

April 27, 2016

The Honorable Anthony Foxx  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Foxx:

I am writing to express concerns over recent reports of anticompetitive behavior on the part of several major airlines that are restricting access to fee and schedule information to third party price comparison sites. Third party comparison websites can provide consumers with valuable pricing, scheduling, and fee information from all readily available options. However, several airlines are now restricting access to their respective fare and flight data, forcing consumers to obtain this information exclusively from airline's websites, where the consumer does not have the ability to comparison shop. I believe these actions by some airlines to block fare transparency and restrict data are not in the best interests of the consumer. Therefore, I request that the Department of Transportation investigate this practice, and if the investigation proves conclusive – use its existing statutory authority under 49 U.S.C. § 41712 to require airline pricing transparency and prevent the withholding of fare and schedule information from travel websites that provide valuable comparison-shopping services for air travelers.

Further review of these actions and pursuit of appropriate recourse by the Department of Transportation directly align with President Obama's April 15<sup>th</sup> Executive Order on appropriate steps to increase competition and better inform consumers and workers to support continued growth of the American economy. This Executive Order calls for agencies to identify specific actions within their jurisdiction to improve transparency and ensure consumer access to information necessary to make informed purchasing decisions. Specifically, Sec. 2 states that:

“(a) Executive departments and agencies with authorities that could be used to enhance competition (agencies) shall, where consistent with other laws, use those authorities to promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public.

(b) Agencies shall identify specific actions that they can take in their areas of responsibility to build upon efforts to detect abuses such as price fixing, anticompetitive behavior in labor and other input markets, exclusionary conduct, and blocking access to critical resources that are needed for competitive entry. Behaviors that appear to violate our antitrust laws should be referred to antitrust enforcers at DOJ and the FTC. Such a referral shall not preclude further action by the referring agency against that behavior under that agency's relevant statutory authority.

(c) Agencies shall also identify specific actions that they can take in their areas of responsibility to address undue burdens on competition. As permitted by law, agencies shall consult with other interested parties to identify ways that the agency can promote competition through pro-competitive rulemaking and regulations, by providing consumers and workers with information they need to make informed choices, and by eliminating regulations that restrict competition without corresponding benefits to the American public.”<sup>1</sup>

In recent years, we have seen large and rapid consolidation of the airline industry. Since 2008, the eight largest airlines have merged into four carriers who control over 82% of domestic seat capacity in the United States, reducing competition and consumer choices.<sup>2</sup> Currently, 44% of travelers typically shop using an online travel agency (OTA) or metasearch travel site to comparison shop before purchasing from an OTA or directly from an airline’s website via a metasearch site.<sup>3</sup> Searching multiple fares at once and finding the best flight options help the consumer.

Despite favorable fuel costs and record industry profits, some airlines have been moving to restrict how travel websites display publicly available fare and schedule information. These changes have made it more difficult for consumers to find comprehensive flight and schedule information, and to shop for the best flight at the lowest price in a transparent, simple way. It is clear that this information helps consumers make better informed choices.

For these reasons, I ask you to review recent practices on the part of airlines to restrict customer access to transparent fee and schedule information, determine whether or not certain airlines are committing an unfair practice or unfair method of competition under 49 U.S.C. § 41712, and take any necessary enforcement actions to prevent these actions in the future. Undertaking this review and making this determination will fulfill the Department’s obligation to identify and take appropriate action to improve consumer access to information necessary to make informed purchasing decisions, as called for by President Obama’s April 15<sup>th</sup> Executive Order. Thank you for your time and attention. I look forward to the results of your review and determination.

Sincerely,



Elizabeth Warren

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<sup>1</sup> Executive Order 13725 -- Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy, April 15, 2016 <https://www.whitehouse.gov/the-press-office/2016/04/15/executive-order-steps-increase-competition-and-better-inform-consumers>

<sup>2</sup> Jack Nicas, Airline Consolidation Hits Smaller Cities Hardest, *The Wall Street Journal* Sept. 10, 2015 <http://www.wsj.com/articles/airline-consolidation-hits-smaller-cities-hardest-1441912457>

<sup>3</sup> Phocuswright U.S. Online Travel Overview, December 2014.