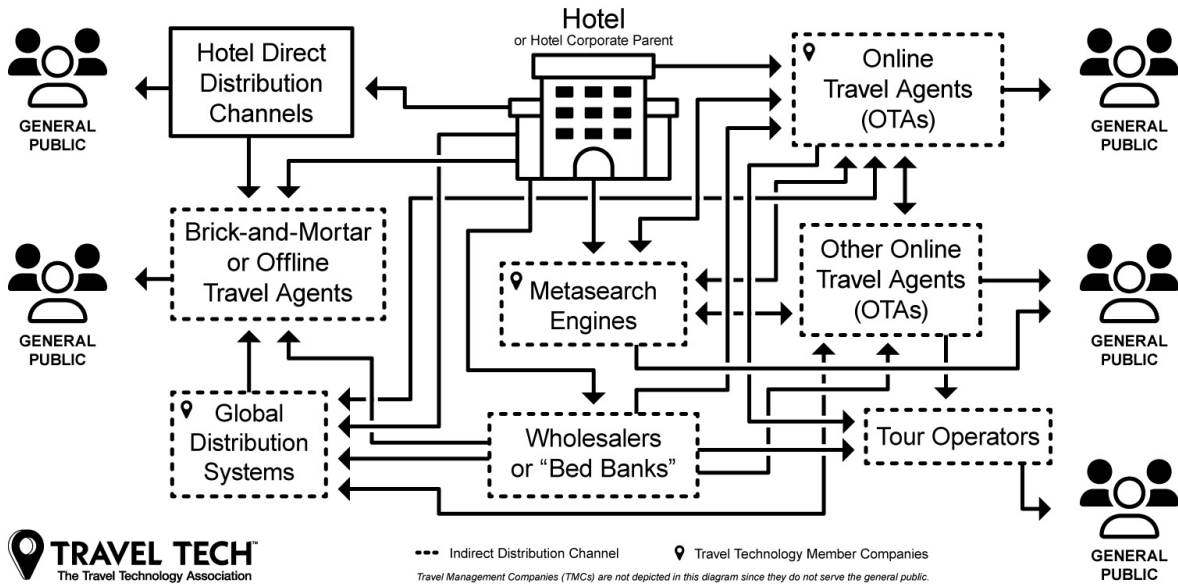
⁶ See NPRM at footnote 248 on page 64.

Travel Tech strongly believes that any Travel Service Provider that fails to provide accurate, complete, and timely mandatory fee information to consumers and to its Intermediary partners should be singularly held liable under any final rule. Travel Tech likewise supports any final rule that would provide for enforcement actions against any upstream Intermediary that receives such fee information but fails to pass it along to downstream companies in the indirect distribution channel and ultimately on to consumers.

III. THE INFORMATION FLOW FROM TRAVEL SERVICE PROVIDERS TO INTERMEDIARIES TO CONSUMERS IS COMPLEX AND MULTI-LAYERED.

Diagram A:

The Complex, Multilayered Information Flow from Hotels to Intermediaries



Consumers currently enjoy optimal choice in booking travel and accommodations because of the array of offerings and services provided by Travel Tech members and other Intermediaries operating within the indirect distribution channel. Travel Service Suppliers such

as hotels often develop what is known as a “distribution strategy,” a plan of action for selling rooms profitably through direct and indirect channels.⁷ Hotels freely enter contracts with Travel Tech members and other Intermediaries to assist in the sale of their accommodation inventory through the indirect distribution channel. Within these agreements, hotels commit to provide their pricing information (including rates, occupancy tax and mandatory fees) and their availability information, the former of which only they know and possess since they set such fees in the first place.

Within the indirect distribution channel, several different types of Intermediaries operate simultaneously – either as business-to-business, consumer-facing, or both – to serve consumers seeking travel options and price comparison tools. Travel Tech represents the following types of companies in the indirect distribution channel: Online Travel Agents, Metasearch Engines, Global Distribution Systems, Travel Management Companies, and Short-Term Rental Platforms. Each type of Intermediary in the indirect distribution channel provides important but distinct services as depicted in Diagram 1 and detailed below⁸:

- Online Travel Agents (“OTAs”), provide a competitive marketplace for consumers to shop, compare, and book their travel. OTAs can bundle different complementary travel offers to be sold as a package, such as airline tickets, hotel room reservations, and car

⁷ For franchised hotels, distribution strategies include often-required use of services provided by corporate hotel brands, which function similarly to Online Travel Agents, offering a marketplace for consumers to shop, compare, and book their stay at brand-affiliated accommodations.

⁸ Diagrams A, B, C and D are provided as a visual reference to depict the complex, multilayered information flow that may exist between hotels, Intermediaries, and the general public. The diagrams are accurate to the best of Travel Tech’s knowledge.

rentals, saving consumers both time and money. Travel Service Providers like hotels freely choose to directly provide their pricing and availability information and occupancy tax details to individual OTAs. OTAs may also source such information provided by Travel Service Providers from Global Distribution Systems and Wholesalers, both described below, and other OTAs, which in turn have received the information from Travel Service Providers.

- Metasearch Engines aggregate travel pricing, availability, and quality information directly from Travel Service Providers, which freely choose to share their pricing and availability information with them, and/or from other partners like OTAs or Short-Term Rental platforms, to provide a robust comparison travel planning tool for consumers. Metasearch Engines also provide referral links to Travel Service Providers' direct channels (i.e., their own website or that of their parent brand, if one exists), OTAs, and Short-Term Rental platforms.
- Global Distribution Systems ("GDSs") efficiently aggregate, organize and make readily useable travel pricing, inventory and other data from Travel Service Providers across the globe, including hotels, airlines, car rental companies, and passenger rail, into a single portal. Travel Service Providers freely choose to provide their pricing and availability information with individual GDSs. Intermediaries, including OTAs, Brick and Mortar Travel Agents and Travel Management Companies, utilize GDSs to supply pricing and inventory data and/or booking capabilities for their services or websites. However, GDSs are not themselves directly consumer-facing.
- Travel Management Companies ("TMCs") fully manage business travel for individuals, companies, and organizations per individually negotiated contracts between the TMC and

the company or organization.⁹ These contracts specify what travel information is provided to the clients' employees; these services are not consumer-facing. TMCs rely on both GDSs and Travel Service Providers directly to supply their pricing and availability information.

- Short-Term Rental Platforms provide listings of alternative accommodations, as well as hotels, motels, and bed & breakfasts, to consumers. The operators of these accommodations are responsible for supplying rates, mandatory fees, availability, and, where applicable, occupancy taxes to their preferred Short-Term Rental Platforms.
- “Brick-and-Mortar” or Offline Travel Agents work directly with individual consumers on their travel planning, comparison shopping, and booking. These sorts of Travel Agents receive pricing and availability information provided directly from Travel Service Providers or source it from GDSs, OTAs, Wholesalers, or Tour Operators.
- Tour Operators are travel agents specializing in assembling vacation packages for groups of consumers. They source large volumes of rooms from Travel Service Providers directly or indirectly through Wholesalers, OTAs, and GDSs.
- Wholesalers are business-to-business third parties who source hotel room inventory in bulk at heavily discounted rates from hotels to sell to other parties. Hotels have long set aside inventory to sell through this Intermediary to entice Tour Operators seeking large blocks of rooms to house their customers while on tours. Doing so is an effective method for hotels to ensure a certain level of occupancy, a key performance metric beyond booking revenue generated. Wholesalers also sell the inventory they secured from hotels

⁹ As discussed later in these comments, it is the position of the Travel Technology Association that TMCs should be wholly exempt from the Proposed Rule.

to OTAs and Metasearch Engines, which in turn sell or advertise it on their travel platforms to consumers.¹⁰

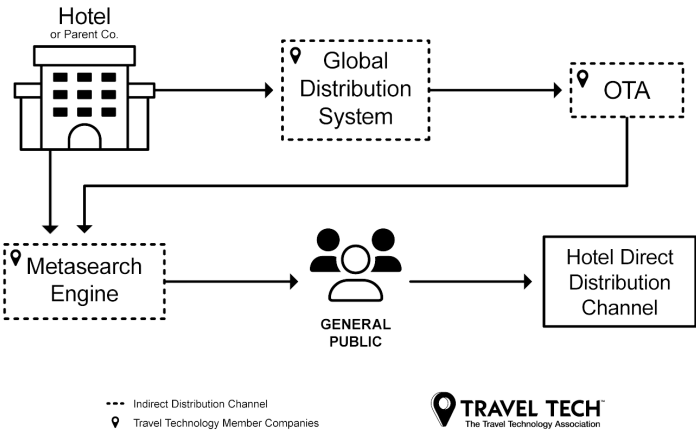
Over 55,000+ hotels operate within the U.S. alone, each with the ability to use one or many Intermediaries per its individual distribution strategy.¹¹ As described above and shown in the provided diagram, Intermediaries often form a chain passing along information originated and provided by Travel Service Providers. Such information may pass from one Intermediary to another and so on before ultimately reaching consumers, creating a complex and multilayered information flow.

As written, the Proposed Rule would impose potential liability on all companies in the chain that fail – through no fault of their own – to provide mandatory fee information as part of a Total Price. As illustrated in the following examples, in doing so, the Commission would create an unfair chain of potential liability and impractical compliance work for each of the Intermediaries downstream from the Travel Service Providers when they, the Travel Service Providers, fail to provide accurate, complete, and timely information in the first place.

¹⁰ To learn more about the dynamics between hotels and Wholesalers, please refer to the following news articles: [“Expedia CEO to Hotel Owners: Stamp Out Rogue Wholesale Rates”](#) by Sean O’Neill, Skift, January 23rd, 2024 and [“Expedia and Marriott Claim Progress on Proliferation of Rogue Hotel Rates”](#) by Dennis Schaal, Skift, July 6th, 2022.

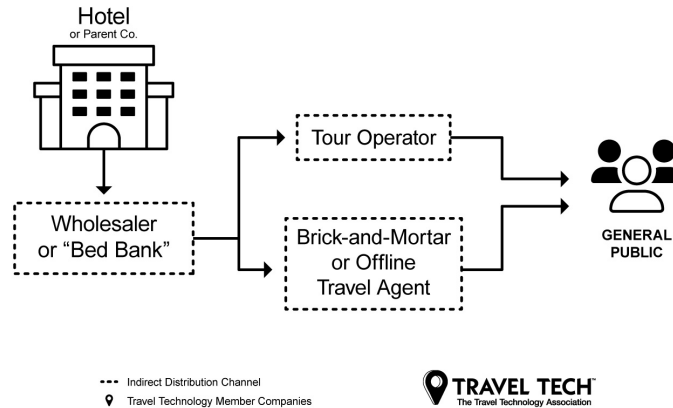
¹¹ <https://www.ahla.com/about/our-industry>

Diagram B:



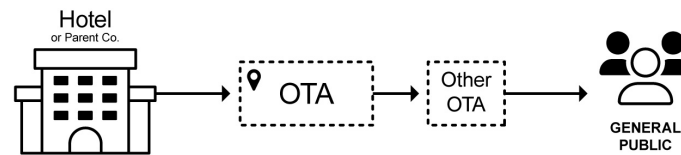
- Example 1 (as depicted in Diagram B above): A hotel directly uploads its pricing and availability information into a GDS. The GDS then provides this information to an OTA, which then shares it with a Metasearch Engine. The Metasearch Engine displays the OTA rate alongside rates provided directly by the hotel. The consumer, preferring to stay at a particular brand of hotel, clicks on the hotel’s link to book their stay, which, in the interim time, has instituted an increase in the cost of its mandatory resort fee to be collected on-site. However, the hotel has not yet informed the Intermediaries it works with per its indirect distribution and marketing strategies of this change. In this instance, the GDS, OTA, and Metasearch Engines could be liable under the Proposed Rule for failure to include the correct mandatory resort fee in their Total Price display, even though it was the hotel that failed to update its indirect distribution channel partners.

Diagram C:



- Example 2 (as depicted in Diagram C above): A hotel sells inventory to a Wholesaler at reduced wholesale prices, without including mandatory fee information. The Wholesaler then provides this information to a Tour Operator, who provides it to its consumer client, who ultimately decides not to book it. The Wholesaler, now left with this quickly expiring inventory, then provides the information to a Brick-and-Mortar or Offline Travel Agent. The travel agent then provides it to its consumer client. Since the hotel failed to convey the mandatory fee to the Wholesaler, the Brick-and-Mortar Travel Agent has no way of knowing if the hotel will assess a mandatory fee or the amount of it. The Proposed Rule does not clarify that the entities downstream from the hotel would not be liable in these circumstances. Therefore, these downstream Intermediaries in this information chain would have the infeasible compliance task of tracing back each price point to ensure it is accurate, complete, and timely.

Diagram D:



--- Indirect Distribution Channel
📍 Travel Technology Member Companies



- Example 3 (as depicted in Diagram D above): A hotel provides an OTA with its accurate, complete, and timely pricing and availability information for its room inventory. Per the hotel’s contract with the OTA, the OTA lists the hotel’s inventory on the OTA’s own consumer-facing website and passes the information along to other OTAs. One of these other OTAs has not set up internal systems to receive and then display mandatory fee information provided by the upstream OTA but originated from the hotel. In this instance, this other OTA would rightly be subject to liability and enforcement action per Travel Tech’s proposed changes to the Proposed Rule since they failed to pass along the information by not taking reasonable measures to comply.

A. Travel Tech’s Member Companies Provide Consumers with Available Information to Make Informed Travel Choices.

Intermediaries Provide Available Information to Empower Consumers. Travel Tech’s member companies provide consumers with available information, including pricing and availability information, to ensure consumers are choosing the option that is right for them and making an informed decision by clearly understanding the costs they will incur. Travel Service Providers determine the rates, terms, and mandatory fees, including resort fees, applicable to

their travel services.¹² Only Travel Service Providers can know whether the nature and purpose of any fee they impose is accurate.¹³ Travel Tech member companies use the information provided to them directly from Travel Service Providers or indirectly through other Intermediaries to aggregate, sort, and display competitive options on their sites and applications, and consumers in turn use this bounty of information to compare offers and make informed choices.

Intermediaries Make Substantial Investments in Technical Systems to Receive Pricing and Availability Information from Travel Service Providers. Travel Tech members substantially invest in developing and maintaining comprehensive technical systems to receive and ingest pricing data from Travel Service Providers – millions of data points from the 55,000+ hotels in the United States alone – often via real-time, direct connections like Application Programming Interfaces (“APIs”). In fact, several Travel Tech member companies often work hand-in-hand with Travel Service Providers like hotels to develop technical systems to receive those providers’ pricing (including mandatory fees) and availability information. As noted throughout these comments, this is information that only the Travel Service Providers know and possess since they set such fees in the first place. All these efforts are undertaken by Travel Tech members to support their Travel Service Providers partners, to enable price and quality comparison tools on their platforms, and to protect consumers from hidden mandatory fees. However, it is important

¹² See NPRM at 77339 (proposing to make it unlawful to offer, display, or advertise an amount a consumer may pay without disclosing the Total Price, including fees, with some exceptions).

¹³ See *id.* (prohibiting the misrepresentation of a fee’s nature and purpose); *id.* at 77484 (Proposed § 464.3 would prohibit misrepresenting the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged, as well as require that Businesses must disclose the nature and purpose of any amount a consumer may pay that is excluded from the Total Price).

that the Commission be mindful that there is no amount of technology investment that Travel Tech members can make to guarantee consumers are protected from surprise, mandatory fees assessed by hotels onsite at check-in when there is no parallel requirement Travel Service Providers share all mandatory fees across the indirect distribution channels. Such a requirement for Travel Service Providers to share all mandatory fees is not contemplated in the Proposed Rule.

Proposed Rule Risks Undermining Transparency and Competitive Travel Offerings for Consumers. Travel Tech supports a nationwide uniform framework for pricing transparency in travel offerings that enables consumers to make informed decisions in choosing among competitive travel offerings that maximize value and quality. However, to the extent the Proposed Rule unfairly assigns compliance responsibility to Intermediaries without accounting for their reliance upon Travel Service Providers for the accuracy and completeness of pricing information to be presented to consumers, the Proposed Rule may have counterproductive effects of reducing transparency and choice for consumers and increasing confusion.

B. The Proposed Rule Creates Unworkable Compliance Burdens for Travel Tech Members and other Intermediaries that Would Jeopardize Valuable Consumer Travel Comparison Tools.

The Proposed Rule recognizes that businesses offer, display, and advertise goods and services provided by others. However, it does not account for the potential of incomplete information flows downstream to and among Travel Tech members or other Intermediaries that may not include all required information in the Total Price or fully and accurately disclose the

nature and purpose of fees the consumer may have to pay beyond Total Price.¹⁴ Despite Travel Tech members' robust efforts to receive Travel Service Providers' complete, accurate, and timely fee information, Travel Service Providers may (and do) still provide inaccurate, incomplete or out-of-date mandatory fees, withhold relevant fee information, and/or change fees or the purpose of such fees without notice to Intermediaries. Travel Tech members and other Intermediaries could be unfairly held liable under the Proposed Rule for these failures of Travel Service Providers.

By painting with a broad brush, the NPRM generally ignores the challenges Travel Tech members and other Intermediaries would face in complying with the Proposed Rule and the unreasonable compliance burden it would impose on such companies. The NPRM does not analyze how Intermediaries could effectively and efficiently obtain the accurate information necessary to comply with the Proposed Rule.¹⁵ For example, the NPRM flatly states that, "if an online travel agent advertises a price for a hotel room provided by a hotel chain, the online travel agent must display the Total Price, inclusive of mandatory fees charged by the hotel chain." However, it does not contemplate the possibility that the online travel agent might not have received all such mandatory fee information from the hotel chain. Similarly, the Proposed Rule would prohibit the OTA from misrepresenting the nature and purpose of any amount a consumer may pay and require the OTA to disclose the nature and purpose of any amount a consumer may

¹⁴ See NPRM at 77439 (explaining the Commission's proposals to require pricing disclosures).

¹⁵ NPRM at 77423 & 77428 (discussing comments submitted on the Advance Notice of Proposed Rulemaking); *id.* at 77445 (discussing a consumer comparing prices across platforms); *see also* NPRM at 77461-71 (discussing short-term lodging, including travel platforms used for such activity, in the context of economic analysis but not addressing how travel platforms would access required information).

pay that is excluded from the Total Price, even though OTAs may not have access to such information.¹⁶ The Proposed Rule does not address how Intermediaries could ever fully verify the purpose of such fees, which are varied, ever-changing, and multiplying over time.

The NPRM assumes information symmetry between hotels and indirect distribution partners: that a hotel and all Travel Service Providers will always provide accurate, complete and timely mandatory fees along with the true rationale for such fees. However, what exists is in fact information *asymmetry* between the parties: hotels, since they alone set their pricing including their mandatory fees and the rationale for such fees, possess the information that Travel Tech members need to comply with the Proposed Rule. As noted above, some hotels do not have a track record of providing accurate, complete, and timely mandatory fee information to both consumers and Intermediaries.

Managing this information asymmetry if the Proposed Rule is adopted without change will create extensive compliance challenges for Travel Tech members and other Intermediaries that are not easily solved. For example, independently policing every price and all fee information provided by Travel Service Providers on their direct channels against what they provide to Intermediaries via web-crawling is unrealistic. Comparison shopping is a significant aspect of the value Travel Tech members create for consumers. This requires sufficient scale, meaning that millions of price points for expiring services such as hotel rooms on a particular date in a particular location are needed to sufficiently meet the needs of the millions of

¹⁶ *See id.*

consumers using Travel Tech members' consumer-facing sites. Policing all these listings would be impossible given the wide variety of applicable rates and ever-dynamic combinations, fees, and taxes available for each of the Travel Service Providers in the United States alone. While automated methods of pricing verification can be an effective tool to enhance price integrity and enforce price integrity policies, automated solutions are not sufficient to protect Travel Tech members from potentially unfair enforcement for the following additional reasons: automated solutions would not ultimately solve for those instances when a resort fee is levied at the point of check-in; and fee information may not be sent via the same means (e.g., API) as other pricing information, creating additional complications that Travel Tech members have been advocating to solve for years.

The Proposed Rule's injection of potential liability into this complex and multi-layered ecosystem with information asymmetry could lead to several consequences that would harm competition and consumers. For example, worse information may flow to Intermediaries as Travel Service Providers leverage enforcement risk to promote their own businesses. Travel Service Providers may find that they can maintain compliance with the Proposed Rule by listing the most up-to-date and accurate fees on the online platforms in their direct channels, such as their own websites and affiliate or brand websites, while not providing the same quality or level of information to Intermediaries. For instance, a hotel may choose to not provide certain fee information such as resort fees to an Intermediary to artificially depress the price and attract clicks by the consumer. A hotel may also choose to provide stale pricing data to an Intermediary, to minimize the hotel's cost of leveraging a Travel Tech member's platform. Either situation would place Travel Tech members out of compliance with the Proposed Rule as written, again

through no fault of their own. Any final rule should make clear that Intermediaries are not liable in such circumstances. In addition, Travel Tech members and other companies operating in the indirect distribution channel may determine that they must impose such stringent listing terms and assurance procedures that those terms and procedures have the unintended consequence of discouraging participation by Travel Service Providers and, in turn, depriving consumers of robust comparison shopping and market transparency.

Finally, consumer prices may rise because the Proposed Rule may incentivize Travel Service Providers to charge a premium for accurate, complete, and timely pricing information, knowing that the Intermediaries face significant regulatory risk without access to such information.¹⁷ Indeed, the purchase of premium information, like mandatory fee data, could become a crucial negotiating point between Travel Service Providers and Travel Tech members, under the regime that could ensue if the Proposed Rule is adopted as written. Travel Service Providers may create a new "price-verified" mandatory fee information product to sell to Intermediaries, knowing full well that Intermediaries must comply with this new regulation. In such a scenario, these new costs introduced to the market would bring no value to consumers but could ultimately be passed along to the consumer, effectively making consumers pay to access accurate pricing information from Travel Service Providers on top of paying the mandatory fee itself.

¹⁷ As discussed below, the FTC should determine that charging Intermediaries for accurate and up-to-date information, so that Intermediaries can comply with FTC's unfair and deceptive fee rule, is an unfair and deceptive practice in itself.

As written, the Proposed Rule could have the unintended consequence of reducing the competitive offerings that Intermediaries currently provide to consumers and increase consumer prices. Travel Tech urges the Commission to consider these issues and modify the Proposed Rule as described below.

C. The Proposed Rule’s Treatment of Discounts and Conditions Could Lead to Consumer Confusion and Unnecessarily Increased Costs.

The NPRM proposes pricing display requirements that may cause consumers to inadvertently overlook or misunderstand discount and pricing conditions, leading to consumer confusion and higher costs. The Proposed Rule defines “Total Price” as “the maximum total of all fees or charges...” and requires that this maximum total be displayed more prominently than other information, including discounts and rebates that may only be displayed after the Total Price.¹⁸ In the travel industry, however, it is common for Travel Service Providers and Intermediaries to offer a discount based on an extended stay, such as a special rate on a stay of five days or a stay of one week. Likewise, rebates or goods/services such as breakfast may be included with certain rooms or lengths of stays. Such deals bring down the “maximum price” and may influence the choices a traveler wishes to make. Under the Proposed Rule, such information would have to be less prominent than the Total Price, potentially leading to a consumer missing out on a deal that may have saved them money and even led to a more enjoyable vacation. Travel Tech respectfully requests that the Commission consider some flexibility to presenting Total Price so that Intermediaries can use their expertise to relay the most appropriate information to

¹⁸ NPRM at 77439.

consumers. Instead of “the maximum total,” “Total Price” should include “the total of all applicable fees or charges a consumer must pay.” In addition, so long as the Total Price is “clearly and conspicuously” displayed to consumers there is no need to also impose a requirement that the Total Price must be displayed “more prominently” than other pricing-related information. The industry should have the flexibility to design innovative displays in consumer-friendly ways, consistent with industry practice.

IV. THE FTC SHOULD MODIFY THE PROPOSED RULE TO ENHANCE TRANSPARENCY AND COMPETITION IN THE TRAVEL MARKETPLACE FOR CONSUMERS.

Given the issues highlighted herein, Travel Tech encourages the Commission to modify the Proposed Rule in ways that will maximize the goals of price transparency and protecting consumers, while minimizing unnecessary compliance risks and burdens to Travel Tech members and other Intermediaries. Specifically, the Commission should clarify in any final rule that Intermediaries are not liable when Travel Service Providers fail to provide accurate, complete, and timely mandatory pricing information.¹⁹ As detailed below, the Commission has a firm basis by which to make such changes given previous Congressional action, the existence of thirty-nine state tax laws that hold marketplace suppliers responsible when sales tax information provided is incorrect, incomplete, or untimely, as well as marketplace realities.

¹⁹ However, the Commission should ensure that any company operating in the indirect distribution channel that fails to pass along accurate information from Travel Service Providers to other companies downstream from it continues to be liable.

A. The Commission’s Proposed Rule Should Assign Compliance Responsibility by Recognizing the Information Asymmetry in the Travel Marketplace.

As discussed above, Travel Tech members engage in price integrity efforts to assess the accuracy of pricing information provided by Travel Service Providers. However, only Travel Service Providers can ensure the accuracy, completeness, and timeliness of pricing information, including mandatory fees, and know the rationale for such pricing that they provide to Intermediaries, including the nature and purpose of such fees. Taking this reality into account, the Commission should appropriately assign compliance responsibility to Travel Service Providers that are in the best position to ensure the accuracy and completeness of pricing and fee information. As discussed below, such an approach is consistent with the actions taken by Congress and numerous states in similar circumstances involving information asymmetry.

Appropriately Assigning Compliance Responsibility, Consistent with Recent Congressional Action. In adopting a final rule, the FTC should follow the approach that Congress enacted nearly six years ago with respect to assigning liability among air carriers and large ticket agents.²⁰ Many Travel Tech members, including OTAs, Global Distribution Systems, TMCs, and some Metasearch Engines, are or may be considered to be a “Large Ticket Agent” as that term relates to the sale of airline tickets on or through their platforms alongside hotel rooms, car rentals, and other travel services. Significantly, Congress recognized the information asymmetry that exists between the less than ten (10) air carriers that operate in the U.S. and

²⁰ “Large Ticket Agents” in this statute are defined as, “a ticket agent with annual revenues of \$100,000,000 or more.” A “ticket agent” in this same statute includes “a person who acts as an intermediary involved in the sale of air transportation directly or indirectly to consumers, including by operating an electronic airline information system, if the person—(i) holds the person out as a source of information about, or reservations for, the air transportation industry; and (ii) receives compensation in any way related to the sale of air transportation.”

Ticket Agents. As such, Congress mandated that Large Ticket Agents cannot be found liable when an air carrier fails to provide the information or data that is required for them to comply with a rule (emphasis added):

(e) ENFORCEMENT.—No large ticket agent may be found in noncompliance of any standard or requirement adopted in the final rule required by this section **if— (1) the large ticket agent is unable to meet the new standard or requirement due to the lack of information or data from the covered air carrier and the information is required for the large ticket agent to comply with such standard or requirement;** or (2) the sale of air transportation is made by a large ticket agent pursuant to a specific corporate or government fare management contract.²¹

Consistent with Congress’s action, the Commission should similarly exempt Intermediaries from liability in the final rule when Travel Service Providers – such as the 55,000+ hotels operating in the U.S., like the less than ten (10) covered air carriers discussed above – fail to provide accurate, complete, and timely pricing information.

In the alternative, the Commission could adopt the approach that a broad majority of states have taken in similar analogous situations to provide a presumption of compliance or an affirmative defense under which Intermediaries that demonstrate taking reasonable steps to receive accurate and complete fee information from Travel Service Providers are not to be held liable. Specifically, most states (39) have adopted marketplace sales tax laws that assign responsibility for truing up tax to the sellers that provide information to a marketplace facilitator, like an Intermediary, because such sellers are in the best position to know and have the best

²¹ FAA Reauthorization Act of 2018, Pub. L. No. 115-254 § 427, 132 Stat. 3340.

access to the tax information.²² Such an approach is even more appropriate in this context. As described above, Travel Service Providers can change their fees without notice to Intermediaries, and changes to mandatory fee information occurs far more often than typical state tax changes. Thus, a presumption of compliance or affirmative defense for Intermediaries based on a demonstration of reasonable steps to receive accurate and complete pricing information would be appropriate in any final rule.

In this context, reasonableness could mean that a Travel Tech member or another Intermediary was accepting and ingesting fee information through the same method as other pricing data, including via electronic transfer (e.g., API) from the Travel Service Provider or other upstream entities. Travel Tech members should have flexibility to supplement these efforts by pursuing pricing integrity efforts that align with their respective business models and customers' needs.²³ However, the Commission should be clear that a "one size fits all" approach to price integrity is inappropriate for all Intermediaries. Furthermore, crawling the entire internet and otherwise double-checking every pricing data point against the Travel Service Suppliers' public, direct channels is plainly not a solution and entirely unworkable for Intermediaries to comply with any final rule. It is not a reasonable or workable way for Intermediaries to receive fee information from Travel Service Providers in the first place either. Put another way, in determining whether an Intermediary has taken reasonable steps to comply with the Proposed

²² See, e.g., 2019 Md. Laws 4208 ("A marketplace facilitator is not liable for a failure to collect the correct amount of sales and use tax due under this section if the marketplace facilitator demonstrates to the satisfaction of the Comptroller that the failure was the result of insufficient or incorrect information provided by the marketplace seller."); 2018 S.D. CODIFIED LAWS 10-65-7; IOWA CODE § 423.14A.

²³ As an example, please view Tripadvisor's *Price Integrity Policy*. The policy and approach detailed in this example is relevant to a metasearch platform and, as explained in these comments, may not be relevant to other Intermediaries' business models:

<https://docs.google.com/document/d/1ZQ6HpRg937Q8dvCtF1hIpmvFJJBjObGITJC6VMOU5Y4/edit>

Rule, the Commission should consider whether the Intermediary was receiving and ingesting price information via electronic transfer (e.g., API) from the Travel Service Provider or other upstream entities.

Protection for Downstream Intermediaries from Unfair and Deceptive Practices. The Commission should make clear that Travel Service Providers would be engaging in an unfair and deceptive practice if they were to distort or intentionally hide the information required for Intermediaries to comply with any final rule issued in this proceeding. In some instances, there may be incentives for some certain Travel Service Providers to “game the system” by obscuring, delaying, or manipulating pricing information provided to Intermediaries to raise the Intermediaries’ compliance burdens and regulatory risk. The final rule could exacerbate this problem if the Commission does not recognize that Travel Service Providers have an obligation to provide pricing information they originate to Intermediaries that is accurate, complete and timely.

In addition, the Commission should clarify that Travel Service Providers may not charge a premium for required pricing information when supplying such travel pricing information to Intermediaries. As discussed above, such a practice could result in consumers ultimately paying more than they currently do for accurate and complete information by companies operating in the indirect distribution channel.

Establishing a Nationwide Framework for Fee Disclosures. While Travel Tech appreciates the preemption language in the Proposed Rule,²⁴ the Commission should go further

²⁴ NPRM at 77484 (Proposed § 464.4).

to preempt all inconsistent state and local laws and establish a uniform nationwide framework that will preempt all inconsistent state and local laws and benefit all consumers that use comparison shopping websites, like those provided by consumer-facing Travel Tech members, while at the same time providing a level playing field for Travel Service Providers and other industry members. States may enact variations of the final rule, which may have the effect of magnifying the information asymmetries described above by incenting Travel Service Providers to charge additional premiums as their information becomes more valuable as a hedge against regulatory risk. Further, a patchwork of state and local laws would undercut the benefits of a uniform pricing disclosure law and potentially lead to confusion as Intermediaries, travelers, and Travel Service Providers all may be located in or, given the borderless nature of e-commerce, sell to residents of different states. For these reasons, the Commission should clarify in any final rule that Intermediaries are not liable when Travel Service Providers fail to provide complete, accurate and timely pricing information; that Travel Service Providers may not charge a premium for sharing complete, accurate and timely pricing information; and that Travel Service Providers and Intermediaries must clearly and conspicuously disclose Total Price but, so long as they do so, the final rule expressly provides the flexibility to design displays such that Total Price need not be displayed more prominently than all other price-related information.

An FNPRM to Address Issues Specific to Companies Operating in Indirect Distribution Channels. As explained in these comments, Travel Tech urges the Commission to explore and analyze the information asymmetries in the travel distribution market, market realities, and industry practices, To the extent that the Commission seeks to adopt the Proposed Rule as is, Travel Tech encourages the Commission to instead issue a Further Notice of a Proposed

Rulemaking (FNPRM) that specifically explores the compliance burdens faced by companies operating in indirect distribution channels, including the complexity of the travel industry with multiple layers of third parties, the pro-competitive role that Intermediaries play, the impact of information asymmetry between Intermediaries and Travel Service Providers, and the potential harms to consumers. Among other questions, an FNPRM should propose and/or ask:

- How can the Commission incent Travel Service Providers to provide accurate and complete information to Intermediaries?
- How would a presumption of compliance or affirmative defense for Intermediaries and similar third parties demonstrate reasonableness?
- Does the proposal create new costs to obtain pricing data? Does the proposal remove or create economic incentives for Travel Service Providers to charge Travel Tech members for pricing information at the risk of non-compliance and potential civil liabilities?

Exploring these issues in a specific FNPRM will lead to rules that recognize the unique challenges to compliance that Intermediaries face and the opportunities that Intermediaries offer in delivering choice and value to consumers.

B. Targeted Modifications Would Strengthen a Final Rule.

In addition to the modifications described above, Travel Tech recommends targeted modifications to the Proposed Rule to enhance its effectiveness and reduce compliance burdens.

First, the Commission should provide an exclusion from any final rule for products and services purchased pursuant to a corporate, government or institutional travel management program. Congress has previously recognized that ticket agents that sell to the general public and ticket agents that sell to corporate customers are distinct and created exemptions from other travel fee transparency rules for the sale of an airline fare made pursuant to a corporate

contract.²⁵ Notably, Congress is considering extending this exemption for Travel Management Companies to price transparency rules for hotel rooms and other places of short-term lodging.²⁶ Absent such an exemption, the rule would interfere with contractual arrangements between Travel Management Companies and large corporate, government, and institutional customers.

Second, Travel Tech requests that the Commission clarify in the final rule that it applies to any entity that supplies or advertises travel pricing information to consumers, including, for example, companies operating in the indirect distribution channel (as used here), Travel Service Providers' direct channels, both online and offline advertisements, and search engines (including any current or future voice assistants and search engines incorporating artificial intelligence). All entities that may be showing relevant Travel Service Providers' pricing information to consumers should be held to the same nationwide standard.

Third, the Commission should exempt airline tickets and travel bundles that include airline tickets (for example, an air/hotel, air/car, air/cruise or air/tour package) from the scope of any final rule in this proceeding. Under its full-fare advertising rule, the U.S. Department of Transportation (DOT) already regulates advertising and display by airlines and ticket agents (including travel agents) of air ticket and air ticket bundle prices. Specifically, the DOT requires

²⁵ FAA Reauthorization Act of 2018, Pub. L. No. 115-254 § 427, 132 Stat. 3340. Likewise, in its proposed rulemaking on the matter, the Department of Transportation rightly asks whether corporate travel agents should be exempted from the Proposed Rule. *Enhancing Transparency of Airline Ancillary Service Fees*, 87 Fed. Reg. 63,718 at 63,724 (Oct. 20, 2022) (“For example, regarding ticket agents who sell air transportation, should the proposed requirement to display information about certain critical ancillary services exclude corporate travel agents because the display content is typically negotiated by the business involved?”).

²⁶ No Hidden FEES Act of 2023, H.R.6543 § 5(4)(B), 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/6543/t>.

that such advertisements and displays must include all mandatory components of the total price, including the rate, fees and – unlike the Proposed Rule – government taxes.²⁷ The DOT rule is inconsistent with the Proposed Rule since DOT does not allow government taxes to be excluded from the total advertised price. In fact, after permitting taxes to be separately stated for some years, DOT determined over a decade ago to change course and require taxes to be stated in the total price as a consumer protection measure.²⁸ Adopting a conflicting or even an overlapping rule applicable to air tickets and air ticket bundles would not benefit consumers since the DOT already regulates such advertisements and displays, would necessarily apply unevenly since airlines are expressly excluded from the Commission’s jurisdiction, and would cause confusion for consumers and the industry.

Finally, Travel Tech also recommends that any final rule refrain from imposing an obligation to itemize mandatory fees.²⁹ Travel platform distributors are best positioned to decide whether to itemize the Total Price in an advertisement or when a price is displayed, especially as such display takes numerous presentations across media and devices.

²⁷ See 14 C.F.R. § 399.84(a) (“The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component.”).

²⁸ See *Enhancing Airline Passenger Protections*, 76 Fed. Reg. 23110, 23142-43 (Apr. 25, 2011).

V. CONCLUSION

Travel Tech supports the Commission's efforts to enhance consumer choice and value through price transparency and, as recommended herein, modifications to the Proposed Rule would help to achieve those goals by addressing price information disparities in the travel marketplace. Travel Tech looks forward to continuing to work with the Commission to encourage price transparency in travel services and enhance competition and consumer value through technology, tools, and innovation.

Respectfully submitted,



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VI. APPENDIX

Diagram 1:

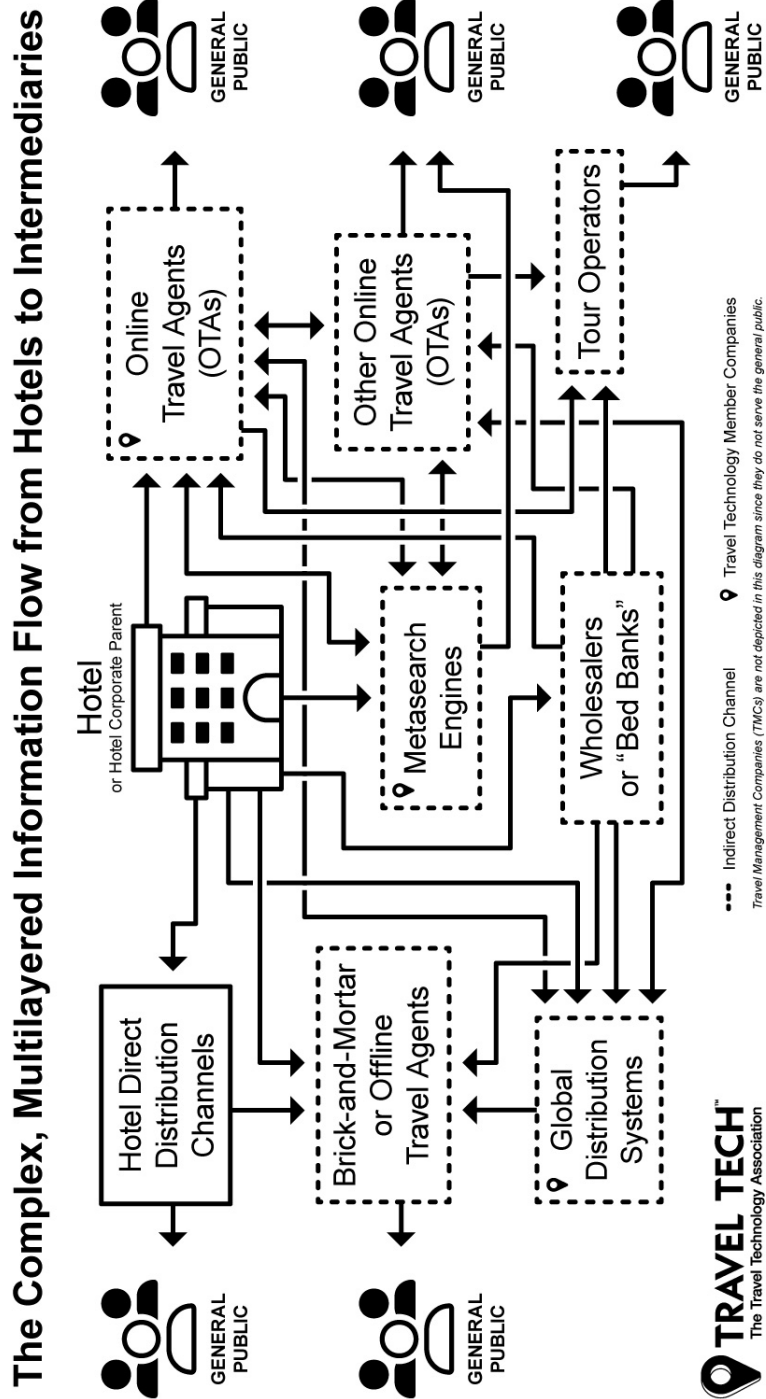


Diagram B:

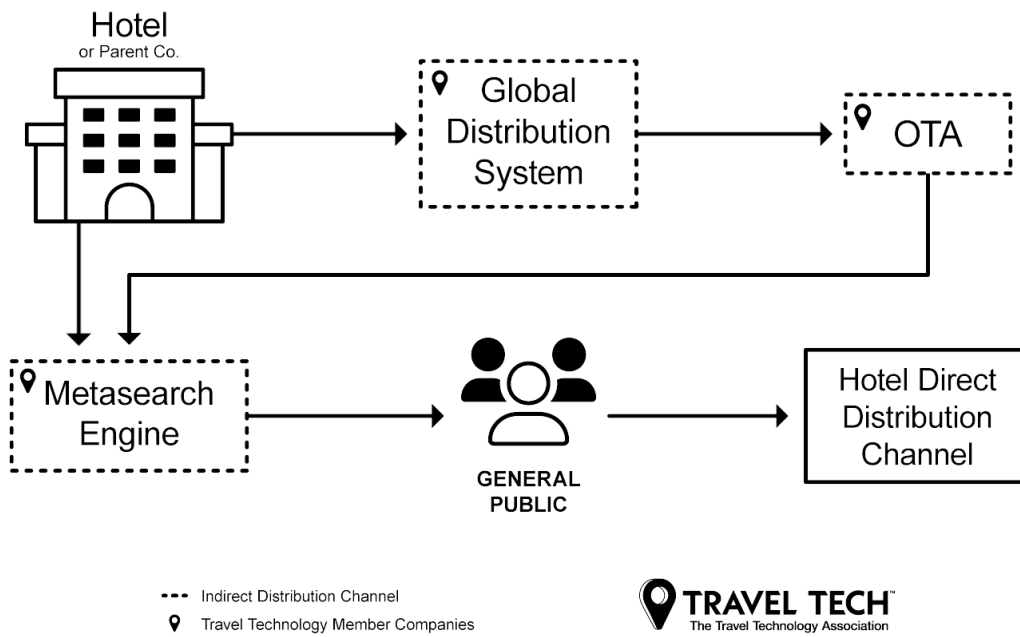


Diagram C:

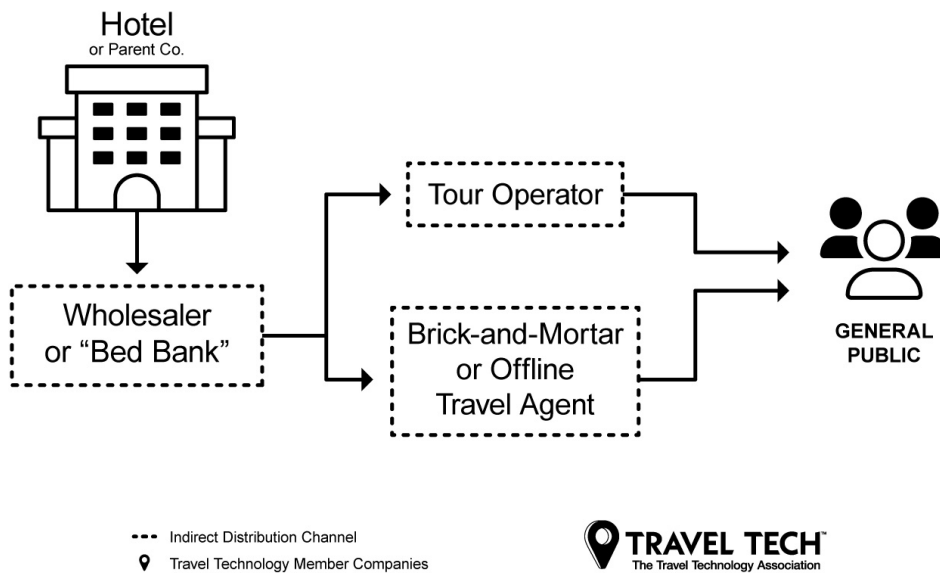
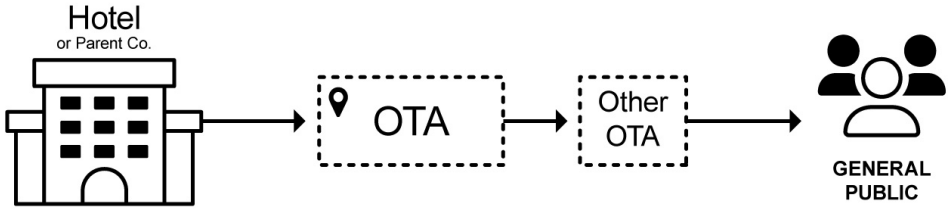


Diagram D:



--- Indirect Distribution Channel
📍 Travel Technology Member Companies

