

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Docket No. DOT-OST-2016-0204

Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information: Extension of Response Deadline for Request for Information

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT)

ACTION: Request for Information (RFI), response to document and data request; clarification; and extension of response deadline.

SUMMARY: DOT is extending the response period for the RFI regarding industry practices on the distribution and display of airline flight schedule, fare, and availability information. The Department is extending the period for persons to submit responses to the RFI from December 30, 2016, to March 31, 2017. This action also addresses a request for documents or data submitted to the Department in connection with issues addressed in the RFI. This request for documents will be processed pursuant to requirements under the Freedom of Information Act (FOIA). This notice also responds to a request for clarification of statements in the RFI.

DATES: Responses should be filed by March 31, 2017.

ADDRESSES: You may file responses identified by the docket number DOT-OST-2016-0204 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251

Instructions: You must include the agency name and docket number DOT-OST-2016-0204 at the beginning of your submission. All submissions received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all submissions received in any of our dockets by the name of the individual submitting the document (or signing the submission, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kyle-Etienne Joseph, Trial Attorney, Office of the General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, 20590, 202-366-9342, 202-366-7152 (fax), kyle-etienne.joseph@dot.gov (e-mail).

SUPPLEMENTAL INFORMATION:

DOT's Request for Information (RFI)

On October 31, 2016, the Department of Transportation published a Request for Information (RFI) to obtain public input regarding industry practices on the distribution and display of airline flight schedule, fare, and availability information. The Department's RFI requests information on whether airline restrictions on the distribution or display of airline flight information harm consumers and constitute an unfair and deceptive business practice and/or an unfair method of competition. The RFI also requests information on whether any entities are blocking access to critical resources needed for competitive entry into the air transportation industry. Finally, the RFI requests information on whether Department action is unnecessary or whether Department action in these areas would promote a more competitive air transportation marketplace or help ensure that consumers have access to the information needed to make informed air transportation choices. See 81 FR 75481 (October 31, 2016). Responses on the matters discussed in the RFI were requested 60 days after publication in the Federal Register or by December 30, 2016.

A4A's Request for Extension of the Response Period on DOT's RFI

On November 8, 2016, we received a request from A4A to extend the response date to the RFI to either 60 days after the Department provides additional information in the docket as requested by A4A, or until March 31, 2017. See DOT-OST-2016-0204-0003.

On November 17, 2016, the Travel Technology Association (TTA) provided a response to the Department opposing A4A's requests. See DOT-OST-2016-0204-0004. TTA asks the Department to deny A4A's request for an extension of 91 days but states that it would not object

to an extension of the response time to January 13, 2017, noting that the December 30, 2016, response date is close to two major holidays.

On November 23, 2016, A4A provided a response to TTA's letter opposing A4A's request for an extension. See DOT-OST-2016-0204-0012.

On November 30, 2016, Delta Air Lines, Inc. (Delta) provided a letter to the Department in support of A4A's request to extend the response period. See DOT-OST-2016-0204-0249.

On December 6, 2016, the Department received TTA's response to the November 23, 2016, A4A letter, and the November 30, 2016, Delta letter. See DOT-OST-2016-0204-0747.

The Department has considered the requests of A4A, TTA, and Delta. In response to the requests for extension of the response period, we grant the extension to March 31, 2017.

A4A's Request for Clarification on DOT's RFI

On November 8, 2016, we received a request from A4A to clarify certain statements and questions in the RFI. See DOT-OST-2016-0204-0003. A4A states that it needs clarification regarding some of the questions posed in the RFI and that it is not sure how the Department is using certain terms. In response to A4A's request, the Department provides the following clarifications.

A4A's first request for clarification is regarding terms that appear on 81 FR 75485. The RFI states on page 75485, center column, bottom paragraph, "Some ticket agents assert that Web sites such as theirs can potentially better position new entrant airlines to compete with larger and more established airlines, especially considering recent airline consolidation." A4A states that the phrase "better position new entrant airlines to compete" implies that ticket agents can bias their displays in favor of new entrant airlines, which A4A states would be unfair and deceptive. We note that the Department recently issued a regulation that prohibits both ticket agents and

carriers from biasing certain flight information displays based on carrier identity without disclosing such bias. See 81 FR 76800.

As described in the RFI, the Department requests additional information to aid the Department in its analysis. The phrase identified by A4A, "better position new entrant airlines to compete," repeats assertions made by some ticket agents and we are requesting input on this assertion. See 81 FR 75485.

A4A's second clarification request relates to terms that appear on 81 FR 75486 where the RFI asks on the first column, whether "any entities are blocking access to critical resources needed for competitive entry into the air transportation industry." Specifically, A4A asks what do "critical resources" and "competitive entry" mean in this context. The RFI also discusses the terms "critical resources" on page 75482, bottom of second column, top of third column, as follows:

On April 15, 2016, the White House issued Executive Order 13725: Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy (the "Executive Order"). The Executive Order expresses the importance of a fair, efficient, and competitive marketplace and notes that consumers need both competitive markets and information to make informed choices. The Department shares the goal of ensuring consumers are provided with information they need to make informed choices. In particular, as directed in the Executive Order, the DOT wants to identify any specific practices in connection with air transportation, such as blocking access to *critical resources*, that may impede informed consumer choice or unduly stifle new market entrants and determine whether the Department can potentially address those practices in appropriate instances. [emphasis added.]

The Executive Order referenced above directs the Department to take action to promote competition, and specifically to act in connection with abuses such as blocking access to *critical resources* that are needed for *competitive entry*. [emphasis added.] The Department uses "critical

resources" and "competitive entry" in the same manner discussed in the RFI paragraph above and in the Executive Order.

A4A next asks what the Department means by "air transportation industry," which appears on page 75486, and whether it refers to the distribution or the provision of air transportation. Regarding the "air transportation industry," the Department is gathering information and did not distinguish specific aspects of the industry such as the distribution or provision of air transportation. Any interested party should provide any information it deems relevant to the issues identified in the RFI.

Also on page 75486, the RFI goes on to ask "whether Department action in this area would promote a more competitive air transportation marketplace." A4A asks what "more competitive air transportation marketplace" means. As discussed in the RFI, some ticket agents informed the Department that they believed airline actions had an anti-competitive impact. As stated in the RFI, the Department is seeking any information relevant to the issues and concerns regarding competition identified in the RFI.

Finally, A4A's third clarification request refers to page 75486, in the third column, under "Effects of Airlines Restricting Use of Flight Information," where the RFI says:

We note that flight information is available through airline Web sites. Would a reduction in the availability of airline flight information on non-airline Web sites due to airline restrictions on the distribution and/or display of such information have a significant negative impact on consumers?

A4A states that the question is vague and asks what "reduction in the availability of airline flight information" means and what the baseline is for determining a "reduction?" The RFI describes and discusses the current availability of flight information on both airline and non-airline Web sites and this question asks about a reduction as compared to currently available flight

information. Any interested party should provide any information it deems relevant to the question.

A4A's Request for Documents and Data Related to DOT's RFI

On November 8, 2016, we also received a request from A4A to provide any documents or data related to the RFI that would enable airlines and other stakeholders to provide meaningful and comprehensive responses. See DOT-OST-2016-0204-0003. On November 30, 2016, Delta provided a letter to the Department in support of A4A's request for the Department to provide additional documents and data related to the RFI. See DOT-OST-0204-0249.

A4A and Delta request the following:

1. Formal and informal complaints (such as correspondence or memoranda) by online travel agents (OTAs) and metasearch sites (MSSs) regarding airline distribution practices for the period 2011 to present.
2. Documentation regarding the resolution of any such formal or informal complaint.
3. Research, data, and analysis provided to support any such complaints or to support the concerns claimed by OTAs and MSSs as described in the Notice.
4. Data provided by OTAs or MSSs indicating the number of OTAs or MSSs affected by air carrier distribution restrictions described in the Notice.
5. The Travel Technology Association/Charles River Associates paper dated May 19, 2015 and any supporting work papers, data or supplemental information.
6. Correspondence and records of communications between the Department and Travel Technology Association or Charles River Associates, or any of their representatives.
7. Correspondence between the Department and any other Federal, State or local agency regarding the topic of the Notice, including the issue of consumer rights and comparison shopping.
8. Data provided by OTAs/MSSs or other ticket agents regarding the volume of combined one-way tickets sold that are packaged to create a round-trip itinerary in order to provide a lower cost option than a single carrier round trip offering, and related savings data.

In response to A4A's request for documents and data, the Department notes that the Travel Technology Association/Charles River Associates paper dated May 19, 2015, is already publicly available as described in the RFI. Nevertheless, the Department has posted the document in the

docket for this proceeding. The Department has also posted Executive Order 13725 in the docket. Regarding the remaining documents and data requested by A4A, the Department has identified this request as one for records under the Freedom of Information Act (FOIA) and has forwarded it to the Office of the Secretary's FOIA Office for processing. The FOIA Office will provide any responsive and releasable information to A4A and Delta and the Department also will place this information in the docket. The Department does not view the outcome of the FOIA request to be material to stakeholders' ability to respond to the RFI. Accordingly, to the extent that the Department has not responded to the FOIA request by March 31, 2017, interested parties should not delay providing a response.

ISSUED THIS 16TH DAY OF DECEMBER, 2016, IN WASHINGTON, D.C.

-ORIGINAL SIGNED-

Molly J. Moran
Acting General Counsel