BEFORE THE
DEPARTMENT OF JUSTICE AND
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

Request for Information on Competition in Air Transportation	Docket ATR-103 (ATR-2024-0001)

COMMENTS OF THE TRAVEL TECHNOLOGY ASSOCIATION

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TRAVEL TECH
The Travel Technology Association

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The Travel Technology Association ("Travel Tech")[1] is pleased to submit these comments in response to the inquiries put to the public by the Department of Justice ("DOJ") and the Department of Transportation ("DOT") in their joint Request for Information on Competition in Air Transportation ("RFI") dated October 24, 2024.

A robust and competitive air transportation marketplace is vitally important for consumers and the Travel Tech member companies that serve them. DOJ and DOT both have mandates to protect competition and consumer welfare, and their inquiry here is timely: It has been nearly a generation since the last comprehensive review of the state of competition in air transportation by DOT.[2] Travel Tech therefore welcomes this effort to examine the state of competition in the aviation industry, its impact on consumers, and to determine what policies should be maintained and/or newly implemented to ensure transparency of air transportation offerings, preserve consumer choice, and promote healthy competition among service providers. Travel Tech's comments shed light on how the indirect channel benefits consumers by promoting competition for airline services as well as airline practices and policies that may be detrimental to both consumers and competition. DOT and DOJ policies should address practices in the industry that result in a distorted marketplace, which is harmful not only for indirect sales channels but also for consumers.

Travel Tech is the leading trade association representing technology-based travel platforms, which connect consumers to air transportation and other travel service providers so that those consumers can make informed choices to best fit their travel needs. Travel Tech's members include Online Travel Agencies ("OTAs"), Global Distribution Systems ("GDSs"), metasearch platforms, Travel Management Companies ("TMCs"), and other travel technology innovators that enable the sale of travel through means separate from the airlines themselves – *i.e.*, the indirect sales channel. Travel Tech's members promote transparency, consumer choice, and fair competition by providing consumers with information about a wide range of travel and air transportation offerings. By

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[1] **Travel Technology Association,** https://traveltech.org/

[2] Findings and Conclusions on the Economic, Policy, and Legal Issues, Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry, Docket No. DOT-OST-1998-3713 (January 17, 2001) (https://www.regulations.gov/document/DOT-OST-1998-3713-1846).

enabling consumers to make informed choices through comprehensive fare and service comparisons, travel technology providers play a vital role in a competitive air transportation ecosystem.

Travel Tech's Members and their Role in the Air Transportation Marketplace

Travel Tech members play a critical role in expanding consumer access to options and facilitating fare comparisons across airlines – which in turn promotes competition in the marketplace. Travel Tech members deliver tools and technologies that increase price transparency and provide consumers with competitive travel offerings. Travel Tech members provide the infrastructure and platforms that enable consumers to see a vast array of potential travel and air transportation options. Travel Tech members promote consumer choice by offering price and availability comparison tools that enhance much-needed transparency and allow consumers to make efficient, information-driven choices about the options that best meet their needs. In short, Travel Tech members enable consumers to obtain better value for their money, with greater travel options, at competitive prices. Further, the information comparisons at issue are not limited to price and availability. Travel Tech members provide other key information to consumers such as customer reviews and informative photographs and videos, allowing consumers to make better informed choices.

Many Travel Tech members also serve as a "one-stop shop" for consumers, allowing them to effectively and efficiently manage their travel bookings through a single platform. Moreover, not only do Travel Tech members expand consumer choices, but they also connect other travel service providers, including airlines, to a broader global customer base. Travel Tech members operate both business-to-business platforms as well as consumer-facing platforms, connecting travel suppliers to all types of travelers. Travel Tech members play an important role in the distribution strategies of travel service suppliers, including airlines. Airlines engage Travel Tech members and other indirect channels to ensure their air transportation offerings reach the broadest possible audience.

Each type of Travel Tech member provides important and distinct distribution services as described below. However, all members share one important common element – they facilitate connections between travel suppliers, including airlines, to customers across the world.

- 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 rentals, saving consumers both time and money. OTAs source product offerings and price information provided by airlines from multiple sources including directly from the airlines, from Global Distribution Systems and wholesalers, and other OTAs.

- Metasearch Platforms aggregate travel pricing, availability, and quality information from various sources, including airlines, hotels, OTAs, and other partners, to provide consumers with a comprehensive and robust comparison planning tool. These platforms are designed to allow travelers to easily compare options across multiple providers, enabling them to find the best combination of price, availability, and features for their needs. By offering referral links to various booking channels, metasearch platforms empower consumers to make informed choices and connect with their preferred purchase channels.

- Global Distribution Systems ("GDSs") efficiently aggregate, organize and make readily useable travel pricing, inventory and other data from airlines and other travel service providers across more than 160 countries, including airlines, hotels, car rental companies, and passenger rail, into a single portal. Travel service providers, including airlines, freely choose to provide their pricing and availability information with individual GDSs. Indirect channels including OTAs, Brick and Mortar Travel Agents, and Travel Management Companies utilize GDSs to access pricing and inventory data and to facilitate bookings for their customers. However, GDSs are not themselves consumer-facing. At their core, GDSs are service providers that help both travelers and suppliers. GDS technology enables airlines, hotels, and car rental companies to access markets across the world and efficiently reach travelers they otherwise would have to identify and service themselves. Consumers benefit from the ability to shop across competitive offerings from thousands of travel suppliers, make quick comparisons, and conveniently book the best choices for their journeys. Comparison shopping and the competition it provides would not exist without the GDSs and other distributors.

  Additionally, some GDSs offer a broad portfolio of software technology products and solutions through software-as-a-service and hosted delivery models, designed for airlines and other travel suppliers. These solutions include industry-leading reservation systems for both full-service and low-cost carriers, commercial and operations tools, agency distribution platforms, and data-driven intelligence solutions. GDS provided systems help airlines manage daily operations and optimize their platforms to improve overall efficiency.

- 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. TMCs rely on both GDSs and other Travel Service Providers, including airlines, directly to supply their pricing and availability information.

- "Brick-and-Mortar" or Offline Travel Agents work directly with individual consumers on their travel planning, comparison shopping, and booking. These types of travel agents receive pricing and availability information provided directly from travel service providers or source it from GDSs and OTAs.

Travel Tech members rely on airlines to provide accurate, timely, and complete information – also known as "content" in the airline distribution industry – so that consumers can obtain up-to-date, real-time availability and pricing information. Ensuring access to this information and transparency of this information is of utmost importance to Travel Tech members and all consumers shopping for the best air transportation experience.

Travel Tech Responses to Specific RFI Questions

I. Response to Section 1 Questions (State of Competition in the Aviation Business)

1(a) Describe the state of competition in the aviation business. The aviation business includes all business sectors that impact air transportation. Examples of businesses that may impact air transportation include, but are not limited to, airlines, airports, airport facilities and/or services, aircraft manufacturers, air transportation sales channels, airline rewards programs, and/or any other business sector. You may wish to discuss consolidation, anticompetitive conduct, unfair methods of competition, and/or any other changes that impact the public interest.

The state of competition in the aviation business has been significantly shaped by decades of consolidation. Today, four carriers – American Airlines, Delta Air Lines, Southwest Airlines, and United Airlines – control 68% of the domestic market, a significant increase from 59% in 2005.[3] This dominance is a direct result of major airline mergers over the past two decades, including Delta and Northwest (2008), United and Continental (2010), Southwest and AirTran (2011), and American and US Airways (2013).[4]

This consolidation among the big four carriers has reduced competition. A 2014 Government Accountability Office (GAO) report found that in markets with the highest passenger volume, the number of effective competitors was limited, ranging between 4.3 and 4.5 during the study period of 2007-2012, even before all of the mergers listed above were fully implemented. The effects of this reduced competition are felt most acutely in smaller markets, where travelers now have fewer choices and are more likely to face higher fares.[5]

At the same time, the indirect channel – which includes OTAs, GDSs, and metasearch platforms – plays a critical role in countering the effects of consolidation by enabling consumers to compare a wide range of air travel options, which promotes transparency and fosters competition among airlines. However, airline practices that limit access to fare and schedule information increasingly threaten the effectiveness of these indirect channels for consumers. For example, some airlines restrict their lowest fares to direct sales channels, impose surcharges on tickets booked through GDSs, or redirect consumers away from indirect channels, all of which undermines consumer choice and transparency.

Significant consolidation in the aviation business has constrained the indirect channel and reduced options for consumers, often leading to higher costs and fewer choices in the marketplace.

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[3] U.S. Gov't Accountability Off., **Airline Competition: The Effects of Airline Mergers and Industry Consolidation on Fares, Service, and Market Share,** GAO-14-515 (2014), https://www.gao.gov/assets/gao-14-515.pdf.

[4] Skift, 8 Airline Mergers That Shaped Today's U.S. Industry, (Dec. 4, 2023), https://skift.com/2023/12/04/8-airline-mergers-that-shaped-todays-u-s-industry/.

[5] U.S. Gov't Accountability Off., **Airline Competition: The Effects of Airline Mergers and Industry Consolidation on Fares, Service, and Market Share,** GAO-14-515 (2014), https://www.gao.gov/assets/gao-14-515.pdf.

These dynamics illustrate how consolidation and evolving airline practices have impacted competition and consumer outcomes.

1(b) How, if at all, has air transportation for passengers been affected by consolidation, anticompetitive conduct, unfair methods of competition, and/or any other changes in the air transportation industry?

There is no serious dispute that consolidation has resulted in an air transportation marketplace with less competition. As noted above, four carriers controlled 68% of the U.S. domestic market share for the 12-month period ending September 2024.[6] Consolidation has occurred even among smaller carriers, including Midwest's integration into Frontier in 2009, Virgin America merging with Alaska in 2016, and Alaska's recent acquisition of Hawaiian Airlines in 2024. The dominance of the "big four" airlines of American, Delta, Southwest, and United has led to a constrained market, reducing competition and making it harder for new entrants to compete effectively, and ultimately impacting the consumer.

This consolidation has also given airlines greater leverage to impose restrictive terms on ticket distribution, limiting transparency and competition. Airlines now have significant control over how their fare and schedule data is accessed. Again, they often restrict their lowest fares to direct sales channels, impose surcharges on tickets booked through GDSs, and set conditions that constrain OTAs and metasearch platforms from displaying or fully utilizing their content. These practices reduce consumers' ability to find and compare options, undermining transparency and limiting choice.

Indirect channels, such as those offered by Travel Tech members, are one of the only tools that still allows true comparison shopping, not just among the big four, but also for new entrants, alerting and connecting passengers to all of the available travel options. Travel Tech members can offer unique benefits such as bundling and virtual interlining (*i.e.*, combining flights from different airlines that do not themselves enable the issue of a single ticket), providing access for consumers to a variety of air transportation options. Beyond these services, Travel Tech members also provide consumers with tools to better plan and manage their travel, including features such as price alerts and itinerary management. Many platforms also allow users to compare ancillary services, such as baggage fees or seat selection, empowering travelers to make more cost-effective decisions. They also support corporate travel management by offering booking tools, policy enforcement features, and expense tracking capabilities tailored to the needs of businesses.

Travel Tech members are an important part of the information chain, providing consumers with an independent source of fare and schedule information and the ability to see a full range of competitive options before choosing which to book. However, as consolidation strengthens airlines' ability to limit access to their content through these restrictive practices, the effectiveness of these channels is increasingly constrained, resulting in fewer choices for consumers. But that

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[6] Bureau of Transp. Stats., **TranStats Database**, U.S. Dep't of Transp., https://www.transtats.bts.gov/.

chain can be most effective at maximizing consumer choice only if there exists an underlying competitive marketplace with robust options.[7]

II. Response to Section 2 Questions (Airlines)

2(a) Explain how airline consolidation overall and/or specific mergers between airlines have impacted air transportation, economic growth, airport facilities, routes, fare prices, load capacity, scheduling and availability, services and amenities, fees, employment, wages, safety, and/or any other aspect of air transportation.

Through indirect channels, Travel Tech members play a critical role in facilitating a fair, competitive marketplace to allow consumers to make fully informed travel decisions. By supporting transparency and expanding access to information, Travel Tech's members provide a market environment that benefits airlines and consumers and fosters competition across the air travel industry.

The role fulfilled by Travel Tech members is crucial because airline consolidation has resulted in less choice and competition. At many smaller airports, the options for air transportation are increasingly limited. Although Travel Tech members allow for robust comparison shopping, when the airline options are limited for a particular city, the alternatives for customers are also limited. As detailed above, the rapid consolidation of U.S. carriers to only four large carriers has significantly altered the air transportation marketplace. Most of those carriers funnel traffic through fortress or network hubs, which reduces competition in those markets and further limits the options for consumers in smaller communities. Studies have shown a direct correlation between the degree of competition on airline routes and the availability of airfares through indirect sales channels.[8]

In line with long-standing precedent, the relevant markets for airline services are defined as city-pairs, or even more granularly on an airport basis. But this fact hides the dire state of competition at many airports and on hundreds of city-pairs in the U.S. airline industry. Indeed, the big four tend to dominate a particular airport and rarely compete on many routes. Practically, this means that one airline is free to charge more for the price of a ticket on a specific route because there is virtually no direct competition that would force them into competitive pricing.

The implications of airline consolidation go beyond price competition: the number of departures at large hub airports in the period between 2007 and 2016 shrunk by 6.2 percent while

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[7] A study submitted to DOT by Charles River Associates in 2015 (https://www.regulations.gov/document/DOT-OST-2014-0056-0777) provides quantitative analysis of the benefits provided by intermediaries; and although the specific data in that study is no longer current, ongoing airline efforts to limit the accessibility of data to them, as well as to consumers, only emphasizes why they are critical to ensuring competition in the air transportation marketplace.

[8] Varella, Frazao, and Oliveria find that entry by a low-cost carrier on an incumbent airline's route leads to a 11% increase in the probability of OTA airfare availability. Varella, Rafael; Frazão, Jessica; and Oliveira, Alessandro Vinícius Marques de, Dynamic Pricing and Market Segmentation Responses to Low-Cost Carrier Entry: The Econometrics of Airline Distribution Management under Increased Competition, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841417.

the decline at non-hub and small airports was more than five times as significant, at 31.5 percent.[9] This means local communities that are not served by hub airports are often left without any choice but to utilize the carrier that holds a monopoly position on the route they need. With no competition, service suffers, and suboptimal consumer outcomes occur, such as an inability to travel due to airline-specific outages and potentially less investment in customer service. More competition on such routes would address these issues, as airlines would be forced to compete with one another for the limited number of passengers on a particular route.

Consolidation also has had a direct effect on Travel Tech members and the indirect channels more broadly: Dominant carriers can rely on their strong existing market position to draw passengers to their direct distribution channels, where consumers do not have access to the offers of other competitors available through the transparent shopping tools of travel technology platforms. Disintermediation in distribution is thus partially motivated by airlines' interest in reducing competitive pressure in the air services market.

Travel Tech members provide tools that enable consumers to search, find, compare, and easily book travel. Additionally, members give new entrants that may not be well-known to consumers access to a global audience. Innovative solutions such as virtual interlining expand consumer options by allowing customers to construct itineraries that best meet their needs. This opens options for customers to routes and prices that are not available by shopping directly with the airline. These services mitigate but do not resolve the implications of consolidation, which requires attention from DOT and DOJ.

> *2(j) Describe any exclusionary conduct, predatory pricing, and/or other anticompetitive practices airlines may use to block, impede, disadvantage, and/or push out their competitors. Where possible, provide real-world examples of instances when exclusionary conduct, predatory pricing, or other anticompetitive practice have occurred and describe any resulting impact on air transportation, including access, availability, cost, quality, and/or any other aspect.*

> *2(k) Describe any practices airlines may use to create or enhance market power and/or extract monopoly rents. Where possible, provide real-world examples of instances when these practices and/or methods have been used and describe any resulting impact on air transportation, including access, availability, cost, quality, and/or any other aspect.*

Airline content distribution strategies have undergone significant changes in the last decades. In airline distribution, two systems are used for electronic communication between airlines and travel agents. EDIFACT (Electronic Data Interchange for Administration, Commerce, and Transport) is a longstanding technical standard for data exchange between airlines, GDSs and agencies, used in processing billions of global travel transactions quickly and efficiently for decades.

NDC (the New Distribution Capability) is a messaging protocol developed by the International Air Transport Association (IATA) designed to give airlines more flexibility to make more personalized offers to consumers. First proposed in 2014, NDC adoption has been

[9] Open Markets Institute, Airlines & Monopoly, https://www.openmarketsinstitute.org/learn/airlines-monopoly.

challenging for both airlines and agencies because it is not a single standard everyone can build to in the same way. IATA has released multiple schemas, each with dozens of optional features airlines may choose to support.

Adoption of NDC has been slow but is growing as more airlines begin to distribute NDC content. Ticket agents must develop new workflows to adapt to the intricacies of each airline and make changes to back-office systems before being able to process NDC bookings. This work is time and resource intensive. Currently, of the world's 450 airlines, only around 30 have fully implemented NDC. Most are in various stages of examination and technical development. Although NDC connections, in theory, can enable more flexible fare offers, the selective implementation of NDC that often has occurred in practice can limit consumer choice if the information is not made uniformly accessible by airlines.

Travel Tech members actively work to share NDC fare content on their platforms, enhancing transparency and empowering consumers to cross-shop between airlines. By aggregating NDC fares alongside EDIFACT content, Travel Tech members provide a complete view of fare options across carriers, promoting competition and enabling informed travel decisions. However, if airlines withhold fares and fee information and impose surcharges on these platforms by misusing the flexibility of NDC channels, airlines limit the transparency that indirect channels are designed to offer, frustrating consumers and reducing competitive pricing pressure. Historically, most airlines made all their fares and ancillary services available to Global Distribution Services and travel agencies. But Travel Tech members now regularly experience airline practices that serve to restrict consumer choice, and limit transparency. Too often airlines withhold schedule, fare, and ancillary fee data – such as baggage fees, seat assignment fees, and other optional costs – from the EDIFACT system, or from indirect sales channels entirely, to drive travel agencies to invest in NDC or drive traffic to the airlines' own sales channels. That withholding creates a "transparency gap" for consumers booking through OTAs, metasearch platforms, and TMCs. The result is an inconsistent and frustrating booking experience, as consumers may need to visit multiple platforms and airline websites to obtain complete fare information and understand the true cost of travel. This increases search costs for consumers and makes it more likely that they pay more for their trip than they would have with a more transparent comparison process.

For example, in 2023 American Airlines pursued a strategy of removing many of their fares from the EDIFACT system and threatened to limit loyalty awards unless passengers booked their ticket directly with the airline or through its preferred NDC channels. While American ultimately changed course and restored access to content via traditional distribution channels, this temporary policy created significant confusion for consumers and disruptions in the marketplace.

In addition, some airlines impose surcharges on fares distributed through GDSs. This practice increases costs for consumers who rely on OTAs and GDSs to compare prices across airlines, effectively undermining the transparency and choice that these platforms offer. For example, the Lufthansa Group's Distribution Cost Charge (DCC) on EDIFACT transactions range from approximately $20 - $26 per ticket while NDC transactions are about $9.[10] Similarly, starting July 1, 2025, Qantas will increase the surcharge on EDIFACT bookings up to $13 per segment in the U.S., while NDC bookings will be $3 per segment.[11] Air France-KLM has a surcharge of between $18 - $24 per segment on EDIFACT bookings, while Hawaiian Airlines has charged $7 for bookings between Hawaii and the mainland.[12] Similar practices have also been documented in Europe, where GDS surcharges have steered consumers toward direct airline bookings at the expense of transparency. By steering consumers to direct airline bookings, airlines are avoiding the cornerstone of a competitive marketplace – efficient price comparison. This may benefit airlines, but certainly not consumers.

In response to the DOT's October 20, 2022 Notice of Proposed Rulemaking regarding ancillary fees, Travel Tech conducted a survey of customers to determine what information was most important to them when making their air transportation choices.[13] Travel Tech's survey data highlights that although 90% of U.S. adults anticipate additional fees, many are frustrated by the lack of clear access to this information in indirect channels. Additionally, the inability to access the full range of fares and ancillary services within indirect channels further complicates the consumer experience, reducing the comparative advantage that Travel Tech members strive to provide.

Travel Tech has also identified several practices that airlines have deployed against OTAs and metasearch platforms that are designed to drive customers away from the convenient shopping and search tools they provide, to instead drive bookings to an airline's own platforms. By imposing restrictions on access to and the display of information, airlines are reducing competition in the marketplace for consumers to compare options for air transportation.

In particular, Travel Tech members have experienced that airlines restrict access to fare data by selectively distributing ancillary fee information, which constrains their ability to display and consumers' ability to access complete and comparable pricing data across platforms. This approach consolidates market power by limiting cross-platform price transparency and deterring competitive price comparisons. Some large domestic airlines make access to their content conditional on strict terms. For example, they prohibit OTAs from advertising their offers on metasearch sites, restrict metasearch platforms from displaying OTA and other third-party, non-airline inventory against inventory from the airline. These restrictions are not limited to domestic carriers; some international carriers also impose similar limitations, despite benefiting from access

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[10] **Lufthansa Group,** *Lufthansa Distribution Cost Charge FAQ,* https://www.lufthansaexperts.com/shared/files/lufthansa/public/mcms/folder_102/folder_3212/folder_4994/file_124750.pdf.

[11] **Business Travel News Staff,** *Qantas to Launch New Distribution Model, Revise Surcharges,* Bus. Travel News, https://www.businesstravelnews.com/Distribution/Qantas-to-Launch-New-Distribution-Model-Revise-Surcharges.

[12] **Skift Staff,** *Sabre Sued Hawaiian Airlines for Alleged Breach of Contract,* Skift (Sept. 3, 2022), https://skift.com/2022/09/03/sabre-sued-hawaiian-airlines-for-alleged-breach-of-contract/.

[13] **Travel Technology Association,** *Travel Tech Takes a Stand for Innovation at DOT Hearing: Advocates for Ancillary Fee Website Display Flexibility,* Travel Tech (n.d.), https://traveltech.org/travel-tech-takes-a-stand-for-innovation-at-dot-hearing-advocates-for-ancillary-fee-website-display-flexibility/.

to the lucrative U.S. aviation market. Additionally, many U.S. carriers contractually prohibit OTAs accessing certain fare classes.

Such practices create significant challenges for the indirect channel in attracting customers (especially smaller, less well-known OTAs) and undermine the ability of metasearch platforms to provide a comprehensive, aggregated view of travel options. As a result, consumers who rely on metasearch platforms for transparent comparisons are forced to forum shop – navigating multiple platforms to piece together information they need – which fragments the booking process and reduces the overall value of metasearch platforms as a one-stop comparison tool. These restrictions reduce OTAs' visibility in the marketplace, limit metasearch platforms' utility as comparison tools, and further consolidate market power in the hands of certain already-dominant airlines

Airlines also have the power to dictate how OTAs display fares (within the options allowed by DOT regulations) and what fares they can display. For instance, airlines often require OTAs to display content in a "shelves" format, highlighting multiple price points for different fare brands at the point of first search result. The mandating of this format negatively impacts the conversion rates for OTA customers, as it complicates the comparison process and discourages bookings through these platforms. Airlines also require travel agents to sell no more than a small percentage of tickets in Basic Economy fare buckets. Agents, however, do not control the pricing, availability, or inventory of Basic Economy tickets, nor the pricing differences between Basic Economy and the next highest fare brand. These limitations stifle the ability of agents to provide competitive offerings to consumers and maintain a balanced marketplace.

In terms of competitive dynamics, exclusionary conduct by large carriers has foreclosure effects on several levels of the market. Airlines are active both in the upstream market for air passenger transport services and the downstream market for the distribution of air tickets. As discussed, the U.S. airline industry for air passenger transport services is highly concentrated overall, with the four leading carriers holding even more significant market shares and related market power based on any route or hub-level assessments. Similarly, in the downstream market for the distribution of air tickets, airline websites play a predominant role, with indirect sales channels such as GDSs, OTAs, TMCs, and metasearch sites playing a secondary role.

It should be underscored that indirect channels and airline websites are often substitutable from the consumer point of view at key points in the booking process, namely on metasearch result pages and general web search. Competitive pressure from indirect channels impacts airline websites and vice versa. From a traditional market definition standpoint, indirect channels and airlines are thus not only commercial partners but also competitors.

The primary impact of airline distribution restrictions is a foreclosure effect for indirect channels seeking to effectively compete with airline websites on the downstream market. As indirect channels lose access to airline data (including the most relevant tickets), are subjected to surcharges and other restrictions, the competitive pressure exerted on airline websites by indirect channels is significantly reduced. Airlines' strong positions on the upstream air passenger transport market make them unavoidable partners for any air ticket distribution channel, thus allowing them to impose restrictive conditions which ultimately foreclose competition on the downstream market.

Put simply, airlines leverage their market power as transport operators to monopolize the air ticket distribution market. The consequence for consumers is unsurprising: indirect channels are unable to exert significant competitive pressure on airline websites, leading to higher prices and reduced quality of booking tools and customer service.

A secondary effect occurs upstream: as indirect channels attractiveness is reduced and passengers are intentionally driven by large airlines to book on airline websites, smaller rival carriers lose consumer visibility. As comparison shopping and combination have been rendered more difficult, consumers are incentivized to book more frequently with the airlines operating most frequently and with the most well-known brands. For consumers, this results in higher prices, fewer options, and reduced quality.

Again, airlines compete with Travel Tech members to make bookings for consumers and business travelers who benefit when they have the option to purchase their air transportation from a service provider that meets their needs – which may not be the airline itself. Travel Tech Members provide options to consumers, and the ability to bundle air transportation with other services. Travel Tech members thus play a critical role in counteracting airlines' efforts to consolidate market power. By offering aggregated fare data, including NDC fares, and providing consumers and business travelers with a transparent booking experience, Travel Tech members enable cross-platform price comparisons, empowering consumers and promoting competition.

> *2(l) What, if any, sources of information may airlines monitor to predict, interpret, and/or otherwise learn the competitive strategies of rival airlines? How, if at all, may airlines signal any plans regarding pricing, entry, exit, changes in service, and/or any other competitive strategy to rival airlines? Where possible, please provide real-world examples of instances when air carriers appear to be attempting to share competitively sensitive plans and/or acting on the competitively sensitive plans of another air carrier, including any instances that are the subject of private litigation.*

Travel Tech members are independent platforms, dedicated to providing transparent, consumer-focused services that allow travelers to make fully informed decisions. Airlines (and in most cases any member of the public) may use Travel Tech member platforms to monitor price differences and fare levels for certain routes. But the primary purpose of our platforms is to enhance competition by aggregating information for consumers and business travelers across airlines, allowing for direct cross-shopping and discouraging the lack of transparency that can occur in single-carrier searches. Travel Tech members empower customers by fostering a transparent marketplace and enabling comparison across carriers, ultimately promoting a competitive market environment.

III. Responses to Section 5 Questions (Air Transportation Sales Channels)

5(a) Describe the various commercial channels through which airlines sell products to various types of consumers. This can include information pertaining to Global Distribution Systems (GDS), travel agencies, and/or direct sale channels.

The basic channels of air transportation sales distribution are direct sales from the airlines through their own sales channels (primarily their websites) or sales through indirect sales channels. Direct sales channels, such as airline websites and apps, primarily focus on selling a single airline's offerings, often in conjunction with alliance partners, while indirect channels allow consumers to compare multiple options. Sales through indirect channels enable consumers to shop for comprehensive fare and service comparisons, which are not possible through direct sales channels alone.

Travel Tech represents major indirect sales channels that compete with airlines to provide a superior shopping experience for customers in the air transportation marketplace. OTAs, GDSs, TMCs, Brick-and-Mortar Travel Agents, and Metasearch Platforms all play an important role in the sale of air transportation, innovating to improve the shopping experience and with benefits including that customers can understand the true cost of travel. GDSs aggregate fare and schedule data across airlines and make it accessible to indirect sales platforms, while OTAs and metasearch platforms leverage that data to display a range of travel options in an easily comparable format.

GDSs and travel agencies foster an open and competitive market by offering an alternative sales channel for customers to complete purchases. These sales channels allow customers to comparison shop, including creating itineraries that are not possible to create through the airlines' direct distribution sales channels. Metasearch sites allow airlines (and OTAs) to reach a wider audience, by aggregating offers from across the market and presenting them to users in an easily comparable manner. These tools are especially critical for smaller and regional airlines, which may struggle to compete with dominant carriers that benefit from established brand loyalty and scale. Metasearch sites play an important role in helping airlines to fill seats, especially smaller airlines, who would struggle to compete with dominant carriers in a world of direct-only bookings.

The consolidation of the U.S. market among the "big four" airlines has significantly reshaped competition. As previously noted, these carriers now collectively control 68% of the domestic market, up from 59% in 2005, following a series of major mergers over the past two decades.[14] While this consolidation has enabled larger carriers to scale operations and expand networks, it has also diminished competition in the upstream air passenger transport market, particularly affecting smaller regional and low-cost carriers. For consumers, this dominance often results in fewer choices and higher fares, especially in smaller markets where the largest carriers encounter minimal competition.

Travel Tech's members depend on access to fare and schedule information to ensure that consumers can view comprehensive flight options which may meet their itinerary needs, supporting both consumer choice and transparency. Ultimately, airlines hold the information and

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[14] **Skift**, *8 Airline Mergers That Shaped Today's U.S. Industry*, (Dec. 4, 2023), https://skift.com/2023/12/04/8-airline-mergers-that-shaped-todays-u-s-industry/.

make determinations about how to distribute the information, thus placing them in a leveraged position of advantage within the travel shopping ecosystem, with the ability to drive shoppers to the airlines' preferred sales channels by not making the data accessible to indirect sales channels. The consolidation of the U.S. market among the "big four" airlines – American, Delta, Southwest, and United – underscores the critical importance of indirect channels in preserving consumer choice and competition. Consumers expect to see these carriers' offerings in indirect platforms, making access to their content vital for ensuring a competitive market. Consolidation has therefore made it easier for U.S. carriers to impose the content access conditions described elsewhere in this submission.

5(b) Describe the state of competition among GDS platforms.

As an initial matter, this question incorrectly assumes that GDSs only compete between themselves in the space of aggregating and distributing fare and schedule information. As DOJ and DOT are aware, GDSs convey data; they are not resellers of tickets. According to data provided by the Airline Reporting Corporation (ARC) direct sales channels controlled by airlines represent over 60% of total ticket sales, underscoring the competitive pressures on GDS platforms and other indirect sales channels.[15] Additionally, there are more than 75 non-GDS content aggregators that compete directly against GDSs for distributing airline content and bookings to ticket agents. There is robust competition amongst all these distributors to be the preferred distribution partner to airlines and source of content for travel agencies, driving them to secure the best deals.

To that end, GDS platforms and other indirect distribution channels facilitate competition within the travel sector by providing real-time data that enables all travel agencies and OTAs to present comprehensive booking options across multiple carriers. ARC reported that U.S. travel agency sales totaled $95.3 billion in 2023, illustrating the significant role of indirect sales channels in driving air ticket sales.[16] These distributors are often the only way smaller or newer players market access the indirect channel, ultimately enhancing consumer choice. Giving new entrants the opportunity to display their fares alongside larger carriers promotes competition and avoids the creation of a market where only dominant airlines are visible to consumers.

5(c) Describe the state of competition among travel agencies.

Many types of travel agencies exist to offer consumers choice and personalization to fit their travel needs. OTAs and TMCs provide consumers with access to real-time data in an easy-to-access format to efficiently compare fare and schedule information for airlines. Traditional brick-and-mortar agencies emphasize personal service, crafting itineraries that meet the preferences of their customers, especially for complicated or once-in-a-lifetime trips.

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[15] *Airline Direct Distribution Share Hits New Heights*, The Beat (Jan. 11, 2023), https://www.thebeat.travel/News/Airline-Direct-Distribution-Share-Hits-New-Heights.

[16] **Airlines Reporting Corp**., *December 2023 Ticket Sales Data*, ARC Newsroom (Dec. 2023), https://www2.arccorp.com/about-us/newsroom/2024-news-releases/dec-2023-ticket-sales/.

While companies in the indirect channel enhance competition in the air transportation marketplace by offering alternatives to airline direct sales channels, significant competition exists among the agencies themselves. For example, OTAs compete fiercely with each other through marketing efforts, innovating new technology features to better support consumers, and expanding new offerings, while TMCs compete to provide value-added services for corporate clients, such as policy enforcement, expense tracking, and negotiated rates. Brick-and-mortar agencies focus on personalized services and niche markets, catering to travelers with specific needs. This internal competition drives innovation, resulting in improved services and more competitive pricing options for consumers.

Direct channels, such as airline websites and apps, already dominate the market, accounting for over 60% of all ticket sales.[17] Travel agencies and other indirect channels compete not only with these direct channels but also with each other to attract consumers to their platforms. This competition benefits travelers by fostering innovation, improving transparency, and expanding access to travel options.

All travel agencies and other indirect channels offer important services that ultimately enhance competition in the overall air transportation marketplace. These companies compete with each other and airlines for customer bookings, which allows would-be travelers to choose the booking method and service provider that best aligns with their preferences, fostering a more accessible and balanced market.

Metasearch sites enable competition between travel agencies (when authorized by the agencies to show such content), allowing consumers to compare offers from different OTAs. However, metasearch sites and other indirect channels contend with anti-competitive behavior from Google. Google operates its own metasearch site, Google Flights. Google, however, uses its overwhelming dominance in the general search market to self-preference its own metasearch service to the detriment of other metasearch services. It does so by placing Google Flights at the top of the search results page. This pushes competing services further down the page, unfairly depriving competitors of traffic. In addition to making it harder for other indirect channels to compete, Google's self-preferencing of Google Flights also has another implication for competition in this market. Whereas other metasearch sites order their results based on objective factors such as price or convenience, Google prioritizes and provides[18] its re-directs to airlines free of charge (something that competing metasearch sites, who cannot bankroll their own service with revenues from their dominant general search service) cannot compete with. In this way, indirect channels are facing unfair competitive constraints from both airlines and Google, which is in turn favoring airlines in its own results.

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[17] *Airline Direct Distribution Share Hits New Heights,* The Beat (Jan. 11, 2023), https://www.thebeat.travel/News/Airline-Direct-Distribution-Share-Hits-New-Heights.
[18] Google Support, About Google Flights, https://support.google.com/travel/answer/7664728?hl=en-GB.

5(d) How, if at all, do GDS providers and/or travel agencies impact competition in any market and/or any aspect of air transportation?

Content aggregators like GDSs and OTAs significantly enhance competition by providing an alternative sales channel from the airlines. They are the only non-airline source of competition for airline content and only means to compare multiple airline options and contrast airline services. Travel Tech members thus provide value to customers, enabling comparison shopping and customization across multiple airlines and routes. They provide these options at a low or no additional price and allow visibility for smaller and new-entrant carriers. This access to the broader marketplace is critical for smaller carriers to offset the competitive advantage held by larger carriers.

Travel Tech members further offer a set of options to consumers unavailable via direct airline sales channels. Notable in this context are cross-fares. Cross-fares involve booking inbound and outbound flights on different airlines for round-trip journeys without requiring code-share agreements between carriers. Cross-fares provide benefits to consumers and enhance competition on the upstream air passenger transport market. Consumers benefit by gaining access to travel routes otherwise inaccessible or only accessible by manually booking separate tickets on airline websites. This can result in significant savings in journey cost and time.

Smaller competitors of large carriers benefit as technology platforms combine their services with those of their larger rivals to offer cross-fares. Smaller airlines can leverage established networks of larger carriers, instead of being unable to compete with incumbents' established services and networks. This benefit is particularly strong where airlines with potentially connecting services are unable to reach distribution-related agreements, such as code-sharing or special prorate agreements. The outcome of these platforms' unique offerings is greater consumer transparency, more efficient journeys, and heightened competition between airlines.

However, due to having ultimate control over fare, schedule, and ancillary fee content, many U.S. airlines – and in many cases their foreign code-share partners – restrict the dissemination of public fare and schedule data through third-party distributors. These restrictions hinder travel agencies including OTAs from presenting complete, transparent information to consumers, reducing the effectiveness of comparison-shopping tools. For more on how such practices impact competition, see Section II.[19]

5(e) Describe how airlines sell products and services directly to consumers. How, if at all, do direct-to-consumer sales help or hinder competition between airlines?

The experience of Travel Tech members has been that airlines' direct sales channels can limit consumers' ability to comparison shop by offering exclusive pricing or restricting fare content visibility on third-party platforms. Travel Tech members have provided examples of this anti-competitive conduct such as requirements that OTAs display content in a specific "shelves" format, highlighting multiple price points for different fare brands at the point of first search result. This

[19] **Lufthansa Group,** *Lufthansa Distribution Cost Charge FAQ,* https://www.lufthansaexperts.com/shared/files/lufthansa/public/mcms/folder_102/folder_3212/folder_4994/file_124750.pdf.

occurs despite data showing that customers do not want or need the display of multiple price points within a branded fare. The screen real estate could be used for purposes more beneficial to consumers, rather than to airlines. Additionally, some airlines prohibit OTAs from receiving traffic from metasearch sites, and the inverse is also true – metasearch platforms are restricted from sourcing inventory from OTAs. This prevents consumers from getting a complete view of all their travel options in one place, forcing them to use multiple platforms to compare flights and fares. These limitations make it harder for OTAs to attract customers and for metasearch platforms to provide a truly comprehensive travel-planning experience, ultimately reducing competition and consumer choice.

Travel Tech encourages policies that maintain consumer access to transparent and comparable fare information across all sales channels to support fair competition. However, airlines are not as committed to transparency, especially insofar as comparative shopping is concerned. In the U.S. market, airlines may limit visibility of some fares to their own direct channels, reducing transparency and comparison, which is the cornerstone of a competitive marketplace. Studies suggest that such restrictions can lead to higher airfares, with one report estimating that such limitations could increase ticket prices by more than 10%.[20] This along with evidence from the EU market suggests that this strategy hinders consumer choice and disadvantages OTAs and GDSs, which serve as essential sources of price comparison.[21]

The dominant U.S. airlines have taken steps to disintermediate Travel Tech members by severely limiting generally available content and forcing consumers to shop on individual airline websites. By requiring travelers to rely solely on direct sales channels, airlines have made it more difficult and time-consuming for consumers to review a broader set of available flights, including flights on smaller or newer carriers. This limits consumer choices, rather than expose them to neutral displays that enable price competition and comparison shopping among a wide array of airlines, routes, and fares. The dominant legacy airlines in particular also have little incentive to negotiate with distributors because they are protected by lack of competition, fortress networks, loyalty programs and tight supply.

5(f) How, if at all, do GDS providers and/or travel agencies exhibit preferential conduct or otherwise distort market outcomes in the sale of scheduled air passenger service?

This question fundamentally misconceives the role played by GDS, agents and other indirect sales channels in the distribution of air transportation content. DOT's comprehensive regulations for GDSs were repealed more than two decades ago, recognizing that independent GDSs do not endanger competition, unlike earlier systems that were owned by airlines and had inherent biases.[22] DOT's regulatory history highlights the significant leverage airlines hold in the

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[20] **Report: Airlines' Limits on OTA Fare Listings Add Costs,** *Travel Weekly,* https://www.travelweekly.com/travel-news/airline-news/report-airlines-limits-on-ota-fare-listings-add-costs

[21] European Parliament, *The Impact of Unfair Commercial Practices on Competition in the EU Passenger Transport Sector, in Particular Air Transport,* Study for the Committee on Transport and Tourism, PE 642.381, at 1–3 (2020), available at https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642381/IPOL_STU%282020%29642381_EN.pdf.

[22] Computer Reservations System (CRS) Regulations, Final Rule, 69 Fed. Reg. 976 (January 7, 2004).

distribution ecosystem, particularly when implementing restrictive practices. This dynamic limits the ability of travel agents and other third-party platforms to influence market outcomes.[23]

Travel Tech members are committed to offering broad choices, transparent prices, and facilitating competition by presenting displays in a neutral manner driven by consumer choices and inputs. DOT regulations require that any display bias based on carrier identity be disclosed to consumers, ensuring transparency. Many Travel Tech member platforms also offer sorting and filtering tools that allow consumers to organize results based on their preferences, enhancing the booking experience. Providing data specifically requested by consumers is not preferential or a distortion of the market but rather pro-competitive.

Moreover, without OTAs, TMCs, and GDSs, the market would be limited by large carriers driving sales to their direct sales channels. Travel Tech's members are committed to providing neutral and comprehensive fare information. It is the airlines' practices, not those of GDS providers or travel agencies, that limit competition and inhibit fare transparency.

5(g) How, if at all, do GDS providers and/or travel agencies limit or inhibit competition between airlines on ticket fares and/or ancillary products or services?

Travel Tech stresses that indirect sales channels do not limit or inhibit competition between airlines; they instead *enhance* competition. Airlines voluntarily participate in GDS, TMC, and OTA sales channels because doing so enables them to reach a broad audience of would-be travelers across the globe. However, airlines impose covenants on indirect channels that prevent them from displaying all available fare options to consumers. These provisions commonly include prohibitions on OTAs and other aggregators from obtaining fare content from third parties, restrictions on OTAs and other aggregators from displaying lower-priced options or referrals to third-party websites, and mandates that bookings be redirected only to the airlines' own websites. These practices prevent consumers from accessing potentially lower fares elsewhere.

Travel Tech members work to ensure fair competition among airlines by offering a platform for all airlines to display fare and ancillary product information. GDS providers, TMCs, and OTAs facilitate a level playing field that supports competition among airlines. This access enables all carriers to compete based on price and service quality. The DOT and DOJ should recognize that indirect sales channels uniquely promote competition by enabling consumers to comparison shop across carriers, offering transparency and choice that direct channels inherently lack.

5(h) Describe any exclusionary conduct, predatory pricing, and/or other anticompetitive practices by GDS providers and/or travel agencies.

Travel Tech emphasizes that its members do not engage in exclusionary conduct or anticompetitive practices. Instead, as described in detail above, they face significant challenges due to airlines' restrictive policies that hinder fare transparency and consumer choice.

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[23] *See, e.g.*, Complaint of the American Society of Travel Agents, DOT Order 2002-9-2 (September 4, 2002) (https://www.regulations.gov/document/DOT-OST-1999-6410-0143-0002).

IV. Responses to Section 6 Questions (Airline Pricing)

6(e) How, if at all, has the introduction and adoption of unbundled fare structures impacted competition among airlines? Unbundled fare structures include those that allow passengers to purchase a ticket that only covers certain aspects of the flight, such as a seat, and requires customers to purchase all other aspects of the flight, including baggage, seat selection, and refreshments separately.

Travel Tech refers the DOJ and DOT to its comments previously filed in response to the Notice of Proposed Rulemaking in the Enhancing Transparency of Airline Ancillary Service Fees docket.[24] Specifically, Travel Tech observed that while "DOT did not finalize the rules proposed in 2014 or 2017, the need for transparency has not dissipated over the years. The transparency sought to be achieved in this proceeding has been stymied because airlines still do not universally provide their ancillary fee information to ticket agents and other entities through which they distribute air travel information. Their failure to do so continues to harm and frustrate consumers who use the indirect channel to book travel, and the passage of time has underscored that the industry will not fix this problem.

Unbundled and branded fares have become the standard in airline pricing, with ancillary fees now making up an increasingly significant share of the total cost of air travel and airline revenues. Ancillary fees averaged $42.11 per ticket globally in 2022, and Frontier Airlines reported $69 per passenger in ancillary revenue during the first quarter of that year, accounting for 62% of its total per-passenger revenue.[25] By 2023, this figure rose to $82 per passenger, and it is projected to climb even higher in 2024.[26] Five U.S. carriers made a collective $12.4 billion in annual revenue from seat fees between 2018 and 2023, and $25.3 billion in bag fee revenue in the same time-period.[27]

That said, Travel Tech emphasizes that the issue is not the fees themselves. Nearly all consumers are aware of additional fees for optional services. Travel Tech commissioned a survey as part of its comments on the DOT Ancillary Fee rulemaking. The survey found that nearly 90% of all U.S. adults know they have the option to pay additional fees for services beyond the cost of

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[24] Comments of the Travel Technology Association, Docket No. DOT-OST-2022-0109, at 2 (January 23, 2023) (https://www.regulations.gov/comment/DOT-OST-2022-0109-0243). As DOJ and DOT are aware, the enforcement of the regulations subsequently adopted in that docket have been enjoined, pending a challenge in Airlines for America, et al. v. DOT, 5th Cir. No. 24-60231.

[25] **Frontier Airlines,** *Frontier Airlines Reports Financial Results for First Quarter 2022,* https://ir.flyfrontier.com/news-releases/news-release-details/frontier-airlines-reports-financial-results-first-quarter-2022

[26] **Frontier Airlines,** *Frontier Airlines Reports Fourth Quarter and Full Year 2023 Financial Results,* https://ir.flyfrontier.com/node/8461/pdf

[27] The Sky's the Limit, the Rise in Junk Fees in American Travel, Majority Report of the Senate Committee on Homeland Security, November 2024 (https://www.hsgac.senate.gov/wp-content/uploads/2024.11.25-Majority-Staff-Report-The-Skys-the-Limit-The-Rise-of-Junk-Fees-in-American-Travel-1.pdf).

their airline ticket.[28] It also learned that approximately 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.

Consumers do deserve more choices in air transportation – selecting the services they need and not paying for services they do not want. However, if the same fares and fees are not available in the indirect channel, the choice for consumers is illusory. Consumers are less informed about all options – including airlines and routes that may better fit their needs – leading to suboptimal choices, including for ancillary services.

The benefits from using a travel comparison site are obvious and prevalent – consumers want to compare flight costs. However, the utility of the sites to facilitate comparison shopping is diminished when there is not clear and complete information shared by airlines. Consumers, when asked about whether they would like to purchase ancillary fee services on the same travel comparison sites where they purchased their airline ticket (known in the airline distribution industry as "transactability") stated emphatically – at a rate of 86% – that they would.

Airlines' reluctance to provide ancillary fee data to indirect sales channels like Travel Tech's members restricts transparency, leading consumers to go directly to airline channels for comprehensive pricing information. This selective distribution limits consumer access to consistent, comparable fare data across platforms, ultimately diminishing competitive pricing pressure. As Travel Tech's comments on the Ancillary Fee NPRM note, "consumers will have an incentive to shop only on airlines' websites" if critical ancillary fees are accessible solely through these direct channels.[29] Such practices inherently disadvantage the indirect sales channel, allowing airlines to retain control over ancillary revenue streams while undermining the comparative value that Travel Tech members offer to consumers.

Travel Tech members are innovators in the travel space and are currently working to counterbalance this trend, promoting transparency by aggregating fare options across multiple carriers. Travel Tech members serve as vital intermediaries by aggregating fare and fee data across multiple carriers, providing consumers with transparent, unified platforms for comprehensive price comparisons. This aggregation facilitates informed decision-making by allowing consumers to assess the true cost of travel, including ancillary services, on a single platform. When ancillary fees are visible and comparable, consumers benefit from a fully transparent purchasing experience, reducing instances where they are "surprised" by additional fees later in the booking process. This transparency not only supports consumer satisfaction but also strengthens competition by aligning fare comparisons across multiple distribution channels.

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[28] **Travel Technology Association,** *Travel Tech Takes a Stand for Innovation at DOT Hearing: Advocates for Ancillary Fee Website Display Flexibility,* Travel Tech (n.d.), https://traveltech.org/travel-tech-takes-a-stand-for-innovation-at-dot-hearing-advocates-for-ancillary-fee-website-display-flexibility/.

[29] Comments of the Travel Technology Association, Docket No. DOT-OST-2022-0109, at 45 (January 23, 2023) (https://www.regulations.gov/comment/DOT-OST-2022-0109-0243).

The absence of transactable ancillary fee data in the indirect channel places an undue burden on consumers, forcing them to navigate between ticket agents and airline websites to secure necessary services, such as baggage and seating. The current model, where ancillary fees are often viewable but not purchasable on agency sites, disrupts the typical online shopping flow and disadvantages consumers who prefer one-stop purchasing. As outlined in the comments, this "incomplete access to critical ancillary services" undermines the pro-competitive purpose of these platforms and highlights the need for a transactable format to streamline purchasing and maintain competitive parity between the direct and indirect channels.

V. Responses to Section 10 Questions (Federal Action)

10(a) What, if any, previous actions or lack thereof by the agencies eliminated, reduced, or otherwise harmed competition in the air transportation industry? Where possible, provide real-world examples of agency action or lack of action that eliminated, reduced, or otherwise harmed competition in the air transportation industry and describe any resulting impact on air transportation, including access, availability, cost, quality, and/or any other aspect of air transportation.

While agencies within the federal government have taken some steps to ensure consumer transparency and choice that Travel Tech applauds, airlines enjoy a competitive advantage over travel agencies through its sole regulation by the DOT coupled[30] with federal preemption of state laws[31] as it relates to consumer protection matters. Only DOT can enforce prohibitions on unfair and deceptive practices against airlines. At the same time and even though they sell the same product through similar e-commerce interfaces, travel agencies are subject to consumer protection enforcement actions from the DOT, Federal Trade Commission, and state attorneys general investigations and are subject to state laws and regulations as well.

This situation is particularly advantageous for airlines insofar as consumer privacy is concerned. In contrast to the DOT, the Federal Trade Commission has initiated 97 privacy cases, 89 data security cases, secured 64 consent decrees, and held countless workshops and other educational conclaves to educate consumers and businesses about commercial privacy and data security practices over the last 25 years. Over the years, states have passed over 20 conflicting and overlapping privacy and data protection laws, in addition to enforcement actions.

However, during this same time period, DOT has pursued only one enforcement action related to data protection against an airline.[32] Because of DOT's lack of action, airlines are effectively unregulated when it comes to the collection and use of consumer data, which provides them yet another competitive advantage. This is especially concerning given the sensitive nature

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[30] In 1938, President Franklin D. Roosevelt signed the Civil Aeronautics Act into law, which established the Civil Aeronautics Authority (CAA), giving it federal responsibility for non-military aviation. This law specifically exempted air carriers from the Federal Trade Commission (FTC) Act (see 15 U.S.C. § 45(a)).

[31] In 1978, Congress passed the Airline Deregulation Act of 1978 (ADA), which, among other significant actions, preempted all state laws related to an airline's "price, route, or service." Today, this includes consumer data privacy and security issues. (See CRS Report, "Airline Deregulation Act of 1978: Preemption of State Consumer Protection Laws," 3/1/23)

[32] *See* Third-Party Enforcement Complaint of the Electronic Privacy Information Center against Northwest Airlines, Inc., Order Dismissing Complaint, DOT Order 2004-9-13 (September 10, 2004).

of the consumer data airlines collect, store, and leverage digitally via their websites and physically across the globe.

DOT has sought to address airline practices that work against competition and consumers, such as restrictions on the distribution of ancillary fee information. While DOT's Enhancing Transparency of Airline Ancillary Service Fees final rule issued in April 2024 aimed to address consumer frustration with the lack of ancillary fee transparency, implementation has been halted due to legal challenges. Should these legal challenges succeed, DOT's ability to proactively address the transparency of ancillary fees and all consumer-related issues may be curtailed.

DOT has promoted competition through its advertising regulations. Notably, the Full Fare Advertising Rule, 14 C.F.R. § 399.84(a), has for decades been a critical measure to ensure that consumers are presented with the total cost of air transportation, including all mandatory taxes and fees, at the outset of the booking process. This transparency reduces deceptive practices by requiring airlines and indirect sales channels to provide clear and honest pricing, empowering consumers to compare options more effectively, enhances competition by mandating full cost disclosure, promotes fair competition across all distribution channels, and prevents airlines from undercutting competitors through hidden fees. Travel Tech supports the continued enforcement of the Full Fare Advertising Rule, as it aligns with the association's advocacy for transparency, fairness, and consumer empowerment in the travel marketplace.

Finally, the federal action which has had the most significant impact on competition has been the allowance of mergers of U.S. carriers, which have resulted in the U.S. aviation market being dominated by four airlines. As described earlier, the U.S. aviation market has seen dramatic consolidation over the last two decades due to federal acquiescence to consolidation, with few or no concessions (*e.g.,* slot divestments) required.[33] Again, this wave of mergers has significantly reduced competition, particularly for regional and low-cost markets, limiting options for consumers and increasing concentration.

Conclusion and Policy Recommendations

Travel Tech's members play a critical role in enhancing competition in air transportation, by ensuring the widespread distribution of information about airlines in common channels, impacting both consumer choice and market transparency. Travel Tech encourages DOT and DOJ to maintain and enhance measures that support transparency across all sales channels to ensure that consumers have access to full information about fare options and services. Price transparency is central to a well-functioning, competitive aviation market, as is having sufficient choice between a suitable number of airlines. Travel Tech is available and eager to engage in continued discussions on promoting competition in air transportation, reinforcing its collaborative relationship with industry stakeholders.

[33] Likewise, DOT has approved most applications by airlines for antitrust immunity pursuant to 49 U.S.C. § 41308 and § 41309 with few or no concessions – in some cases disregarding specific objections from DOJ to the effect that competition would be harmed. *See, e.g.*, Comments of the Department of Justice, Docket No. DOT-OST-2002-13002 (August 30, 2002) (https://www.regulations.gov/comment/DOT-OST-2002-13002-0007).

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Travel Tech appreciates the opportunity to submit these comments and looks forward to continuing to work with the Department of Justice and the Department of Transportation on matters that are of concern to consumers and industry.

Respectfully submitted,

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TRAVEL TECH
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