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Mr. David L. Winstead, Esq  
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Dear Mr. Winstead:

I want to thank you personally for the opportunity to testify before the Commission in Chicago. I appreciate having the chance not only to present my testimony, but to answer the questions of the Commissioners.

In the course of the afternoon session, however, there were a number of instances of mistaken beliefs that may have been inadvertently treated as facts. Some of these may have been repeated later in the San Francisco hearing as well. While everyone is entitled to their opinion, and the Commission is quite right to want to hear a broad spectrum of opinions, it is also important that misinformation not be accepted as fact.

Accordingly, I would ask the indulgence of the Commission to allow me the opportunity to correct the record on a few of these matters:

- (1) The conclusion was drawn in some of the afternoon dialogue that Orbitz intended to be a CRS and that our position was that in so doing we would be exempt from all CRS rules.

Orbitz entered the travel distribution business with new technology and the goal to increase competition by offering to lower the cost of the service. Orbitz has been a successful catalyst of competition in online travel distribution and we believe could stimulate the same kind of competition in the CRS business. However, for Orbitz to enter the CRS business and compete effectively, some of the current regulations that solved one set of problems years ago, but have since helped support the high CRS fees, would have to be changed. We believe it is only a matter of time before Orbitz, or some other Internet agency (such as Expedia), would offer itself as an additional option to travel agents in a version that had features specifically designed for agents, intending agents to use it as a full-time or part-time substitute for their existing CRS. It certainly was my point that such a development would be positive for travel agents, in that they would benefit from one or more new entrants competing for their business – whether or not they ever actually switched from their current system.

It was not my testimony, nor is it my position that in doing so an Internet agency would be exempt from the CRS rules. Quite the contrary, an Internet agency that offered travel agencies a system with all the features of a CRS would be covered by most of the current CRS rules.

The question I was asked in the hearing had to do specifically with the Mandatory Participation Rule (14 CFR 255.7). It is our position, and the position of many others, that the Mandatory Participation Rule has had the opposite of its intended effect, that it entrenches and protects CRS monopoly power rather than limits it, and that it ought to be repealed. (Not surprisingly, Sabre, the largest CRS, has been the leading advocate of retaining the Mandatory Participation Rule in its current form.) And we believe the Mandatory Participation Rule should be repealed to encourage price competition whether or not Orbitz or any other Internet agency even offers a CRS-like product to travel agents. We are on record as advocating that other features of the CRS rules in fact be strengthened, specifically including the provisions intended to protect travel agents from harsh contract practices by CRSs.

(2) There was, in the afternoon, considerable dialogue about whether Orbitz should disclose which of its fares are exclusive. That dialogue had no basis in fact. Orbitz is not entitled to any exclusive fares from any airlines; nor so far as we are aware have we ever had an exclusive fare. To the best of our knowledge, every fare ever displayed on Orbitz has also been displayed somewhere else – at least on an individual airline’s site – and most of the time it is displayed through multiple non-Orbitz channels. In some cases a particular fare may not be available through every outlet, but it has never been available only through Orbitz. The recently issued DOT report confirms this point after considerable investigation: “The evidence reviewed to date shows that no Orbitz charter associate airline has provided exclusive fares to Orbitz.”

Other Internet agencies, such as Travelocity and Expedia, have occasionally advertised that they have exclusive fares. There is nothing improper or illegal about having an exclusive fare, but Orbitz has none. The question of our disclosing that we have such fares is therefore unfounded at the very least.

There was also discussion about our having fares that were lower than fares offered by anyone else. Again, for the reasons just discussed, we are not entitled to fares lower than those shown anywhere else, but from time to time may display lower fares either because we bargained to sell them for an airline at lower cost of sale, or because our search technology found the lower fare where the others’ did not. Therefore, discussion of our disclosing that we have a fare lower than anyone else’s is odd. We frankly boast of “the most low fares” but have never said that we have the “lowest” fares because we do not believe it is systematically true. There would be nothing improper or illegal if an airline decided to put such a fare on Orbitz, but none have done so and we do not expect any to do so.

(3) There were, in the course of the afternoon, several loose remarks about Orbitz “setting fares.” That is completely false. Orbitz makes no decision about what any fare is or ought to be – only the airlines individually determine the fares. Orbitz is basically a bulletin board where others offer items for sale and decide the price at which they are willing to sell them. We may be a high-tech electronic bulletin board, but we are still just a bulletin board. Orbitz never determines what an airfare is.

(4) There was during the afternoon, more than a little dialogue suggesting that airlines are doing something wrong simply by jointly owning a business entity in a related field (in this case Orbitz) or by meeting in the same room. This common misconception led the Federal Trade Commission and Justice Department to jointly issue guidelines in

2000 on how competitors can lawfully enter into joint ventures, and citing the procompetitive benefits that often result. The airlines scrupulously adhered to those guidelines in establishing Orbitz, which is why no action has been taken against Orbitz or its owners despite substantial scrutiny. It is not ownership of such an entity that is prohibited, nor is the right to meet and speak to one another prohibited, but it is certain other activities, such as colluding on price or output, that are prohibited.

In short, in these kinds of circumstances it is not who you are, but what you do, that determines whether you are guilty of an antitrust law violation. For example, if a group of travel agents decided to pool their knowledge and put out a book advising travelers how to make long distance travel more comfortable and enjoyable, that would be a good thing. They could lawfully work together to write, edit, publish and even determine the price at which the book would be sold. But if they met to collude on what override commissions they would or would not accept, that would be illegal. The fact of their meeting and working together is not the problem. What they do when they meet together may or may not be a problem.

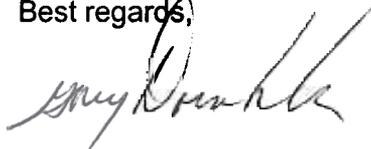
If competitors meeting together in a room were sufficient to constitute illegality, then not only would Orbitz's board meetings be illegal, but so would ASTA's, ARTBA's, ATA's, ATPCO's, ARC's, and a great many others.

In the case of Orbitz, the questions of whether Orbitz creates a problematic opportunity for collusion has already been squarely studied and rejected by the Inspector General of the Department of Transportation ("We do not see anything unique to the structure of Orbitz that would encourage or facilitate collusion on pricing.") and by the Department itself ("We have established that the source of Orbitz's fare and schedule information is the same as that for all computer reservations systems (CRSs) – the industry standard for filings with the Airline Tariff Publishing Company (ATPCO). Orbitz thus creates no new mechanism for the filing and exchange of published fare information which is not already standard industry practice.") This is not a topic on which further uninformed discussion is worthwhile.

In closing, I would also like to express my appreciation to the Commissioners for the many thoughtful comments made during the course of the hearing. Here I will note just two. Dr. Ann Mitchell said, "If the consumer wins, we'll all be okay." And Paul Rudin, speaking of ASTA and Orbitz, said, "There is a surprising amount of agreement between us." I think both remarks contain certain fundamental truths. If the Commission can be guided by such wisdom, it will well discharge the mission given to it by Congress.

I wish you all the best as you endeavor to do exactly that, and if I may be of further assistance at any time, please do not hesitate to phone or email me.

Best regards,



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