

Endnotes

Introduction

1. Testimony of Stephanie Turner, Tr., 6/26/02, p.221.

Chapter 1

1. Competitive Marketing Investigation, 99 CAB 1, Order 82-12-85, pp. 14-15 (1982).
2. Competitive Marketing Investigation, *supra* note 1, at 14-15.
3. ATC Agency Resolution Investigation, 29 CAB 258 (1959).
4. Written testimony of Gary R. Doernhoefer, Orbitz, L.L.C., p. 3; Written testimony of Kenneth Button, p. 3.
5. Competitive Marketing Investigation, *supra* note 1, at 18.
6. Competitive Marketing Investigation, *supra* note 1, at 17.
7. Written testimony of William A. Maloney, American Society of Travel Agents, Inc., p. 10.
8. Competitive Marketing Investigation, *supra* note 1, at 19.
9. MALONEY, *supra* note 7, at 10.
10. IATA Agreements Concerning Agency Matters – Uniform Commission Rates, Order 78-8-87; Competition for Agency Services Show Cause Proceeding, Order 80-2-33.
11. MALONEY, *supra* note 7, at Chart 12.
12. *Id.* at Chart 4.
13. This reflects an average of 2.5 segments per trip. Tr., 6/12/02, pp. 147-48.
14. Written testimony of Mark Miller, Galileo International, Inc., p. 2.
15. By 1986, both Apollo and Sabre had accumulated deficits of approximately \$200 million each. Department of Transportation, Study of Airline Computer Reservation Systems, p. 26 (1988)
16. Richard Fahy, *The Cutting Edge of Technology and Regulation*, in *The Handbook of Airline Economics*, chapter 7 (1st Ed. 1995).
17. *Id.* at chapter 7.
18. MILLER, *supra* note 14, at 10.
19. Tr., 6/12/02, pp. 151-52.
20. *Id.* at 151-52.
21. Written testimony of Al Lenza, Northwest Airlines, Inc., p. 3. Vendors dispute this number. For example, Galileo claimed from 1984 until today booking fees increased only about 5% (MILLER, *supra* note 14, at 10). Delta claims booking fees increased every year since 1999 from 4-7%. (Written testimony of Scott Yohe, Delta Air Lines, Inc., p. 9).

22. MILLER, *supra* note 14, at 10, 3; Written Testimony of Paul J. Blackney, Worldspan, Inc., p. 4.
23. Tr., 6/12/02, pp. 251-52; Tr., 6/26/02, pp. 49-50.
24. MILLER, *supra* note 14, at 6.
25. Airlines Reporting Corporation.
26. MALONEY, *supra* note 7, at Chart 1.
27. Written testimony of George A. Nicoud, III, American Airlines, Inc., p. 5.
28. Tr., 6/12/02, pp. 42-43; NICOUD, *supra* note 27, at 5.
29. The data undervalues the agents' share of revenue because it compares domestic commissions with total domestic passenger revenue, including travel not sold by agents.
30. NICOUD, *supra* note 27, at 4; Written testimony of Greg Taylor, United Airlines, Inc., pp. 1, 8.
31. GAO, Effects of Changes in How Airline Tickets Are Sold, July, 1999, p. 3.

Chapter 2

1. Airlines Reporting Corporation (ARC).
2. Written testimony of William A. Maloney, American Society of Travel Agents, Chart 7.
3. ARC.
4. MALONEY, *supra* note 2, at Chart 6.
5. ARC Press Release (Sept. 12, 2002) (on file with Commission).
6. MALONEY, *supra* note 2, pp. 10, 15-16.
7. Written testimony of Gary R. Doernhoefer, Orbitz, L.L.C., p. 3; Written testimony of David A. Schwarte, Sabre, Inc., p. 14. "Markets" for override purposes are usually based on city-pairs or total traffic from a particular city.
8. MALONEY, *supra* note 2, at 15-16.
9. The travel agents' frustration was evident in the testimony given by DTR Travel: "As you can see in the past two years, the airlines have reduced what amounted to almost 40 percent of our revenues to zero; not because of our inability to serve the consumer or the consumer demanding to be able to purchase on the Internet, but because 'they can,' pure and simple." (Written testimony of David L. Rojahn, DTR Travel, Inc., p. 2).
10. Joined by ASTA, their industry trade association, agents filed antitrust class actions alleging collusion among the carriers, and settled after extensive discovery for \$86 million. In re Airline Ticket Commission Antitrust Litigation, MDL 1058 (DC, D. Minn, 1997).
11. MALONEY, *supra* note 2, at Chart 7, pp.15-16.
12. Written Testimony of Scott Yohe, Delta Air Lines, Inc., p. 12.
13. "As with any small business, we have quickly adapted by charging service

- fees and re-focusing on other products and services other than airline tickets.” (ROJAHN, *supra* note 9, at 2). An agent from Sunflower Travel said, “Over the last five years, we’ve been purposely trying to get away from airfares. . . if we’re not getting paid for it [working with airfares], why do we want to do it?” (Tr., 6/26/02, p. 281).
14. American Society of Travel Agents, ASTA 2001 Service Fee Study (Feb. 2001).
 15. Tr., 7/31/02, p. 181.
 16. Written Testimony of Robert W. Joselyn, p. 5
 17. Tr., 7/31/02, pp. 2-3.
 18. Tr., 7/31/02, p.51; Written testimony of Michael E. Levine, p. 9.
 19. LEVINE, *supra* note 18, at 7.
 20. *Id.* at 8.
 21. Bruce Cunningham, Travel Agents Access to Airline Fares, 1 (July 30, 2002) (study prepared for the Commission).
 22. Airlines can buy aggregated marketing information data tapes from CRSs containing a wealth of detailed information about air travel purchases.
 23. Written testimony of Greg Taylor, United Airlines, Inc., p. 5.
 24. YOHE, *supra* note 12, at 10; Press Release, Delta Air Lines, Inc. (Sept. 17, 2002) (on file with Commission).
 25. SCHWARTE, *supra* note 7, at 3.
 26. PhoCusWright, Travel Market Analysis, 2002-2004, p. 5 (July 25, 2002) (study prepared for Commission) [hereinafter *PhoCusWright*].
 27. Joan M. Feldman, *The King of the Hill Evolves*, Air Transport World, Sept. 2002, at 36.
 28. Bruce Cunningham, Consumer Attitudes and use of the Internet and Traditional Travel Agents, 5 (Sept. 19, 2002) (study prepared for the Commission).
 29. “Unmanaged” refers to business travel conducted on consumer sites.
 30. *PhoCusWright*, *supra* note 26, at 2.
 31. *Id.* at 4.
 32. MALONEY, *supra* note 2, at Chart 5.
 33. Air Transport Association.
 34. The weakened economy of 2001 and the events of September 11th resulted in “a decline in revenues and volume by some 20-25 percent” for American Express. “In the fourth quarter of 2001, [it] downsized [its] work force by over 5,000 people.” (Written testimony of Michael Mulvagh, American Express, p. 7).
 35. The number of ARC agencies during a particular time period reflects all agencies that reported at any time during the period. Thus, they are akin to averages, rather than to figures as of the end of a period.
 36. “Market power” is considered in antitrust law to be the unilateral or

- collusive power to affect total industry output. Ball Mem'l Hosp. v. Mut. Hosp., Inc., 784 F2d 1325, 1335 (7th Cir. 1986); Levine, Price Discrimination Without Market Power, 19 Yale J. on Reg. 1, 7 (2001).
37. Tr., 7/31/02, pp. 205-207; Written testimony of Steven W. Hewins, Hewins Travel Consultants, p. 5.
 38. Securities and Exchange Commission Form S-1 Orbitz, L.L.C., p 9. MALONEY, *supra* note 2, at 27-29; Department of Transportation, Report to Congress: Efforts to Monitor Orbitz, pp. 6-7, 28 (2002) (hereinafter *DOT*).
 39. Post-Hearing Comments of Galileo International, 4-5 (Sept. 2002) [hereinafter *Galileo*].
 40. MALONEY, *supra* note 2, at 31.
 41. *DOT*, *supra*, at 7, 28 (2002).
 42. MALONEY, *supra* note 2, at 28-44.
 43. HEWINS, *supra* note 37, at 5.
 44. Written testimony of George Delanoy, Brea Travel, p. 6.
 45. DTR Travel explains, "The marketing tactics of the airlines and Orbitz has inferred that if you want a cheaper airfare, the Internet is the easiest and ONLY place to get it. The underlying message is why pay a travel agent a fee when you can do it yourself online." (ROJAHN, *supra* note 9, at 3). Brentwood Travel complains that the "the attitude. . . of the airlines is to discourage the client from using us." (Tr., 6/26/02, p. 195). In its written testimony, Brentwood gives an example of how this is the case: "AA informed me that if I purchased my ticket directly from them they could take care of the ticketing and upgrade, BUT if I purchased the ticket from a travel agent, I would have to be inconvenienced and go to the airport to get my upgrade. When I expressed my desire to use my excellent travel agent (my own company), they reminded me again of the inconvenience to me, and how much better they could serve me. Here I as the agent sold the ticket on that particular carrier, and they were trying to shove the travel agency out of the picture." (Written testimony of Stephanie Turner, Brentwood Travel, p. 2). Another agent said, "I don't want airlines to tell my customer, 'Don't use a travel agency.' I mean, that's what's happening when you're on the phone. If you're ever o[n] the phone with some of these people." (Tr., 6/26/02, p. 224).
 46. *ITSA questions Orbitz*, Travel Trade, September 16, 2002; Dennis Schaal, *Orbitz-AA Direct Link Heralds Bypass of GDSs*, Travel Weekly, August 29, 2002, (available at <http://www.twcrossroads.com/news>). Calculation assumes 2.5 segments per booking.
 47. ComScore, ComScore Media Matrix: U.S. Top 50 Internet Properties July 2002 measurement period, pp. 1-2
 48. *Galileo*, *supra* note 39, at 4-5.

49. *Travel web sites: You still need to compare*, Consumer Reports Travel Letter (Consumers Union, Yonkers, N.Y.), June 2002, at 1.
50. MALONEY, *supra* note 2, at 18; ARC Written Statement, p. 7.
51. ARC, *supra* note 5.
52. The General Manager of Travel Travel described her concern over the debit memo system: “. . . we spent a lot of time disputing with the airlines. ARC debit memos and service fees. It is unfortunate that our agency, along with other agencies, have to spend so much research time proving the legitimacy of each fee that we sometimes come close to forgetting the most important part of our job. Taking care of the customer.” (Tr., 6/26/02, p. 206).
53. MALONEY, *supra* note 2, at 24-25; Another example was provided by Diplomat Travel about a client who was traveling from Madison, Wisconsin to Texas on American. The flight was cancelled by American and the airline told Diplomat to refund the original ticket and issue a new one from Chicago, where the passenger had to travel in order to take another flight. Diplomat explains, “Total compensation for both tickets to us was \$35. We received a \$200 debit memo. The reservation agent said to refund, we thought, through the IAR. No one said this had to be mailed into American Airlines. And the client needed to pay for another \$600 ticket, while he waited six to ten weeks for American to mail him the refund.” (Tr., 6/26/02, pp. 259-60).
54. MALONEY, *supra* note 2, at 21.
55. Tr., 6/26/02, pp. 109-110.

Chapter 3

1. Harris Interactive survey, dated April 17, 2002.
2. Bruce Cunningham, Consumer Attitudes and Use of the Internet and Traditional Travel Agents, pp. 13-14 (Sept. 19, 2002) (study prepared for the Commission).
3. *Id.* at 16-18.
4. An online air traveler is one who travels for business or leisure and has a valid e-mail address. Totals add to more than 100% because of multiple responses.
5. Department of Transportation, Report to Congress: Efforts to Monitor Orbitz, p. 19 (June 2002)
6. CUNNINGHAM, *supra* note 1, at 18.
7. *Id.* at 22.
8. *PhoCusWright, Travel Market Analysis, 2002-2004*, pp. 2-3, 12.
9. Written testimony of Greg Taylor, United Airlines, Inc., p. 9.

10. Written testimony of Scott Yohe, Delta Air Lines, Inc., pp. 8, 13-14.
11. One area of particular concern to the Commission is the impact of the changes outlined here on rural consumers. One Member of Congress suggested that the travel agent fees and the lack of access to many airline discounts results in higher costs for rural residents and makes it harder for smaller agents to survive (Letter, dated June 11, 2002, from Hon. Bill Shuster to the Commission). However, the recent changes have actually improved the position of rural residents. With Internet access, they can handle their travel needs online. Because they no longer need paper tickets, they do not need to visit a physical travel agent location, but can deal with agencies anywhere in the country. Thus, they can purchase travel more efficiently, and they have a wider choice of alternatives for travel intermediaries.
12. Written testimony of Robert W. Joselyn, pp. 6-8; Tr., 6/12/02, pp. 106, 109.
13. JOSELYN, *supra* note 11, at 8.
14. Tr., 7/31/02, pp. 205-207; CUNNINGHAM, *supra* note 1, at 16.
15. JOSELYN, *supra* note 11 at 6, 8.
16. Written testimony of William A. Maloney, American Society of Travel Agents, p. 43; Written testimony of Beau Brendler, Consumer Webwatch, p. 4.
17. JOSELYN, *supra* note 11, at 8.
18. Written testimony of John H. Caldwell, p. 6.
19. The corporations participating in the study designated the web sites to search. The examples were chosen because employees told corporate travel managers that lower fares were available on particular online agency or airline sites. In almost all cases, Topaz searched at least two major Internet sites.
20. American Heritage Dictionary Of The English Language, (4th Ed. 2000); Webster's Revised Unabridged Dictionary, (1996).
21. CUNNINGHAM, *supra* note 1, at 15.
22. YOHE, *supra*, note 9, at 3.

Chapter 4

1. Written testimony of Steven W. Hewins, Hewins Travel Consultants, Inc., pp. 5-7.
2. Bruce Cunningham, Travel Agents Access to Airline Fares, 15-16 (July 30, 2002) (study prepared for the Commission).
3. *Id.* at 15-16.
4. *Id.* at 15.
5. *Id.* at 9-11.
6. *Id.* at 9.
7. *Id.* at 9-11.

8. Letters from George A. Nicoud, III, Associate General Counsel of American Airlines (Sept. 20 and 25, 2002).
9. *New NWA Agency Site to Allow ARC Reporting*, Travel Weekly, September 30, 2002. (available at <http://www.twcrossroads.com/news>). Northwest's online web fare program does not provide integration of transaction data with agency back office software, integrated PNR management, or credit against CRS booking thresholds.
10. Sabre handles 47% of North American travel agency bookings.
11. CUNNINGHAM, *supra* note 2, at 2.
12. *Id.* at 2.
13. *Id.* at 2.2 n.4.
14. *Id.* at 3.3 n.5.
15. *Id.* at 3.
16. Tr., 6/12/01, p. 78. Several members of the Commission also attended a demonstration of these tools at Casto Travel in San Francisco.
17. Written testimony of John H. Caldwell, p. 7.
18. Tr., 6/12/02, pp. 195-97.
19. *Id.* at 195-97.
20. Written Statement of Kevin Iwamoto, National Business Travel Association, Inc., p. 3.
21. *Id.* at 4.
22. Written testimony of David A. Schwarte, Sabre, Inc., pp. 8, 11, 12.
23. Department of Transportation, Report to Congress: Efforts to Monitor Orbitz, p. 19 (June 2002)
24. Tr., 7/11/02, p. 96.
25. Jerry Limone, *CO exec: Our Fares on Web Aren't "Web fares,"* Travel Weekly, Aug. 7, 2002. (available at <http://www.twcrossroads.com/news>).
26. SCHWARTE, *supra* note 20, at 17; Tr., 7/31/02, pp. 225-26.
27. Dennis Schaal, *Expedia Revenue, Net Up; TravelocityLags*, Travel Weekly, July 25, 2002. (available at <http://www.twcrossroads.com/news>).
28. Expedia SEC Form 10-Q, period ended June 30, 2002. Expedia earned a net profit of \$20.1 million on revenue of \$165.8 million in the third quarter of 2002 (Reuters, October 23, 2002).
29. *Travel web sites: You Still Need to Compare*, Consumer Reports Travel Letter (Consumers Union, Yonkers, N.Y.), June 2002, at 1.
30. *Id.*, at 1, 6.

Chapter 5

1. Written Testimony of Michael Thomas, OneTravel.com, p. 11.
2. Written Testimony of Mark H. Brown, AAA, p. 5.
3. Written Testimony of Kevin Iwamoto, National Business Travel Association, Inc., p. 6.
4. Written Testimony of Al Lenza, Northwest Airlines, Inc., pp. 4-5.
5. Orbitz submitted a letter, dated October 15, 2002 to the Commission defending the MFN clause. It claimed that the clause is simply a commercial agreement under which it rebates to the carrier part of its rebate from the CRS in exchange for access to all the carrier's web fares, and argues that striking the clause would simply aid its competitors, Travelocity and Expedia, without benefiting the public interest.
6. Written Testimony of Michael Mulvagh, American Express, p. 8; Written Testimony of Steven W. Hewins, Hewins Travel Consultants, Inc., p. 8; Written Testimony of Mark Miller, Galileo International, Inc., p. 16.
7. Written Testimony of George A. Nicoud, III, American Airlines, Inc., pp. 8-9.
8. MULVAGH, *supra*, note 10, at 11; SCHWARTE, *supra* note 6, at 20.
9. Written Testimony of Alex Wasilov, Rosenbluth International, pp. 2-3.
10. The Travel Agent Arbiter program was established by ARC and travel agent organizations to resolve disputes over applicability of, or compliance with, the terms of the airline-agent agency agreement. The Arbiter may resolve other disputes between agents and airlines with the consent of both parties.

