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.

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Presented by:

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The American Society of Travel Agents, Inc. (AASTA@), is pleased to be the lead-off witness in the investigation to be conducted by this Commission. This is a unique opportunity to present in one place a complete picture of the trends we believe threaten the access of consumers to adequate comparative information about travel options.

Who Is ASTA?

ASTA was established in 1931 and is today the leading professional travel agent trade organization in the world. Its travel agency members account for about half of the 27,000 staffed travel agency locations serving the public throughout the United States. ASTA's corporate purposes specifically include promoting and representing the views and interests of travel agents to all levels of government and industry, promoting professional and ethical conduct in the travel agency industry worldwide, and promoting consumer protection for the traveling public.

ASTA has provided testimony before numerous federal and state legislative committees and fact finding bodies and has appeared in many and varied legal proceedings over the years. We regularly interact with various governmental and quasi-governmental bodies, including the Federal Trade Commission, state and local consumer protection agencies and better business bureaus, to name just a few. ASTA is widely recognized as responsibly representing the interests of its members and the travel agency industry. All of ASTA=s travel agency members are Aticket agents@ within the meaning of the Federal Aviation Act, 49 USC 40102(a)(40). ASTA includes

in its membership thousands of travel service providers who, though they have no vote, believe that a close relationship with ASTA and travel agents is important to them and their customers.

Summary and Framing of the Issues

The statute that created this Commission calls for an evaluation of the financial condition of travel agencies, especially small agencies. We have submitted separately a set of eleven charts and a spreadsheet from which part of that evaluation can be made. We have also asked the Commission to secure from the Airlines Reporting Corporation (AARC@) even more detailed data that will further illuminate what is happening to the travel agency community.

The statute also 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. Our testimony sets out a catalog of such policies and practices and presents a conceptual framework to explain the long term goal, and the long term consequences, of those actions.

To summarize, and based on the available evidence, ASTA believes the following to be true with respect to the airlines= policies and practices toward travel agencies:

! Airlines general have and frequently exercise market power against travel agents

One major proof of that is that airlines have been able to drive agency compensation below the level that a truly competitive market would provide

Air travel booking and ticketing services performed by travel agencies do not have zero value to the airlines, but they are able to enforce zero commission policies for such services

! 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

! Between inducements like bonus frequent-flyer miles, on the one hand, and price differentials between Internet-only fares and prices for the same service available to agents through GDS=s that 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

While airlines have been driving commission rates to zero, forcing distribution costs directly onto consumers, much more has been happening to erode the competitive vitality of travel agencies.

! Airlines, through the Airlines Reporting Corporation, the Air Transport Association, GDS contracts and other practices have unnecessarily raised travel agents= costs, interfered with customer relationships and impaired agents= ability to adapt to Internet technologies for efficient use in their businesses

The end game has now 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

! 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

It is one of the ironies of the present situation of travel agencies that early attempts (in the late 1960's and early 1970's) to develop a joint industry data server were defeated in part because the Department of Justice was opposed to a centralized and jointly-owned system serving the entire industry. Airlines also quickly detected a vacuum that could be exploited. Because of the

need to automate the flight/fare search and the reservation-making process, the airlines commercialized their own systems, which they Aco-hosted@ or marketed through competing airlines with whom the owners struck partnership deals.

The result of airline ownership of these Computer Reservation Systems (ACRS@), now called Global Distribution Systems or GDS, 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, 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 regulations adopted by the CAB were to expire in 1990 unless renewed. The regulations effectively ended display bias and price discrimination. Nonetheless, in the scheduled review of the rules, the Department of Transportation found that the conditions leading to the original rules continued to exist and renewed the rules, with significant changes, effective in 1992. This set of regulations was to have a five year life, but for reasons still unclear, the DOT has been unable to produce a proposed rulemaking to formally start the reevaluation process. The industry has thus been left in a state of uncertainty about the future of the regulations as DOT extended the termination date of the rules five times.

While the government was failing to issue a proposal for the future, the Internet arrived as a major influence in the sale of travel services. Largely because the CRS rules permitted them, the CRS=s continued to impose long-term contracts on most travel agencies. Those contracts

contained productivity clauses that punished an agency that failed to meet specified booking thresholds, thus deterring most agencies from booking on the Internet even when doing so might earn it not only a commission but a service fee from the customer as well.

With display bias and price discrimination banned, the ownership of CRS became less attractive to many airlines and they gradually divested many of their ownership interests. It is a mistake, however, to believe that CRS=s are not still owned by or otherwise connected to airlines. Worldspan is entirely owned by three airlines. Foreign airlines still hold a 60 percent interest in Amadeus. And Sabre has marketing relationships with American Airlines which owns a piece of Worldspan.

The airline relationship with Worldspan proved prescient, since it became the booking engine behind the airline joint venture Web site known as Orbitz. While apparently unable to find a way to get lower booking fees from Worldspan despite their complete ownership of its stock, Delta, Northwest and American (via its acquisition of TWA) managed to acquire two new partners, Continental and United, and secure a rebate from their wholly owned GDS, not to themselves, but to the intermediary Orbitz. Along the way they have accumulated, through Orbitz, a total of more than 38 airline partners, all of whom are participating in varying degrees in the arrangement to favor Orbitz with low fares that they withhold from Orbitz= competitors.

The glory days of the airlines= manipulation of CRS are not forgotten, however. Orbitz has now made an arrangement whereby its services are being sold to large corporate-focused travel agencies, and 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.[1]

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. All they really required is favorable changes to the CRS regulations and continued deference from the Department of Justice. 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.

Of course, one can theorize easily enough that consumers should pay directly for the services they get. One can argue that if the other industry sectors need travel agencies for distribution, they should pay for them. But it is not that simple, and one reason it is not is that this kind of wholesale reshaping is being forced on all sectors by joint action of the airlines. That

[1] Orbitz, Inc. S-1 Registration Statement, filed with Securities and Exchange Commission, May 20, 2002, at 30.

is the extraordinary aspect of all of these developments. And is that joint action that threatens to totally disrupt commercial relationships throughout the travel industry and shift huge costs onto consumers. If consumers are unwilling or unable to bear those costs, the resulting collapse of demand will be catastrophic for the travel industry and for the economy.

Such an outcome will not in any sense be a competitive market outcome. It will be a product of allowing the airlines to do collectively what which national transportation policy and, in our view, federal law, contemplates would be done, if at all, separately.

We turn now to consideration of the role that travel agents play in assuring a competitive airline marketplace that benefits consumers with not only competitively determined fares and services, but access to essential comparative information about choices..

The Role of Travel Agents in the Competitive Process

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. Agents provide every carrier, in every market, an instant professional distribution system ready and able to inform the public of service and price options and to sell all of the inventory available at any moment, with no additional investment required by the 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.

Travel agents quote schedules and fares, and provide ticketing services, to consumers on major U.S. airlines, small U.S. airlines, large and small international airlines, and start-up airlines. Travel agents are the only efficient, independent and comprehensive neutral sources of information for airline travel options. Travel agency sales of air travel alone exceeded $76 billion in the last normal year (i.e., before 2001).

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 vast majority of consumers prefer dealing with travel agencies rather than airlines when purchasing air transportation because agencies deliver far more value, convenience and services. Among these services is collecting and distributing comparative information and advice about the price and quality of airline offerings, a function that no single airline can or wants to perform. In addition, compared to direct-dealing with airlines, consumers' transaction costs are often lower through travel agencies, especially when many travel arrangements are joint purchases of the products of several travel suppliers, air transportation and hotel/rental car, for example.

During the early years of deregulation these functions of the professional full-service travel agency served the needs of the airlines and consumers very well. Once the airlines= ability to fix commissions by agreement was ended by the Civil Aeronautics Board, competitive forces led to the expected and inevitable rise in agency compensation. Commission leveled off at 10 percent of the fare sold, as a Abase commission@ for all transactions rates (not including Abonus@ or Aincentive@ payments called ›overrides=) .

Travel agencies made rapid competitive maneuvering possible in an environment where the race went to the swiftest. As the airlines adapted to the new competitive marketplace, they earned considerable profits during the 1980's. Deregulation thus produced benefits for the major airlines as well as the traveling public.

Travel agencies also benefitted. The public liked what travel agencies did for them, and they flocked to agencies for help with the morass of fares and schedule changes that deregulation produced as the necessary corollary to a free market. The market share of travel agencies for air transportation rose from a pre-deregulation level in the low 40 percent range to about 80 percent for domestic sales and over 90 percent for international business.

Travel agencies continued to do well even when the fortunes of the airlines turned down in the early 1990's.[2] The airlines lost billions a year while agency sales continued to rise, save only for the Gulf War year of 1991.

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[2] The agencies= share of airline sales rose from 55 percent in 1977 to 81 percent in 1995. P. Ruden, Competition in the Distribution of Travel Services 5 (ASTA 1997).

More recently, with the consolidation of the industry into a handful of giant carriers, and with various other types of alliances being almost routinely approved by the Department of Transportation,[3] the large airlines began to conclude that travel agents were an obstacle to their objectives. Agents made sure that consumers fully understood all of the fare and service options open to them, and their advice to consumers about fares, routing options, airport choice, day or time of day of travel and similar considerations were seen to interfere with the yield management techniques the airlines employed to assure the highest average price per seat that they could get from the market on each flight.

The airlines came to understand that consolidation of the airline industry, combined with the success of passenger loyalty programs, had given them genuine market power over travel agencies. And, for the first time, an apparent alternative to distribution through travel agencies had 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.

No less an authority than Dr. Alfred Kahn, the acknowledged Afather@ of airline deregulation, has observed, that deregulation can continue "only in the presence of effective competition as the protector of consumers.@ Both economic theory and practice within the air transportation industry support the conclusion that the availability of comparative information

[3] Some of these alliances have received antitrust immunity permitting airlines that would otherwise be competitors to freely collude with respect to routes, rates, services and commissions.

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. Since 1978, the stated policy of the United States, as manifested in the Federal Aviation Act of 1958, amended by the Airline Deregulation Act of 1978, has been to promote aggressively conditions of competition between and among the airlines.

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. As airlines have continued to reduce and then eliminated agency commissions, many agencies have been forced out of business. Those 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.

The carriers= anti-competitive strategy is likely designed to, and surely will, have the effect of, eroding the ability and incentives of consumers to seek and obtain the services of travel agencies, including on-line booking services and auction sites. The airlines know and are acting upon the fundamental truth that when consumers are deprived of comparative information in

making travel purchases, they almost always end up paying more C not because fares rise in absolute terms but rather because consumers are unaware of lower fares and are therefore not able to claim them.

Moreover, market imperfections, including consumers= notorious lack of information about carriers= complex, ever-changing and often poorly visible price and service offerings, enable carriers with market power over particular routes and facilities to discriminate against captive consumers. By limiting access to travel agencies, individual airlines can and do exercise and maintain market power in discrete geographic markets for air transportation, especially city-pairs involving a Ahub@ where the carrier is the dominant or monopoly provider.

Simply put, 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.

If the airlines can divert any meaningful amount of this business to themselves, through elimination or restriction of public access to travel agencies, the potential gain to them is enormous, not merely in commissions avoided, but in the higher overall prices that consumers will pay for air travel. Deprived of easy access to independent sources of comparative price and service information, consumers inevitably will end up paying more, on average, even if the airlines never raised another fare.

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 Anew 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. Legend failed and National, Midway and Sun Country have all passed through bankruptcy. Others have been acquired out of existence by larger carriers. Critics of our view may cite the recent public offering by Jet Blue and its rapid growth but that carrier is too new to assume it will be another Southwest 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). Thus, carrier practices that restrain the ability of agents to compete also tend to raise entry barriers in first-stage markets in which carriers compete among themselves. The Congress, as well as Federal agencies such as the Department of Justice and the Department of Transportation, have long been concerned about market conditions that impede entry and expansion of small, low-price carriers, and there is good reason to believe that elimination of travel agency competition will translate directly into less competition in the market for air transportation.

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 C upwards of 40 percent C 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. If the major airlines are successful in destroying most or all of the smaller, new entrant airlines, competition in airline pricing and schedules will diminish even further.

Moreover, 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.

Disintermediation Through Non-compensatory Commission Policies

Armed with motive and opportunity, the airlines are now embarked on a campaign to eliminate or at the least severely impair the public=s access to travel agents. That course of conduct has substantially reduced, and now threatens to eliminate, competition in the market for travel services and to injure consumer welfare.

The first action in the airlines= campaign began in 1995, when the major airlines, with the exception of Southwest Airlines, capped travel agency domestic commissions at $50 per round-trip ticket. This was followed in September 1997, with across-the-board reductions in the domestic base commission rate from 10 percent to 8 percent, retaining the caps on maximum

commissions that could be earned. In 1998, international fares were subjected to caps. In dollar terms, the total compensation reduction to agents from these actions was more than 30%.

But it did not end there. In October 1999 the base commission rate was cut to 5 percent and in August 2001 the cap was reduced from $50 to $20 per roundtip ticket. The final blow came just six months later, only five months after the terrorist attacks of September 11, 2001, had devastated the entire travel industry including travel agents. On March 14, 2002, the major airlines started, and quickly finished, the final round to reduce base commissions to zero.[4]

This Arevenue squeeze@ made entire segments of airline ticketing activity non-remunerative for agents. It has been the major factor in the exit of 17 percent of independent U.S. travel agency locations and 30 percent of agency firms since 1994. as well as in a shifting of resources by many of the remaining agencies to non-air sales. The impact on travel agencies is well-documented in ASTA Charts 1-11, submitted separately.

Disintermediation Through Cost Escalation

The revenue squeeze described above is only part of the story. The respondents are also parties to other actions, some taken individually and others taken collectively through the Airlines Reporting Corporation and/or the International Air Transport Association, that are intended to and have the effect of raising travel agent costs, impairing travel agency efficiency, and interfering

[4] ARC promptly concluded that such commissions as might be reported after March, 2002, were so small as to be no longer Astatistically valid,@ and it therefore decided to cease publishing the information. ARC Press Release accompanying ARC Sales and Document Statistics, April, 2002.

with travel agencies' client relationships. These same practices are intended to and, if allowed to continue, will have the effect of impairing consumer access to travel agencies and travel agencies' access to consumers.

The practices referred to consist at least of the following:

1. *Imposition of unnecessary and unwanted training requirements.*

The Airlines Reporting Corporation (ARC), as of July 1, 1999, requires passage of a Certified ARC Specialist examination for all new agency locations and in all cases of change of ownership of 30 percent or more of voting shares, regardless of prior experience in the industry. ARC is floating the idea of a CAS II which would replace the personnel standards for the agency manager qualifier. Currently the manager qualifier must have two years experience in a company selling general travel services to the public. ARC is proposing that a separate CAS test, focused on management related questions, be developed as "an option" to the current standards.

The cost of CAS training ranges from $345 for the Internet-based version to $395 for a video. Multi-day classroom training costs from $275 to $345. The test fee itself varies between $145 and $175. With travel costs and lost productive time considered, the total cost of being CAS tested may easily exceed $1,000 per applicant.

The ticketing qualifier can be the owner/manager, but it can also be anyone in the office. Since the CAS accreditation is bestowed on the individual, but required of the agency entity, whenever the CAS qualifier leaves the agency, the agency is again forced to endure the costs and hassles of either recruiting a CAS qualified agent or training and testing yet another employee (another financial burden). Once the CAS qualifier leaves the agency, he is required by ARC to notify ARC within 45 days. The agency also must notify ARC within 45 day of any changes in the employment of the CAS qualifier.

The Agent Reporting Agreement (ARA) does not provide a CAS agency any protection or grace period once the registered CAS qualifier leaves. Therefore, once the CAS leaves, the agency is in immediate breach of the ARA.

2. *Unnecessary Ticket Security Requirements*.

In 1998 ARC imposed a new rule forcing many travel agents to acquire a locking safe for accountable documents at a cost of up to $1,000. This occurred at a time when travel agent use of paper ticket stock had declined dramatically. As of August, 1999, over 43 percent of all travel agent air transactions involved electronic tickets (essentially the issuance of a receipt, the loss of which creates no liability for the airline or the agent). **During the last week of July 2001, a record 61.2% of total travel agent volume reported to ARC were electronic tickets.** 3. *Resistance to Efficient GDS Displays on Code Shared Flights.*

The airlines have resisted agent-requested changes to the code-share regulations to prevent the clogging of screen displays with multiple listings of what are in truth a single flight. ASTA requested that this practice be stopped several years ago. The airlines resisted and DOT, in its latest code-share action, which imposed additional disclosure obligations on travel agents, said that the issue of multiple displays was under consideration in another rule-making and would be considered there.[5]

4. *Passive Segments*

[5] Final Rule in Dockets OST-95-179 & OST-95-623, 64 Fed. Reg. 12844.

Many airlines today pay no commissions for tickets issued using passive segments and even charge back to the travel agent the fees assessed by GDS-s, owned wholly or partly by airlines, for such segments. Some of the GDS-s, owned wholly or partly by the airlines, have stopped offering productivity credit for unticketed passive segments, making it even more difficult for travel agents to achieve the productivity quotas the GDS-s require in their contracts with agent subscribers.

5. *Interference with Travel Agent Achievement of GDS Productivity Quotas.*

GDS subscriber contracts with travel agencies usually contain segment booking thresholds. The failure to achieve these levels of segment bookings results in serious economic penalties. Airline owned GDS-s have enforced these penalties while the airline owners of those same GDS-s continue reducing agent income and income-producing opportunities and thereby impair agents- ability to meet the contractual thresholds.

6. *Refusal to Provide Settlement Efficiencies for Travel Agent Service Fees.*

When Delta Airlines declared open season on travel agents in February, 1995 with the first commission caps, it made a prescient statement. Delta said it expected that travel agents would make up part of the loss in commissions by charging their clients for the services they provide. In fact, travel agents have attempted to do just that, reluctantly but unavoidably. The fee average recently has been about $15 per transaction, a very small amount relative to the price of the average ticket. But even agencies charging rates as high as $50 for some tickets cannot begin to compensate for the total loss of commission from the major carriers.

Many travel agents would prefer to settle these fees with all of the efficiency benefits of the ARC Area Settlement Plan. The most efficient way to do this is to have a place on the ticket

stock into which the agent=s fee can be inserted, permitting the data recordation process at the ARC-ASP settlement banks to extract the fee data at the same time and in the same manner as the other ticket data is recorded and accounted for.

ASTA=s efforts to get such a box on the ticket stock following the caps in 1995 were rebuffed. One airline informed us that there was no point to going through a long process to find and plan space on the ticket because the carrier would never agree to permit such a box. Since IATA would have to concur in changes to the ticket stock, and IATA decision rules require unanimity, travel agents were denied this efficiency tool even as the airlines escalated their disintermediation campaign through additional commission reductions leading to zero commissions in 2002.

7. *Discriminatory Ticketing Policies.*

Major airlines refuse to permit agents to offer certain benefits and concessions to consumers, such as the refund of so-called Anon-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 Aback-to-back@[6] and Ahidden city@[7] tickets which

[6] ABack-to-back@ tickets, are a pair of tickets issued to permit the traveler to avoid the Saturday night layover normally required to get a discounted ticket. Airlines prohibit agents

are prohibited to travel agents, with severe penalties when detected, but are routinely issued by the airlines themselves.

Most airlines now also provide fares that are available only by dealing directly with them through their Internet sites. These special fares are often accompanied by other inducements, such as bonus frequent-flyer miles, to lure consumers to buy direct, while the airlines imposed non-compensatory commission caps on agent sales of Internet-originated transactions. These discriminations interfere with the relationship between the travel agency and its clients, by, among other things, impairing the agency-s credibility in the eyes of the customer.

In addition, major airlines, while acknowledging passenger contracts for passage legally exist only between passengers and airlines, nonetheless reserve the right to penalize travel agents financially 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.

Airlines have also adopted an identical condition upon redemption of frequent flyer awards that arbitrarily forces consumers to by-pass agencies. These awards are mostly earned at

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from issuing these tickets, and normally demand the agent pay the full coach fare as the penalty for so doing.

[7] AHidden city@ tickets are transactions in which the passenger buys a ticket A-B-C, which is cheaper than a non-stop A-B ticket, then gets off the plane at B.

employer expense but are commonly used by individual travelers for leisure trips, many of which would have been arranged through travel agencies. The airlines divert substantial revenue from agencies by requiring awards to be redeemed directly from airlines.

In perhaps the most bizarre of these practices, and the one known instance in which the airlines did not essentially copy each other=s policies, Delta Air Lines, in early 1999, announced a $1 surcharge for each published fare component on all U.S. domestic fares. As a result, most round-trip tickets, which are constructed using two fare components, would include a $2 surcharge. Additional surcharges would apply on tickets constructed using multiple fare components. This surcharge, however, would not be applied to tickets issued via Delta=s SkyLinks Internet web site.

Delta sought to penalize all of its customers who wished to avail themselves of the opportunity to receive comparative information by consulting a travel agent. The avoidance of the $1 surcharge penalty by using the Delta web site was another form of Afools gold@ placed in consumers= paths to lure them into remaining in the dark about fare alternatives that could potentially save them hundreds of dollars.

Delta cited increased computer reservation system booking fees as its justification for this punitive charge for using a travel agent. Since the airlines by and large own the CRS systems, they are both responsible for, and benefit directly from, the increased CRS booking fees of which Delta purported to complain. Fortunately, this particular piece of airline heavy-handedness was too much for the other carriers and the plan met a swift and well-deserved death.

8. *Misuse of Confidential Travel Agent Information.*

One of the most egregious of the airline practices in question, is the process whereby the airlines share competitively significant sales transaction data in violation of the confidentiality interests of the travel agents and other independent air travel distributors who generated the transactions. Confidential business information generated by travel agencies is routinely captured and shared by the airlines in a manner that would be blatantly unlawful absent regulations issued by the Department of Transportation (14 CFR Par 255). Those regulations require each computer reservations system (at least one of which, Worldspan, is undeniably controlled by three major airlines) to make available to all participating U.S. airlines all marketing, booking and sales data that it generates from its systems.

In addition, ARC sells to airlines the travel agency Atotal sales@ figure, information that would normally be confidential unless a business consented to its disclosure. Because airlines are major competitors of travel agencies, they should not have access to proprietary data of this kind without the consent of the agency that generated it.

9. *Joint Interference with Customer Service Abilities*

While most consumers today, and most travel agencies as a result, favor the use of so-called electronic tickets, there are still circumstances in which possession of a paper ticket is advantageous if indeed not critically important. One example is the case where a threatened labor disruption or weather situation may require a last-minute change of plans at the airport. Electronic tickets are not universally interchangeable between airlines and a consumer stuck at an airport with just an e-ticket may face extended waits in lines in order to change plans. In those cases a paper ticket can be readily accepted by any carrier. Today in most cases a travel agent,

having issued an e-ticket, can convert the ticket to a paper ticket when the circumstances make it in the client=s interest to do so.

In 2001, the Air Transport Association, without consulting ASTA or any other agency organization to our knowledge, adopted a resolution that prevented agencies from converting e-tickets to paper tickets. Whatever the thinking may have been about the impact on customers, there was, in ASTA=s view, no basis for airline collective action on this subject. The resolution was promptly rescinded in the face of ASTA=s objections. In ASTA=s view this incident, while ultimately contained, illustrates the propensity of the airline industry to act jointly whenever it can, not merely as a convenience, but to assure that no airline gets caught out with an unpopular policy.

10. *Abusive Treatment of Travel Agents*

When American Airlines reduced its base commission to zero, it decided that group travel contracts executed and deposited prior to its announcement, but as to which ticketing had not yet occurred, would receive no commission. Northwest Airlines took a somewhat different approach, but with the same practical effect: it stated it would protect the agent=s commission but only if ticketing occurred by a new date certain, a condition that did not exist when the group was booked and, in at least some cases, a condition that would be impossible to meet. These practices retroactively deny commission to agents who earned the compensation when they produced a client that was ready, willing and able to travel. We understand that other airlines are adopting the American approach.

In another egregious example, American Airlines has maintained a unique policy that requires refunds to be processed directly with it rather than through the regular weekly ARC reports that other

airlines permit. When the terrorist attacks on September 11, 2001, disrupted the national air transportation network, American announced in the Direct Reference section of the GDS-s that agents could refund or exchange tickets issued for travel from September 11 to September 25 in cases where American was canceling its flights, using the ARC reporting process.. On the afternoon of September 12, American, changed its policy by reducing the time covered to the period September 11 to September 18. The next day American made a third change, extending the waiver for exchanges back to September 25, but keeping the limit on refunds at September 18. While these exceptions were communicated in American-s DRS file, many agents also contacted American directly, as they do with all other carriers in similar situations, to seek their advice for the handling of refunds for tickets with dates <u>not covered</u> by the blanket exceptions noted above. In almost every case, the American representative recognized the canceled or significantly delayed schedule, and gave the travel agent a verbal authority to process the refund. Using American-s own 9/11-exception policy as a precedent, many travel agents interpreted American-s verbal authorization to refund the ticket as their authority to process the ticket through ARC. In some cases, the American Airlines agent gave the travel agent specific instruction to process the refunds through ARC. Agents relied upon these directions, as they are required by ARC rules to do.

In virtually every case, the customer was unquestionably entitled to a refund because of a significant schedule change or a canceled flight. American lost nothing as a result of agents sending the refunds through ARC. Nonetheless, hundreds, perhaps thousands, of travel agents who processed refunds through ARC, rather than mailing the tickets to American, were fined $200 per refund by American. In addition, American recalled the agent's commissions.

Since the customer received the refund that they were entitled to receive, and American lost nothing, the $200 fines do not correlate to any real damage to American. Many agents received multiple debit memos totaling thousands of dollars. Prior to March 18, 2002, a travel agent would needed to sell10 American Airlines' tickets at a price of at least $400 each (to earn the then maximum capped commission of $20) to recoup just one of American=s debit memos.

American=s Atoo 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 $5 billion dollar bailout accompanied by a $10 billion loan program that only one or two airlines have thus far even attempted to use. 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 pay for services performed. these $200 debit memo.

Disintermediation Through Denial of Access to Fares: The Internet & Orbitz

Orbitz, the joint airline website announced in 1999 and, after a little more than six months of operations, the third largest travel retailer on the Internet, is the airlines= chosen instrument for reshaping the air travel distribution market in an image that suits the collective aspirations of the five largest U.S. airlines: to dominate together the distribution of the air travel product in this country.

In practical effect, the United States airline industry has begun to operate as a single enterprise, of which the joint Web-site is just the most recent manifestation. The consequences of such behavior are not new or surprising:

A century-old principle of antitrust is that when the same company controls both content and the carriage of content, anticompetitive abuses arise. The gate keeper (such as a railroad) can overcharge users, keep out competitors, and frustrate technological advance. This led the government to insist that companies must choose between being common carriers or providers of content. You could be railroad or shipper that uses railroads, not both, and as railroad you had to treat shippers equally. You could control the TV network, but not the production companies. If you were the phone company, you had to connect all calls.

The Internet has different technologies, but similar economies principles. There is the same temptation to combine and dominate, less to achieve economies of scale than to achieve market power.... Far from being scrapped, antitrust policy needs to be brought into the Internet Age.[8]

[8] APirates, Snoops, Monopolists: Why the Net Needs Some Cops,@ Robert Kuttner, Business Week, February 21, 2000, at 24.

On November 9, 1999, four major airlines, United, Delta, Northwest and Continental, together representing more than 45 percent of the passengers carried in domestic air transportation (more than 11,482 daily flights), announced a Apartnership@ to operate a Amulti-airline travel portal@ that was self-proclaimed to Aoffer the most comprehensive selection of online airfares and other travel information available anywhere on the World Wide Web,@ a site Asuperior to all travel sites,@ a site with Athe best of everything.@[9] It didn=t take long for American Airlines to join the group, producing an aggregation of market power never before seen in the air transportation business.

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 despite the fact that those agencies are, in every other respect, the full and unqualified agents for these airlines for the retail sale of air transportation. The new joint site is not in lieu of the individual Web-sites provided by the participating carriers B those will continue to operate and will continue to offer Internet-only fares.[10] The initial joint announcement referred to Aunique travel packages@ that will be offered through Acombined product offerings of our [non-airline] partners.@ The current Orbitz Web-site makes clear that it

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[9] Joint Press Release of United Delta, Northwest and Continental, November 9, 1999.

[10] Id.

offers A**deals that are currently only available on the airlines' own Web sites.@**[11] **Orbitz claims that its internal arrangements leave airlines free to trade on the same terms with others is a sophistic mirage.**

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11 http://www.orbitz.com/App/about/about_partners.jsp?cache=1023054200138&requestId=86

Predictably, and in keeping with the airline industry=s history of advance announcements to their competitors of business intentions, additional airlines have joined the pack, yielding a total, to date, of 43 airlines.. The non-investing airlines are called ACharter Associates.@ The added participation of the new US airlines (only America West and Southwest, among the majors, are missing from the Orbitz table) brings the combined market share of the partners to at least 80 percent of domestic passenger traffic. The other participants include some smaller U.S. airlines plus Air Canada (the monopoly route carrier in Canada), Alitalia, KLM Royal Dutch Airlines and other major foreign carriers. Most of these carriers have marketing alliances and/or code-share agreements with the partners in the US carrier Web-site.[12]

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.

Both the Atraditional@ 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 avenue has become increasingly important to agents as airlines=denial of the lowest fares forces agents to buy them

[12] Those same airlines were parties to a proposal to assign common identifier numbers to corporate clients so that, among other things, airline alliances can Atrack corporate business across several airlines.@ See Application for Approval of Agreements by the International Air Transport Association, Docket OST-99-6694-1, filed December 21, 1999.

online for clients who want their help with this but who insist upon getting the absolutely lowest fare.

Clearly, the airlines would like customers to make their reservations directly on the carriers= own Web sites. Standing alone, that objective does not necessarily offend competition policy. But the airlines have gone well beyond merely luring consumers with Abetter deals.@ They have implemented commission policies and other restrictions with respect to Internet-based bookings by travel agencies that are designed to thwart travel agency use of the Internet to communicate and book travel. The more successful they are in this approach, the fewer practical options consumers will have for comparing prices and purchasing travel, leading to less competition in travel services and higher prices for consumers.

Orbitz has repeatedly said it will operate just like other travel agencies, but there is no reason to believe that claim. The Charter Associate Agreement expressly negates an agency relationship, creating the possibility that this new Atravel agent@ will, in addition to other airline favoritism, operate outside the regime of the Airlines Reporting Corporation that applies to all its competitors. In addition, as explained below, Orbitz has plans, only recently revealed, that indicate a role stretching far beyond anything that any travel agency ever conceived.

The Orbitz Business Plan

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 contemplated by the S-1 Registration, 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[13] provides that Orbitz will be granted Amost favored competitor@ status by every Charter Associate airline. Orbitz gets free fares, schedules and seat availability on the same basis as the airline provides them to its own or any alliance partner=s website. Moreover, if any of that data, plus any data and processing ability for frequent flyer miles and promotions, is provided to website that competes with Orbitz, the same must be provided to Orbitz on equivalent terms.

Each Charter Associate airline is also obligated to supply Orbitz with in-kind marketing support. Each carrier=s commitment is to be valued according to its share of sales on the Orbitz site, limited to some ceiling not publicly revealed. AIn-kind promotions@ includes two items of

[13] The description of the Orbitz business plan is derived from a draft copy of the Charter Associate Agreement (in wide circulation and to the writer=s knowledge never denied by Orbitz) combined with descriptions of the relationships set out in papers on Orbitz= own website. Those papers consist of: (1) Statement of Daniel M. Kasper, Sept. 22, 2000 (cited as AKasper@), (2) AThe Competitive Potential of the Orbitz Online Travel Agency,@ Oct. 2000, by Steven A. Morrison et. al, (cited as AMorrison@), and (3) Orbitz own website comments (cited by URL).

special interest: (1) providing Orbitz Acompetitive purchaser names,@ the names of passengers who booked travel through a competitor of Orbitz, and (2) Aexclusive promotions or fares available only on@ Orbitz.

The first provision means that a partner airline can fulfill its in-kind promotion obligations by giving Orbitz the names and contact information of passengers who booked that airline through a website that competes with Orbitz. (Parenthetically, it must be asked whether airlines doing this will disclose to prospective bookers on other websites that it may share this information or whether they will bury this practice in their privacy policies.)

Orbitz= own analysts acknowledge the latter provision is tiered to provide incentives for granting exclusivity.[14] The Department of Transportation has found that exclusive low fare access for Orbitz will likely result.[15] And it has. Orbitz= enormous advertising budget enables it to advertise pervasively that it has the lowest fares available anywhere.

The airline is also obligated to pay Orbitz the greater of its prevailing commission rate or a per-transaction fee not publicly disclosed. Now that the major airlines, including all of Orbitz founders, have eliminated base commissions to travel agents, this provision assures Orbitz of higher unit revenue than competing websites and competing travel agencies of the more traditional kind. The S-1 Registration explicitly acknowledges that such competition exists. It also describes the "minimum guaranteed transactions fees" as "important as it gives us a

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[14] Morrison at 9.

[15] Letter to Jeffrey G. Katz, Chairman of Orbitz, from U.S. Department of Transportation, April 13, 2001, at 5 (hereafter cited as DOT Orbitz Letter).

guaranteed transaction fee schedule in a time when travel suppliers are generally reducing or eliminating commissions."[16] These guaranteed fees represented 29% of Orbitz net revenue in the Q1-2002.

[16] Orbitz S-1 at 29-30.

The return for the Charter Associate airlines= commitments is a partial GDS fee rebate. The recently filed S-1 Registration Statement[17] 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.[18] The airlines= savings are dwarfed by the benefit that could be achieved by simply selling the fares on each airline=s own website rather than on Orbitz. 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 Orbitz Business Plan Limits Airline Freedom and Impairs the Competitive Process

The Most Favored Competitor clauses in the Orbitz operating agreement with the Charter Associate airlines unquestionably limit those 43 airlines= freedom to engage in certain competitive activity. Each airline must share with Orbitz any fares and frequent flyer promotions from its own website. It thus agrees in advance that it will not withhold lowest fares from Orbitz while it may withhold them from other retailers and is induced to withhold through the in-kind promotion arrangement.. DOT found that such withholding would likely arise from this scheme.[19] And it has.

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[17] Filed May 20, 2002, with the Securities and Exchange Commission.

[18] Orbitz S-1 at 30, 74.

[19] DOT Orbitz Letter at 7.

Since this scheme involves 43 holders of more than 80 percent of the market, even with a ceiling on the incentive, the potential for exclusive deals for Orbitz exceeds $70,000,000.

The Orbitz Most Favored Competitor clause represents an agreement by each carrier, through Orbitz, not to compete with Orbitz on price, or, put differently, an agreement to allocate a portion of the market (the low-fare-only consumers) to Orbitz rather than exploiting all of it themselves. Either way, it should be unlawful either as price fixing or as a horizontal market or customer allocation. See United States v. Columbia Pictures Indus., Inc. 507 F. Supp. 412 (S.D.N.Y. 1980).

Orbitz maintains that the partnership arrangements provide only for individual carrier action. But if the participating airlines assembled in a room to make the same deal in a multi-party contract, without an intermediary like Orbitz and without the facade of individual agreements, the illusion of individual action would be apparent. Orbitz' separate legal existence does not insulate Orbitz from the immediate control of the five investors or create an economic interest separate from theirs. Indeed, the S-1 Registration Statement makes very clear that the founding airlines have and will continue indefinitely to control completely the entire Orbitz business enterprise. It is unthinkable that the owners would allow Orbitz to depart from their interests as collectively understood and collectively dictated through their complete domination of the Orbitz board of directors.

In addition to the Most Favored Competitor clauses, the Orbitz business package interferes in more subtle, but no less disturbing, ways with the competitive process. It largely removes uncertainty about the intentions of the investors, and likely all the participating carriers, regarding the marketing of their lowest fares. Not only will it likely stabilize the channels through which

they sell, but the magnitude of the in-kind promotion commitments could easily deter Charter Associate carriers from independent initiatives that would enhance their own websites or partnerships with online or offline retailers competing with the Ainvestment@ they have made in Orbitz. The airlines are in effect saying: ALet=s get together on this and none of us need fear leap-frogging by the others.@

By limiting the incentive to independent decision making,[20] Orbitz represents an effort to tone down the potential threat of individual airline Internet initiatives that could produce unsettling innovative individual airline advantages over the others.

Orbitz will likely limit the competitive freedom of the airlines in other ways too. By jointly investing more than $200 million in this venture, the airlines have collectively decided that Orbitz and its particular software package are the innovation to which they are committed. Even if, hypothetically, it is accepted that the Orbitz technology is a great advance over existing technologies for searching and booking travel options, the one lesson we have surely learned from the Internet revolution is that today=s technology often quickly becomes tomorrow=s trash. Orbitz technology is unlikely to be the last word. 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. Competition policy should strongly disfavor

[20] See Antitrust Guidelines for Collaborations Among Competitors, Federal Trade Commission and U.S. Department of Justice, April, 2000, sec. 3.31(a), Marketing Collaborations (hereafter cited as Antitrust Guidelines).

virtually industry-wide arrangements that make it more difficult to enter and persist in the rapidly changing technology-dependent retail marketplace.

ASTA is aware, of course, of the recent emergence of firms offering travel agencies, generally the large corporate-market-focused agencies, software that purports to economically combine Internet-only fares with the regular GDS output. These emerging offers do not overcome the concern about the long-term joint lock-out of competitive initiative that the Orbitz scheme may inspire. None of these firms or their offers have had time to prove their viability or capacity to endure, let alone penetrate the market sufficiently deeply to offset the Orbitz advantage. Agencies offered these products still face the issues of interface with back-office accounting systems, Passenger Name Record management and GDS contract penalties discussed earlier.

Finally, 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, especially where such collaboration, outside that screen, would be forbidden. The Antitrust Guidelines, at Sec. 3.31(b), address this issue directly:

> A... the sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern .... the sharing of information on current operating and future business plans is more likely to raise concerns than the sharing of historical information.@

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 directors, however, representing collectively a huge majority of the domestic market, must approve Orbitz' plans and thereby place their corporate imprimaturs on those plans. The Orbitz directors include airline managers from the highest levels at the airlines, including one president and two chief financial officers.[21]

The Orbitz Business Plan Insulates Orbitz From Market Forces

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.

Under the Charter Associate regime, the parties have agreed to some of the terms whereby Orbitz gets access to deals with competing online retailers that are being considered by the carriers. This arrangement may well defeat competitors' efforts to make bilateral fare deals with Orbitz' participating airlines.[22] The legitimacy of exclusive fare deals depends upon bilateral negotiation in conditions of uncertainty about what others will do. Orbitz faces no such uncertainty and the airline participants don't either. They know that, at least among themselves (almost the entire market), their chosen instrument will always get anything they, or any of them, might be asked to give someone else.

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[21] Orbitz S-1 at 61-62.

[22] DOT Orbitz Letter at 3, quoting Orbitz.

The Most Favored Competitor clauses also insulate Orbitz from the uncertainty that the revenue stream from Charter Associate airlines will be cut off. That uncertainty faces every other retailer in the business. It creates a floor below which Orbitz= compensation from the participating airlines will not fall. By clear example, 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. Orbitz= public statements that the reduction and elimination of base commissions hurt it just like its competing travel agencies is the depth of sophistry.

The joint creation of a minimum price for a service is a classic form of price fixing. Absent an efficiency enhancing integration of assets that produces a new product that cannot exist absent the integration and the price setting, such actions are condemned *per se*. Broadcast Music, Inc. v. CBS, Inc., 441 U.S. 1 (1979). Such price fixing cannot be justified by Abusiness needs@ such as the airlines claim in this case (savings in GDS booking fees).

The Price in Lost Competition is Not Worth the Gains

The litany of consumer and other benefits claimed by Orbitz to result from its entry into the market have attracted some support in the popular press and have induced the Department of Transportation to withhold final judgment until Orbitz had begun operations. DOT is now under a congressional mandate to dig deeper and report to Congress on the actual operation of Orbitz. The Department of Justice is reported to have issued Civil Investigative Demands to Orbitz and many of the involved airlines.

It is not the job of the government or groups of competitors to say what is best for consumers. The government should assure that the conditions for competition are maintained and

let the market do the rest. We depend upon inter-company rivalry under conditions of uncertainty to achieve that end. That is one of the reasons we generally do not allow dominant firms to agree on market-sealing terms of dealing.

The theory of perfect competition suggests that the best results occur when everyone has perfect knowledge. While Internet-based communications may have enhanced our ability to exchange information swiftly and more ubiquitously, the travel market does not come close to achieving perfect information for all players. Millions of Americans have no effective access to the Internet and there is no cogent evidence to suggest that their changing economic or life circumstances will eliminate the Adigital divide@ for a very long time, if ever. In those circumstances the law and national economic policy should not and does not allow dominant firms to exchange real-time price and other competitively relevant data.

The moves of individual firms, forced to operate independently, assure openings remain for innovation by new players and as well as consumer-benefitting shifts of allegiance among existing players. By allowing groups of dominant competitors to determine what constitutes innovation, we actually deprive consumers of long run innovation and fluidity in the market. A giant like Orbitz, aligned with the dominant airlines, likely will deter others from entering the market. This is true even if, today, Orbitz will increase consumer convenience with one-stop shopping access to low fares.

The software on which Orbitz=superior searching claims are based has already been used by others[23] and is available for lease/purchase on the open market.[24] The searching technology

[23] See http://www.twcrossroads.com/news/newswrapper.asp?ArticleID=23994, describing adoption by TravelByUs.com.

of this software is, therefore, not uniquely available through Orbitz, and it cannot be said that the airlines' collaboration in Orbitz was essential to bring the innovation, if it is one, to market.

[24] See http://www.itasoftware.com

Similarly, numerous one-stop shopping options exist both online and offline in the travel marketplace. The Department of Transportation has warned Orbitz that it Acannot claim to be a one-stop shop for the lowest fares@ and Acannot hold itself out as the site that offers every airline=s lowest fares or as the only site that consumers need to visit.@[25] Competition, in short, has already broken out on the Internet and elsewhere, and this core claim of Orbitz, which it continues to make in substance despite DOT=s warnings, amounts to nothing.

Orbitz has argued that the continued availability of Adistressed inventory@ e-fares depends upon airlines not paying commissions, booking fees or ARC fees.[26] If true, this would only account for sales on airlines= own websites. Orbitz will be charging a commission, or a transaction fee if higher. And its bookings will, for the foreseeable future, entail booking fees, albeit at Areduced@ levels. In the wake of the zero commission regime, it is pretty clear that it is now cheaper to distribute through GDS-connected travel agencies than it is through Orbitz. Yet there is no move by the airlines to change the stranglehold that Orbitz has over access to the lowest fares.

More fundamentally, there has never been a demonstrated connection between the level of distressed e-fares and any of the cited distribution costs. E-fares often differ from Aregular@ published fares by amounts far greater than the sum of those costs. It is far more likely that e-fares are set at levels necessary to induce short-term, impulse buying by those few who happen to

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[25] DOT Orbitz Letter at 6.

[26] Kasper at 16, 21

find them, thereby undermining the market position of that airline=s agents, and have little or nothing to do with incremental distribution expenses.

Finally, aggregation of online fare specials is also already present on the Internet in other forms, as DOT recognized. Other innovators will likely appear, provided the market is not closed to them by a market-wide distribution cartel involving most of the productive capacity of the airline industry. Rather than being essential to retailing innovation, Orbitz represents more truly a threat to innovation.

Less Restrictive Alternatives to Orbitz Exist

The Antitrust Guidelines state, in Sec. 1.2, that the

> Acentral question [in rule of reason analysis] is whether the relevant agreement likely harms competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement.@

Orbitz is not necessary to achieve the much touted reduction in GDS booking fees that is, superficially, the major inducement for airline participation. Prior to the American acquisition of TWA, two Orbitz investors owned a combined 74 percent interest in Worldspan and, it would seem, could have caused Worldspan to reduce booking fees at any time. Of course, such a reduction could not, under DOT=s equal treatment regulations,[27] uniquely benefit the GDS=s owners. But had Worldspan reduced booking fees even roughly as much as the Orbitz rebate, other GDS=s would almost certainly have had to reduce fees as well. The impact, then, would have been market-wide, with all airlines benefitting in rough proportion to their segment counts.

[27] 14 CFR Part 255.

The Orbitz model, by contrast, appears to assume that other GDS-s will cut booking fees on a substantial segment of their business just to protect the two percent Orbitz claims it will get.[28]

Another possibility is that a single carrier could have funded an Orbitz-like entity, which would operate as an agent for all airlines on a website powered by the same software now licensed to Orbitz. This would have entailed a risk for the investing carrier, to be sure, but risk-taking in conditions of uncertainty is one of the hallmarks of competition. Instead, the airlines appear to have decided that there is a need for the Orbitz-like business plan but for only one. By establishing Orbitz, they likely have assured that there will never be another.

[28] See Kasper at 23.

There is also no apparent reason that all the publicly attractive benefits claimed for Orbitz (better searching, etc.) could not have been obtained through contracts not containing the Most Favored Competitor clauses. Thus, even if there is a cognizable integration of assets here, a conclusion we do not concede, the Most Favored Competitor clause fails the requirement of being Areasonably necessary@ to achieve the asserted benefits.[29]

If single-carrier risk-taking is too much to ask of the nation=s backbone transportation carriers, another possibility, less damaging to the competitive process than Orbitz, would be a multi-carrier website comprising a neutral fare posting system. This approach would have offered the same claimed attractions of more-or-less one-stop shopping to attract buyers, but would have left airlines free to decide, as market circumstances dictated in the future, how and with whom to place their fares. A volume-based rebate arrangement with the captive GDS should still have been possible in this scenario.

While there seems little likelihood that the airline industry would consider giving them up, it is also possible to imagine a business plan that does not include the in-kind promotional incentives to induce exclusive low fare access for Orbitz. Many other forms of commercial incentives allowing non-cash payoff of the in-kind promotion commitment are already included in the Charter Associate agreement. If the real goal were to bring a leap-frogging technological innovation to market under terms fair to all competitors and promotive of the competitive process, such an arrangement could be constructed on an economically rational basis without the many anticompetitive features of Orbitz.

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[29] Antitrust Guidelines, sec. 3.2, 3.36(b).

Fair Access to Fares

Orbitz aside, for the moment, ASTA appreciates the argument that airlines should have the freedom to select the channels for the various fares they sell. The problem with that argument is that this Afreedom@ is being exercised at the expense of a large number of very small businesses who have been used by those very same airlines for their own advantage and are now being summarily discarded in circumstances where airline conduct has severely limited their ability to adapt. The main case in point is the airline argument 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. They note the presence of new software providers with screen-scraping programs that can search multiple websites, consolidate the listings, make online bookings, and perform other needed tasks.

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. While those GDS=s mostly now recognize their own dependency upon the survival of a large travel agency retail distribution system, and have offered Internet interface options, small-agency Internet-based, no-minimum segment booking products and other similar technology processes, 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. Putting aside the unequaled scope of total information available through CRS, 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.

Many Internet Fares are lower than fares made available by Respondents for sale by travel agencies using databases accessed through CRS (hereafter ACRS Fares@). Examples of these price discriminations are attached to this testimony as Exhibit A. Additional examples may be found in the following filings in Docket OST- 1997-2881: Uni-Travel Cruises and Tours, Price Travel Agency, Travel Express and the many others filed by travel agencies beginning December 13, 2001.

The differences between Internet Fares and CRS Fares often are hundreds of dollars, far in excess of any conceivable difference in the cost of selling through the Internet channel versus the travel agency channel. The specific intent and purpose of the airlines in refusing to make the very low fares available for sale by travel agencies through CRS=s in the presence of zero commission policies, and the foreseeable effect, is to (a) eliminate and reduce competition from the affected travel agencies as independent sources of information and booking services for consumers, and (b) eliminate and reduce competition from the

affected agencies as competitors of the airlines in the distribution of air transportation services.

The airlines have repeatedly made the argument that agents are not allowed to compete with their principals, citing the general law governing principal-agent relationships. They bootstrap from those principles dealing with the issue of agent loyalty questions to the conclusion that: (1) airlines and their agents are not competitors in any sense recognized by federal laws governing competition (the antitrust laws) or laws dealing with unfair methods of competition (mainly the unfair practices section of the Federal Aviation Act), and (2) airlines are therefore free to do whatever they want to undermine and interfere with, even destroy, the businesses of their agents, and (3) agents are without remedy except to quit the relationship.

The presentation of this argument reflects the accumulated arrogance of years of domination under government policies that have conferred and sustained market power in the hands of a small group of the largest carriers. The truth is that economic competition between airlines and their travel agents for the patronage of consumers has existed since agents first emerged to help consumers deal with the airlines. It existed with the knowing consent of the airline principals and they cannot now be heard to deny the consequences of what they allowed, encouraged and in many ways facilitated. It may now be expedient for the airlines to assert that they are immune from the law now, but that does not make it right. To allow the airlines to destroy the agency distribution system through denial of information, collective practices and interference with agency adaptation is stunningly unfair to the people who have served as a right hand for tens of millions of consumers all

these years. Travel agents are entitled to a fair chance to survive and to protection -- not from progress, technological advancement or competition -- but from the collective use of market power against them. Perhaps more importantly, the public is entitled to a fair choice of how to buy and the airlines should not be allowed to collectively dictate how those choices are manifested to them.

The question then is whether the airlines= or the public=s interests will prevail and what will be done to assure that the public=s interest is paramount.

- End -

E-Mail Received March 6, 2002

Redacted to remove personal identification and comments

>.....

> On February 28, last Thursday, Delta came out with systemwide, deeply
discounted
> "zone" fares for the 48 states that can ONLY be purchased via the
Deltamatic
> Reservations System. This goes beyond a "web only" discount, as these
tickets
> can be called into Delta reservations directly, purchased at a Delta
airport
> counter, www.delta.com, and, oddly enough on Orbitz. No fuel surcharges
apply
> either.
>
> Example of fare differences:

>

> CAE-LGA April 6-9 on Delta's nonstops: lowest fare including all taxes available

> from a travel agent with no service fees: $336.00 Same flights booked on

> www.delta.com $201.50 (Delta gives a $5 discount for booking with delta.com

> instead of calling in) Orbitz is $211.50 ($5 discount lost, and $5 Orbitz

> service fee) Same huge differences in EVERY domestic market.

>

> The fare rule is readily available in Delta's GRS and plainly states -"SPECIAL

> SALE FARE TO BE PURCHASED VIA DL ONLY". Have a look in Delta Direct Access

> topic G*U14ON84, or check direct-access fares and rules from any CRS to Deltamatic.

> The fare rules states: CRS "MAY ONLY BE SOLD BY CRS -DL"

>

>.....

> The fare has a ticket deadline of March 20 (almost three weeks worth of
underhanded
> price cutting!) and a travel complete date of May 31, with no blackout
dates,
> and a 14 day advance requirement.

>

>.....

>

>

>

EXHIBIT A

(July 6, 2001 - 11:AM ET)

Flights/City Pairs	Sabre Fare	Airline Web Fare	Airline Direct Fare	Orbitz Fare
US525 LGA CLT US1035 CLT MSY US946 MSY PIT US608 PIT DCA	$872.00	$872.00	$872.00	$472.00

Other Low Fare Options for travel on US Airways from LGA to MSY departing July 20 and returning July 22, but not on the above reference flights.

Sabre: $476.50 for flight that required a 2.5-hour layover in each direction. (1 option)

US Airways- Web: $242.75, direct flight out, with a 3-hour layover on the return. (1 option)

Orbitz: $453 (5 options), $457 (4 options), $472 (3 options)

****

E-Mail Received November 7, 2001

Redacted to remove personal identification and comments

A client wanted to buy a UA ticket from ALB to SFO on Dec 10 and

returning on Dec 14, no Saturday stayover. I quoted him a price of

1051.50

in my sabre set. He told me he saw a price of 499.00 on UA's web sit. ...

I was dumbfounded but checked it out myself and saw that very

price on

both UA and AA's websites today, Nov 7, no Sat nite requirement and a

fare

that is 552.00 LESS than any fare I can offer him. ..

****

E-Mail Received November 29, 2001

Redacted to remove personal identification and comments

today I have this situation: Jan 25 out back Jan28

(UA 1939 TO LAX / UA 310 BACK TO DEN)

DEN to LAX per ual.com or orbitz at $191.50

Per Amadeus: $436.00

Statutory Framework

The initial framework for federal regulation of civil aviation was set forth in the Civil Aeronautics Act of 1938, Ch. 601, 52 Stat. 973 (1938). Section 411 of that Act, which gave the original Civil Aeronautics Authority the power to determine if any carrier engaged in unfair or deceptive practices or unfair methods of competition, was the predecessor of present section 41712. The unfair practices provision has not been substantively changed in the 61 succeeding years during which the statute has otherwise been significantly rewritten by Congress.

The most fundamental changes have been entirely in keeping with the intent of section 41712. Congress enacted the Airline Deregulation Act in 1978. Pub.L. No. 95-504, 92 Stat. 1705 (1978) (Deregulation Act) to encourage and develop an air transportation system that "relies on competitive market forces to determine the quality, variety, and price of air services."

The Deregulation Act directed the CAB, and later the Department of Transportation, to consider a number of factors to be in the public interest, including "[t]he prevention of unfair, deceptive, predatory, or anti-competitive practices in air transportation." Id. at 1706. In 1980, Congress amended section 102 of the Act by adding a more comprehensive treatment of matters to be considered in the public interest. This treatment contains a new emphasis on "maximum reliance on competitive market forces and on actual and potential competition" to achieve the goals of safe, efficient and economic air transportation. Pub.L. No. 96-192, 94 Stat. 35 (1980).

Finally, Congress enacted the Civil Aeronautics Board Sunset Act of 1984, Pub.L. No. 98-443, 98 Stat. 1703 (1984), which terminated or transferred the remaining functions of the CAB

and provided for its demise. The Sunset Act transferred the responsibility for enforcing section 411 to the Department of Transportation. Id. at 1704.[30]

The legislative history makes clear the fundamental and continuing purpose of section 411 (now 41712) to protect consumers from air carrier practices. The House Committee on Public Works and Transportation specifically noted that there was a need to clarify the status of some of the CAB's authority after sunset because the sunset provisions of the 1978 Deregulation Act did not deal with the authority to protect consumers and to prevent unfair competitive practices.[31] The Committee concluded that this important authority should be continued and should be exercised by the Department of Transportation.[32]

> The Committee has determined that the Department of Transportation is the most appropriate agency to administer CAB's consumer protection and unfair competitive practice authorities. Under the ADA, DOT will get CAB's authority to protect consumers

---

[30] Code revisions in 1994 recodified the section as 49 U.S.C. 41712. Section 12 of the Sunset Act continued in effect all rules, regulations, orders and determinations of the CAB and gave the same authority as held by the CAB to any agency to which CAB functions were transferred.

[31] H.R.Rep. No. 793, 98th Cong., 2d Sess. 1, 3 (1984), reprinted in 1984. U.S. Code Cong. & Admin. News 2857, 2859.

[32] H.R.Rep. No. 793 at 4-6; 1984 U.S. CODE Cong. & Admin. News at 2860.

and competitors....[33]

Trans World Airlines, Inc. v. Mattox, 897 F.2d 773 (5th Cir. 1990).

Section 41712 was patterned after section 5 of the Federal Trade Commission Act. Derived, as they are from that statute, the words Aunfair * * * practices@ and Aunfair methods of competition@ as used in section 41712 contain a broader concept than the common-law idea of unfair competition. Pan American World Airways, Inc. v. U.S., 371 U.S. 296 (1963).

The scope of Aunfair practices@ and Aunfair methods of competition@ was left for case-by-case definition. The Senate Report stated:

[33] H.R.Rep. No. 793 at 6; 1984 U.S. CODE Cong. & Admin. News at 2 862.

> It is believed that the term 'unfair competition' has a legal significance which can be enforced by the commission and the courts, and that it is no more difficult to determine what is unfair competition than it is to determine what is a reasonable rate or what is an unjust discrimination. The committee was of the opinion that it would be better to put in a general provision condemning unfair competition than to attempt to define the numerous unfair practices, such as local price cutting, interlocking directorates, and holding companies intended to restrain substantial competition.[34]

In Federal Trade Comm'n v. Raladam Co., 283 U.S. 643, the Supreme Court concluded that Aunfair competition was that practice which destroys competition and establishes monopoly.@ The provision was designed to supplement the Sherman Act by stopping Ain their incipiency those methods of competition which fall within the meaning of the word 'unfair@.... (emphasis added).

Whatever the unfair practice or unfair method employed, section 41712, like section 5 of the Federal Trade Commission Act, was designed to bolster and strengthen anti-trust enforcement. Pan American World Airways, Inc. v. U.S., *supra* at 307. The Court in Pan American World Airways, Inc. v. U.S., *supra*, further observed:

> A[U]nfair practices@ and Aunfair methods of competition@ are not limited to precise practices that can readily be catalogued. They take their meaning from the facts of each case and the impact of particular practices on competition and monopoly.
>
> These words, transferred to the Civil Aeronautics Act, gather meaning from the context of that particular regulatory measure and the type of competitive regime which it visualizes. That regime has its special standard of the Apublic interest@ as defined by Congress.
>
> The standards to be applied by the Board in enforcing the Act are broadly stated in section 2: 'In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessityB....
>
> '(c) The promotion of adequate, economical, and efficient service by air carriers at

[34] S. Rep. No. 597, 63d Cong., 2d Sess., p. 13, quoted at 371 U.S. 306.

> reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; .....
> ....
>
> AThe 'present and future needs' of our foreign and domestic commerce, regulations that foster 'sound economic conditions,' the promotion of service free of 'unfair or destructive competitive practices,' regulations that produce the proper degree of 'competition'--each of these is pertinent to the problems arising under section 411.@

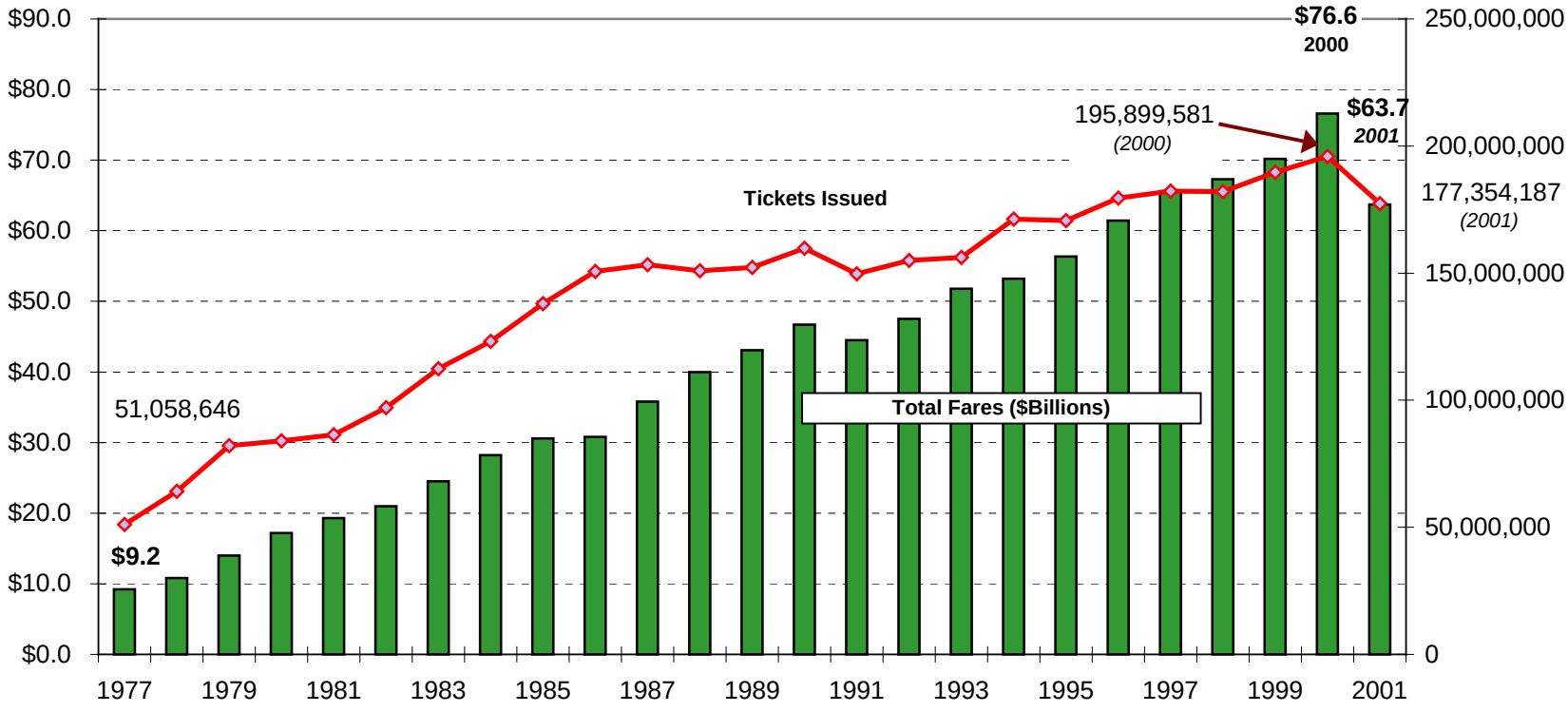
371 U.S. 307-309, citations omitted.]

The scope of 49 U.S.C. 41712 is thus much broader than common law notions or even the principles laid down in the antitrust laws. The Secretary can forbid anticompetitive practices even before they become serious enough to violate the Sherman Act. United Airlines v. Civil Aeronautics Board, 766 F.2d 1107 (CA7, 1985), at 1114. As the court there noted, a finding of substantial market power would bring the carriers= practices within Section 417 even without any evidence of collusion. United Airlines v. Civil Aeronautics Board, *supra* at 1114.

Moreover, acts undertaken by any one of them, with predatory intent, for the purpose of eliminating travel agents as viable competitors, are clearly within the sweep of 49 U.S.C. 41712. Aloha Airlines, Inc. v. Hawaiian Airlines, Inc., 349 F..Supp. 1064 (USDC HI 1972).

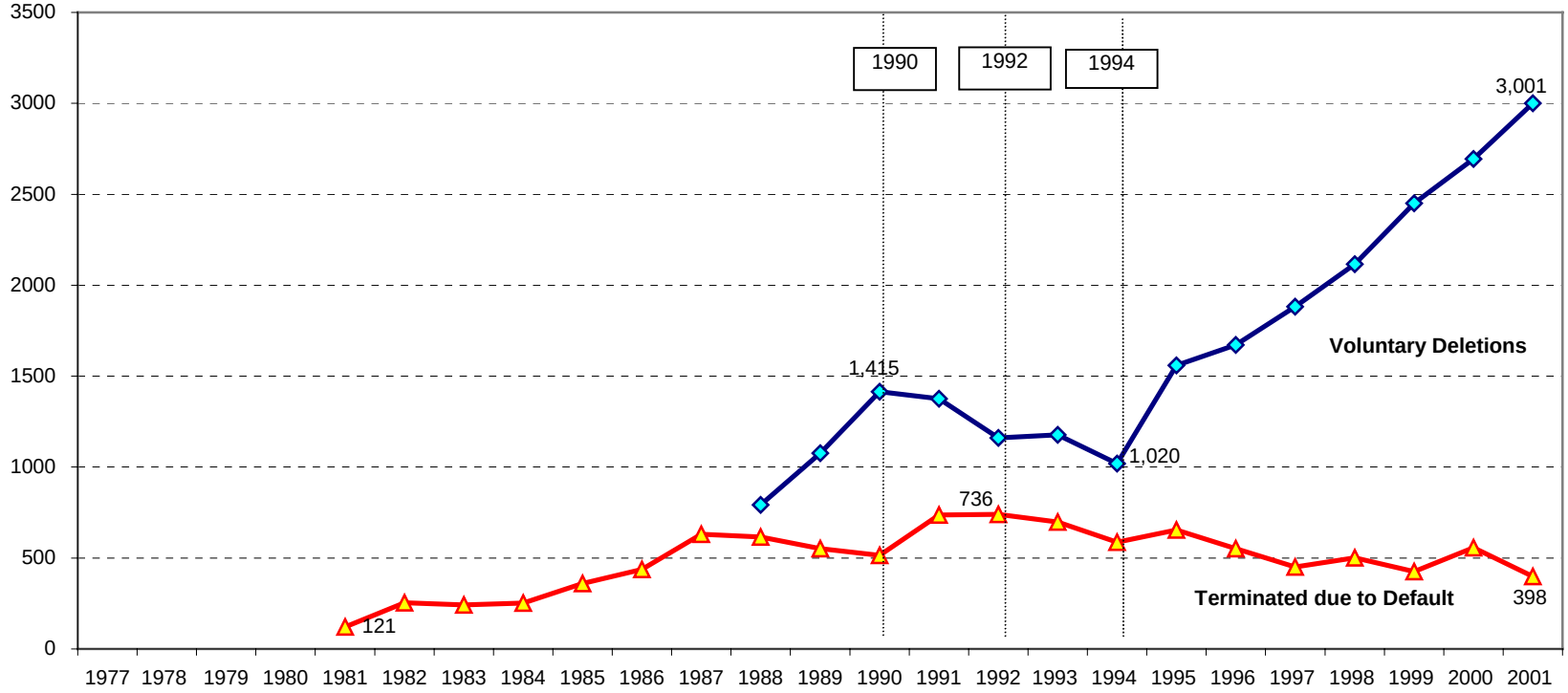
CONSUMER DEMAND FOR RETAIL TRAVEL AGENCY SERVICES HAS CONTINUED TO RISE

Total Fares and Tickets/Documents Issued



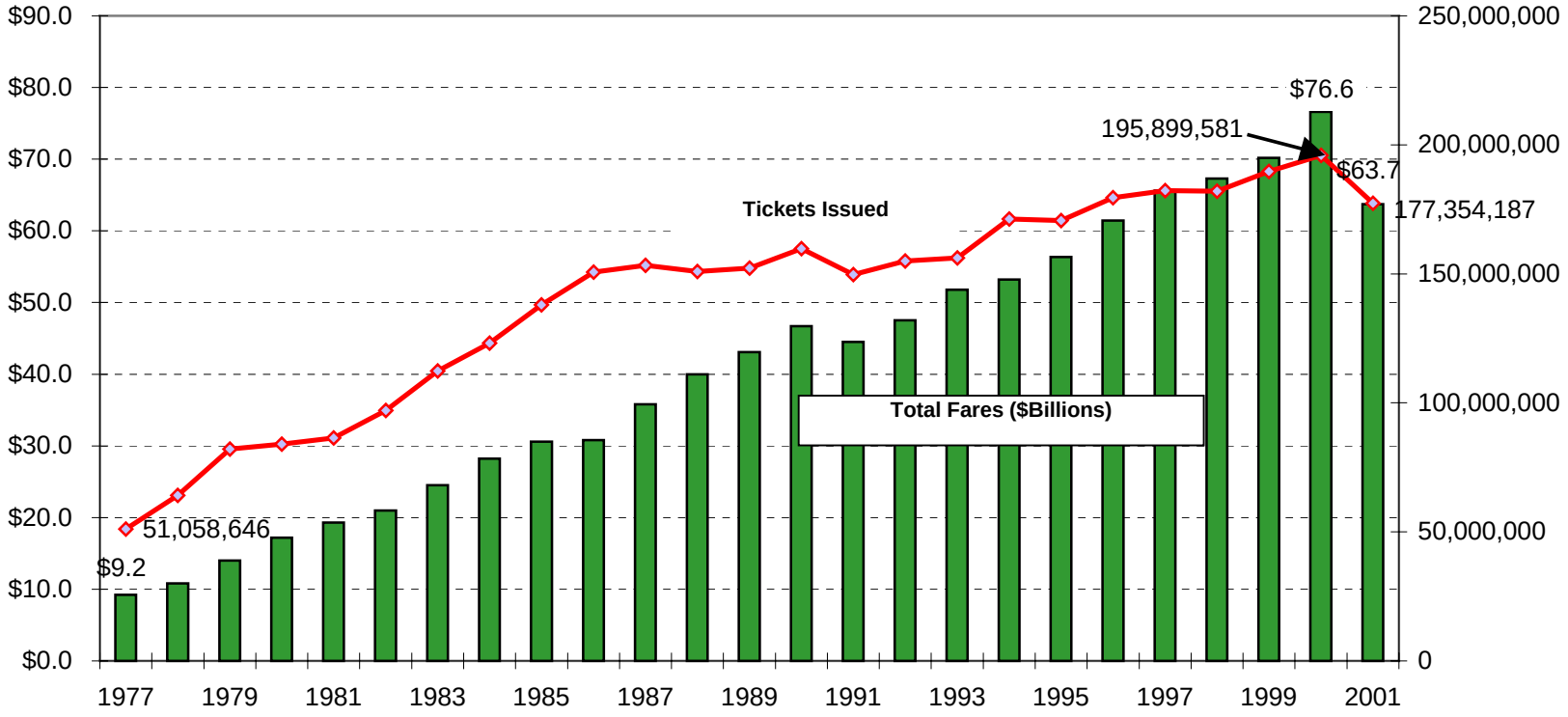
TRAVEL AGENCY FAILURE RATES REMAIN LOW - VOLUNTARY CLOSURES PROTECT CONSUMERS

Agency Turnover



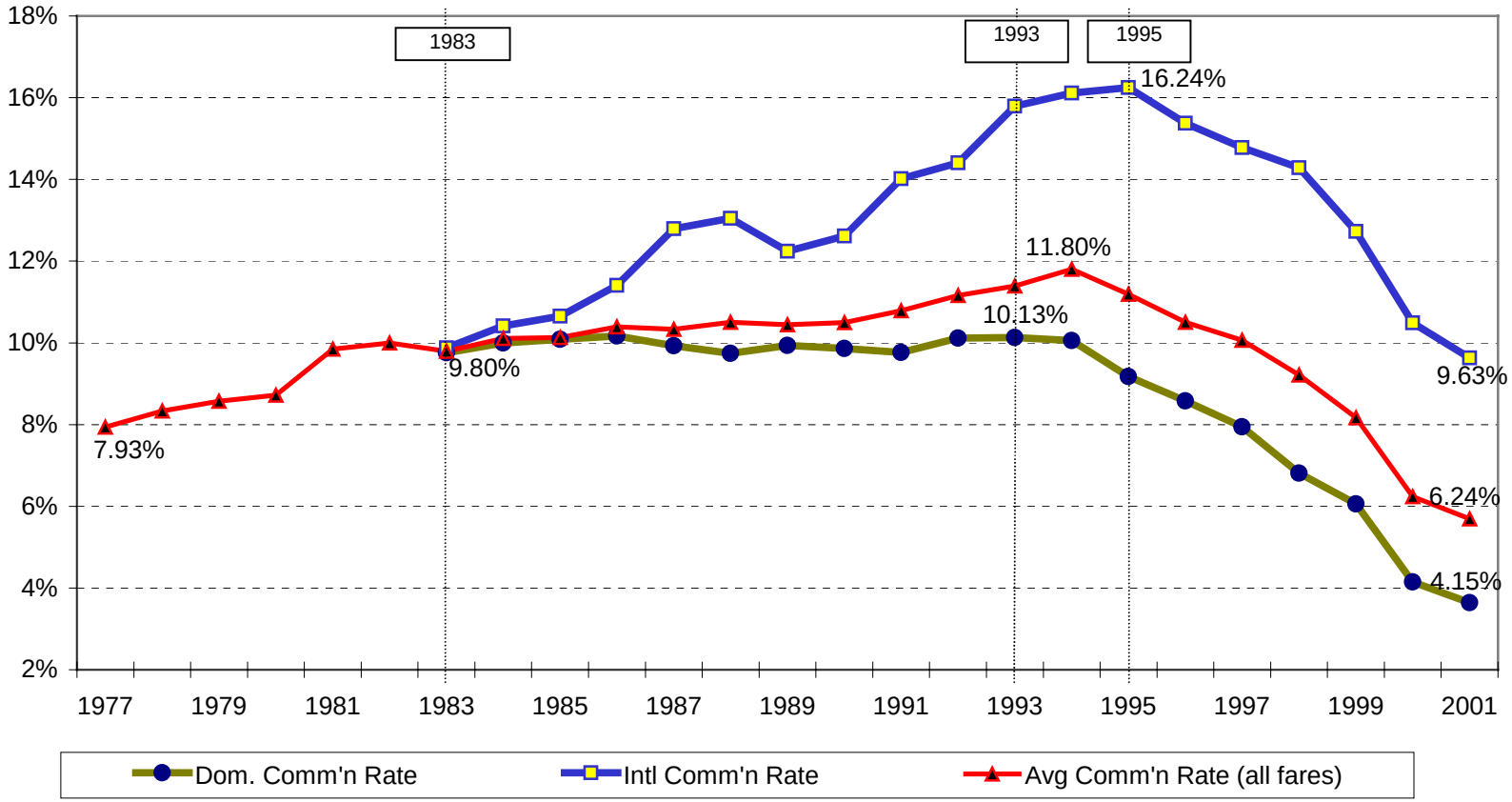
CONSUMER DEMAND FOR RETAIL TRAVEL AGENCY SERVICES HAS CONTINUED TO RISE

Total Fares and Tickets/Documents Issued



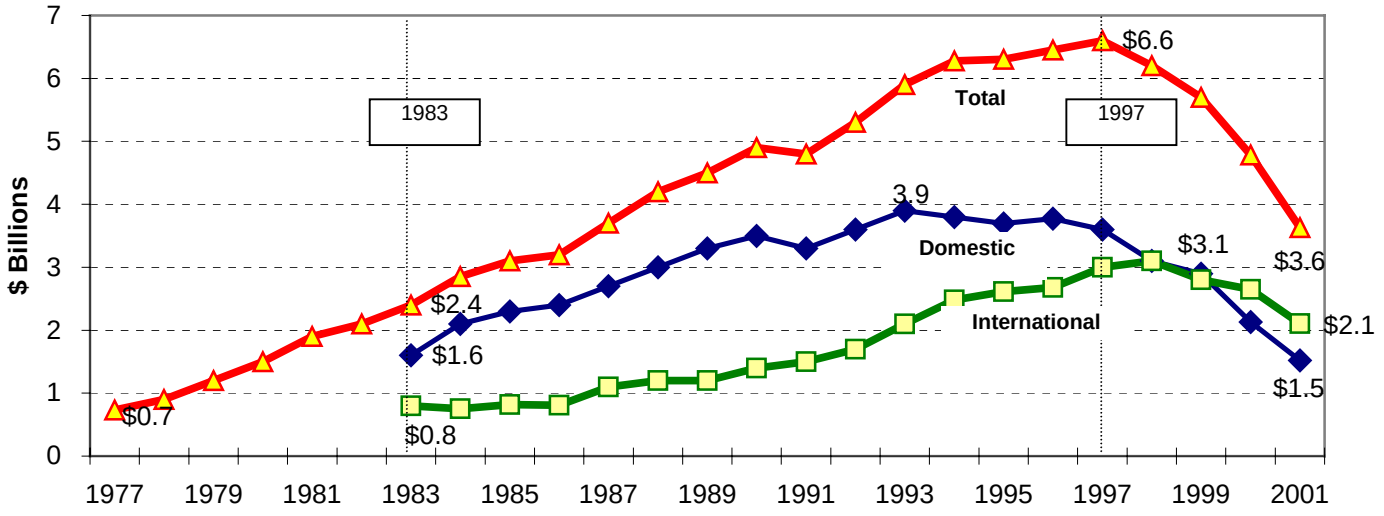
TRAVEL AGENCY BASE COMPENSATION RATES PLUNGED AFTER 1994

Average Base Commission Rates



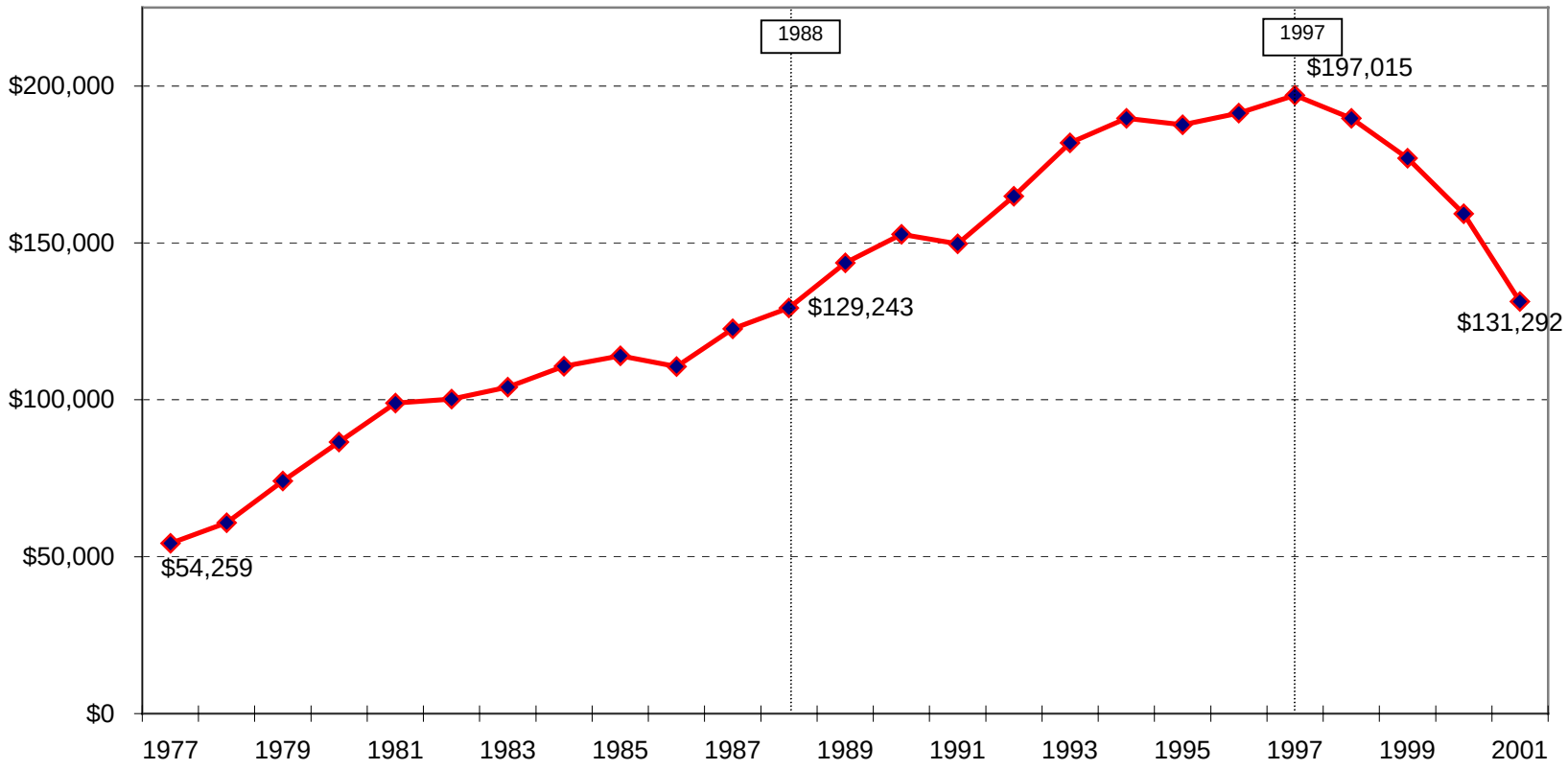
BASE COMMISSIONS PAID TO TRAVEL AGENCIES PLUNGED FOLLOWING THE RATE CUTS

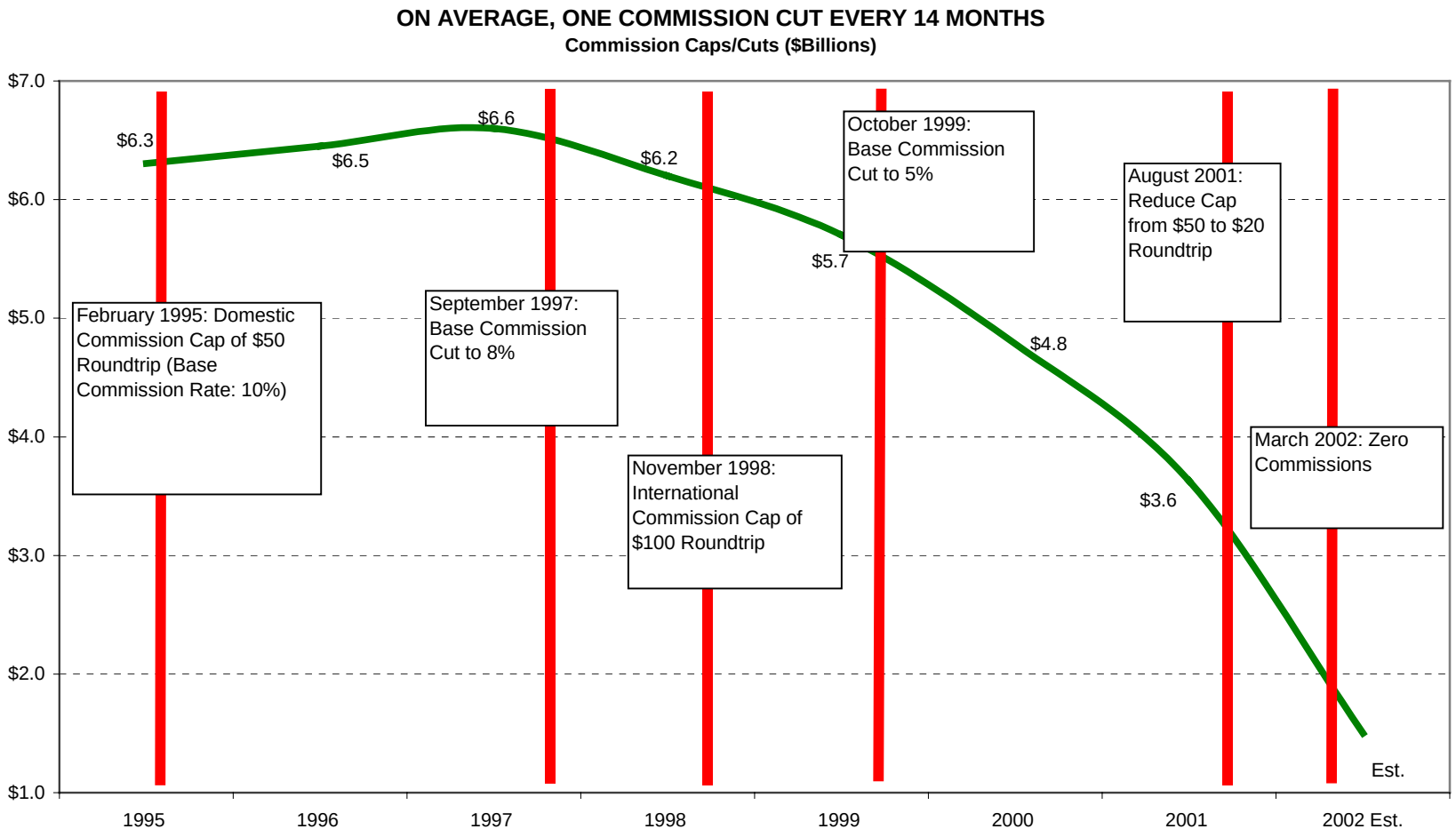
Base Commissions Paid to Travel Agencies (exclusive of overrides)



INDUSTRY CONTRACTION DID NOT OFFSET LOSS OF COMPENSATION

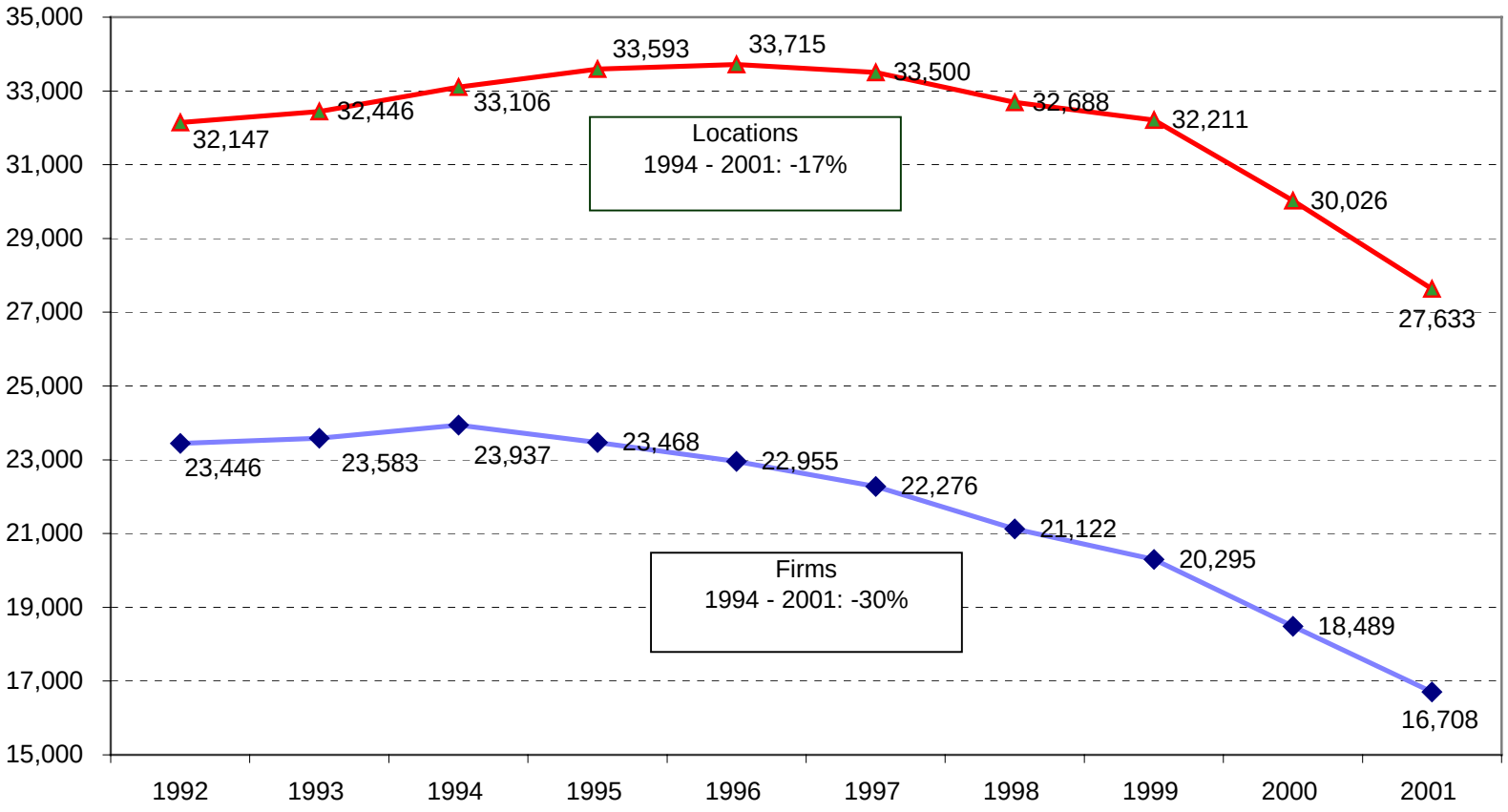
Commissions Per Agency Location (exclusive of overrides)



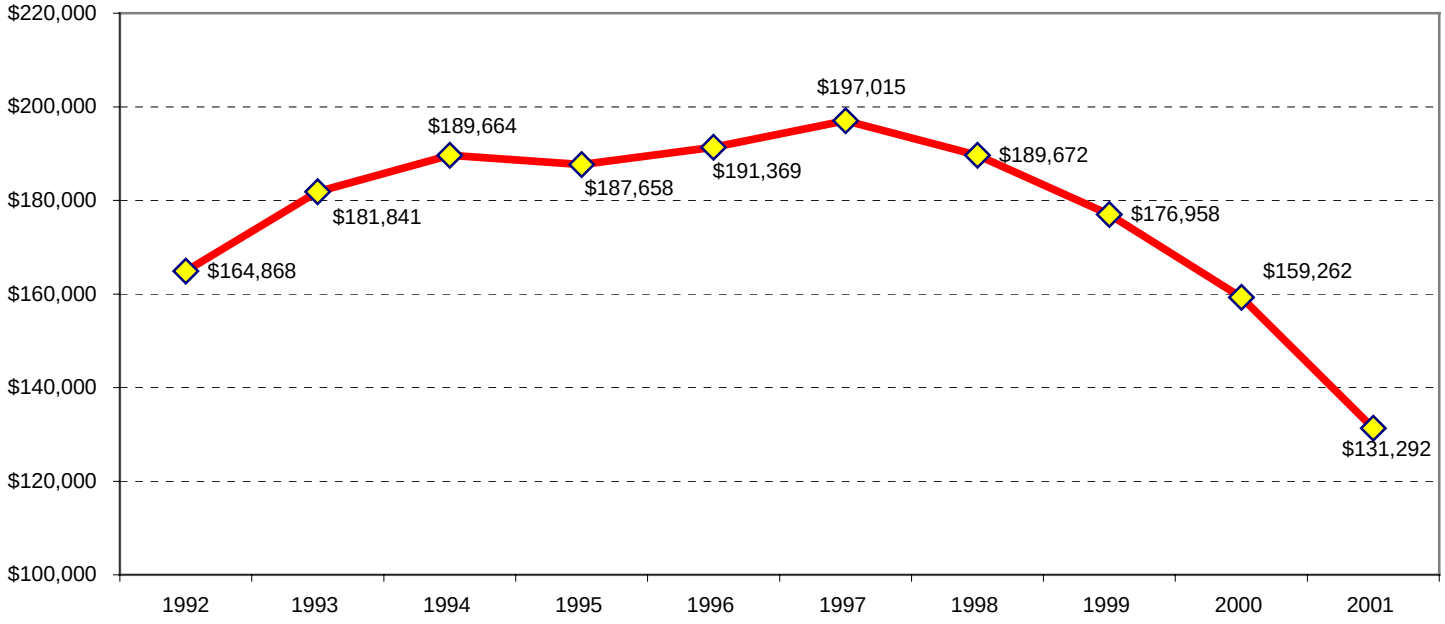

ON AVERAGE, ONE COMMISSION CUT EVERY 14 MONTHS
Commission Caps/Cuts ($Billions)
$7.0
$6.0
$5.0
$4.0
$3.0
$2.0
$1.0
$6.3
$6.5
$6.6
$6.2
$5.7
$4.8
$3.6
Est.
February 1995: Domestic Commission Cap of $50 Roundtrip (Base Commission Rate: 10%)
September 1997: Base Commission Cut to 8%
November 1998: International Commission Cap of $100 Roundtrip
October 1999: Base Commission Cut to 5%
August 2001: Reduce Cap from $50 to $20 Roundtrip
March 2002: Zero Commissions
1995
1996
1997
1998
1999
2000
2001
2002 Est.

A CLOSER LOOK AT INDUSTRY CONTRACTION

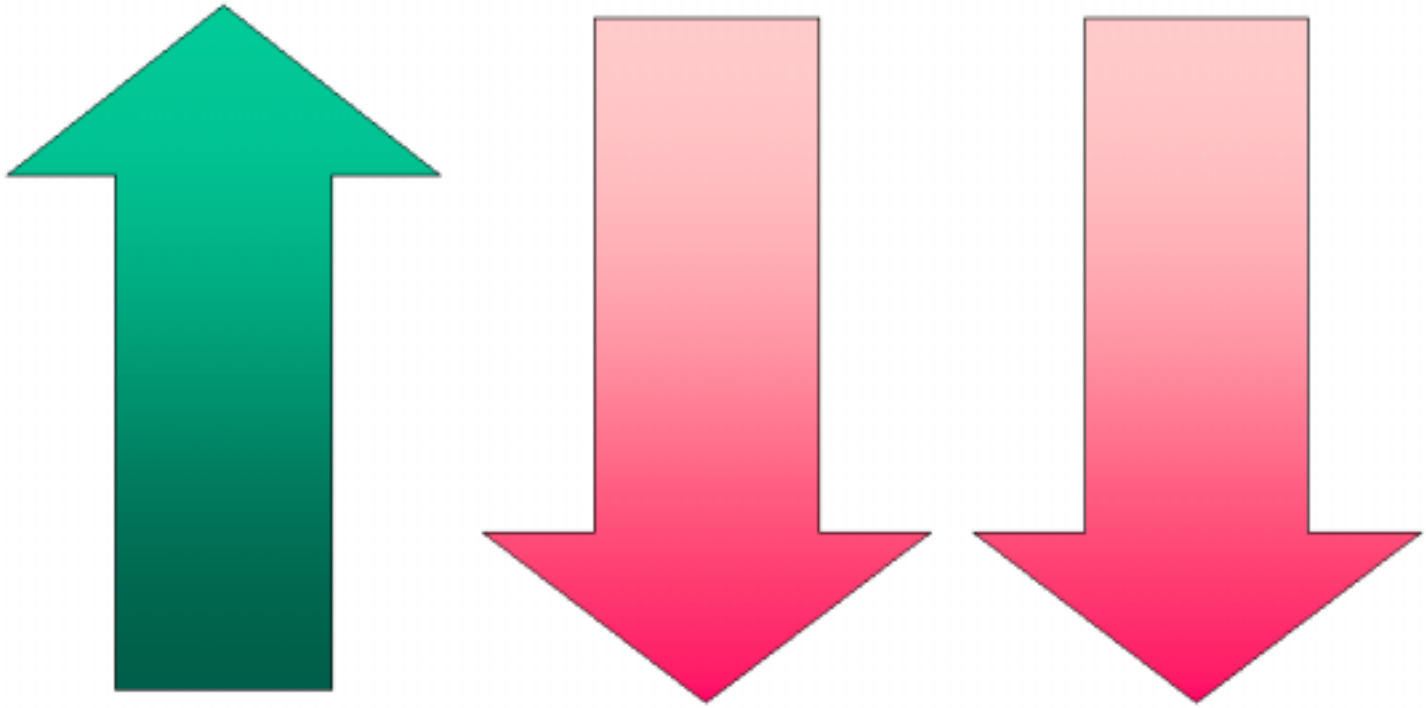
Total Agency Locations and Total Firms (Home Office and Independent Locations)



COMMISSIONS PER LOCATION ARE WELL BELOW THE 1992 LEVEL
Commissions Per Agency Location (exclusive of overrides)



From 1994 - 2001:



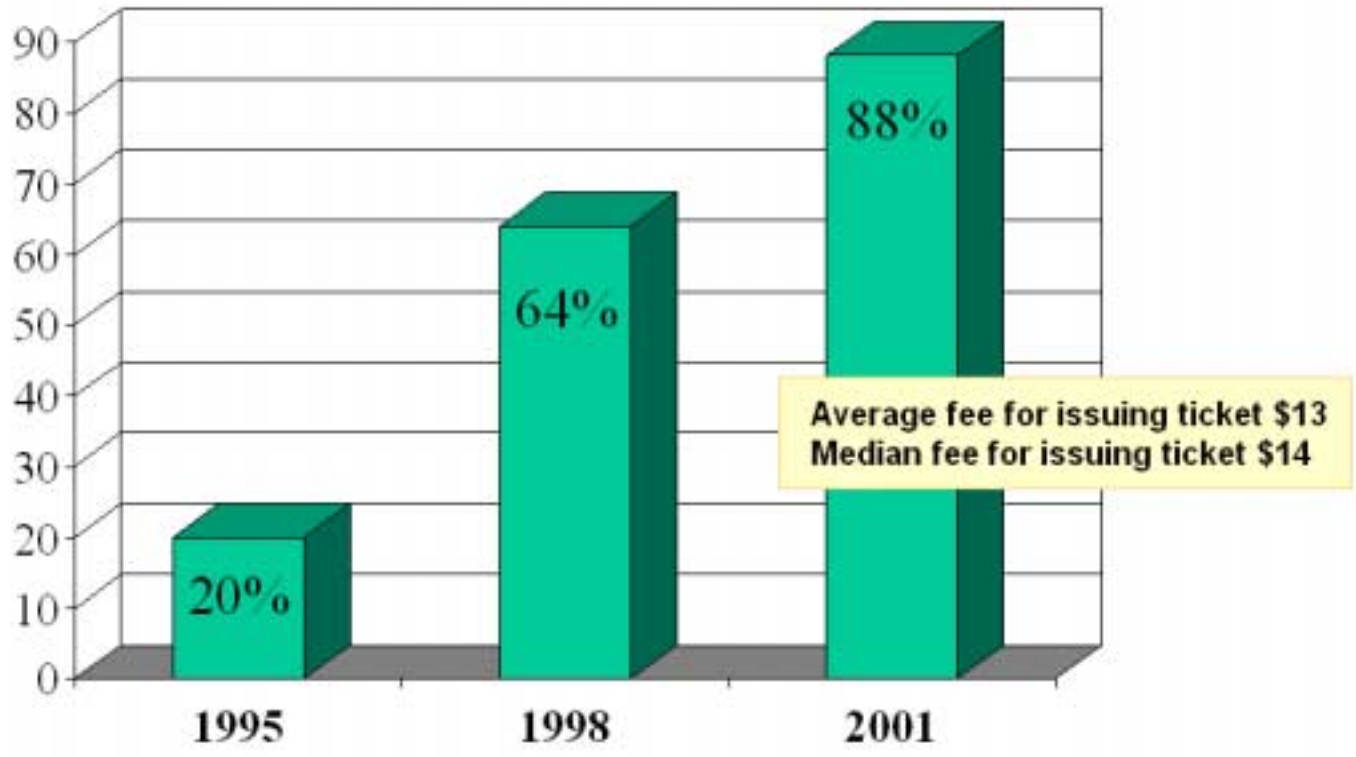
Fares Sold +20%
Tickets Issued +4%

Commissions Paid -43%

Locations -17%
Firms -30%

AGENTS ARE CHARGING FEES, BUT CANNOT COMPENSATE FOR THE $6.4 BILLION IN LOST COMMISSIONS

Percent of Agencies Charging Service Fees



Source: ASTA 2001 Service Fee Study (Feb. 2001)

07-Jun-02	1977	1978	1979	1980	1981	1982
Dom. Fares ($Billions)						
Dom. Comm'ns ($Billions)						
Dom. Comm'n Rate						
Int'l Fares ($Billions)						
Int'l Comm'ns ($Billions)						
Intl Comm'n Rate						
Total Fares ($Billions)	$9.2	$10.8	$14.0	$17.2	$19.3	$21.0
Avg Comm'n Rate (all fares)	7.93%	8.33%	8.57%	8.72%	9.84%	10.00%
Total Comm'ns ($Billions)	$0.7	$0.9	$1.2	$1.5	$1.9	$2.1
Comm'ns per Agt Location	$54,259	$60,794	$74,106	$86,510	$98,943	$100,181
Comm'ns per Firm		$76,963	$93,897	$110,359	$129,640	$131,612
Agency Locations(NonSTP)	13,454	14,804	16,193	17,339	19,203	20,962
Tickets Issued	51,058,646	64,087,582	82,053,475	83,967,202	86,461,784	97,094,036
Home Offices		1,521	1,636	1,809	1,995	2,219
Branches		3,104	3,320	3,663	4,246	5,106
Branches (+Restricted Access)		3,110	3,332	3,747	4,547	5,683
Independents		10,173	11,144	11,783	12,661	13,737
Restricted Access		6	12	84	301	577
Total Agency Firms		11,694	12,780	13,592	14,656	15,956
Annual % Chg in Total Commissions		23.3%	33.3%	25.0%	26.7%	10.5%
Retail Location						
Voluntary Deletions - NonSTP						
Defaults Declared					206	360
Terminated due to Default					121	254

07-Jun-02

	1983	1984	1985	1986	1987
Dom. Fares ($Billions)	$16.4	$21.0	$22.8	$23.6	$27.2
Dom. Comm'ns ($Billions)	$1.6	$2.1	$2.3	$2.4	$2.7
Dom. Comm'n Rate	9.76%	10.00%	10.09%	10.17%	9.93%
Int'l Fares ($Billions)	8.1	$7.2	$7.7	$7.1	$8.6
Int'l Comm'ns ($Billions)	$0.8	$0.8	$0.8	$0.8	$1.1
Intl Comm'n Rate	9.88%	10.42%	10.65%	11.41%	12.79%
Total Fares ($Billions)	$24.5	$28.2	$30.6	$30.8	$35.8
Avg Comm'n Rate (all fares)	9.80%	10.11%	10.13%	10.39%	10.34%
Total Comm'ns ($Billions)	$2.4	$2.9	$3.1	$3.2	3.7
Comm'ns per Agt Location	$104,081	$110,688	$114,000	$110,600	$122,642
Comm'ns per Firm	$137,907	$148,206	$152,192	$148,644	$168,029
Agency Locations(NonSTP)	23,059	25,748	27,193	28,933	30,169
Tickets Issued	112,327,085	123,168,252	138,013,854	150,714,621	153,258,033
Home Offices	2,302	2,633	2,813	2,771	2,700
Branches	5,656	6,518	6,824	6,728	6,989
Branches (+Restricted Access)	5,656	7,094	7,269	7,101	7,260
Independents	15,101	16,597	17,556	18,757	19,320
Restricted Access		576	445	373	271
Total Agency Firms	17,403	19,230	20,369	21,528	22,020
Annual % Chg in Total Commissions	14.3%	18.8%	8.8%	3.2%	15.6%
Retail Location					
Voluntary Deletions - NonSTP					
Defaults Declared	337	355	516	690	874
Terminated due to Default	243	252	360	437	631

07-Jun-02

	1988	1989	1990	1991	1992
Dom. Fares ($Billions)	$30.8	$33.2	$35.5	$33.8	$35.6
Dom. Comm'ns ($Billions)	$3.0	$3.3	$3.5	$3.3	3.6
Dom. Comm'n Rate	9.74%	9.94%	9.86%	9.76%	10.11%
Int'l Fares ($Billions)	$9.2	$9.8	$11.1	$10.7	$11.8
Int'l Comm'ns ($Billions)	$1.2	$1.2	$1.4	$1.5	$1.7
Intl Comm'n Rate	13.04%	12.24%	12.61%	14.02%	14.41%
Total Fares ($Billions)	$40.0	$43.1	$46.7	$44.5	$47.5
Avg Comm'n Rate (all fares)	10.50%	10.44%	10.49%	10.79%	11.16%
Total Comm'ns ($Billions)	$4.2	$4.5	$4.9	$4.8	$5.3
Comm'ns per Agt Location	$129,243	$143,678	$152,757	$149,691	$164,868
Comm'ns per Firm	$185,939	$194,670	$208,130		$226,051
Agency Locations(NonSTP)	32,497	31,320	32,077	32,066	32,147
Tickets Issued	150,888,211	152,174,028	159,752,960	149,757,830	154,971,252
Home Offices	2,697	2,692	2,632	2,537	2,422
Branches	7,536	8,204	8,534	8,498	8,701
Branches (+Restricted Access)	7,763	8,394	8,719	8,639	8,842
Independents	19,891	20,424	20,911	20,917	21,024
Restricted Access	227	190	185	141	141
Total Agency Firms	22,588	23,116	23,543	23,454	23,446
Annual % Chg in Total Commissions	13.5%	7.1%	8.9%	-2.0%	10.4%
Retail Location					
Voluntary Deletions - NonSTP	793	1,077	1,415	1,375	1,160
Defaults Declared	654	872	868	1,069	1,070
Terminated due to Default	616	552	514	736	740

07-Jun-02	1993	1994	1995	1996	1997
Dom. Fares ($Billions)	$38.5	$37.8	$40.3	$44.0	$45.3
Dom. Comm'ns ($Billions)	3.9	3.8	3.7	3.8	3.6
Dom. Comm'n Rate	10.13%	10.05%	9.17%	8.58%	7.95%
Int'l Fares ($Billions)	$13.3	$15.4	$16.1	$17.4	$20.3
Int'l Comm'ns ($Billions)	$2.1	$2.5	$2.6	$2.7	$3.0
Intl Comm'n Rate	15.79%	16.11%	16.24%	15.37%	14.78%
Total Fares ($Billions)	$51.8	$53.2	$56.3	$61.4	$65.6
Avg Comm'n Rate (all fares)	11.39%	11.80%	11.19%	10.50%	10.06%
Total Comm'ns ($Billions)	$5.9	$6.3	$6.3	$6.5	$6.6
Comm'ns per Agt Location	$181,841	$189,664	$187,658	$191,369	$197,015
Comm'ns per Firm	$250,180	$262,314	$268,621	$281,072	$296,283
Agency Locations(NonSTP)	32,446	33,106	33,593	33,715	33,500
Tickets Issued	156,171,588	171,251,443	170,661,925	179,491,637	182,266,581
Home Offices	2,308	2,263	2,229	2,212	2,178
Branches	8,753	8,976	8,985	8,662	8,121
Branches (+Restricted Access)	8,863	9,078	9,407	8,996	8,499
Independents	21,275	21,674	21,239	20,743	20,098
Restricted Access	110	102	422	334	378
Total Agency Firms	23,583	23,937	23,468	22,955	22,276
Annual % Chg in Total Commissions	11.3%	6.4%	0.4%	2.3%	2.3%
Retail Location					
Voluntary Deletions - NonSTP	1,177	1,020	1,559	1,672	1,882
Defaults Declared	1,024	759	882	772	664
Terminated due to Default	698	587	655	551	451

07-Jun-02

	1998	1999	2000	2001	2002 Est.
Dom. Fares ($Billions)	$45.5	$48.0	$51.3	$41.8	
Dom. Comm'ns ($Billions)	$3.1	$2.9	$2.1	$1.5	
Dom. Comm'n Rate	6.81%	6.06%	4.15%	3.64%	
Int'l Fares ($Billions)	$21.7	$22.2	$25.3	$21.9	
Int'l Comm'ns ($Billions)	$3.1	$2.8	$2.7	$2.1	
Intl Comm'n Rate	14.29%	12.73%	10.49%	9.63%	
Total Fares ($Billions)	$67.3	$70.2	$76.6	$63.7	
Avg Comm'n Rate (all fares)	9.21%	8.17%	6.24%	5.69%	
Total Comm'ns ($Billions)	$6.2	$5.7	$4.8	$3.6	$1.5
Comm'ns per Agt Location	$189,672	$176,958	$159,262	$131,292	
Comm'ns per Firm	$293,533	$280,857	$258,640	$217,141	
Agency Locations(NonSTP)	32,688	32,211	30,026	27,633	
Tickets Issued	182,042,991	189,667,055	195,899,581	177,354,187	
Home Offices	2,063	2,027	1,879	1,651	
Branches	7,685	7,434	7,096	6,696	
Branches (+Restricted Access)	8,154	8,079	7,841	7,558	
Independents	19,059	18,268	16,610	15,057	
Restricted Access	469	645	745	862	
Total Agency Firms	21,122	20,295	18,489	16,708	
Annual % Chg in Total Commissions	-6.1%	-8.1%	-16.1%	-24.1%	
Retail Location					
Voluntary Deletions - NonSTP	2,116	2,451	2,694	3,001	
Defaults Declared	649	592	774	691	
Terminated due to Default	502	425	556	398	