

United States Senate

WASHINGTON, DC 20510

August 30, 2019

Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Chao:

We continue to have concerns about potentially anticompetitive and anti-consumer behavior among airlines that may be suppressing consumer ability to make informed flight decisions. Two years ago, the Department of Transportation (DOT or “the Department”) suspended a Request for Information (RFI) that would have explored this issue: “Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information” (DOT-OST-2016-0204). Since then, there has been no meaningful action by the Department to execute its statutory responsibility to improve consumer protection for the traveling public. Accordingly, we write to request that you immediately reinstate the RFI proceeding.

In October 2016, DOT opened an RFI proceeding to gain a better understanding of concerns that airline companies’ may be restricting “distribution or display of airline flight information” and whether that “constitute(s) an unfair and deceptive business practice and/or an unfair method of competition.”¹ Over 60,000 comment submissions were received until the proceeding was abruptly suspended in March 2017, under the false pretense that the Department needed to “allow the President’s appointees the opportunity to review and consider” the RFI.²

Over two years later, the RFI remains suspended, and DOT has not taken meaningful action to study, let alone correct the airline industry’s attempts to stifle marketplace competition and consumers’ ability to price shop. The traveling public depends on third-party price comparison sites to make apples-to-apples comparisons among fares and flights and to select the best price, schedule, and airport from all available options. Unfortunately, some airlines appear to be taking steps to restrict consumer access to fare and schedule information on such sites. For

¹ Molly J. Moran, “Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information,” *Federal Register* volume 81, no. 210 (2016): 75481, accessed July 10, 2019, <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/258896/2016-26191.pdf>.

² Judith S. Kaleta, “Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information,” *Federal Register* volume 82, no. 46 (2017): 13375, accessed July 10 2019, <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/274166/2017-04696.pdf>.

example, Delta Airlines prohibits certain third-party price comparison travel websites, including online travel agents (OTAs) and metasearch websites, from fully accessing the airline's flight data. A consumer wishing to see how Delta's prices and schedules stack up against other carriers on the OTA TripAdvisor, or a metasearch site like Hipmunk, would be out of luck.³ Southwest Airlines withholds its information from travel sites entirely.

Accordingly, we strongly urge the Department of Transportation to lift the RFI suspension and continue exploring industry practices on distribution and display of airline fare, schedule, and availability information. We also urge the DOT to use its existing statutory authority⁴ to protect consumers from unfair or deceptive practices, or unfair methods of competition upon conclusion of this proceeding.

Thank you in advance for your attention to this issue. We respectfully request a response by September 20, 2019.

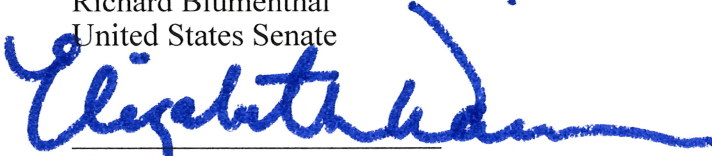
Sincerely,



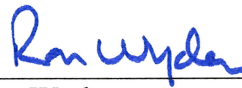
Richard Blumenthal
United States Senate



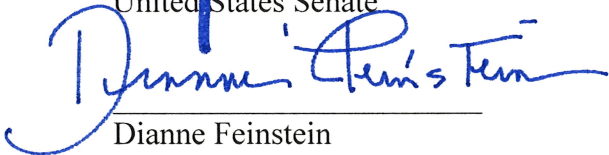
Edward J. Markey
United States Senate



Elizabeth Warren
United States Senate



Ron Wyden
United States Senate



Dianne Feinstein
United States Senate

³ Jack Nicas, "Travel Websites Allege Delta Air Lines Is Shutting Them Out," *The Wall Street Journal* (New York, New York), May 20, 2015, <http://www.wsj.com/articles/travel-websites-allege-delta-air-lines-is-shutting-them-out-1432094461>.

⁴ 49 U.S.C. 41712