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November 23, 2020

Office of Information and Regulatory Affairs (OIRA)
Office of Management and Budget
Executive Office of the President
New Executive Office Building

RE: DOT Defining Unfair or Deceptive Practices Final Rule

The Department of Transportation (DOT) seeks to dramatically enhance the clarity and consistency of DOT's rulemaking process, enforcement proceedings, and general oversight of transportation industries in the "Defining Unfair or Deceptive Practices" final rule. We respectfully request timely finalization of this rule so that the public can enjoy the many benefits of the rule without incurring costs. The November 16 Travelers United letter contains numerous misrepresentations about the rule and offers no valid reason for delaying its approval.

Importantly, the rule will bring DOT's oversight of transportation entities into conformity with the Federal Trade Commission's (FTC) much broader oversight of other sectors of the economy with regard to unfair or deceptive practices, and thereby provide a new consistency of regulatory standards across the government. The DOT's rule will provide tangible benefits to both regulated parties and consumers by providing clear and consistent criteria for determining whether a practice is unfair or deceptive. We note that not only airlines support this rule, but Global Distribution Systems, ticket agents, U.S. tour operators, competition entities, and business aviation providers welcome the transparency this rule will provide. The rule will also benefit the agency itself by enabling it to establish more transparent and easily understood standards for commercial conduct. And finally, the rule will not impose any new costs because it is procedural in nature and codifies regulatory standards that the Department already follows.

Marketplace Competition Continues to Provide Consumer Benefits

Travelers United is simply wrong in claiming that "current competition among airlines is non-existent because of COVID-19 issues." Every carrier is trying to survive and is forced to adapt and compete in this new environment. To suggest that competition has waned in light of the pandemic, is to completely misread the situation at hand, especially when airlines are fighting for the small pool of traffic that remains. In fact, airline competition has *increased* as many carriers have cut fares due to the drastic loss of passenger traffic and offer, for example, fee waivers for changing tickets, relaxed frequent flyer program rules, unlimited travel for a fixed price, ability to purchase an

entire row of seats, and programs to buy one ticket and get a second ticket on the same itinerary for the cost of taxes and fees.

The Bureau of Transportation Statistics reports that U.S. domestic air fares declined in the second quarter of 2020 to \$259, the lowest inflation-adjusted quarterly air fare in BTS records dating back to 1995. The previous low was \$334 in the first quarter of 2020. Adjusted for inflation (constant 2020 dollars) the 2Q 2020 air fare was down 27.8% from 2Q 2019 (\$358).¹

Competition to serve new destinations is fierce, even during the pandemic, as carriers are expanding their reach to compete in areas that they haven't served before. Just a few examples include:

- Southwest: Miami, Palm Springs, Steamboat Springs, Sarasota, Chicago O'Hare, Telluride, Colorado Springs, etc.
- Allegiant: Boston, Houston Hobby, Chicago Midway, Newark
- Spirit: Orange County
- United: several non-hub point to point service from assorted destinations to/from Florida this winter
- Delta: adding new service to assorted Western US destinations (ATL-BOI, ATL-GEG, LAX to FAT, PSP, RNO)

The increased transparency created by this rule has become even more vital while consumers and regulated entities experience unprecedented circumstances due to the COVID-19 pandemic. Ensuring the public has a clear understanding of what constitutes an unfair or deceptive practice is essential to protecting consumers and reducing confusion. A clear set of standards also informs carriers that continue to compete vigorously for drastically lower air travel demand. Greater transparency provides greater opportunities and benefits for consumers because carriers can bring compliant innovative solutions to the marketplace delivering greater choice to consumers.

DOT Adoption of FTC Unfair and Deceptive Standards

Travelers United is also wrong in stating that the DOT rulemaking is "opposed by the FTC." The FTC did not file public comments in the DOT docket. Instead, two minority FTC Commissioners (out of five) filed comments in their personal capacity, not on behalf of the FTC.

In response to the minority commissioners, Former FTC Chair Tim Muris and former FTC Director of the Bureau of Consumer Protection Howard Beales filed extensive comments in the DOT docket explaining that competition remains robust in the airline industry and that the FTC standards for unfair or deceptive practices will provide benefits to consumers and should be adopted by DOT. Mr. Muris and Mr. Beales, who

¹ See Second Quarter 2020 Air Fare Drops to New Low as Passenger Numbers Decline" at https://www2.arccorp.com/about-us/newsroom/2020-news-releases/october-us-travel-agency-air-ticket-sales-continue-upward-trend?utm_source=Twitter&utm_medium=social&utm_campaign=2020-11_Ow-Br-Edu_Newsroom

are recognized leaders in the field of competition law, conclude that DOT adopting the FTC standards “will better direct the agency’s resources to the problems that matter most to consumers, will offer clear guidance to the regulated community, and assure that the same standard will apply to the same legal prohibition regardless of the regulatory agency involved.” We agree.

DOT Meets Administrative Requirements

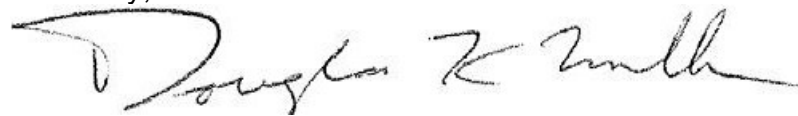
Travelers United is incorrect in suggesting that the proposed DOT Unfair and Deceptive Practices rule does not comply with Executive Order 13771, which requires that for every one new regulation issued, at least two prior regulations be identified for elimination. DOT explicitly addresses E.O. 13771 compliance in the NPRM by stating that the proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866. We agree, this rule provides benefits but no costs; therefore, adopting this rule will result in net zero costs to a regulatory budget and therefore in compliance with E.O. 13771.

Travelers United alleges there will be increased paperwork burdens required by the final rule. However, no new paperwork requirements produced by this rule were identified by commenters in the DOT docket. DOT correctly determined in the Paperwork Reduction Act section of the NPRM preamble that there are no new information collection requirements associated with this NPRM and there is no data after public comment that supports a different conclusion.

Conclusion

The reforms the Department seeks to adopt in this rulemaking will produce widespread and lasting benefits for air travelers, airlines, and the economy. We urge that the rule be finalized as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Mullen". The signature is fluid and cursive, with the first name "Douglas" being the most prominent.

Douglas K. Mullen
Vice President and Deputy General Counsel
Airlines for America