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The Final Rule on Ancillary Fees Should Require Airlines to Provide Their Ancillary Fee Data to Global Distribution Systems

- ***Airline unbundling obscures the actual cost of air travel for consumers***

Airline consolidation in the US over the last two decades has concentrated markets and reduced total capacity, leading to more crowded planes, higher average prices, lower quality services, and fewer satisfied air passengers. As head-to-head competition based on quality of service has eroded, carriers have adopted pricing practices that are unpopular with consumers who have little choice but to accept.¹ Among these practices is “unbundling” the cost of checked and carry-on bags, seat selection, ticket changes, and many other options and services from the “airfare” advertised to customers and charging “ancillary” fees when any of these now “optional” services are chosen.

The current rulemaking does not regulate carriers’ ability to pursue an unbundling strategy. Rather, it addresses an identified market failure in that unbundling artificially lowers published airfares presented to consumers and obscures the actual cost of air travel. Ancillary fees are often not disclosed until well into the ticket purchasing process or after a ticket has been purchased, making it difficult for consumers to know the true, total cost of a ticket or to comparison shop prior to purchase.²

And while airline ancillary fees may be small individually, in aggregate they have become a major component of the total fare paid. In the first quarter of 2022, for example, Frontier Airlines reported that its ancillary revenue was \$69 per passenger, a figure that accounted for *62 percent of total per passenger revenue* and was projected to reach \$85 per passenger in 2023.³ Globally, air fares have been in decline in the recent decade, while ancillary fees have risen correspondingly reaching \$42.11 per ticket on average in 2022.⁴

- ***The Biden Administration has a goal to re-introduce full transparency in airfares.***

On October 26, 2022, the Biden Administration announced an initiative to address “junk fees,” noting research that shows by hiding the full price, unbundling can lead consumers to pay more than they would otherwise, and it also makes it hard for consumers to comparison shop. In a speech that same day, President Biden noted that in reference to the then pending NPRM on ancillary services:

¹ See, e.g., Tim Wu, *The Bigger Airlines Get, the Worse They Become*, N.Y. TIMES (Dec. 4, 2023), <https://www.nytimes.com/2023/12/04/opinion/jetblue-spirit-airlines-merger.html>.

² See Press Release, Senator Richard Blumenthal, *Fight Against Junk Fees: The Senate Permanent Subcommittee on Investigations Probes Airlines on Sky-High Ticket and Fee Costs* (Nov. 20, 2023), <https://www.blumenthal.senate.gov/newsroom/press/release/fight-against-junk-fees-the-senate-permanent-subcommittee-on-investigations-probes-airlines-on-sky-high-ticket-and-fee-costs>.

³ See Robert Silk, *The unseemly side of ancillary fees*: *Travel Weekly*, (January 28, 2023), and Brian Summers, *Frontier Airlines Tips Balance to Non-Ticket Revenues*, SKIFT (Apr. 29, 2022), <https://skift.com/2022/04/29/frontier-airlines-tips-balance-to-non-ticket-revenues/>. Note also that Frontier Airlines is one of the most vocal opponents of including GDSs within the current proposed rule.

⁴ Press Release, IdeaWorksCompany, *Airline Ancillary Revenue Reaches Record \$117.9 Billion Worldwide for 2023* (Oct. 31, 2023), <https://ideaworkscompany.com/wp-content/uploads/2023/10/Press-Release-178-Worldwide-Estimate-2023.pdf>.

“The Department of Transportation is working on rules that would require airlines and travel sites to disclose fees up front, fees like things if you want to sit next to your young child. Well, guess what? Or your — check your baggage or change your ticket. You’re going to be surprised. They’re going to charge you for that without telling you. Your ticket is going to cost a heck of a lot more.”⁵

On March 4, 2024, the White House Council of Economic Advisors also published a report on the economic cost of junk fees that are not disclosed up front, noting that: “Of course, this is not an accident: firms strategically impose such fees in order to deter comparison shopping, and any unnecessary time and energy consumers spend searching is a deadweight loss to society.” This report specifically called out airline baggage and baggage change fees, which clocked in at \$8.3 billion in 2023.⁶

- ***Global Distribution Systems sit at the center of the travel ecosystem, working behind the scenes to enable discovery and purchase of consumer and business travel options.***

Global Distribution Systems (GDSs) function as platforms connecting travel bookers and travel suppliers (e.g., airlines, hotels, and car rental companies), promoting price transparency, comparison shopping, and competition that allow consumers to choose the travel options that best meet their needs. The three primary GDSs serving the US are Sabre, Amadeus, and Travelport. GDSs provide real-time access to the travel supplier’s price (fares and fees) and availability data, which allows travel agents and online booking engines to offer consumers a rich set of options and helps airlines and other travel suppliers reach a global audience. GDSs are the largest funnel used by airlines and travel agencies to reach the consumer outside of the airlines’ own websites.

GDSs are also fully integrated with travel agencies’ back offices and other operational systems. Without GDSs providing these critical services, each airline would need to integrate individually with each travel agency for consumer displays and back-office functions, which would be enormously complex and costly. Most travel agencies, and small, medium, and niche agencies, do not have the technical or financial ability to implement or manage multiple direct connections favored by airlines. While direct connects today account for only a tiny fraction of travel transactions, the GDSs can already accommodate new industry distribution standards such as New Direct Connection (NDC). The major GDSs are also working cooperatively with airlines to implement the efficient display and selling of fares, fees, and flight options within the NDC framework, helping achieve the goals of NDC.

Over 450 airlines load their fare and schedule data into GDS. The travel agency community relies on the GDSs to make that information available to travel agencies in easy-to-use formats and “neutral displays” which the agencies, in turn, use to help consumers make their travel choices. Unlike airlines’ own websites, direct connect content, GDSs and travel agent intermediaries allow consumers to comparison shop between different airlines’ offers to make the best choices for them.

Although the proposed final rule also includes travel agents outside the U.S. that sell into the U.S., for ease of exposition, in this paper we will address only travel agencies located in the US. The travel agency industry in the U.S. remains robust post-Covid. Travel agencies consistently sell about 50% of all air tickets every year. In 2023, the more than 10,000 travel agencies in the US sold more than \$93 billion in air travel,

⁵ President Joe Biden, Remarks by President Biden on Protecting American Consumers from Junk Fees (Oct. 26, 2022) (transcript available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/10/26/remarks-by-president-biden-on-protecting-american-consumers-from-junk-fees/>).

⁶ THE WHITE HOUSE COUNCIL OF ECON. ADVISORS, THE PRICE ISN’T RIGHT: HOW JUNK FEES COST CONSUMERS AND UNDERMINE COMPETITION (Mar. 5, 2024), <https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/>.

representing more than 268 million passenger trips.⁷ ASTA reported in March 2023, that 50% of consumers were more likely to use a travel advisor today than they were in the past—a 14% increase year over year.⁸

- ***Excluding GDSs would undermine the essential purpose of the rule by making it more difficult, if not impossible, for consumers to access ancillary services through thousands of independent travel agents.***

The DOT in this case has proposed to require that “airlines and ticket agents” disclose a range of ancillary fees.⁹ However, *the final rule as proposed would require airlines to actually provide ancillary fee data to a subset of ticket agents as that term is defined, i.e., ticket agents excluding GDSs,*¹⁰ despite the fact that GDSs are the best means to provide ancillary fee data to the vast majority of travel agencies in the US that do not have the resources or capital to manage and maintain the complexity and cost of integrating, aggregating, and normalizing the constantly changing ancillary fee information into their operations. Travel agents rely on the GDSs to deliver that critical information as part of their offering.

Indeed, in the pending *Enhancing Transparency* rulemaking, the Department recognized that, “GDSs may provide the lowest cost and most efficient way of distributing this [ancillary fee] information to ticket agents that sell or display the carrier’s ancillary services. Most ticket agents currently receive airline fare information through GDSs and rely on GDSs as an efficient source of data. Using GDSs may facilitate display of critical airline ancillary services.”¹¹

If the rule is approved as final, *Sabre estimates that at least three thousand and perhaps many more Sabre travel agent subscribers in North America that rely only on our GDS will not have required access to ancillary fee data even if disclosure of such data is mandated by the rule, that is unless airlines are also required to provide ancillary fee data to GDSs.*¹²

To put this in perspective, ARC currently accredits more than 10,000 travel agencies in the US. Industry MIDT data shows that Sabre has a 48% share of travel agency bookings in the US and the other two GDSs, Amadeus and Travelport, make up the balance. At the same time, Sabre estimates that roughly two-thirds of Sabre GDS travel agency subscribers in the US would not have access to ancillary fee data under the final rule, as proposed. The economic and consumer protection consequences would be substantial. In 2023, for example, Sabre estimates that its subscriber agencies in North America that rely exclusively on Sabre for airline content accounted for an estimated 24,224,668 ticketed itineraries, all trips purchased and flown by real consumers.

⁷ [Sales Statistics \(arccorp.com\)](https://www.arccorp.com/sales-statistics)

⁸ <https://www.asta.org/about-us/press/pressReleaseDetail/2023/04/13/Consumer-Research-March-23>

⁹ [Federal Register: Enhancing Transparency of Airline Ancillary Service Fees](#), page 63721, 63724.

¹⁰ “In this NPRM, the Department proposes to require entities that advertise or sell air transportation to consumers in the United States to disclose, prior to ticket purchase, the fees for ancillary services that are critical to a consumer's purchasing decision. This means that the proposed requirement would apply to 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. However, Global Distribution Systems (GDSs) would not be covered by this proposal as GDSs arrange for air transportation but do not sell or display a carrier's fare to consumers.” *Enhancing Transparency of Airline Ancillary Service Fees*, 87 Fed. 63718, 63729 (Oct. 20, 2023), page 63724.

¹¹ *Id.*

¹² Sabre’s internal business practice is to divide its subscriber base according to major geographies such as Europe, the Middle East, and Africa (EMEA), the Asia-Pacific (APAC) and North America (NAM); however, the substantial majority of Sabre subscribers in the NAM cohort are in the US.

As proposed, the rule is also unfair to travel agencies that will not have access to the same ancillary fee data as their larger and online competitors. They will instead have to leave the GDS environment and separately log on to airline.com – which of course does not provide the opportunity to comparison shop – every time they quote a fare for an airline that does not voluntarily provide its ancillary fee data to the GDSs.

All of this makes no sense given the policy rationale for the rule is to *re-introduce airfare price transparency for the public*. And the DOT has acknowledged the vital role of GDSs in this regard for at least a decade, e.g.: “GDSs are the source through which most travel agents obtain their fare information, so as a practical matter, they may be the most efficient vehicle currently available for carriers to use for dissemination of information on ancillary fees.”¹³

The DOT’s proposal to exclude GDSs from the final rule is all the more baffling given that GDSs are “ticket agents” under DOT regulations and rulings. As early as 2004 the Department of Transportation recognized the central role of GDSs in the sale of air transportation when it determined that they were regulated ticket agents because of the reliance of airlines and agents on GDSs to disseminate and sell air travel:

“[T]he systems are active participants in the sale of air transportation, not just communications links. . . The systems enable travel agents to conduct booking transactions, require airlines to accept any bookings made by a travel agent through the system, make credit card authorizations, and issue tickets.”¹⁴

And the DOT has considered this definition in connection with the earlier 2014B NPRM on ancillary fees,¹⁵ and could have easily used it in the proposed final rule.

- ***If adopted as proposed, the DOT’s final rule would fall short of implementing the Biden Administration’s initiatives on “junk fees”.***

The Biden administration’s clear objective is full transparency of airfares across the travel agency community in the US so that consumers know the total cost of travel. The DOT’s proposed final rule chooses airline commercial interests over these objectives because it excludes thousands of small and medium US businesses and the consumers that use them from access to the critical data necessary to inform purchasers of the actual cost of air travel. Moreover, the White House appears to believe that the rule “would require airlines to disclose all of their fees, from baggage fees to wireless internet to seat changing fees, up front when you’re first comparing prices.”¹⁶

The easiest and best way to ensure that these objectives and expectations are achieved is to ensure that all consumers actually have the information the White House expects they will have under this rule.

¹³ Transparency of Airline Ancillary Fees and Other Consumer Protection Issues, 79 Fed. Reg. 29970, Docket No. DOT-OST-2014-0056, RIN 2105-AE11 at 29977 (proposed May 23, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-05-23/html/2014-11993.htm>.

¹⁴ Sabre v. Dep’t of Transp., 429 F.3d 1113 (D.C. Cir. 2005).

¹⁵ Transparency of Airline Ancillary Fees and Other Consumer Protection Issues, 79 Fed. Reg. 29970, Docket No. DOT-OST-2014-0056, RIN 2105-AE11 at 29972-74 (proposed May 23, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-05-23/html/2014-11993.htm>.

¹⁶ Press Release, The White House, President Biden Recognizes Actions by Private Sector Ticketing and Travel Companies to Eliminate Hidden Junk Fees and Provide Millions of Customers with Transparent Pricing (June 15, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/15/president-biden-recognizes-actions-by-private-sector-ticketing-and-travel-companies-to-eliminate-hidden-junk-fees-and-provide-millions-of-customers-with-transparent-pricing/>.

The simple solution is to require that airlines provide all their ancillary fee data to “ticket agents” as defined by DOT in other regulations and thereby include GDSs within the scope of the final rule.

And the DOT’s justification for excluding GDSs from the final rule does not hold water. The airlines appear to have persuaded the DOT that whether airlines must provide ancillary content to GDSs should be negotiated between the individual GDSs and hundreds of different airlines. This conclusion is misguided for obvious reasons, but it is also moot given the Biden Administration’s broad objectives to re-introduce price transparency for *all consumers* described above.

And finally, if the rule becomes final as proposed, many of the half or so of airlines that provide some measure of ancillary content to GDSs today may choose to follow American Airlines and cut off Sabre (and other GDSs) altogether. Alternatively, the GDSs may have to pay fees to the airlines for the same ancillary fee data that the airlines would be providing to direct connect travel agents for free.

- ***Withholding ancillary fee data is also an element of an airline strategy to force consumers away from GDS neutral displays that enable comparison shopping and on to individual airlines websites.***

As a rule, dominant airlines would also rather disintermediate GDSs and the travel agencies that rely upon them by starving them of content and forcing their customers to airline.com. In this way, each airline can further control its customers and limit their choices, rather than expose consumers to GDS neutral displays that foster price competition and comparison shopping among a wide array of carriers, routes, and fares. These airlines thus have no incentive to negotiate fairly with the GDSs because they are protected by lack of competition, fortress networks, loyalty programs and tight supply on the one hand, and they fear the GDS value proposition that offers consumers choice and competes directly with single-carrier airline distribution channels on the other hand.

American Airlines, for example, cut off ancillary fee data to Sabre in July 2023, with dramatic effect. In the two-year period ending December 2023, American provided Sabre ancillary fee data as many as 84,835 times during May 2022, and 30,985 times in June 2023. In July 2023, the number of ancillaries per month from American dropped to eleven and stayed below one hundred for the remainder of 2023.

Moreover, the NDC model that airlines prefer is in its relative infancy and does not yet enable the full range of capabilities for complex itineraries that are available in bookings made in the traditional EDIFACT/PNR model supported by the GDSs. While NDC is expected to grow rapidly in coming years, bookings based on the traditional EDIFACT/PNR model will also be a fact of life for smaller airlines and for thousands of US travel agencies that rely on a GDS and need the flexibility and scope of capabilities the model provides.

Some airlines contend that requiring them to supply ancillary content to GDSs will stall implementation of alternative means of distribution to traditional GDS EDIFACT, such as NDC direct connect. The truth of the matter is that more than a decade later, NDC is still immature. Many airlines (and all the GDSs) are working to support it, but the traditional EDIFACT/PNR technology will persist in the market for years to come. In short, there are much more powerful financial and economic constraints on industry-wide adoption of NDC in play and requiring carriers to provide ancillary content to the GDSs will not materially factor into the pace of this transition.

- ***Forcing consumers away from GDS neutral displays is also contrary to the objectives laid out in President Biden’s Executive Order on Promoting Competition in the American Economy and the Stated Purpose of the Rulemaking***

On July 9, 2021, President Biden issued Executive Order 14036 (“EO 14036”), which sets out the pro-competition objectives of his Administration across the Executive Branch.¹⁷ The Executive Order emphasizes that a competitive economy means “more choices” for consumers.¹⁸ As discussed above, GDSs provide consumers choices that individual airline websites, by definition, do not.

GDSs play an essential role in the consumer aviation market, a role specifically contemplated by President Biden’s Executive Order. EO 14036 states that that consumers should have access to “airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines”, which is precisely the benefit GDSs provide for consumers.¹⁹ Unfortunately, the proposed rule, in current form, pushes consumers toward individual airline websites, making it more difficult for consumers to find a “broader set of available flights,” especially flights offered by “new or lesser known airlines.”²⁰ This limitation constrains consumer choice of those new entrants and smaller competitors needed to inject competition into the delivery of travel services within the larger, already-concentrated consumer aviation market.

The EO also orders the DOT to ensure that “consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition.”²¹ Creating a system where the GDSs may lack access to this information, will push consumers to airlines’ individual websites where ancillary fees are more common.²² More spend on ancillary fees is contrary to both the objectives of EO 14036 and the purpose of the rulemaking.

The implementation of EO 14036 relies on cross-agency coordination and cooperation. Agencies are encouraged by the executive order to “coordinate their efforts, as appropriate and consistent with applicable law, with respect to [...] the design, execution, and oversight of remedies.”²³ Given OIRA’s important regulatory expertise and guidance authority, it should ensure that this critical rulemaking aligns with the stated objectives and the pro-competition goals of this Administration.

¹⁷ Exec. Order No. 14036, 3 C.F.R. 36987 (2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See, e.g., Sam Kemmis, *Why booking directly with airlines can be more expensive*, INDEPENDENT (Nov. 23, 2022), <https://www.independent.co.uk/news/american-airlines-ap-biden-kayak-travelers-b2231431.html>. (“Airlines want customers to book through their own websites and apps for a simple reason: They tend to spend more money on ancillary fees.”)

²³ Exec. Order No. 14036, 3 C.F.R. 36987 (2021).