

The following letter was sent on February 1, 2011, to the association which represents the major global distribution systems operating in the United States and to several global distribution systems and online travel agents.

Re: Display bias

This letter is in regard to recent reported actions by global distribution systems (GDSs) and online travel agents (OTAs) that appear to be unfair and deceptive practices in violation of 49 U.S.C. § 41712.

It has come to our attention that, apparently in connection with various business disputes in recent months, at least one OTA may have intentionally biased or distorted the airfare and schedule information of at least one airline that is displayed to consumers on the OTA's website so as not to accurately reflect that information or accurately reflect that information compared with that of other carriers. Additionally, we understand that certain GDSs may have biased or distorted the information displayed to travel agents in a similar manner.¹

The Department of Transportation (Department) does not prescribe how a system must display airline services or require any OTA or GDS to provide fare and schedule information or sell tickets for all air carriers or any particular air carrier. However, the Department has the authority to prohibit OTAs and GDSs from presenting their displays in an unfair and deceptive manner, including by biasing their displays.² The Department views display bias as an unfair and deceptive practice because it prevents consumers and travel agents who advise consumers from obtaining accurate and complete information on schedules and fares.³ Display bias by an OTA could prevent consumers relying on that OTA from obtaining accurate and complete information on schedules and fares. Display bias by a GDS in the displays relied on by travel agents could mislead those travel agents and a significant number of consumers who rely on them by causing their travel agents to provide misleading information on the available service options and as a result book relatively inferior flights when other flights might better meet those travelers' needs, for example, in terms of price or scheduling.

OTAs and GDSs have generally led the public to believe that they are transparent sources of the information they have and that the information they do provide is fairly presented. This being the case, an OTA or GDS that displays airfare and schedule information for a particular air carrier

¹ This letter is intended to address practices occurring within the United States. As a matter of policy, the Department of Transportation Office of Aviation Enforcement and Proceedings does not generally take enforcement action in connection with displays presented by GDSs or OTAs only outside the United States.

² 49 U.S.C. 41712; *Sabre, Inc. v. Dept. of Transportation*, 429 F.3d 1113, 1124 (Nov. 22, 2005).

³ See, e.g., Computer Reservations System (CRS) Regulations, Final Rule, 69 FR 976, 992-94, Jan. 7, 2004.

must display such information equitably with that of all other air carriers on that system without display bias in favor of, or to the detriment of, individual air carriers. The Department's Office of Aviation Enforcement and Proceedings views conduct by an OTA or GDS of biasing airfare and schedule information without sufficient notice of that bias to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712. By bias, we mean to include the inequitable display of information in a manner associated with passenger preferences, e.g., lowest fares, departure times, arrival times, trip duration, or airports used. The inaccurate display of information regarding a particular carrier would also be deceptive under 49 U.S.C § 41712.

To the extent an OTA or GDS engages in display bias, it must clearly and conspicuously disclose that fact. Sufficient notice could include, but is not limited to, a prominent notice on each screen that displays fare and schedule information to the effect that the information displayed is not neutral and that fare and schedule information for certain air carriers available to the OTA or GDS is not equitably displayed. A general notice from a GDS to travel agents using its system by email or letter would not, by itself, be sufficient notice to avoid consumer harm. The publication of inaccurate carrier fare or schedule information is never permitted.

By this letter, we caution OTAs and GDSs not to engage in undisclosed display bias. We will continue to monitor OTA and GDS practices in this area and will, if warranted, take enforcement action to ensure consumers are not provided deceptive information. Questions about this guidance may be directed to me or my deputy, Dayton Lehman Jr., at 202-366-9342.

Samuel Podberesky
Assistant General Counsel
Office of Aviation Enforcement and
Proceedings
Office of the General Counsel
U.S. Department of Transportation