

**The following letter was sent on March 4, 2011, to the
association which represents the major global distribution
systems operating in the United States.**

We appreciate that you and representatives of several of your global distribution system (GDS) and travel agent members took the time to meet with us and provide our office information regarding how GDSs display airline information to travel agents.

As we discussed, my office seeks to ensure that GDSs and OTAs are aware that inadequately disclosed display bias is harmful to consumers and is an unfair and deceptive practice. We do not, however, take a position in any contractual disputes between any airline and a GDS or OTA, and no correspondence or statement from my office should be misconstrued as having done so. As I indicated at our meeting, we have not conducted a full investigation of any GDS or OTA regarding bias disclosure; nor have we found that any particular GDS or OTA has engaged in a bias-related unfair and deceptive practice in violation of 49 U.S.C. § 41712. In order to clarify my office's views, I summarize below the kinds of disclosure that we would expect to see if a GDS or OTA decided to engage in display bias impacting the display of an individual air carrier's fare and schedule information.

Adequate disclosure is a prerequisite to preventing display bias from rising to an unfair and deceptive practice that harms consumers. Displays provided by GDSs to travel professionals would be expected to provide clear and explicit disclosure directly to individual agents, with an understanding that travel professionals have a more sophisticated understanding than ordinary consumers of the information available to them.

To the extent that a GDS decided to alter the way it displayed information to travel agents to favor or disfavor one or more air carriers, we would expect that to be disclosed as follows:

- Through letters or appropriate electronic mail communications to travel agent companies so that they can take appropriate steps to notify their employees and to make necessary adjustments to any systems they might have layered on top of the GDS displays.
- Through an explicit statement on GDS displays to each travel agent describing which air carriers are impacted and in what manner. We would expect the statement to be displayed before the agent could use the GDS. The disclosure would have to be prominent and clearly visible on the first screen displayed to the travel agent during sign-in or immediately after entering or logging onto the system. The disclosure should state which air carriers are impacted, whether those air carriers' flights are favored or disfavored in the display of flight options, and, to the extent features exist to override display bias, instructions on how to do so or where to find such instructions.
- The information regarding impacted air carriers and override procedures should also be made available via abbreviated instructions on displays throughout the system and particularly on the screens displayed to travel agents as they search options and book air transportation.

- To the extent the system features a toolbar or panel that remains on the screen adjacent to the active window, a notice hyperlinked to the information should be made available on the adjacent toolbar or panel.

Because each system is different, each GDS is responsible for determining the best way to disclose information on its own system and for providing adequate disclosure of any display bias. The above examples of how to provide adequate disclosure to individual travel agents are suggestions that can be adapted to each system. Our office stands ready to work with representatives of any GDS that has questions regarding applying this guidance to its own system.

The displays presented by OTAs directly to consumers would be expected to provide an even higher level of disclosure regarding any bias than would be expected from a GDS. The disclosure by an OTA would have to be clear and understandable to the ordinary consumer since OTA displays are directed at all consumers, not only sophisticated consumers or travel professionals. The examples above focus on disclosure by GDSs since you have advised us that certain OTAs will contact our office directly for additional guidance regarding appropriate disclosure on websites directed at consumers. Finally, we wish to note that a GDS or OTA might conceivably seek to implement such a biased display that it would constitute an unfair and deceptive practice no matter what disclosure was provided.

Since the guidance provided above is intended to help GDSs and OTAs avoid possible enforcement action, we would appreciate your sharing this letter with your members who attended our meeting and with others who you feel may benefit from it. Questions about this guidance may be directed to me or my deputy, Dayton Lehman Jr., at 202-366-9342.

Sincerely,

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings