

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

American Society of Travel Advisors, Inc.)	
)	
v.)	Docket DOT-OST-2023-0147
)	
American Airlines, Inc.)	
)	

SURREPLY AND MOTION FOR LEAVE TO FILE OF AMERICAN AIRLINES, INC.

Communications with respect to this document should be addressed to:

R. Bruce Wark
Senior Vice President & Deputy General
Counsel
AMERICAN AIRLINES, INC.
1 Skyview Drive
Fort Worth, TX 76155

Katrina Robson
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
Tel: (202) 303-1096
Email: krobson@willkie.com

Molly Wilkinson
Vice President - Regulatory Affairs
AMERICAN AIRLINES, INC.
1200 Seventeenth Street, NW, Suite 400
Washington, DC 20036

Arjun Garg
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Tel: (202) 637-6423
Email: arjun.garg@hoganlovells.com

Counsel for American Airlines, Inc.

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The American Society of Travel Advisors, Inc. (“ASTA”) has twice tried and twice failed to explain how the efforts of American Airlines, Inc. (“American”) to give consumers more information, more options, and a better booking experience have violated the law or harmed consumers. Stripped of its factual inaccuracies, overinflated rhetoric, and baseless assumptions, ASTA’s Reply¹ is nothing more than a renewed demand that the Department of Transportation (“Department or DOT”) hold back technological competition in order to favor certain corporate travel agencies that continue to use 1970s-era technology—technology that lacks the functionality now standard in modern e-commerce platforms. ASTA’s demand should be denied.

New Distribution Capability (“NDC”) is indisputably a better solution for the consumer. NDC allows for richer, more dynamic communication between the traveler and airline. With NDC, airlines are able to expand their product offerings; provide passenger-specific information,

¹ ASTA submitted its Reply without seeking leave to file it. To respond to points raised in ASTA’s Reply, American respectfully requests leave of the Department to file this Surreply. Good cause supports accepting American’s further response to ASTA’s arguments, so that the Department will have a more thorough record upon which to consider American’s request to dismiss the Complaint without instituting an enforcement proceeding.

like loyalty program status and credit card benefits; improve the comparability of products; and better service travelers. EDIFACT's limited text-only standard, first written fifty years ago, does not have the same capabilities. It does not permit, for instance, the transfer of media, even basic images or video. And the process that has developed around EDIFACT does not allow for airlines to provide individualized information or tailor products to consumer preferences.

ASTA admits that NDC's "promise for the future of air ticketing"² was recognized as far back as ten years ago, when the Department concluded (in ASTA's words) that NDC:

would create modern, industry-wide technical standards and protocols for data transmission throughout the distribution chain. This would in turn facilitate the marketplace development of distribution practices and channels that would make it easier for consumers to compare competing carriers' fares and ancillary products across multiple distribution channels, make purchasing more convenient, allow carriers to customize service and amenity offers, and increase transparency, efficiency, and competition.³

The real issue in this proceeding is not whether airlines should be allowed to choose to distribute their products through consumer-benefiting NDC⁴—absolutely, yes—it is why after so many years some travel agents are still NDC-incompatible.

That "some" is important. As ASTA pointed out in its Complaint, over thirty-one percent of travel agents reported that they were "fully prepared" for NDC content in March 2023.⁵ Another forty-four percent indicated that they would be ready at some point in 2023.⁶ And every GDS—

² ASTA Complaint ("Complaint") at 5.

³ *Id.* at 18-19 (citing DOT Order 2014-5-7 (May 21, 2014)).

⁴ To be fair to ASTA, it discloses—in fact, in the very first paragraph of its Complaint—that it represents the interests of travel agencies, *not consumers*. Just as representatives of horse-driven wagons surely tried to convince manufacturers not to distribute by train, ASTA's field-of-concern is the agency who is not ready for modern e-commerce distribution.

⁵ Complaint at 22.

⁶ *Id.*

“upon which all independent [travel agency] retailers depend”⁷ (according to ASTA)—is proudly advertising not only its readiness for NDC but also the benefits of the technology:

Sabre: “NDC is a key component of our strategic vision to create a new marketplace for personalized travel. Our position as both an aggregator and an airline IT provider allows us to deliver retailing solutions across the end-to-end customer journey, from offer creation all the way to fulfillment.”⁸

Amadeus: “NDC has been part of the game since our first NDC-enabled solution in 2018. ALL our product evolutions consider the NDC flow: end-to-end mid- and back-office integration, automated payment reconciliation and reporting, automation or omnichannel servicing, [] in two of our flagship interfaces.”⁹

Travelport: “Our solutions let agents easily view and filter NDC content within one user-friendly workflow. We work hard behind the scenes to make sure your selling and servicing experience with NDC is easy-peasy.”¹⁰

Among the minority of unready agencies are entrenched travel management companies (“TMCs”)—many of whom have received in aggregate billions of dollars in connection with their use of the older EDIFACT-based technology and have no desire to change. As Air France-KLM recently explained, even though it is selling one out of four tickets through NDC, those sales are to the average “low-yield” consumer and, according to its Chief Commercial Officer, Air France-KLM cannot afford to “turn [its] back” on the “yields [it] get[s] from the high-end corporate travel agents” who are “negative” on moving away from their traditional solutions.¹¹

⁷ *Id.* at 20.

⁸ *Go beyond the standard of NDC with Sabre*, SABRE (last visited Jan. 30, 2024), <https://www.sabre.com/insights/ndc/>.

⁹ *About Amadeus NDC*, AMADEUS (last visited Jan. 30, 2024), <https://amadeus.com/en/topic/ndc-new-distribution-capability>.

¹⁰ *The Real Deal on NDC*, TRAVELPORT (last visited Jan. 30, 2024), <https://www.travelport.com/ndc>. ASTA notably references a Travelport website that similarly emphasizes that it has “fully enabled NDC on our platform, including all the voluntary and involuntary servicing scenarios.”

¹¹ Jay Boehmer, *Air France-KLM Again Delays TMC Surcharge, Maintaining 'Gentle' NDC Rollout*, THE BEAT (Jan. 3, 2024), <https://www.thebeat.travel/News/Air-France-KLM-Again-Delays-TMC->

complaining corporate agencies would be prepared to use NDC. But in December 2023, ASTA was not announcing that its complaining corporate travel agencies were ready to use NDC or even that they had made substantial progress in that direction. Rather, ASTA was filing an (unauthorized) Reply in this matter reiterating its demand that the Department block American's NDC program—indefinitely, so far as ASTA has indicated.

Not only were those TMCs still unprepared for NDC in December 2023, they disclaimed any responsibility for their lagging technology and operations. ASTA identified purported NDC “deficiencies” that are, in fact, the very functions that corporations pay travel management companies to deliver to the consumer. As one industry stakeholder put it, the Reply is “confusing” because “[e]verything they are blaming AA for is something that the consumer of the NDC API [i.e., the travel management company], not the airline should be delivering.”¹³ Other providers have confirmed their ability to provide exactly those services, just as GDSs have underscored (repeatedly) their ability to support the use of NDC “end-to-end.”

The Department has long held a commitment to “maximum reliance on competitive market forces”¹⁴ to achieve “efficiency, innovation, and low prices”¹⁵ in the airline industry. That is precisely what is happening here: Companies are competing to offer the best technology for the distribution of airline tickets to consumers, and, as discussed more fully below and at length in the Answer, consumers are benefiting. American respectfully asks that the Department continue to allow competition to function as it should and dismiss ASTA's Complaint.

¹³ Jeff Klee, LinkedIn (Dec. 2023), https://www.linkedin.com/posts/jeffklee_asta-continues-public-fight-with-american-activity-7143979564430483456-g_TO.

¹⁴ 49 U.S.C. § 40101 (a)(6).

¹⁵ 49 U.S.C. § 40101 (a)(12).

I. The Department Should Protect the Technological Competition in Air Ticketing that Will Benefit All Consumers.

ASTA's Reply does not—in fact, cannot—contest the central and most important fact in this proceeding: NDC is the better technological solution. (See below II.A.) ASTA's quibble is not with the technology; it is with the fact that *some* corporate travel agencies would prefer not to use it. *No one is forcing them to.* But that leaves those agencies with another issue: they must compete against NDC-enabled companies that are now able to deliver previously unachievable efficiencies, innovation, and servicing benefits. That competition benefits consumers—all consumers—by motivating companies and agencies to invest in and improve on their prior performance.

To be fair to ASTA, it does not represent consumers; it represents travel agencies. And in this proceeding, it does not even represent all travel agencies: online travel agencies are NDC-enabled, most travel agencies reported that they were or would be NDC-ready by the end of 2023, and technology companies (including GDSs) are prepared to support NDC. ASTA here represents the interest of a subset of agencies, specifically those TMCs who are paid by large corporations to manage their travel spend for business. *Some* of those travel agencies would prefer to avoid the above-described competition and what it may mean for their control over corporate-based travel revenue.

As ASTA conceded, that narrowness of interest is why ASTA does not challenge United's NDC program: United's program affects tickets that “account[] for less than one-tenth of 1 percent of United's corporate travel sales.”¹⁶ Like Air France-KLM, United chose not to upset the TMCs

¹⁶ Reply at 6 (quoting Jay Boehmer, *United Puts Basic Economy on EDIFACT Chopping Block, Expands Continuous Pricing*, THE BEAT (July 26, 2023), <https://www.thebeat.travel/News/United-Puts-Basic-Economy-On-EDIFACT-Chopping-Block>).

who control the “high yield” corporate travel and would prefer not to change their processes and operations. “Hence,” as ASTA emphasizes, “the impact on both TMCs and their clients is negligible.”¹⁷ Put more directly, non-innovative TMCs do not have to meet the technological competition posed by innovative agencies (many of whom are smaller, newer, and less costly) in order to retain United-traveling corporate customers. Consequently, ASTA is not asking the Department to step in and stop United’s NDC program.

ASTA falsely colors that as “an effort to protect consumers,” but even ASTA has to admit it means only “travelers who prefer to book through the agency distribution channel.”¹⁸ The majority of travelers cannot afford or do not choose to use an agency. ASTA remains silent as to the effect of its demands on those travelers for a reason—because blocking technological competition in the industry will leave those consumers mired in stagnating and static pre-internet, pre-API computer protocol.

Instead, ASTA focuses its attention on what it estimates, in an astounding mischaracterization, as the other 48 percent. First of all, of that 48 percent, many are already using NDC-enabled agencies, which includes *every* online travel agency as well as agencies who have invested directly or indirectly in improved technology. ASTA is working against those consumers’ interests by advocating that the Department block the very competition that has brought them a better, more transparent, and more personalized experience.

As to the corporations still calling on those staid TMCs sufficiently powerful to have insulated themselves from technological competition, there is no harm. ASTA tries to manufacture

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 16.

some, but the position it stakes out collapses under the slightest scrutiny. ASTA claims, for instance, that “if what the consumer wants is the best price and the guidance, service and convenience associated with working with a trusted advisor or TMC . . . no, they simply can’t have that.”¹⁹ Oh yes, they can. Every fare is viewable and accessible through EDIFACT, so no consumer is being denied information about a fare that might be available through a lower-cost, higher-tech, and equally trustworthy agency. *Nor is any consumer being denied access to any fare. Any* consumer can book *any* fare and if that consumer wants to book the fare through an agency—*lots* of agencies are available to help them. Entrenched EDIFACT-preferring TMCs may have to prove the value of their traditional (but technologically limited) operations and processes, but there is no harm there either. That is textbook marketplace competition.

In reality, it is ASTA and its anticompetitive demands that pose the risk of harm: specifically, the harm of leaving the industry stuck in an EDIFACT-based booking flow—a booking flow that an industry insider has described as follows:

[EDIFACT-based booking flow] starts with pulling up availability for an outbound flight by typing a command like:

1S10DECLAXNYC

And getting a response like this:

¹⁹ *Id.* at 8.

```
1B6 524 J1 CC DC*LAXJFK 7 102P 904P 32S M/S 0 XJ DCA /E
IC Y7 E7 K7 H7 Q7 B7 V2 RC WC MC
2UA 2614 J1 C0 D0*LAXEWR 9 1250P 900P 781 L/F 0 DCA /E
Z0 P0 O1 A1 R0 Y9 B9 M9 E9 U7 H5
3NH/UA 7236 J1 C1 D1*LAXEWR 1250P 900P 781 L/F 0 DCA /E
Z1 PC G1 E1 N1 Y9 B9 M9 U9 H9 Q9
INTL ONLINE CONEX/STPVR TFC ONLY
4DL 678 J0 C0 D0*LAXJFK 063 115P 940P 764 D/F 0 DCA /E
I0 Z0 W0 S0 Y9 B9 M9 H9 Q9 K9 L3
5KE/DL 7419 JL CL DL*LAXJFK 115P 940P 764 0 DCA /E
IL RL WL Y9 B9 M9 S9 H9 E9 K3 LL
INTL ONLINE CONEX/STPVR TFC ONLY
6AA 274 F1 A1 CC*LAXJFK 7 1230P 853P 32B L/S 0 DCA /E
JL RC DL IC Y7 B7 H7 K7 M7 L7 GC
* - FOR ADDITIONAL CLASSES ENTER 1*C.
```

Then picking a flight from this list and an RBD (which, of course, everyone knows what that is) and selling a segment with a command like this:

```
01L4
```

Then repeating the same process for the return flight.

Then typing a command to get a price:

```

WPNC

10DEC DEPARTURE DATE-----LAST DAY TO PURCHASE 08DEC/2359
  BASE FARE      TAXES/FEES/CHARGES  TOTAL
1- USD893.95      96.85XT  USD990.80ADT
  XT 67.05US  9.60ZP 11.20AY  9.00XF
      893.95      96.85  990.80TTL
ADT-01 QA0NA0MQ MA7OA0MQ
LAX DL NYC378.60DL LAX515.35USD893.95END ZPLAXJFK XFLAX4.5
JFK4.5
NONREF/CHANGES PERMITTED
VALIDATING CARRIER - DL
BAG ALLOWANCE -LAXJFK-NIL/DL
1STCHECKED BAG FEE-LAXJFK-USD30.00/DL/UP TO 50 POUNDS/23
KILOGR
AMS AND UP TO 62 LINEAR INCHES/158 LINEAR CENTIMETERS
2NDCHECKED BAG FEE-LAXJFK-USD40.00/DL/UP TO 50 POUNDS/23
KILOGR
AMS AND UP TO 62 LINEAR INCHES/158 LINEAR CENTIMETERS
BAG ALLOWANCE -JFKLAX-NIL/DL
1STCHECKED BAG FEE-JFKLAX-USD30.00/DL/UP TO 50 POUNDS/23
KILOGR

```

Then hoping this is actually the best priced itinerary because no comparison shopping was done.

Then *typing about 8 more cryptic commands* to complete the booking, adding among other things the traveler name, phone number, “ticketing field”, and very necessary “received field.”²⁰

Surely the Department’s role is not to insulate these kinds of processes from modern technological competition.

Fifty years ago, EDIFACT was an improvement over the largely manual, labor-intensive, paper-and-pen ticket distribution practices of airlines. But today, EDIFACT falls stunningly short

²⁰ Jeff Klee, LinkedIn (Dec. 2023), https://www.linkedin.com/posts/jeffklee_travel-agency-group-doubles-down-on-dispute-activity-7138761122177843200-tk7j (emphasis added and blocks added to lines of code for readability).

of the capabilities of most e-technology standards, including NDC. And those modern capabilities lead to well-documented and unquestioned benefits: NDC allows consumers more options at market-driven prices, providing access to rich data, bundled pricing, real-time inventory, and a wider variety of price points,²¹ which leads to an increasing number of consumers choosing to book through NDC-enabled or direct channels.²² For those reasons, NDC is already being used successfully around the world; numerous international airlines and travel agencies have used NDC for years, and all three major domestic GDSs have now made substantial investments in NDC capabilities.²³

ASTA fails to engage meaningfully on any of those points or with any of the evidence and data that supports them, including multiple statements from actual consumers and service providers noting the benefits of NDC that they have already seen for themselves and/or their clients;²⁴ examples of rapid growth in NDC-enabled booking on platforms that offer both NDC and EDIFACT capabilities;²⁵ and actual evidence of the functions offered on NDC-enabled platforms.²⁶

Instead, ASTA misdirects by trying to find “nits” in the NDC protocol (while ignoring the gaping deficiencies in EDIFACT). Ultimately, ASTA’s efforts are defeated by the industry itself. ASTA emphasizes that the complaining travel agencies cannot, when using NDC, hold a booking, use guest bookings, book a car and hotel at the same time during the booking flow, use virtual

²¹ *See Answer* § II(a).

²² *See id.* at 17.

²³ *See id.* at 14–17.

²⁴ *Id.* at 3–4, 8.

²⁵ *E.g., id.* at 17.

²⁶ *E.g., id.* at 10–13.

payments, and support rules or custom fields.²⁷ But these are functions that *travel agencies* “should be delivering”²⁸ regardless of technology. In fact, many newer, and smaller NDC-enabled companies *are* providing these services already: AmTrav customers, for example, can do all of this “whether the booking is through our direct NDC connections or via legacy EDIFACT,”²⁹ which has led AmTrav to ask whether ASTA’s mission is “to fight like hell to keep everything exactly as it was in the 80’s?”³⁰

The industry is replete with companies eager and ready to compete to offer *all* consumers a better travel experience through more advanced technology. There is no statutory basis to calcify the industry for the sake of a narrow slice of corporate travel agencies who have historically exploited the limitations of now-stale technology to protect their profits. Indeed, the Department’s statutory directive is just the opposite.³¹

II. ASTA Cannot Defend Its Effort to Stifle the Pro-Consumer Innovation that NDC Offers.

ASTA tries to mask the unreasonableness of its demands by ignoring American’s evidence and misrepresenting the substance of American’s Answer. But ASTA’s overblown rhetoric is no match for the fundamental truth: competition drives innovation, and where air ticketing is still relying on 1970s-era technology, innovation is overdue. If anything, ASTA’s feints at misdirection show how blind ASTA has become to both modern e-commerce demands and consumer expectations.

²⁷ Reply at 12.

²⁸ Jeff Klee, LinkedIn (Dec. 2023), https://www.linkedin.com/posts/jeffklee_asta-continues-public-fight-with-american-activity-7143979564430483456-g_TO.

²⁹ *Id.*

³⁰ *Id.*

³¹ *See* 49 U.S.C. § 40101 (a)(6).

A. NDC Is the Superior Technology and Benefits Consumers.

ASTA incorrectly asserts that American provides no evidence of consumer benefit from NDC adoption³² and that American provides no “verifiable evidence of consumer satisfaction.”³³ That is wrong. Neither is true.³⁴ Stakeholders from across the industry, including technology companies, agencies, customers, and GDSs, have publicly lauded the advantages of NDC technology, as demonstrated in American’s Answer:³⁵

- AmTrav’s CEO dubbed NDC “a big step forward” from a “really old, complicated structure” that “really makes no sense[.]”³⁶ AmTrav also notes it “embraced NDC since the very beginning because of its promise to deliver richer offers, facilitate shopping for ‘extras’ like roomier seats or Wi-Fi, and make it easier to make changes mid-trip.”³⁷
- Walmart similarly cites the value of “additional bundles,” “new ways of buying things,” and “simplifying what our associates need to do when they have to travel.”³⁸ Therese Gehler, Global Travel Procurement Director, has said that the company has “already seen the difference” with NDC and is “really excited” about

³² Reply at 7.

³³ Reply at 8.

³⁴ For evidence of consumer benefit from NDC adoption, *see* Answer at 3–4, 9–14, 17–18, 21–22. For evidence of consumer satisfaction, *see* Answer at 3–4, 13–18, 20–22.

³⁵ *Id.* at 3–4, 15–18.

³⁶ Donna M. Airoidi, *Airline Continuous Pricing, Explained*, BUSINESS TRAVEL NEWS (Oct. 9, 2023), <https://www.businesstravelnews.com/Procurement/Airline-Continuous-Pricing-Explained>.

³⁷ *New Distribution Capability (NDC)*, AMTRAV (last visited Jan. 30, 2024), <https://www.amtrav.com/ndc>.

³⁸ In the Know Webinar Registration, *The Evolution of NDC: Where are We Going Next?*, BTN GROUP CONTENT SOLUTIONS (Nov. 9, 2023), https://event.webcasts.com/starthere.jsp?ei=1638928&tp_key=68e8ac58b9&sti.

the benefits.³⁹

- Travelport’s Chief Technology Officer, Tom Kershaw, lauded NDC, because it “gives the travel industry a chance to rethink some of the things we’ve been doing over and over again for decades,”⁴⁰ stating that “[w]e’re excited to see more than a decade of ruminations and machinations finally come to some fruition.”⁴¹
- Dena Fradette, head of partnerships at Travel Bank, values “the features that are available only on NDC—like a wider variety of price points and services, whether through, for example, continuous pricing, ancillary or bundle offerings, or entitlement shopping,” all of which “give[] travel advisors a competitive advantage.”⁴²
- Navan, a worldwide corporate travel and expense manager, has emphasized that “[w]ith NDC, airlines can share more details about flights and ancillary offerings directly to travel agents, aggregators, and third-party platforms.”⁴³
- Sabre emphasizes that in “just a few simple steps,” agencies can access NDC through Sabre to “expand content access, enhance productivity, and add profitability to [agencies’] bottom line, while delivering the exact experience []

³⁹ *Id.*

⁴⁰ *Busting the Myths on NDC*, TRAVELPORT (last visited Jan. 30, 2024), <https://www.travelport.com/our-views/busting-the-myths-on-ndc>.

⁴¹ Linda Fox, *Travelport Tech Chief Talks Moving the Needle on NDC*, PHOCUSWIRE (Apr. 19, 2023), <https://www.phocuswire.com/travelport-tom-kershaw-on-ndc>.

⁴² Julie Ross, *The A-B-Cs of NDC and How Travel Advisors Can Embrace the Transition*, TRAVEL WEEKLY (Aug. 28, 2023), <https://www.travelweekly.com/Strategic-Content/United-how-to-navigate-NDC-airline-industry>.

⁴³ Libby Zay, *New Distribution Capability Explained: A Comprehensive Guide*, NAVAN BLOG (Aug. 18, 2023), <https://navan.com/blog/technology-and-innovation/what-is-new-distribution-capability-explained>.

travelers want. Every time.”⁴⁴

- Amadeus sees NDC as “a great opportunity for us to bring value to [its] customers[.]”⁴⁵

American’s Answer is also replete with evidence that consumers are overwhelmingly choosing NDC-enabled distribution over the limitations of EDIFACT:⁴⁶

- “Between April and October 2023, American’s revenues from customer bookings on direct and NDC-enabled platforms increased 20 percentage points, from 60%⁴⁷ to 80%.”⁴⁸
- “Over 90% of American’s Online Travel Agency volume, and over 50% of its total indirect volume, come from NDC-enabled channels.”⁴⁹
- “Spotnana, which offers both NDC and non-NDC distribution, has seen NDC-enabled bookings grow to 32% as of October 2023.”⁵⁰
- “General consumer surveys consistently show greater satisfaction ticketing on NDC-enabled platforms than non-NDC distribution channels.”⁵¹

⁴⁴ *Video: Get started with NDC content in Sabre Red 360*, SABRE INSIGHTS (Aug. 2, 2021), <https://www.sabre.com/insights/get-started-with-ndc-content-in-sabre-red-360/>.

⁴⁵ Amadeus IT Group, S.A., FQ3 2023 Earnings Call Tr. at 4 (Nov. 7, 2023).

⁴⁶ Answer at 17.

⁴⁷ *Id.* (citing Jay Boehmer, *AA: 80 Percent Of Bookings Could Come Direct Or Via NDC By Year-End*, THE BEAT (Apr. 27, 2023), <https://www.thebeat.travel/News/AA-Direct-Or-Via-NDC-Growth>).

⁴⁸ *Id.* (citing American Airlines Group Inc., FQ3 2023 Earnings Call Tr. (Oct. 19, 2023)).

⁴⁹ *Id.* (citing In the Know Webinar Registration, *The Evolution of NDC: Where are We Going Next?*, BTN GROUP CONTENT SOLUTIONS (Nov. 9, 2023), https://event.webcasts.com/starthere.jsp?ei=1638928&tp_key=68e8ac58b9&sti).

⁵⁰ *Id.*

⁵¹ Answer at 17.

Against the tide of progress that NDC is ushering in, it is ASTA that cannot defend EDIFACT. ASTA does not even attempt to argue—let alone offer any evidence—that EDIFACT is the “future of air ticketing.” Rather, ASTA itself associated that phrase with *NDC* in its Complaint.⁵²

B. Agencies Can—and Many Do—Use NDC.

ASTA’s singular response to the above-described evidence is that these benefits do not “countervail” the interests of small and medium-sized agencies that, according to ASTA, lack the resources to develop processes and operations around NDC. But again, this is false.

First, agencies of all sizes are transitioning to NDC. Spotnana,⁵³ AmTrav, FCM Travel,⁵⁴ and Corporate Travel Management⁵⁵ are just a few of those offering expanded solutions to travelers directly using NDC’s increased functionality.

Second, even ASTA qualifies its assertion, admitting that the “wherewithal” those agencies

⁵² Complaint at 5.

⁵³ Spotnana’s statements are so damaging that ASTA takes aim at them as “self-serving.” But ultimately, ASTA only proves American’s point. ASTA critiques the statements of Spotnana—a company founded in 2020—because this newcomer can aggregate and integrate NDC content. Spotnana is not believable, says ASTA, because they are able to deliver the functionality that certain decades-old travel management companies—some of whom have been paid billions of dollars for using EDIFACT-based technology—cannot. In other words, ASTA urges the Department to doubt what Spotnana says about the achievability of NDC functionality because Spotnana has, in fact, achieved that functionality. Shockingly, ASTA is attacking one of its own constituents, albeit unknowingly. ASTA has gone so far astray that it asserts that Spotnana “is not an agency” (Reply at 10, fn. 8), but Spotnana’s website confirms that it is offering to “operate as your [company’s] travel management company (TMC) providing 24/7 service via experienced travel agents.” See *Travel Services*, SPOTNANA (last visited Jan. 30, 2024), <https://www.spotnana.com/corporations/global-service/>.

⁵⁴ *New Distribution Capability (NDC) Hub*, FCM TRAVEL (last visited Jan. 30, 2024) <https://www.fcmtravel.com/en-us/travel-insights/our-approach-ndc>.

⁵⁵ *What is the New Distribution Capability (NDC)?*, CORPORATE TRAVEL MANAGEMENT (last visited Jan. 30, 2024), <https://us.travelctm.com/ndc/>.

lack is “the scale required to achieve a *proprietary* solution.”⁵⁶ ASTA does not say that *no solution* is available to those agencies because such a statement would be patently false—small and new agencies are already providing such solutions.

In short, it is not the size or “wherewithal” of the agency that is a barrier; it is the agency’s willingness to meet modern competition. But holding back innovation for that reason would be like saying that the government should have stopped competition around the development of word processing programs because some companies relied on WordStar (another 1970s-era, pre-internet program) and preferred not to retrain employees or reconfigure processes to use Microsoft Word or Google Docs. Just as blocking competitive innovation would have deprived the public of new word processing efficiencies, so too will it deprive consumers of all the benefits NDC offers, if ASTA has its way.⁵⁷

C. NDC Is the Product of Competition.

Teetering on an unsupported and unsupportable request that the Department halt competition in airfare distribution technology, ASTA takes a miscalculated swipe at the Department’s success at fostering competition in the airline industry. American, it says, holds a “dominant position”⁵⁸ in the airline industry, ergo the Department should step in to protect TMCs (some of whom are multi-billion dollar entities far more profitable than airlines) from the likes of newcomer Spotnana, for example. It is a ridiculous assertion.

First, although American may at times respectfully hold views different from the

⁵⁶ Reply at 11 (emphasis added).

⁵⁷ DOT Order 2014-8-1 at 2 (Aug. 6, 2014) (finding the use of an XML communication standard would be in the public interest and rejecting arguments that it should not be approved due to concerns around competition, transparency, and privacy).

⁵⁸ Reply at 3.

Department, there is no question that the Department oversees a competitive industry, as detailed in American’s Answer.⁵⁹ After the deregulation of the airline industry, the entrance and expansion of LCCs and ULCCs put “downward pressure on fares and ma[de] commercial air travel accessible to more consumers than ever before,”⁶⁰ as demonstrated by increases in the number of city pairs served by LCCs and increases in the number of passengers who are able to travel on LCCs.⁶¹ Carriers including American have invested billions of dollars in new aircrafts and new airport facilities, despite the financial buffeting the industry has historically experienced.

The benefit of all this competition is lower prices. ASTA accuses American of citing data that “pertains only to base fares” and not revenue from additional services.⁶² Not so. American merely confirmed the statistics that the Department had reported: that in 2019 (pre-COVID) it recorded “the lowest inflation-adjusted annual fare since the Bureau of Transportation Statistics began collecting such records.”⁶³ Notably, American has offered data showing that the Department’s achievement stands both with and without counting additional revenue.⁶⁴

⁵⁹ Answer at 36-38.

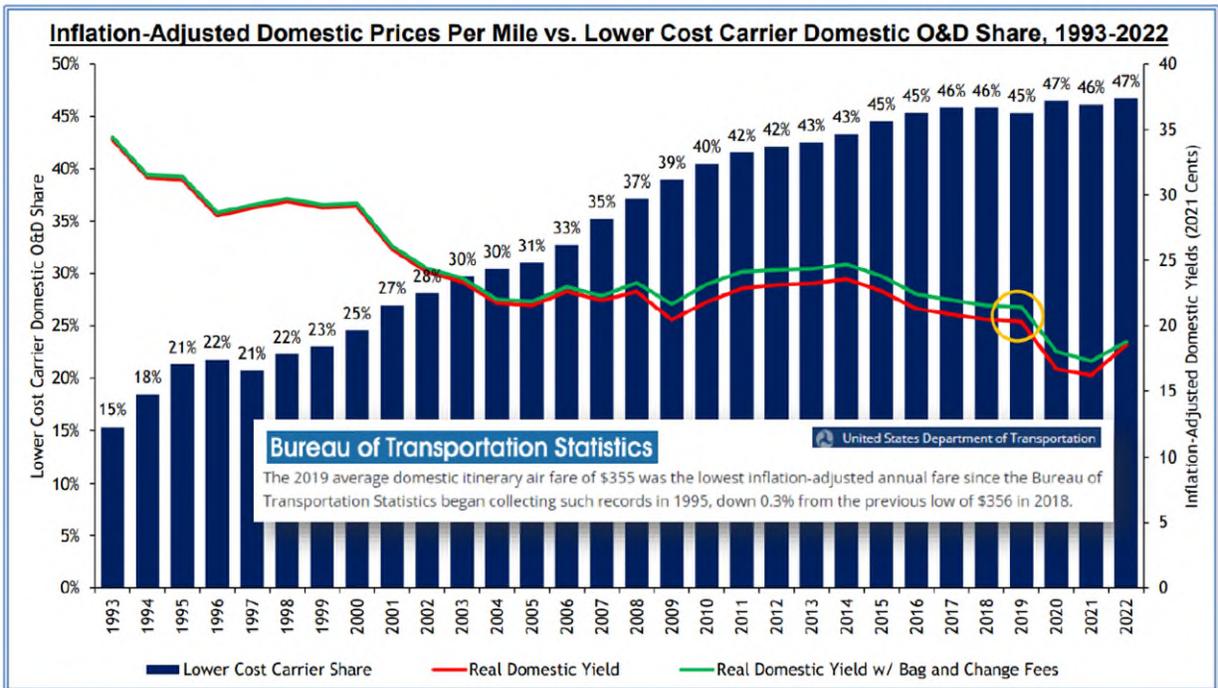
⁶⁰ *Id.* at 37-38.

⁶¹ *Id.* at 36-37.

⁶² Reply at 13.

⁶³ *Annual and Fourth-Quarter 2019 Air Fare Data*, Bureau of Transportation Statistics (Apr. 22, 2020), <https://www.bts.gov/newsroom/annual-and-fourth-quarter-2019-air-fare-data#:~:text=The%202019%20average%20domestic%20itinerary,low%20of%20%24356%20in%20201.>

⁶⁴ *Id.* Sources: U.S. DOT DB1B database; U.S. DOT Form 41 schedule p.1.2; U.S. BLS CPI all urban consumers; <https://www.bts.gov/newsroom/annual-and-fourth-quarter-2019-air-fare-data>. Notes: Data for 2022 is the four quarters ending Q3, 2022. Real yield in 2021 cents. Bag fees and change fees are from U.S. DOT Form 41 schedule P-1.2, Passenger Baggage Fees and Reservation Cancellation Fees.



ASTA ignores that 2019 accomplishment and instead narrows its sights on 2019–2022. That period, says ASTA, “to put it mildly, is not representative of the forty-five years since the airlines were deregulated.”⁶⁵ DOT’s data does not go back forty-five years, but to be fair to ASTA, it is correct that the cited four-year period is not representative of the past thirty years: *air fares in 2019-2022 are lower than any of the prior recorded years.*

ASTA “corrects” for that non-“representative” four years by comparing air fares in 2022 to those in 2023. That comparison, of course, offers no meaningful or helpful information. As ASTA itself admits, “demand for air travel dropped to unprecedented levels” during the COVID-19 pandemic.⁶⁶ The “staggering” decrease in demand had a long tail: by the end of 2022, most airlines were reporting that business demand had only recovered to 70-80% of pre-pandemic

⁶⁵ Reply at 14.

⁶⁶ *Id.* at 13.

levels.⁶⁷ In short, ASTA would sweep away a thirty-year trend in favor of a single year when the airline industry was still recovering from an exogenous shock that artificially and dramatically distorted demand—a period that Bloomberg has described as the “lost years” of “unprecedented, existential crises” for airlines.⁶⁸ Further, ASTA would dismiss what many industry observers, including Bloomberg, have reported:

After peaking in May 2022, US air fares have fallen below 2019 levels—even as cost inflation takes a growing bite out of profits. In August, ticket prices were about 5.3% below the same month in 2019, based on the US consumer price index.⁶⁹

Even so, it is not competition among the still shell-shocked airlines that is at issue in this proceeding, as much as ASTA would like others to chase that red herring. The question here is whether the Department should intervene to hold back technological competition among agencies that distribute airline fares in order to insulate the entrenched position of certain TMCs who are unprepared—or unwilling—to work with modern technology on behalf of their corporate clients. ASTA offers not a scintilla of evidence to justify the imposition of such an extraordinary remedy.

III. Conclusion.

American respectfully requests that the Department deny all of Complainant’s requested relief, not institute an enforcement proceeding, and instead dismiss the Complaint.

⁶⁷ FAA Aerospace Forecast Fiscal Years 2023-2043, at 1 (May 8, 2023), <https://www.faa.gov/sites/faa.gov/files/2023-Forecast%20Highlights.pdf>.

⁶⁸ Jinshan Hong and Anthony Palazzo, *Air Travel Is Back to Pre-Pandemic Levels With New Turbulence Ahead*, BLOOMBERG NEWS (Oct. 8, 2023), <https://www.bnnbloomberg.ca/air-travel-is-back-to-pre-pandemic-levels-with-new-turbulence-ahead-1.1981967>.

⁶⁹ *Id.*

Respectfully submitted,

Katrina M. Robson

Katrina Robson
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
Tel: (202) 303-1096
Email: krobson@willkie.com

Arjun Garg

Arjun Garg
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Tel: (202) 637-6423
Email: arjun.garg@hoganlovells.com

Counsel for AMERICAN AIRLINES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Surreply and Motion for Leave to File of American Airlines, Inc. has been served by email this February 5, 2024, upon each of the following persons:

Peter N. Lobasso
Senior Vice President & General Counsel
American Society of Travel Advisors, Inc.
123 N. Pitt Street, Suite 400
Alexandria, VA 22314
plobasso@asta.org

Blane A. Workie
Assistant General Counsel for
Aviation Consumer Protection
Office of the General Counsel
U.S. Department of Transportation
blane.workie@dot.gov

Kimberly Graber
Deputy Assistant General Counsel for
Aviation Consumer Protection
Office of the General Counsel
U.S. Department of Transportation
kimberly.graber@dot.gov

Robert M. Gorman
Senior Trial Attorney
Office of the General Counsel
U.S. Department of Transportation
robert.gorman@dot.gov



Arjun Garg