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DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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Advance Notice of Proposed Rulemaking)
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Computer Reservation System (CRS))
Regulations)
)
14 C.F.R. Part 255; Notice No. 97-9)
)

Docket OST-97-2881-35

COMMENTS OF BRITISH AIRWAYS

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COMMENTS OF BRITISH AIRWAYS PLC

Introduction

British Airways welcomes the opportunity to comment on the Department's Advance Notice of Proposed Rulemaking (ANPRM) regarding Computer Reservation Systems (CRSs). The existing CRS regulations have, for the most part, served a useful purpose. Accordingly, they should be extended for an additional interim period, subject to adjustment as discussed below. The Department should consider revisiting the rules before their expiration should circumstances warrant.

The Department should also exercise caution before expanding the reach of the existing regulations, particularly to new technologies and distribution alternatives. It should do so only

where there is a demonstrated and well documented need. As discussed below, there is a need for affirmative regulatory action to remedy apparent abuses with respect to fictitious and passive segment booking fees. In other areas, where the need for additional regulation has not been established, the Department should avoid regulation that may inhibit innovative, pro-consumer and pro-competitive market alternatives.

The CRS Rules Should be Extended for an Additional "Flexible" Five-Year Period.

During its most recent comprehensive review of the CRS regulations in 1992 the Department concluded that:

CRS rules remain essential because each of the carriers operating the four CRSs may have the power and incentive to use its system to prejudice the competitive position of other carriers in ways that will raise consumer costs and reduce the level of airline service. Because market forces may not effectively prevent such injuries, some regulations are necessary. (57 Fed. Reg. 43781, September 22, 1992).

Only last month in its final rule regarding parity provisions, the Department noted that CRSs retain the ability to exercise market power:

The large majority of travel agencies use only one CRS.... As a result, virtually every airline must make its services available through each of the four CRSs operating in the United States in order to distribute its services through the travel agencies using each system.... Because each airline must participate in each system the systems do not compete with each other for airline participants and have long been able to

dictate the terms for participation (in contrast, the systems compete for travel agency users). Each of the systems is controlled by one or more airlines or airline affiliates, which can use their market power over airline participants to distort airline competition. (62 Fed. Reg. 59784, November 5, 1997).^{1/}

Although changes have occurred since the Department's last comprehensive review, the four CRSs still retain considerable market power. The trend towards more diffuse CRS ownership and development of alternative technologies such as electronic ticketing and direct internet booking suggests that this may diminish. However, current conditions require retention of the CRS regulations to protect against abuses the regulations were designed to prevent and allow the transition to a mature regime of alternative booking sources. A further five year period is appropriate and should be "flexible" in the sense that it would be subject to interim Department review should circumstances warrant.

^{1/} See also Department of Justice comments submitted in Docket OST-96-1145, September 19, 1996, at 2-3 (footnote omitted):

Each CRS provides access to a large, discrete group of travel agents, and unless a carrier is willing to forego access to those travel agents it must participate in every CRS. Thus, from an airline's perspective, each CRS constitutes a separate market and each system possesses market power over any carrier that wants travel agents subscribing to the CRS to sell its airline tickets.

Additional Rules are Required to Prevent CRSs from Charging Airlines Unjustified Booking Fees for Fictitious and Passive Segments.

The Department decided against direct regulation of booking fees in its 1992 rulemaking. That decision was based, in part, on the expectation that "the rule allowing agencies to use third-party hardware and software (and to access several systems and data bases from a single terminal if not owned by the vendor) will begin to discipline booking fees by giving airlines an alternative to CRS bookings." (57 Fed. Reg. 43817). Unfortunately, that expectation has not been realized. As stated by the U.S. Department of Justice:

The CRSs do not engage in price competition in order to induce carriers to participate at higher levels. Not coincidentally, the booking fees that CRSs charge are widely believed to be at supra-competitive levels and appear to have little relation to costs. While the costs of computing power have dropped dramatically over the last decade, the price of CRS services has risen substantially. Indeed, the price has now risen to the point that even airlines that own CRSs have publicly complained about the level of the fees. Moreover, we learned from our investigation that more than three-quarters of CRS revenue is earned from airlines which see little price competition among the CRSs, while approximately ten percent comes from travel agents which see intense price competition. (Department of Justice comments in Docket OST-96-1145 September 19, 1996 at 4-5 (footnote omitted)).

This is not to suggest that the Department embroil itself in regulatory rate making. A simpler solution is to adopt the proposal by America West in its October 14 Petition in Docket No. OST-97-3014 and prohibit CRSs from imposing booking fees for

transactions that do not result in actual travel. Alternatively, should it prove unduly burdensome to verify actual travel, the Department could limit booking fees to transactions that result in issuance of a ticket. While those solutions would not resolve all booking fee related problems, they would eliminate the unjustified practice of charging the airline fees for agency bookings of fictitious, duplicative, speculative and passive segments under circumstances where such bookings provide no benefits to the airline charged.^{2/}

America West calculates that between 7 and 10 percent of its CRS booking fee charges are for abusive bookings. (America West Petition at 10). Passive bookings account for approximately 50% of the booking fees assessed on carriers such as Reno Air,^{3/} and approximately 15% of British Airways' booking fees. British Airways currently pays booking fees for 22% more segments than passengers actually fly.

The problems associated with subscriber contract productivity provisions that reward agents for maximizing bookings regardless of ticket issuance, much less actual passenger travel, have been made known to the Department.

^{2/} America West is not the first airline to raise this issue. It was a concern as far back as early as 1990. See e.g. Second Supplemental Comments of Air France, Docket 46494 (August 23, 1990).

^{3/} Aviation Daily, October 17, 1997, p. 101.

British Airways experienced similar problems this past summer when it discovered that one agent was booking approximately 400 reservations per month in the name of passengers such as GGG and XXX. While British Airways was able to detect and remedy the incident, it is extremely difficult to monitor each of the 107,000 agents which sell its tickets via the four major CRSs. The only practical solution to this problem, which reflects the ability of CRSs to impose "supra-competitive" booking fees, is to prohibit fees for bookings that do not result in actual travel or ticket issuance.

The Department Should Not Expand Applicability of the Rules to Individual Carrier Web Sites

While the existing rules have an overall positive effect, they should not be extended to individual carrier web sites, which are in their infancy but growing rapidly. They demonstrate the potential for new competitive distribution channels benefiting both passengers and carriers and acting as a check on the powers of CRSs. Premature and unwarranted regulation could frustrate their development. As noted by the Department in the 1992 final rule, "Regulation obviously imposes costs of its own, e.g. by interfering with management decisions to respond to market forces (and, in this case, potentially frustrating technological change)." (57 Fed. Reg. 43788, September 22, 1992). Needless regulation could inhibit innovation that will likely alleviate the anti-competitive aspects of existing CRS.

The policy reasons for CRS regulation do not apply to individual carrier web sites. As noted in the ANPRM, "travel agencies hold themselves out as unbiased sources of information, while many web sites do not." (62 Fed. Reg. 47610, September 10, 1997) That is an important distinction. Just as a passenger calling an airline 800 number understands that he or she will be steered towards booking on that carrier (assuming it offers the desired service) and perhaps only be referred to competing service if the first carrier cannot provide a satisfactory option, a passenger accessing a web site identified to an individual carrier understands that flights on the proprietor carrier will receive top billing. With good reason, the Department has never attempted to apply the CRS rules to carrier 800 numbers or internal carrier reservation systems. Similarly, there is no basis for regulating individual carrier web sites.

That is not to say that the Department should not consider issues relating to multi-carrier web sites that portray themselves as neutral providers of airline information, especially with respect to CRS imposed mandatory participation requirements. However, those issues do not apply to individual carrier or carrier group web sites which do not portray themselves as neutral providers of information and which should remain free from regulation.

The Department Should Not Relax the Existing Data Sharing and Functionality Requirements

British Airways opposes any relaxation of the existing requirements that systems make available all marketing and booking data they generate and that they make available to each participating carrier the same functionality used by its owner airline. CRS generated marketing and booking data provide a valuable planning tool. Continuation of data availability is consistent with the longstanding DOT recognition that increased information availability provides greater competition and dilutes the advantages of large vendor carriers.

British Airways also opposes any relaxation with respect to the functionality requirement. The ANPRM notes that:

The size of the halo effect has apparently shrunk in recent years, in large part because the functionality offered by the systems for the owner airlines and other participating airlines has become more equal. (62 Fed. Reg. 47607, September 10, 1997)

The Department should heed that observation. There is no basis for eliminating existing functionality requirements.

The Multiple Listing Issue

The ANPRM notes that American and TWA filed petitions in Dockets 49620 and 49622 requesting a rule prohibiting the multiple listing of a single flight under different airline codes

as a result of code sharing agreements. If the Department includes that issue in this rulemaking, it should be with the understanding that code sharing has become an important marketing alternative that underpins the global network of international services. Code sharing provides significant benefits to passengers and carriers, which require the ability to market their services in conjunction with other carriers in CRSs and elsewhere. Accordingly the Department should use caution in setting these issues for comment so as to avoid any regulatory action that would unnecessarily diminish these benefits.

Given the importance of code sharing in international service the Department should promote consistency between the U.S. and European Union approaches to the multiple listing issue. The Department also should continue the requirement that CRS displays disclose the existence of code share flights and ensure disclosure of the identity of the operating carrier.

Conclusion

Since 1984 the Department of Transportation and the Civil Aeronautics Board before it have acted appropriately in regulating CRS excesses. British Airways respectfully requests that the Department (i) extend the existing rules for an additional five year period, subject to review as circumstances warrant, (ii) avoid regulating carrier web sites, and (iii)

prohibit mandatory booking fees for fictitious and passive segments, for all the reasons set forth above.

Respectfully submitted,

Handwritten signature of Don H. Hainbach, consisting of a large, stylized 'D' followed by 'KH'.

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