

BEFORE THE  
NATIONAL COMMISSION TO ENSURE CONSUMER INFORMATION  
AND CHOICE IN THE AIRLINE INDUSTRY  
WASHINGTON, D.C.

TESTIMONY OF THE  
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

June 12, 2002

**ORAL TESTIMONY OF WILLIAM A. MALONEY, CTC**

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WILLIAM A. MALONEY  
NATIONAL COMMISSION TESTIMONY  
INTRO

DURING THE HEART-BREAKING DAYS FOLLOWING SEPT. 11, THE NATION STOOD SUSPENDED IN SHOCK. THE NATION'S TRAVEL AGENTS, HOWEVER, PRESSED INTO ACTION WORKING AROUND THE CLOCK TO ASSIST TRAVELERS WHO WERE STRANDED BY THE NATIONWIDE AIRPORT CLOSURE.

AGENTS ACROSS THE COUNTRY WORKED OVERTIME TO FIND WAYS TO GET SCARED AND FRUSTRATED TRAVELERS HOME AND TO REUNITE FAMILIES SUFFERING FROM THE TERRIBLE TRAGEDY. MANY AGENTS PROVIDED FREE ASSISTANCE TO PEOPLE WHO HAD BOUGHT THEIR TICKETS ON THE INTERNET AND HAD NO ONE ELSE TO CONTACT FOR HELP.

ONE PENNSYLVANIA AGENT TOLD OF A CLIENT STRANDED IN AN ALASKA AIRPORT WHO CALLED HER TO REBOOK A FLIGHT THEN PASSED HIS CELLPHONE THROUGH THE LINE SO SHE COULD HELP OTHER TRAVELERS.

ASTA'S ROCKY MOUNTAIN CHAPTER IMMEDIATELY FORMED A BANK OF VOLUNTEER TRAVEL AGENCIES TO ASSIST THE GENERAL PUBLIC IN COLORADO, UTAH AND WYOMING IN RESCHEDULING FLIGHTS DURING THE NATIONAL EMERGENCY.

OTHER AGENTS DROVE THEIR CLIENTS TO THEIR DESTINATIONS OR PICKED THEM UP AT THE AIRPORT WHEN THEIR FLIGHTS WERE CANCELED. FOR EXAMPLE, MARK MURIE, OWNER/MANAGER OF COUNTRY TRAVEL IN BISMARCK, NORTH DAKOTA, PERSONALLY DROVE A CLIENT TO MINNEAPOLIS SIX-AND-A-HALF HOURS AWAY TO MAKE A BUSINESS APPOINTMENT.

SOME AGENTS HAD THE DIFFICULT TASK OF REUNITING FAMILY MEMBERS TO MOURN THE LOSS OF A LOVED ONE. A TRAVEL AGENT IN MATAWAN, NJ, FOR EXAMPLE, WORKED WITH STATE DEPARTMENT, TO SECURE A FLIGHT FOR

COUPLE ON VACATION IN FINLAND WHO LEARNED THAT THEIR SON WAS ONE OF THE MISSING NEW YORK CITY FIREMEN.

SEPT. 11 WAS A DRAMATIC EXAMPLE OF THE VALUABLE SERVICES TRAVEL AGENTS PROVIDE EACH AND EVERY DAY.

IN THE DAYS AHEAD, AS SECURITY RULES CHANGE AND FLIGHTS MAY BE CANCELED FOR A HOST OF REASONS, THE PUBLIC IS GOING TO WANT AND NEED TRAVEL AGENTS MORE THAN EVER.

CONSUMERS WILL NEED TO TALK TO REAL PEOPLE PREFERABLY SOMEONE THEY KNOW AND TRUST WITH CURRENT KNOWLEDGE OF THE SYSTEM, THE NEW RULES AND THE REQUIREMENTS FOR ACHIEVING SAFE AND EXPEDITIOUS TRAVEL. TRAVEL AGENTS ARE THE FAMILY FARMS OF THE TRANSPORTATION INDUSTRY. THE PUBLIC SHOULD NOT BE CUT OFF FROM IRREPLACEABLE AGENCY SERVICES AT A TIME WHEN THEY NEED THEM THE MOST.

AT THIS POINT I WOULD LIKE TO ILLUSTRATE VISUALLY WHAT IS HAPPENING TO THESE SMALL BUSINESSPEOPLE...

**BEFORE THE  
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[THIS FOLLOWS A VERBAL PRESENTATION AND QUESTIONS RE CHARTS]

THANK YOU MR. CHAIRMAN. I WILL NOW PRESENT A SUMMARY OF THE WRITTEN TESTIMONY SUBMITTED BY ASTA.

THE GOVERNING STATUTE CALLS FOR AN INVESTIGATION OF AIRLINE MARKETING PRACTICES THAT MAY NOW, OR MAY THREATEN IN THE FUTURE, TO IMPAIR CONSUMER ACCESS TO COMPARATIVE INFORMATION CONSUMERS NEED TO OPTIMIZE CHOICES WHEN BUYING AIR TRAVEL. THERE ARE ESSENTIALLY THREE BROAD CATEGORIES OF ISSUES RELATED TO THAT INQUIRY, THOUGH EACH OF THE CATEGORIES IS CLOSELY RELATED TO THE OTHERS. THE CATEGORIES MAY BE STATED AS (1) USE OF AIRLINE MARKET POWER TO REDUCE TRAVEL AGENCY COMPENSATION BELOW THE LEVEL A COMPETITIVE MARKET WOULD PRODUCE, (2) COLLECTIVE AND INDIVIDUAL ACTIONS TO RAISE THE OPERATING COSTS OF TRAVEL AGENTS AND TO ENCOURAGE CONSUMERS TO BOOK ELSEWHERE, AND (3) COLLECTIVE ACTION FUNNELED THROUGH ORBITZ TO DENY TRAVEL AGENCIES EQUAL ACCESS TO ALL PUBLISHED FARES. ALL OF THIS TAKES PLACE AGAINST A BACKGROUND OF OUTMODED CRS REGULATIONS THAT IMPAIR THE ABILITY OF AGENTS TO ADAPT TO NEW MARKETPLACE REALITIES AND THAT ENABLE AIRLINES TO EXERCISE THEIR MARKET POWER

BY SECURING INFORMATION TO WHICH, IN OUR VIEW, THEY ARE NOT ENTITLED.

TO BEGIN WITH THE FIRST CATEGORY, IT IS UTTERLY IMPLAUSIBLE TO BELIEVE, AS THE AIRLINES ARGUE, THAT AIR TRAVEL BOOKING AND TICKETING SERVICES PERFORMED BY TRAVEL AGENCIES HAVE ZERO VALUE TO THE AIRLINES. YET THEY ARE ABLE TO ENFORCE ZERO COMMISSION POLICIES FOR SUCH SERVICES. IT IS CLEAR, WE BELIEVE, THAT THE LARGEST AIRLINES HAVE EXERCISED MARKET POWER AGAINST TRAVEL AGENTS BY DRIVING AGENCY COMPENSATION BELOW THE LEVEL THAT A TRULY COMPETITIVE MARKET WOULD PROVIDE. IN VIEW OF THE AVAILABILITY OF THE INTERNET, A NEW ALTERNATIVE DISTRIBUTION TECHNIQUE, THAT FIGURE MAY NOT BE 10 PERCENT BUT IT IS MOST CERTAINLY WELL ABOVE ZERO.

THE HISTORY OF THE COMMISSION CUTTING IS SET OUT IN ASTA'S FULL WRITTEN TESTIMONY AND IS FAMILIAR TO MOST PEOPLE, SO I WON'T SPEND TIME TODAY GOING THROUGH THE DETAILS. SUFFICE IT TO SAY, THAT THE DEPARTURE FROM AT LEAST THE AIR TRAVEL PORTION OUR INDUSTRY OF 30 PERCENT OF THE BUSINESS ENTITIES AND 17 PERCENT OF THE LOCATIONS SINCE 1994 IS DIRECTLY AND LARGELY ATTRIBUTABLE TO THE COMMISSION REDUCTIONS. THIS HAS OCCURRED DESPITE THE FACT THAT ALMOST ALL AGENCIES HAVE INSTITUTED SERVICE CHARGES AND THAT OUR SURVEYS, AS WELL AS EXTENSIVE AND CONSISTENT ANECDOTAL REPORTS, SHOW THAT MOST CONSUMERS WILL PAY SERVICE FEES RATHER THAN ATTEMPT SELF SERVICE IN THE PURCHASE OF AIR TRAVEL. IT HAS OCCURRED DESPITE SIGNIFICANT DOWNSIZING, USE OF THE INTERNET AND

CONSOLIDATORS AS ALTERNATIVE AIR BOOKING TOOLS, AND CONSIDERABLE MERGER AND ACQUISITION ACTIVITY THAT HAS CREATED EFFICIENCIES IN AGENCY OPERATION. AGENCIES, WITH THE HELP OF ASTA AND OTHERS, ARE ADOPTING DATABASE MANAGEMENT, NICHE MARKETING, CUSTOMER AND MARKET SPECIALIZATION AND MANY OTHER TECHNIQUES TO SUSTAIN THEIR BUSINESSES IN THE FACE OF WHAT MIGHT BE CALLED A 'FORCED RECESSION' OF HUGE PROPORTIONS. I SAY 'FORCED,' BECAUSE THE PUBLIC CONTINUES TO LOVE WHAT AGENTS DO AND SEEK THEIR SERVICES AS THEY HAVE IN THE PAST. YET THE ECONOMICS OF OPERATING A TRAVEL AGENCY HAVE BEEN UNDERMINED BY THE AIRLINES' MARKET POWER, PROBABLY FOREVER.

AIRLINE TRAVEL AGENCY COMPENSATION POLICIES ARE NOT MERELY BENIGN EXAMPLES OF COST-CUTTING FOR EFFICIENCY'S SAKE. THE POLICIES ARE CALCULATED TO DISADVANTAGE AGENTS BY FORCING THEM TO SELL TICKETS AT HIGHER PRICES THAN THOSE THE AIRLINES SELL. AIRLINES HAVE NOT OFFERED AGENTS PRICES WHEREBY BOTH AIRLINES AND AGENTS WOULD MARK UP FROM A COMMON WHOLESALE PRICE LEVEL, THEREBY GIVING THE MOST EFFICIENT SELLERS AN ADVANTAGE. INSTEAD, THEY PRICE AT ONE LEVEL TO THE PUBLIC AND NOW TELL TRAVEL AGENTS "YOU GET THE SAME PRICE TO SELL BUT WITH NO COMPENSATION." THE END RESULT IS THAT ANY AGENT TRYING TO SELL AIRLINE TICKETS MUST ADD A FEE TO THE RETAIL PRICE, THEREBY APPEARING MORE EXPENSIVE THAN THE AIRLINES THEMSELVES.

EXAMPLES OF THE SECOND CATEGORY ARE NUMEROUS AND OUTLINED FULLY IN THE WRITTEN TESTIMONY. I WANT TO FOCUS HERE TODAY ON TWO OR THREE OF THE REALLY MAJOR PROBLEMS. ONE OF THE MOST IMPORTANT OF THESE ARE THE PRODUCTIVITY

BOOKING THRESHOLDS THAT ARE CONTAINED IN TRAVEL AGENCY CRS CONTRACTS. THESE ARE A VERY WIDE-SPREAD PROBLEM. THESE PROVISIONS OPERATE AS A FUNDAMENTAL DETERRENT TO A TRAVEL AGENCY'S ATTEMPT TO MOVE AIR BOOKINGS TO THE INTERNET OR TO CONSOLIDATORS, IN ORDER TO ACCOMMODATE THE CLIENT'S DEMAND FOR THE ABSOLUTELY LOWEST FARE, AND TO BE ABLE TO MARK UP OR ADD A SERVICE FEE TO A TICKET.

ANOTHER MAJOR ISSUE IN THIS CATEGORY IS THE PUNISHMENT THAT AIRLINES METE OUT AGAINST TRAVEL AGENCIES WHO VIOLATE THEIR RULES. PERHAPS THE MOST EGREGIOUS EXAMPLE, THOUGH BY NO MEANS THE ONLY EXAMPLE, IS AMERICAN AIRLINES' ASSESSMENT OF \$200 PENALTIES ON AGENCIES THAT PROCESSED CERTAIN REFUNDS THROUGH THE AIRLINES REPORTING CORPORATION, WHERE ALL OTHER TICKETS AND REFUNDS ARE HANDLED. THE DETAILS ARE SET OUT IN THE FULL WRITTEN TESTIMONY. THIS INCIDENT IS ONE OF COUNTLESS CASES IN WHICH TRAVEL AGENTS ARE ASSESSED PENALTIES THAT ARE GROSSLY DISPROPORTIONATE TO ANY LOSS THE AIRLINE INCURS. IN FACT, IN THE AMERICAN CASE THE REFUNDS WERE UNQUESTIONABLY CORRECT AND AMERICAN LOST NO MONEY AS A RESULT OF PROCESSING THROUGH ARC. THEY EVEN RECALLED THE AGENT COMMISSIONS, A COMMON PRACTICE IN THE AIRLINE INDUSTRY, EVEN IF THE REASON FOR THE REFUND IS ATTRIBUTABLE ENTIRELY TO THE AIRLINE'S OWN ACTIONS AND THE TRAVEL AGENT IS COMPLETELY FREE OF FAULT.

THESE PUNISHMENTS AMOUNT TO THOUSANDS OF DOLLARS IN SOME CASES AND HAVE REAL ECONOMIC IMPACT ON SMALL TRAVEL AGENCIES. IN THE AMERICAN CASE, AN AGENT WOULD HAVE TO SELL TEN TICKETS THAT QUALIFIED FOR THE MAXIMUM OF

THE THEN PREVAILING CAPPED COMMISSION RATE IN ORDER TO RECOUP JUST ONE OF AMERICAN'S DEBIT MEMOS.

AMERICAN'S "TOO BAD" POLICY TOWARD THESE AGENTS WAS REMINISCENT OF THE WAY THE AIRLINES TREATED TRAVEL AGENTS IN THE AFTERMATH OF THE SEPTEMBER 11 ATTACKS. THE AIRLINES THEN RECALLED AN ESTIMATED \$73 MILLION IN COMMISSIONS RELATED TO FLIGHTS THE AIRLINES DID NOT OPERATE. THIS OCCURRED EVEN AS THE AIRLINES WERE PERSUADING CONGRESS TO GRANT THEM A \$15 BILLION DOLLAR BAILOUT. THE UNITED STATES AIRLINES CONTINUE TO PAY COMMISSIONS, SOMETIMES AS HIGH AS NINE PERCENT, IN OTHER COUNTRIES, EVEN AS THEY HAVE REDUCED TRAVEL AGENTS IN THIS COUNTRY TO ZERO.

ASTA HAS ALSO REPEATEDLY OBJECTED TO THE AIRLINES BEING ALLOWED TO BUY MARKETING INFORMATION TAPES FROM THE CRS COMPANIES. THESE TAPES CONTAIN VERY DETAILED DATA ABOUT TRAVEL AGENT-GENERATED TRANSACTIONS, NOT ONLY ON THE AIRLINE THAT BUYS THE TAPES BUT ALSO ON THE COMPETITORS OF THAT AIRLINE.

TWO OTHER PRACTICES WARRANT MENTION HERE. WHEN THE AIRLINES FIRST CAPPED COMMISSIONS IN 1995, WE ASKED THEM TO INCORPORATE A BOX ON THE TICKET WHERE A TRAVEL AGENT COULD, IF IT WISHED TO, INSERT ITS SERVICE CHARGE AND HAVE THE CHARGE PROCESSED BY ARC ALONG WITH THE TICKET PRICE. THE AIRLINE POSITION WAS THAT THE SERVICE CHARGE IS THE AGENT'S PROBLEM AND THE AIRLINES WOULD DO NOTHING TO ACCOMMODATE THIS NEED FOR A MORE EFFICIENT SETTLEMENT PROCESS. ARC DID CREATE A DOCUMENT THAT AGENTS CAN USE FOR THIS PURPOSE BUT IT REQUIRES TWO SETTLEMENT DOCUMENTS

WHEN ONE WOULD BE SUFFICIENT. THIS MEANS MORE WORK, MORE RISK OF ERROR AND GENERALLY MORE PROBLEMS FOR THE AGENT.

FINALLY, FOR PRESENT PURPOSES, THERE IS THE MATTER OF DISCRIMINATORY TICKETING PRACTICES.

MAJOR AIRLINES REFUSE TO PERMIT AGENTS TO OFFER CERTAIN BENEFITS AND CONCESSIONS TO CONSUMERS, SUCH AS THE REFUND OF SO-CALLED "NON-REFUNDABLE" TICKETS, WHILE RESERVING TO THEMSELVES THE RIGHT TO MAKE SUCH REFUNDS.

TRANSGRESSIONS ARE PUNISHED SEVERELY, WITH AIRLINES LEVYING CASH PENALTIES AGAINST AGENTS TO WHICH AGENTS ARE SUMMARILY REQUIRED TO ACQUIESCE OR FACE THE GREATER PENALTY OF LOSING THEIR ABILITY TO ISSUE TICKETS ALTOGETHER. YET THE AIRLINES THEMSELVES OFTEN ISSUE SUCH REFUNDS. THE AIRLINES THEN TYPICALLY FORCE THE AGENT TO REPAY THE COMMISSION EARNED ON THE ORIGINAL SALE.

SIMILAR DISCRIMINATION IN COMPETITIVE PRACTICES OCCURS WITH RESPECT TO PRICE-SAVING TICKET-COMBINATION OPPORTUNITIES, SUCH AS THE SALE OF "BACK-TO-BACK" AND "HIDDEN CITY" TICKETS WHICH ARE PROHIBITED TO TRAVEL AGENTS, WITH SEVERE PENALTIES WHEN DETECTED, BUT ARE ROUTINELY ISSUED BY THE AIRLINES THEMSELVES.

IN ADDITION, MAJOR AIRLINES PENALIZE TRAVEL AGENTS WHEN CONSUMERS BUY INEXPENSIVE ROUND-TRIP TICKETS, TRAVEL ONE-WAY, AND THROW AWAY THE RETURN PORTION OF THE TICKET. SUCH POLICIES CONFUSE AND ANGER THE PUBLIC, WHILE UNDERMINING THE RELATIONSHIP BETWEEN THE TRAVEL AGENT AND HIS CLIENT, WHO EXPECTS THE AGENT TO FIND AND TICKET THE LOWEST FARE AVAILABLE.

THE THIRD AND FINAL CATEGORY OF ISSUES INVOLVES TWO CONNECTED PROBLEMS. NOT ONLY DO THE AIRLINES USE INDUCEMENTS LIKE BONUS FREQUENT-FLYER MILES TO DRAW CONSUMERS TO THEIR WEB SITES AND AWAY FROM THEIR AGENTS, THEY ALSO PRICE MANY SERVICES ON THEIR WEB SITES AT LOWER LEVELS THAN THE PRICES FOR IDENTICAL SERVICES AVAILABLE TO AGENTS THROUGH CRS'S.

THE INTERNET FARES ARE OFTEN MANY HUNDREDS OF DOLLARS BELOW THE FARE OFFERED THROUGH AGENTS. THESE DIFFERENTIALS VASTLY EXCEED ANY CONCEIVABLE COST DIFFERENTIAL BETWEEN THE CHANNELS. THERE CAN BE ONLY ONE CONCLUSION: AIRLINE INTERNET DISTRIBUTION POLICIES ARE DESIGNED TO INDUCE CONSUMERS NOT TO BUY THROUGH TRAVEL AGENTS.

THAT SITUATION WOULD BE DIFFICULT ENOUGH, MR. CHAIRMAN, BUT NOW THE END GAME HAS BEGUN -- IT'S NAME IS ORBITZ. JOINT AIRLINE OWNERSHIP OF ORBITZ IS DESIGNED TO IMPAIR TRAVEL AGENCIES' ABILITY TO COMPETE BY FAVORING ORBITZ OVER OTHER CHANNELS WHILE SIMULTANEOUSLY DENYING EFFECTIVE ACCESS TO LOWEST FARES FOR ORBITZ' COMPETITORS BOTH ONLINE AND OFFLINE.

ORBITZ, THE JOINT AIRLINE WEBSITE BECAME, AFTER A LITTLE MORE THAN SIX MONTHS OF OPERATIONS, THE THIRD LARGEST TRAVEL RETAILER ON THE INTERNET. IT IS THE AIRLINES' CHOSEN INSTRUMENT FOR RESHAPING THE AIR TRAVEL DISTRIBUTION MARKET TO SUIT THE COLLECTIVE ASPIRATIONS OF THE FIVE LARGEST U.S. AIRLINES TO DOMINATE TOGETHER THE DISTRIBUTION OF THE AIR TRAVEL PRODUCT IN THIS COUNTRY.

A MAJOR GOAL OF THIS VENTURE IS TO COMBINE IN ONE RETAIL LOCATION, OWNED AND CONTROLLED BY THE LARGEST AIRLINES, THE INTERNET-ONLY FARES OFFERED TO CONSUMERS AND NOT AVAILABLE FOR SALE BY THE INDEPENDENT TRAVEL AGENCY COMMUNITY. THE CURRENT ORBITZ WEB-SITE MAKES CLEAR THAT IT OFFERS “DEALS THAT ARE CURRENTLY ONLY AVAILABLE ON THE AIRLINES' OWN WEB SITES.” ORBITZ' CLAIM THAT ITS INTERNAL ARRANGEMENTS LEAVE AIRLINES FREE TO TRADE ON THE SAME TERMS WITH OTHERS IS A SOPHISTIC MIRAGE.

ALTOGETHER 43 AIRLINES PARTICIPATE IN THE ORBITZ SCHEME. THE COMBINED MARKET SHARE OF THE PARTNERS IS AT LEAST 80 PERCENT OF DOMESTIC PASSENGER TRAFFIC.

SINCE THE EARLIEST DAYS OF COMMERCIAL AVIATION, THERE HAS BEEN AN INDEPENDENT PRESENCE IN THE MARKET, OFFERING CONSUMERS AN ALTERNATIVE TO DEALING DIRECTLY WITH THE AIRLINES FOR INFORMATION AND TRANSACTIONS. TODAY THE “TRADITIONAL” AGENTS WHO HAVE EMBRACED INTERNET TECHNOLOGY AND THE NEW FULLY-ONLINE AGENCIES PROVIDE AN EFFICIENT MEANS TO DELIVER THE ONE-STOP, ACCURATE, AND UNBIASED COMPARATIVE TRAVEL INFORMATION AND ADVICE THAT CONSUMERS VALUE. THIS SERVICE OFTEN DEFEATS AIRLINE YIELD MANAGEMENT BY SHOWING THE CONSUMER WAYS TO ECONOMIZE AND GET GREATER VALUE FROM THEIR AIR TRAVEL PURCHASE.

TO GAIN THE FIELD FOR ITSELF AND ITS AIRLINE OWNERS, ORBITZ HAS PLANS, ONLY RECENTLY REVEALED, THAT INDICATE A ROLE FAR BEYOND ANYTHING THAT ANY TRAVEL AGENCY EVER CONCEIVED.

SINCE WE HAVE COVERED THE DETAILS OF THE ORBITZ BUSINESS OPERATION IN GREAT DETAIL IN OUR WRITTEN TESTIMONY, I WILL NOT GO OVER ALL THAT GROUND IN MY VERBAL PRESENTATION. A FEW HIGHLIGHTS SHOULD SUFFICE TO SHOW WHY ORBITZ IS DANGEROUS TO THE PUBLIC INTEREST IN HAVING MANY ALTERNATIVE SOURCES OF INFORMATION AND BOOKING SERVICES FOR THE PURCHASE OF AIR TRAVEL.

THE CORE PROBLEMS WITH THE ORBITZ BUSINESS PLAN ARE THAT (1) THE AIRLINES WHO CREATED IT, AND THEIR PARTNERS, ARE FAVORING ORBITZ OVER ALL OTHER DISTRIBUTORS, AND (2) THE MANAGEMENT STRUCTURE, BOTH TODAY AND AFTER THE PUBLIC OFFERING RECENTLY ANNOUNCED, WILL PLACE THE FIVE LARGEST UNITED STATES AIRLINES IN A POSITION TO JOINTLY PLAN AND COORDINATE THEIR RETAILING STRATEGIES UNDER THE GUISE OF MANAGING ORBITZ.

THE CHARTER ASSOCIATE AGREEMENT PROVIDES THAT ORBITZ WILL BE GRANTED “MOST FAVORED COMPETITOR” STATUS BY EVERY PARTICIPATING AIRLINE. EACH CHARTER ASSOCIATE AIRLINE IS THEN OBLIGATED TO SUPPLY ORBITZ WITH IN-KIND MARKETING SUPPORT. “IN-KIND PROMOTIONS” INCLUDES “EXCLUSIVE PROMOTIONS OR FARES AVAILABLE ONLY ON” ORBITZ.

THE DEPARTMENT OF TRANSPORTATION HAS FOUND THAT EXCLUSIVE LOW FARE ACCESS FOR ORBITZ WILL LIKELY RESULT FROM THE ORBITZ INCENTIVES. AND IT HAS ... EXACTLY THE RESULT THE AIRLINES WANTED.

EACH PARTICIPANT IS ALSO OBLIGATED TO PAY ORBITZ THE GREATER OF ITS PREVAILING COMMISSION RATE OR A PER-TRANSACTION FEE NOT PUBLICLY DISCLOSED. THIS PROVISION

ASSURES ORBITZ OF HIGHER UNIT REVENUE THAN COMPETING WEBSITES AND COMPETING TRAVEL AGENCIES OF THE MORE TRADITIONAL KIND. ORBITZ ADMITS THIS IN ITS RECENT PUBLIC OFFERING REGISTRATION STATEMENT. THESE GUARANTEED FEES REPRESENTED 29% OF ORBITZ NET REVENUE IN THE Q1-2002.

THE RETURN FOR THE PARTICIPATING AIRLINES' COMMITMENTS IS A PARTIAL GDS FEE REBATE. THE REGISTRATION STATEMENT SHOWS THAT SINCE INCEPTION THE FOUNDING AIRLINES INVESTED MORE THAN \$200 MILLION IN ORBITZ, WHICH LOST \$153 MILLION OF THAT INVESTMENT, WHILE RETURNING TO THE FOUNDERS A MERE \$6 MILLION IN GDS BOOKING FEES ON SIX MILLION TRAVEL TRANSACTIONS. THE ORBITZ PLAN IS NOT THE STUFF FROM WHICH SIGNIFICANT CONSUMER PRICE REDUCTIONS CAN BE EXPECTED, EVEN IF THE AIRLINES, IMPROBABLY, PASSED ON THE COST SAVINGS.

THE PUBLIC OFFERING REGISTRATION STATEMENT MAKES VERY CLEAR THAT THE FOUNDING AIRLINES HAVE AND WILL CONTINUE INDEFINITELY TO CONTROL COMPLETELY THE ENTIRE ORBITZ BUSINESS ENTERPRISE. AN INTERESTING AND RECENT EXAMPLE OF THIS IS THE FARE SALE ANNOUNCED ON ORBITZ LAST WEEK. THE FIVE FOUNDERS USED THE ORBITZ SITE TO SIMULTANEOUSLY ANNOUNCE A SALE ON ALMOST IDENTICAL TERMS. THOSE PRICES ARE NOT OFFERED TO TRAVEL AGENTS THROUGH THEIR CRS SYSTEMS.

ORBITZ WILL LIKELY LIMIT THE COMPETITIVE FREEDOM OF THE AIRLINES IN OTHER WAYS TOO. THE AIRLINES HAVE COLLECTIVELY DECIDED THAT ORBITZ AND ITS PARTICULAR SOFTWARE PACKAGE ARE THE INNOVATION TO WHICH THEY ARE COMMITTED. ALLOWING THE VAST BULK OF THE AIRLINE INDUSTRY

TO COALESCE INTO THIS ONE RETAILING VENTURE IS LIKELY TO CREATE AN ENORMOUS OBSTACLE TO FUTURE INNOVATORS SEEKING TO ENTER THE RETAILING MARKET.

WE SHOULD BE EXTREMELY SUSPICIOUS OF ANY ARRANGEMENT THAT BRINGS VIRTUALLY THE ENTIRETY OF AN INDUSTRY INTO ONE SETTING THAT PROVIDES A SCREEN FOR COLLABORATION AND EXCHANGES OF COMPETITIVELY SENSITIVE INFORMATION ON A BROAD RANGE OF BUSINESS ISSUES. THE ORBITZ BUSINESS WILL, AT A MINIMUM, BRING TOGETHER IN THE ORBITZ BOARD ROOM HIGH LEVEL REPRESENTATIVES OF THE FOUNDING AIRLINES TO CARRY OUT THEIR LEGAL OBLIGATIONS TO MANAGE THE BUSINESS OF THE COMPANY -- THE RETAIL DISTRIBUTION OF TRANSPORTATION SERVICES. THE ORBITZ BOARD ROOM WILL THUS BECOME A LEGITIMIZING DEVICE FOR AIRLINE COLLABORATION ON ALL MANNER OF ISSUES INVOLVING THE COMPETITION BETWEEN ORBITZ, THE AIRLINES AND OTHER RETAILERS, BOTH ON AND OFF THE INTERNET.

THE ORBITZ CONCEPT ALSO REMOVES THE COMPANY FROM RISKS ATTENDANT TO PARTICIPATION IN THE BUSINESS OF RETAIL TRAVEL DISTRIBUTION, RISKS THAT ALL ITS COMPETITORS FACE AND THAT ARE IN MANY MAJOR CASES CONTROLLED BY ORBITZ' OWNERS. THE FOUNDING AIRLINES KNOW THAT, AT LEAST AMONG THEMSELVES, THEIR CHOSEN INSTRUMENT WILL ALWAYS GET ANYTHING THEY, OR ANY OF THEM, MIGHT BE ASKED TO GIVE SOMEONE ELSE.

THE MOST FAVORED COMPETITOR CLAUSES ALSO INSULATE ORBITZ FROM THE UNCERTAINTY THAT THE REVENUE STREAM FROM PARTICIPATING AIRLINES WILL BE CUT OFF. THAT UNCERTAINTY FACES EVERY OTHER RETAILER IN THE BUSINESS.

WHEN NORTHWEST AIRLINES ANNOUNCED IT WAS ELIMINATING COMMISSIONS TO ONLINE RETAILERS, THE TRANSACTION FEE FLOOR IN THE ORBITZ DEAL ASSURED ORBITZ OF A CONTINUING REVENUE STREAM EVEN AS ONE OF ITS OWNERS CUT OFF THE REVENUE STREAM TO COMPETITORS.

THE AIRLINES AND ORBITZ HAVE ARGUED THAT TRAVEL AGENCIES ARE FREE TO SELL INTERNET-ONLY FARES BY FINDING THEM FOR CONSUMERS AND ADDING A SERVICE CHARGE TO REFLECT THE VALUE OF THE SERVICE PROVIDED TO THE CONSUMER. BUT FOR TWO DECADES THOSE SAME AIRLINES ENCOURAGED, INDEED DEMANDED, THAT TRAVEL AGENCIES RELY UPON THE GDS SYSTEMS THAT THEY DEVELOPED, OWNED AND IN MANY KEY RESPECTS MANAGED. THOSE GDS'S MOSTLY NOW RECOGNIZE THEIR OWN DEPENDENCY UPON THE SURVIVAL OF A LARGE TRAVEL AGENCY RETAIL DISTRIBUTION SYSTEM, THE FACT REMAINS THAT FOR MOST AGENTS, MOST OF THE TIME: (1) THERE IS NO EFFECTIVE PASSENGER RECORD MANAGEMENT SYSTEM THAT EQUALS THE GDS SYSTEMS, AND (2) INTERNET BOOKINGS DO NOT COUNT TOWARD GDS SEGMENT BOOKING THRESHOLDS, THEREBY PUNISHING THE AGENCY FOR EVERY ONLINE BOOKING IT MAKES.

THE REALITY IS THAT, DUE IN MAJOR PART TO AIRLINE ACTIONS OVER THE YEARS, TRAVEL AGENCIES STILL MUST RELY UPON CRS FOR INFORMATION ABOUT AIR TRANSPORTATION SERVICES AND FARES AND FOR MAKING AND EXECUTING BOOKINGS FOR THE VAST MAJORITY OF INFORMATION SOUGHT AND AS TO THE VAST MAJORITY OF BOOKINGS MADE AND EXECUTED. USING INTERNET BOOKING SERVICES MEANS THAT THE AGENT MUST MASQUERADE AS THE CLIENT AND THEN ALL COMMUNICATIONS GO DIRECTLY TO THE CLIENT, DEFEATING THE AGENCY'S ROLE AS THE MANAGER OF THE TRANSACTION IT SOLD

AND BOOKED FOR THE CLIENT. SCHEDULE CHANGES, FOR EXAMPLE, WOULD NOT BE NOTICED TO THE AGENCY BUT TO THE CLIENT DIRECTLY.

WE BELIEVE IT IS NOW CLEAR THAT THE AIRLINES' LONG-RUN GOAL IS THE EFFECTIVE DISINTERMEDIATION OF INDEPENDENT TRAVEL AGENCIES AS AN EFFECTIVE NATIONAL ECONOMIC FORCE, OFFLINE AND ONLINE, REPLACING THEM WITH INSTRUMENTALITIES, SUCH AS ORBITZ, THAT ARE COLLECTIVELY CONTROLLED BY THE AIRLINES. IF THE AIRLINES SUCCEED AT THEIR LONG-RUN GOAL, CONSUMERS WILL HAVE LESS ACCESS TO OPTIMIZED COMPARATIVE PRICE AND SERVICE INFORMATION FOR AIR TRAVEL AND WILL PAY HIGHER THAN NECESSARY PRICES.

IF THE AIRLINES LONG-RUN STRATEGY SUCCEEDS, THE INDUSTRY WILL HAVE RETURNED TO THE STATE THAT EXISTED BEFORE 1984, WHEN AIRLINE MANIPULATION OF COMPUTER RESERVATIONS SYSTEMS IMPAIRED AND DISTORTED AIRLINE COMPETITION, FORCING THE GOVERNMENT TO REGULATE CRS PRACTICES. THE RESULT OF AIRLINE OWNERSHIP OF THESE COMPUTER RESERVATION SYSTEMS WAS IMMEDIATE AND CLEAR. THE OWNERS TURNED THESE ASSETS INTO A POWERFUL WEAPON AGAINST THEIR COMPETITORS, BIASING THE DISPLAYS TO FAVOR THE OWNERS AND THEIR PARTNERS AND ASSESSING DISCRIMINATORY FEES TO NON-PARTNERS FOR BOOKINGS MADE THROUGH THE SYSTEMS THEY OWNED. THE IMPACT OF THESE PRACTICES ON AIRLINE COMPETITION WAS SO SEVERE THAT THE CIVIL AERONAUTICS BOARD, EVEN WHILE STILL IMPLEMENTING THE AIRLINE DEREGULATION ACT OF 1978 AND PREPARING TO PASS ITS VESTIGIAL AUTHORITY TO THE DEPARTMENT OF TRANSPORTATION,

FOUND IT ESSENTIAL TO REGULATE THESE AND RELATED PRACTICES OF THE AIRLINE-OWNED CRS'S.

THE GLORY DAYS OF THE AIRLINES' MANIPULATION OF CRS ARE NOT FORGOTTEN. ORBITZ HAS NOW MADE AN ARRANGEMENT WHEREBY ITS SERVICES ARE BEING SOLD TO LARGE CORPORATE-FOCUSED TRAVEL AGENCIES. THERE ARE INDICATIONS THAT, IF IT CAN SECURE SUITABLE (TO IT AND ITS AIRLINE OWNERS) CHANGES IN THE CRS REGULATIONS, ORBITZ WILL OFFER ITS SERVICES TO OTHER TRAVEL AGENCIES AS WELL. AT THE SAME TIME IT IS SELLING ITS SERVICE TO REPLACE THE INTERNAL RESERVATIONS SYSTEMS OF SOME OF THE PRINCIPAL AIRLINE SUPPLIERS, INITIALLY AND MOST NOTABLY TWO OF THE OWNERS, AMERICAN AND NORTHWEST.

THUS, WE ARE ON THE VERGE OF THE FINAL ROUND, IN WHICH A JOINT AIRLINE-OWNED AND TIGHTLY CONTROLLED INSTRUMENTALITY IS POSITIONING ITSELF TO COMPLETELY DOMINATE THE RETAILING OF AIR TRANSPORTATION PRODUCED BY ITS OWNERS AND THEIR PARTNERS. IF NOT CONTAINED, THEIR PLAN, BASED UPON JOINT OWNERSHIP AND JOINT EXECUTION, WILL UNDERMINE THE COMPETITIVE POSITION OF THE MAJOR ONLINE TRAVEL AGENCIES, DETER NEW PLAYERS FROM ENTERING THE MARKET, AND DEVASTATE WHAT REMAINS OF THE TRADITIONAL TRAVEL AGENCY DISTRIBUTION SYSTEM. THAT SYSTEM CONTINUES TO BE THE PRIMARY MEANS BY WHICH MOST CONSUMERS, MOST OF THE TIME, BUY THEIR AIR TRAVEL.

MAJOR CURTAILMENT OF THE CORE DISTRIBUTION SYSTEM WILL HARM NOT JUST CONSUMERS, MANY OF WHOM SIMPLY CANNOT ACCESS OR EFFECTIVELY USE THE INTERNET. THE CRUISE AND TOUR INDUSTRIES DEPEND ALMOST ENTIRELY UPON THE

AIRLINE-MANAGED (THROUGH ARC) TRAVEL AGENCY DISTRIBUTION SYSTEM TO SELL THEIR SERVICES TO THE PUBLIC.

MOREOVER, AS EXPLAINED IN DETAIL IN OUR FULL WRITTEN STATEMENT, TRAVEL AGENTS SERVE AT LEAST THREE CRUCIAL FUNCTIONS ESSENTIAL TO ASSURING THE COMPETITIVE ENVIRONMENT NECESSARY FOR THE PUBLIC TO BENEFIT FROM, RATHER THAN BE VICTIMIZED BY, AIRLINE DEREGULATION.

FIRST, THEY FACILITATE ENTRY, EXIT AND PRICE AND SERVICE COMPETITION AMONG EXISTING AND NEW ENTRANT AIRLINES. SECOND, TRAVEL AGENTS SERVE AS THE ONLY ONE-STOP, NEUTRAL SOURCE OF COMPREHENSIVE INFORMATION AND COUNSELING ABOUT AN INCREDIBLY COMPLEX, CONSTANTLY CHANGING ARRAY OF FARES AND SERVICES THAT CONFRONTS THE GENERAL PUBLIC. THIRD, THEY PROMOTE THE USE OF AIR TRANSPORTATION SERVICES, PROVIDING THE EXPANDING UNIVERSE OF CUSTOMERS NECESSARY TO SUPPORT A HEALTHY AIR TRANSPORTATION SYSTEM, BUT OF SPECIAL IMPORTANCE TO NEW AND POTENTIAL ENTRANTS.

THE VAST MAJORITY OF TRAVEL AGENCIES ARE INDEPENDENTLY-OWNED, SMALL BUSINESSES, WHICH, IN ADDITION TO THEIR OTHER ROLES, COMPETE WITH AIRLINES AND OTHER TRAVEL SUPPLIERS ENGAGED IN DIRECT SELLING. SINCE DEREGULATION OF THE U.S. AIRLINE INDUSTRY IN THE LATE 1970S, THE PUBLIC HAS HAD THE CHOICE OF BUYING DIRECTLY FROM SUPPLIERS SUCH AS AIRLINES AT NO ADDITIONAL COST AND OVERWHELMINGLY HAS CHOSEN TO DEAL WITH TRAVEL AGENCIES.

THE AIRLINES SOON CAME TO UNDERSTAND, HOWEVER, THAT CONSOLIDATION OF THE AIRLINE INDUSTRY, COMBINED WITH THE SUCCESS OF PASSENGER LOYALTY PROGRAMS, HAD GIVEN THEM

GENUINE MARKET POWER OVER TRAVEL AGENCIES. AND AN APPARENT ALTERNATIVE TO DISTRIBUTION THROUGH TRAVEL AGENCIES EMERGED -- THE INTERNET, BY WHICH THE AIRLINES BELIEVED THEY COULD CONTROL DIRECTLY THE INFORMATION PROVIDED TO THE PUBLIC WITHOUT MEDDLESOME INTERFERENCE BY TRAVEL AGENTS TELLING A SOMEWHAT DIFFERENT, AND UNBIASED, STORY.

BOTH ECONOMIC THEORY AND PRACTICE WITHIN THE AIR TRANSPORTATION INDUSTRY SUPPORT THE CONCLUSION THAT THE AVAILABILITY OF COMPARATIVE INFORMATION ABOUT AIR TRANSPORTATION SERVICES IS ESSENTIAL TO VIGOROUS COMPETITION AMONG THE AIRLINES AND NECESSARY TO THE MAINTENANCE OF AFFORDABLE FARES AND RESPONSIVE SERVICES THROUGHOUT THE COUNTRY. CONSUMERS MUST HAVE ACCESS TO TRAVEL AGENTS WHO PROVIDE UNBIASED CONSOLIDATED SCHEDULE AND FARE INFORMATION IF WE ARE TO PRESERVE COMPETITION IN THE AIRLINE INDUSTRY AND MAINTAIN A SYSTEM THAT PROVIDES THE PUBLIC WITH A BROAD RANGE OF OPTIONS, INCLUDING ACCESS TO SMALL AIRLINES AND START-UP CARRIERS. THOSE TRAVEL AGENCIES THAT SURVIVE ARE INEVITABLY BEING FORCED TO CHARGE HIGHER SERVICE FEES, PLACING TRAVEL AGENT SERVICES BEYOND THE MEANS OF MILLIONS OF CONSUMERS WHO NEED THEM MOST, AND WHO WILL HAVE NO CHOICE ULTIMATELY BUT TO DEAL DIRECTLY WITH MAJOR AIRLINES.

THIS PUTS THE CONSUMER RIGHT WHERE THE AIRLINES WANT HIM, BEREFT OF A NEUTRAL SOURCE OF COMPARATIVE INFORMATION AND EXPERTISE TO DEAL WITH A BEWILDERING ARRAY OF COMPLEX AIR FARES AND SERVICES. AS TRAVEL AGENTS ARE FORCED OUT AND AIRLINES SECURE MORE DIRECT CONSUMER

BUSINESS, CONSUMER ALTERNATIVES WILL CONTINUE TO DECREASE RESULTING IN SIGNIFICANTLY HIGHER CONSUMER TRAVEL COSTS.

CARRIER PRACTICES THAT EVEN MODESTLY REDUCE COMPETITION ACHIEVED THROUGH TRAVEL AGENCIES PRODUCE IMMEDIATE AND OUT-SIZED GAINS IN CARRIER REWARDS, NOT BECAUSE OF INCREASED EFFICIENCY BUT BY EXPLOITATION OF CONSUMERS' INABILITY TO OBTAIN THE LOWEST PRICE OR BEST VALUE WHEN DEALING DIRECTLY WITH THEM.

BY LOCK-STEP IMPOSITION OF CAPS AND CUTS ON COMMISSIONS PAID TO ON-LINE TRAVEL AGENCIES AND OTHER INDEPENDENT ON-LINE TICKETING SERVICES, EVENTUALLY RESULTING IN ZERO COMPENSATION, THE AIRLINES ARE ATTACKING IN ITS INCIPIENCY AN EFFECTIVE COUNTER-MEASURE AVAILABLE TO AGENCIES TO OFFSET REDUCTIONS IN COMMISSIONS ON TRADITIONAL SALES: UNFETTERED ACCESS TO CONSUMERS THROUGH HIGH-VOLUME, LOW-COST INTERNET MARKETING SYSTEMS.

SMALL DOMESTIC AIRLINES, MANY INTERNATIONAL AIRLINES, AND START-UP AIRLINES WHO DEPEND UPON THE TRAVEL AGENCY DISTRIBUTION SYSTEM WILL BE ADVERSELY IMPACTED IF NOT ELIMINATED. THERE IS NO ALTERNATE DISTRIBUTION SYSTEM AVAILABLE TO THESE TYPES OF AIRLINES. INDEED, FOR AT LEAST THE SECOND TIME SINCE AIRLINES WERE DEREGULATED, THE SO-CALLED "NEW ENTRANT" AIRLINE GROUP, WHICH TYPICALLY OPERATES ON A NO-FRILLS, LOW-COST, AND THUS LOW FARE, ECONOMIC MODEL, IS FINDING IT DIFFICULT, IF NOT IMPOSSIBLE TO COMPETE WITH MAJOR ESTABLISHED AIRLINES.

A COMPETITIVE MARKET FOR TRAVEL SERVICES, I.E., ONE IN WHICH CONSUMERS ANYWHERE IN THE U.S. CAN READILY TURN TO INDEPENDENT TRAVEL AGENTS TO REDUCE SEARCH COSTS AND AVOID BUYING ERRORS, MAKES IT POSSIBLE FOR THESE NEW CARRIERS TO ENTER THE MARKET AND FOR SMALL CARRIERS TO EXPAND WITHOUT BEARING THE FULL COSTS OF SECOND-STAGE ENTRY (DEVELOPING THEIR OWN DISTRIBUTION NETWORK).

TRAVEL AGENCIES PROVIDE A CRUCIAL COMPETITIVE CHECK UPON AN INDIVIDUAL CARRIER'S ABILITY TO EXPLOIT CONSUMERS' LACK OF INFORMATION TO OBTAIN TICKET PRICES THAT ARE EFFECTIVELY HIGHER THAN COMPETITIVE PRICES. THIS PROBLEM IS ESPECIALLY ACUTE IN LOCAL HUB MARKETS, WHERE MAJOR U.S. CARRIERS CAN AND DO EXTRACT FARES SUBSTANTIALLY HIGHER — UPWARDS OF 40 PERCENT — THAN FARES FOR COMPARABLE SERVICE AT NON-HUB MARKETS. IT IS THEREFORE NOT SURPRISING THAT THESE SAME DOMINANT CARRIERS ARE THE ONES THAT HAVE BEEN THE MOST ACTIVE IN IMPOSING RESTRAINTS ON TRAVEL AGENCIES' ABILITY AND TO PROTECT CONSUMERS.

MAJOR AIRLINES HAVE GENERALLY MISREPRESENTED THE REASON FOR AGENCY COMMISSION CUTS, CITING A NEED TO REDUCE EXPENSES AND PASS SAVINGS ON TO CONSUMERS. THERE IS NO EVIDENCE THAT A SINGLE PENNY OF THE ALLEGED COST SAVINGS HAS BEEN PASSED ON TO CONSUMERS THROUGH BETTER SERVICE OR LOWER TICKET PRICES. MORE FUNDAMENTALLY, MR. CHAIRMAN AND MEMBERS OF THIS COMMISSION, AND IN CONCLUSION, WE MUST NOT BE HYPNOTIZED BY THE SHORT-TERM CLAIMS OF PRICE REDUCTIONS, REAL OR IMAGINARY, IN ASSESSING THE EFFECTS OF AIRLINE MARKETING PRACTICES WE HAVE DISCUSSED. THE AIRLINES' SIREN SONG IS LIKE THAT OF THE PIED

PIPER. WHEN THE AGENTS ARE GONE, AND THE AIRLINES DOMINATE THE INFORMATION FLOW, THE DISCOUNTS WILL BE NOWHERE TO BE FOUND.

THE QUESTION THEN IS WHETHER THE AIRLINES'S COMMERCIAL INTERESTS OR THE PUBLIC'S INTEREST WILL DOMINATE THE AIR TRANSPORTATION SYSTEM IN THE YEARS AHEAD. WHEN THE RECORD IS NEARING COMPLETION IN THIS COMMISSION'S HEARING PROCESS, ASTA WILL SUBMIT DETAILED RECOMMENDATIONS TO ADDRESS THE CORE ISSUES THAT MUST BE COVERED BY YOUR REPORT TO CONGRESS. UNTIL THEN, WE THANK YOU FOR YOUR ATTENTION.