



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

July 24, 2015

1200 New Jersey Avenue, SE
Washington, DC 20590

Certified Mail – Return Receipt Requested

Jon-Peter F. Kelly
Assistant General Counsel
Delta Air Lines, Inc.
Department 981, 1030 Delta Boulevard
Atlanta, Georgia 30354-1989



Re: Potential Violations of 49 U.S.C.
§ 41712

Dear Mr. Kelly:

This letter concerns allegations of pricing irregularities on air routes that compete with Amtrak's Northeast Corridor service in the aftermath of the derailment of Amtrak Northeast Regional Train, No. 188 ("Amtrak 188"), on May 12, 2015.¹ Specifically, we are investigating whether air carriers engaged in unfair practices (*e.g.*, price gouging) affecting air travel during the period of time that Amtrak service along the Northeast Corridor was delayed or suspended as a result of the May 12th derailment.

Pursuant to 49 U.S.C. § 41712, the Department may investigate and decide whether an air carrier has been or is engaged in an unfair or deceptive practice in air transportation and may prohibit such conduct. Generally, a practice is unfair if it (1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition.² In order to investigate the allegations, we require that Delta Air Lines, Inc.³ (Delta) provide us with complete and accurate responses to the questions below.

¹ See letter from Senator Christopher S. Murphy, dated May 19, 2015. A copy is enclosed.

² The statute providing the Department authority to regulate unfair and deceptive practices, 49 U.S.C. § 41712, is modeled after Section 5 of the FTC Act, 15 U.S.C. § 45; see *e.g.*, *EPIC v. Northwest Airlines*, DOT Order 2004-9-13 (noting that the Federal Trade Commission Act, 15 U.S.C. § 45, served as a model for 49 U.S.C. § 41712). In analyzing whether a practice of a carrier or ticket agent action is unfair, we use a standard similar to the Federal Trade Commission's standard for unfairness. See <http://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

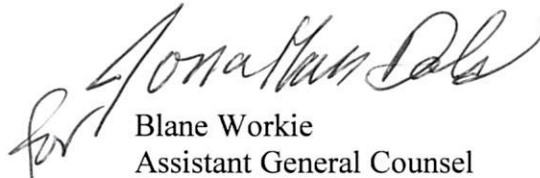
³ When referenced in this letter, "Delta" refers to Delta Air Lines and any subsidiaries affiliated with Delta.

1. For each route segment served by Delta that is referenced in the enclosed list of routes, provide the following information in a Microsoft Excel spreadsheet format:
 - a. State the average fare by market, by day, and by fare class, offered by Delta on each day from April 28 to May 26, 2015. Include a complete description of any and all restrictions associated with each fare class.
 - b. State the number of tickets purchased by market, by day, and by fare class, on each of the dates referenced in question 1.a.
 - c. State the number of passengers carried by market, by day, and by fare class, on each of the dates referenced in question 1.a.
 - d. State the average fare by market, by day, and by fare class, offered by Delta on each day from April 29 to May 27, 2014. Include a complete description of any and all restrictions associated with each fare class during the relevant period.
2. Provide an explanation for any increases in average fare (by market and fare class) that occurred between the period April 28 to May 11, 2015 and the period May 12 to May 26, 2015.
3. Identify, if any, other routes that Delta serves whose demand and fares were affected by the derailment of Amtrak 188.
4. State whether Delta made any adjustments to schedule, frequency, or equipment on the routes discussed in questions 1 and 3 following the derailment of Amtrak 188. Describe the adjustments made, if any, and explain the reasons for the adjustments.
5. State whether Delta made any adjustments or exceptions, whether temporary or permanent, to the carrier's pricing structure or change, cancellation, or refund policies following the derailment of Amtrak 188. Describe the adjustments or exceptions, if any, and explain the reasons for the adjustments or exceptions.
6. State whether Delta made any adjustments or exceptions, whether temporary or permanent, to the carrier's frequent flyer program, including mileage accrual or redemption policies and availability, or membership benefits policies, following the derailment of Amtrak 188. Describe the adjustments or exceptions, if any, and explain the reasons for the adjustments or exceptions.
7. State whether Delta, through its management, agents, or counsel, ever initiated or participated in a conversation with another air carrier about passenger demand, fares, flight frequencies, or equipment, in relation to the derailment of Amtrak 188. Provide a description of these conversations, if any.

8. State whether Delta, through its management, agents, or counsel, communicated in writing with any other air carrier regarding the derailment of Amtrak 188. Provide a copy of these communications, if any.
9. State whether Delta received any consumer complaints about Delta's price for flights on routes affected by the derailment of Amtrak 188 during the period May 12 to 18, 2015. Provide a copy of these complaints, if any.
10. Provide Delta's revenue forecasts as of 12:00 p.m. on May 11, 2015, by day for the period May 12 to 26, 2015 for each market listed in the enclosed list of routes for which Delta offers service.

We request that Delta provide any other information that it believes should be taken into account in our investigation of this matter. We ask that this information be provided within 30 days of the date of this letter. If you have any questions about this matter, please do not hesitate to contact Ryan Patanaphan, Trial Attorney, or Kimberly Graber, Chief, Consumer Protection and Competition Law Branch, at (202) 366-9342.

Sincerely,

A handwritten signature in cursive script, appearing to read "Blane Workie". To the left of the signature is a small, stylized mark that looks like "for".

Blane Workie
Assistant General Counsel
Aviation Enforcement and Proceedings

Enclosure

LIST OF ROUTES

IAD-EWR
IAD-JFK
IAD-LGA
IAD-ISP
IAD-BDL
IAD-PVD
IAD-BOS
DCA-EWR
DCA-JFK
DCA-LGA
DCA-ISP
DCA-BDL
DCA-PVD
DCA-BOS
BWI-EWR
BWI-JFK
BWI-LGA
BWI-ISP
BWI-BDL
BWI-PVD
BWI-BOS
PHL-EWR
PHL-JFK
PHL-LGA
PHL-ISP
PHL-BDL
PHL-PVD
PHL-BOS

EWR-IAD
EWR-DCA
EWR-BWI
EWR-PHL
JFK-IAD
JFK-DCA
JFK-BWI
JFK-PHL
LGA-IAD
LGA-DCA
LGA-BWI
LGA-PHL
ISP-IAD
ISP-DCA
ISP-BWI
ISP-PHL
BDL-IAD
BDL-DCA
BDL-BWI
BDL-PHL
PVD-IAD
PVD-DCA
PVD-BWI
PVD-PHL
BOS-IAD
BOS-DCA
BOS-BWI
BOS-PHL

United States Senate

WASHINGTON, DC 20510

May 19, 2015

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Mr. William J. Baer
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U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
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Ms. Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Mr. Baer and Ms. Ramirez,

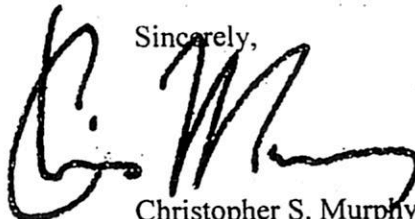
As leaders at agencies tasked with protecting consumers and promoting economic competition, I wanted to bring to your attention reports of alarming price trends in airfares along the Northeast Corridor in the wake of the fatal derailment of a New York-bound Amtrak train last Tuesday. I respectfully ask that you investigate these price spikes to ensure that they were aberrations and not evidence of attempts by airlines to manipulate the prices to unfairly target the thousands of travelers whose travel plans were altered as a result of the derailment.

According to a May 14, 2015, article in The New York Times, certain flights were priced significantly higher than usual, even when compared to same day flights. For example, the article cited a flight from La Guardia Airport to Washington, D.C. that was priced at the staggering amount of \$2,309. This evidence, as well as anecdotal evidence from my constituents, raises troubling questions about possible market distortions at play. If this drastic and sudden increase in ticket prices is an effort to make money from desperate travelers impacted by this tragedy, you should fully exercise the enforcement powers vested in your agencies.

Some companies self-corrected after I initially expressed concern last Friday. I was glad to see that after their \$2,300 flight raised eyebrows, Delta Airlines announced that it would make every effort to accommodate passengers affected by the service outage along Amtrak's lines in the northeast. The carrier added seats on its shuttle flights between major east coast cities, honored existing Amtrak tickets, waived change fees and offered discounted one-way fares. Any actions companies took to aid struggling travelers after this tragedy deserve to be applauded.

Like you, I share a profound interest in protecting consumers, and trust that you will thoroughly and promptly investigate this matter. Thank you for your consideration of my request.

Sincerely,



Christopher S. Murphy
United States Senator