

March 16, 2016

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, Southeast
Washington, DC 20590

Dear Secretary Foxx:

We write today because our offices have received reports that airlines may be refusing to provide flight information to third-party price comparison sites, which have helped the flying public save billions of dollars. We believe this practice is damaging to consumers and potentially in violation of our consumer protection laws that promote competition in the air transportation industry. Accordingly, we urge the Department of Transportation (DOT or Department) to use its existing statutory authority to promote transparent price competition that will allow consumers to quickly and easily make good purchasing decisions.

Price comparison websites allow consumers to make apples-to-apples comparisons among fares and flights, acting as a catalyst for pricing competition. Decisions by the airlines to withhold their flight data seem intended to push travelers towards the airlines' own websites, where they can add-on extra fees to ticket prices for seat-selection, early boarding, or bag-check and luggage handling. Many of these sites also allow consumers to mix and match flights from competing airlines to customize the best itinerary for each trip.¹ However, when airlines restrict third-parties from accessing their flight scheduling and fare data, they make it harder for consumers to select the best price, schedule, and airport from all readily available options. Making comparison shopping more difficult for consumers could also aid airlines in tacitly coordinating their ancillary fees, helping to shroud and hide the true cost of flying from the market.

For example, Delta prohibits certain third-party price comparison travel websites, including online travel agents (OTAs) and "meta-search" websites, from fully accessing the airline's flight data.² A consumer wishing to see how Delta's prices and schedules stack up against other carriers on the OTA TripAdvisor, or a meta-search site like Hipmunk, would be out of luck.³ It is impossible for these third-party websites to provide consumers with the most comprehensive and accurate information when major

¹ See, e.g., How to Save Time and Money with Mix & Match Air Fares | CheapAir, <https://www.cheapair.com/blog/cheapair-news/what-is-the-mix-match-category-on-my-flight-search-results/> (last visited Mar. 8, 2015).

² Delta Carrier Distribution Policy, https://pro.delta.com/content/deltapro/en_US/policy-library/distribution-and-revenue-recovery/carrier-distribution-policy.html (last visited Feb. 22, 2016).

³ Jack Nicas, *Travel Websites Allege Delta Air Lines Is Shutting Them Out*, WALL ST. J. (May 20, 2015), <http://www.wsj.com/articles/travel-websites-allege-delta-air-lines-is-shutting-them-out-1432094461>.

carriers refuse to share their flight and fare data. Consumers deserve the ability to compare flight data across multiple airlines instead of being left with no such choice.

As you know, DOT has the broad authority to investigate whether "an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation."⁴ We urge DOT open a rulemaking to consider whether the public interest is served by airlines choosing to restrict the distribution of fare and scheduling information.

The Department should take these complaints seriously and investigate them as part of your broader mission to protect American consumers from anticompetitive behavior. Given the unprecedented level of consolidation among the airline industry, it is more important than ever that consumers maintain the ability to comparison shop.⁵ Taxpayers have supported and aided the airline industry for almost 100 years through bankruptcy protections, federal preemption of state consumer protection laws, regulated access to congested slots, antitrust exemptions, and even direct financial support. The United States has invested deeply in this industry, and the airlines have an obligation to facilitate a competitive marketplace by allowing consumers to access accurate fare and schedule information. We appreciate your close attention to this issue and respectfully request a response by April 15, 2016.

Sincerely,

RICHARD BLUMENTHAL
United States Senate

AiE
United States Senate

⁴ 49 U.S.C. § 41712.

⁵ See Andrew Ross Sorkin, *As Oil Prices Fall, Airfares Still Stay High*, N.Y. TIMES (March 23, 2015), <http://www.nytimes.com/2015/03/24/business/dealbook/as-oil-prices-fall-air-fares-still-stay-high.html> (concluding "[w]hat the American airline industry is today is an oligopoly, with two dominant carriers.... And oligopolies, by their very nature, are anticompetitive."); Complaint at 14, *United States v. US Airways Grp., inc.*, 38 F. Supp. 3d 69 (D.D.C. 2014) (No. 1:13-cv-01236) ("The consolidation 'wave' started with the 2005 merger between US Airways and America West, creating today's US Airways. In 2008, Delta and Northwest Airlines merged; in 2010, United and Continental merged; and in 2011, Southwest Airlines and AirTran merged. The chart below, in which one of US Airways' executive vice presidents referred to industry consolidation as the 'New Holy Grail,' demonstrates that since 2005 the number of major airlines has dropped from nine to five.

Increasing consolidation among large airlines has hurt passengers. The major airlines have copied each other in raising fares, imposing new fees on travelers, reducing or eliminating service on a number of city pairs, and downgrading amenities. An August 2012 presentation from US Airways observes that consolidation has resulted in 'Fewer and Larger Competitors.' The structural change to 'fewer and larger competitors' has allowed '(t)he industry' to 'reap the benefits.' Those benefits to the industry are touted by US Airways in the same presentation as including 'capacity reductions' and new 'ancillary revenues' like bag fees.").