



CCIA Comments on the Department of Transportation’s Notice of Proposed Rulemaking on Enhancing Transparency of Airline Ancillary Service Fees

Docket Number: DOT-OST-2022-0109; RIN 2105-AF10

The Computer and Communications Industry Association (“CCIA”)¹ welcomes the opportunity to comment on the Notice of Proposed Rulemaking (“NPRM”) on Enhancing Transparency of Airline Ancillary Service Fees² issued by the U.S. Department of Transportation (“DOT”) on October 20, 2022.

CCIA applauds the DOT’s goal of providing consumers with information necessary for them to determine the full cost of travel at the appropriate point in their travel purchase. However, CCIA believes that the inclusion of metasearch sites as covered entities in the NPRM would be misguided, runs afoul of Congress’s explicit statutory direction, and could lead to significant unintended consequences. Therefore, our comments focus on explaining our concerns in this regard and provide some important considerations and suggested approaches for the DOT to take into account.

I. Metasearch Sites Do Not Fit the Statutory Definition of Ticket Agent and Should Not Be Treated as Traditional Ticket Agents.

In the NPRM, the DOT proposes to require covered entities to disclose, prior to ticket purchase, the fees for ancillary services that are critical to a consumer’s purchasing decision. The NPRM defines as covered entities all “U.S. air carriers; foreign air carriers; ticket agents that sell airline tickets, whether traditional brick-and-mortar travel agencies, corporate travel agents, or online travel agencies (OTA); *and metasearch sites that display airline flight search options directly to consumers.*”³

¹ CCIA is an international, not-for-profit association representing a broad cross section of technology and communications firms. For fifty years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.cciagnet.org.

² Notice of Proposed Rulemaking on Enhancing Transparency of Airline Ancillary Service Fees, U.S. Department of Transportation, October 20, 2022.

<https://www.transportation.gov/airconsumer/AirlineAncillaryFeeNPRM>

³ *Id.* at 21.

Based on this definition of covered entities, the DOT is proposing to sweep ticket agent consumer protection requirements to “metasearch sites that do not sell airline tickets but display airline flight search options directly to consumers.” In this regard, CCIA would like to highlight the importance of the DOT not imposing obligations on aggregators and intermediaries to disclose airline fees that they may not even have access to, and to also not clutter and undermine the strong consumer interest in having workable displays and comparisons of flight options that metasearch provides.

Despite evolution in the sale of air transportation, Congress has steadfastly maintained an explicit statutory definition of “ticket agent” as comprising “a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.”⁴ Metasearch sites simply *do not* meet the statutory definition. They are *not* agents of airlines and neither sell, nor control, nor provide air transportation.

Metasearch sites are not the ticketing entities brokering air transportation, reserving or issuing tickets. Much of the time a user of a metasearch site does not even attempt to purchase air transportation, meaning what they value from a metasearch site is often purely information. Should a user desire to proceed to a purchase, the metasearch site may provide a link to a fulfillment site but the fulfillment site, not the metasearch site, handles transaction and post-transaction matters directly with the consumer.

Providing information and introducing a prospective customer to a fulfillment site do not equate to “arranging for” air transportation, either. “Arranging for” by definition means more than merely conveying information about a particular transportation option. Alongside “selling” and “providing,” it is facially clear that “arranging for” means entities that have a direct role in the selection and purchase of a particular underlying transportation option. Metasearch sites do not broker or control any air travel inventory. Indeed, the lack of an ability to issue a ticket and complete the sale is a key differentiator of a metasearch site from a Global Distribution Systems (“GDS”), Online Travel Agencies (“OTA”) or traditional ticket agent. Metasearch sites are indistinguishable from many other information services that merely categorize, but do not originate or exercise control over, the underlying products or services.

Congressional intent shows a clear desire to link a “ticket agent” with the direct sale of air transportation. When Congress first empowered DOT’s predecessor, the Civil Aeronautics Board (“CAB”), to regulate “ticket agents” in addition to airlines, the stated concern was “ticket agents who are engaged in selling air transportation.”⁵ For decades, the DOT/CAB interpretation has been limited to entities that have a direct role in the sale of transportation, an interpretation

⁴ 49 U.S.C. § 40102(a)(45).

⁵ S. REP. NO. 82-1508 (1952); H.R. REP. NO. 82-2420 (1952).

consistent with the statutory mandate. Congress has not intervened to alter this fundamental understanding of the scope of a “ticket agent.”

Therefore, as metasearch sites simply *do not* meet the statutory definition and are *not* agents of airlines and neither sell, nor control, nor provide air transportation, it is important for the underlying regulations to remain on the core functionality of ticket agents as sellers of air transportation — the entities that provide reservations and serve as the ticketing entity and merchant of record for the sale of air transportation.

II. Expanding the Ticket Agent Requirements to Intermediaries Could Lead to Significant, Unintended Consequences.

Expanding the ticket agent requirements to intermediaries could also lead to significant, unintended consequences. First, this can have an impact on competition. It is important to stress that the way in which travel metasearch sites display, organize, and present their information is the main parameter on which they compete. Browsing and exploring travel options is a popular search activity online. Metasearch sites help consumers discover, research, and compare transportation options, and help travel suppliers connect with people researching air travel at a moment of potential interest. Metasearch sites work to provide fast results using innovative displays and interfaces as users browse various options and figure out when and where to travel using a map or text queries. Users can sort the options and adjust filters in the way that best meets their travel needs, and results can vary widely by market and based on that they select which metasearch they prefer.

Second, regulating the way in which intermediaries display the information could also have an impact on consumers. As such, consumers benefit when intermediaries and aggregators have sufficient flexibility to continue to innovate in this space. Consumers use metasearch sites broadly to meet a variety of pre-sale travel exploration needs. For the most part, users control their own personalized research and discovery experience on metasearch sites, which offer a more flexible, open-ended research and comparison process than airline sites, OTAs and traditional ticket agents. Consumers may start the travel exploration process by broadly examining what airports are near a given destination, what airlines fly to a particular airport, how often, and with how many stops. Indeed, as industry research shows, many metasearch users have no immediate intention to purchase, further distinguishing metasearch sites from OTAs and airline sites.⁶ DOT has provided no factual basis to apply ticket agent requirements to information services that are not directly involved in the sale of air transportation.

⁶ Sean O’Neill, OTAs outshine metasearch sites in sending traffic to air and hotel suppliers, says study, TNOOZ, Dec. 13, 2012, <http://www.tnooz.com/article/otas-outshine-metasearch-sites-in-sending-traffic-to-air-and-hotelsuppliers-says-study>.

Third, if DOT mandates metasearch sites to show particular information for every flight search, this would also dampen innovation in the flight search exploration process. Sites would have less ability to present more selective results based upon the user's particular query or interest. This overzealous display of ancillary fee information could very well result in screen clutter frustrating the user experience. If the DOT further mandated particular display standards or formats, the harm to innovation on metasearch sites would be exacerbated.

Finally, there also could be serious privacy and security issues raised by forcing metasearch providers not involved in transactions to be suddenly in the role of a ticket agent storing personal data and payment data – none of which they have today. The lack of ancillary fee transparency is not a justifiable basis to deem metasearch sites as ticket agents and require them to collect information they do not have. Metasearch sites do not set prices for, control or arrange airline ancillary fees. They do not have access to the underlying ancillary fee raw data, either. It is important for the DOT to consider that forced data sharing poses risks to user privacy, and would require ensuring that such sharing comes with robust controls to protect privacy. This obligation can also affect integrity, security, and privacy more broadly, since tools and technologies to fight harmful activities would be compromised if the intermediaries have not implemented the adequate standards for this purpose as they have not been in the role of a ticket agent before.

Given that metasearch sites are information tools and not the actual providers of travel service, such regulation would be overbroad and unnecessary. Requiring a rigid disclosure format would limit consumer benefits, may bring privacy and security concerns, and may harm competition and innovation in travel exploration.

III. Instead of Imposing Obligations on Intermediaries, DOT Should Address the Lack of Transparency in Ancillary Fees by Requiring Airlines Directly to Release Dynamic Ancillary Fee Data to Consumers.

It is undisputed that in recent years airlines have sought additional fees for consumer activity that previously had been free or built into the cost of an air ticket. Yet, real-time information about the cost of ancillary services is not shared with airline distribution channels. This underlies the transparency market failure – the lack of dynamic ancillary fee data flowing from airlines. While the NPRM addresses various reasons why ancillary fee data is not flowing today, it is not clear that the market alone will unleash dynamic ancillary fee data absent DOT intervention. DOT should address the underlying root cause of the information failure in the

least costly and burdensome manner by requiring airlines to unleash flight-specific real-time data about essential ancillary fees to consumers.⁷

Since metasearch sites enable interested buyers to link directly to points of sale, where the user will see any required disclosures, there is no gap in consumer protection that needs to be filled by regulating information sources. Accordingly, the benefit of redefining ticket agents to include metasearch sites is speculative. The governmental interest in protecting consumers from deceptive practices and financial harm can be fully realized by ensuring that consumers can see the full cost of essential ancillary fees prior to the purchase. In the case of air travel, that can occur with the entity that will reserve or issue the ticket.

Therefore, if DOT were to fail to fix the underlying data flow imbalance while imposing ticket agent requirements on metasearch sites, it is not at all clear that this would provide any additional transparency. Even today metasearch sites have difficulty obtaining complete and accurate pricing data from some airlines. Today's experience shows that the data flow out from the airlines is the bottleneck. If airlines continue to decline to provide dynamic ancillary fee data, then expanding the scope of regulated ticket agents will have no impact on improving consumer transparency. It would merely harm innovation and deprive consumers of current and future opportunities for enhanced travel exploration services.

For these reasons, CCIA believes that imposing ticket agent requirements on information intermediaries should be strongly avoided. Instead, DOT should simply require airlines and actual booking agents to provide the fee data that should be disclosed to protect consumers prior to the ticket purchase itself (not in the initial flight option comparison). This is the most direct manner to obtain the intended results, and the most privacy protective, with the least overall regulatory cost for innovation and consumers.

Solving the root problem of the lack of transparency would lead the marketplace to further disseminate the desired information — and to do so in more innovative, consumer-friendly ways than impermissibly stretching a statutory definition and mandating particular display requirements.

⁷ Passenger-specific ancillary fee discounts can likely only be calculated at the point of purchase, when the passenger has chosen to purchase a particular flight and provides their personal identification, including frequent flier details, to the seller. Airlines often discount certain ancillary fees as rewards for their frequent fliers or customers who use airline-associated credit cards.

CCIA is pleased to provide this input on the NPRM and welcomes any questions from the DOT.

Respectfully submitted,

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