

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC.

Agreement Adopted by the Passenger
Services Conference of the International
Air Transport Association

Docket OST-2013-0048

REPLY OF THE
INTERNATIONAL AIR TRANSPORT ASSOCIATION

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I. Introduction

The current framework for the marketing and sale of air transportation through indirect channels is seriously limited. The problem, identified and discussed at length during the Department's second Enhancing Airline Passenger Protections rulemaking proceeding, is the chasm between the increasingly rich and dynamic information available on airline-owned, proprietary websites and the relatively static and incomplete information available to consumers through online travel company websites, traditional travel agencies, and other intermediaries who rely on Global Distribution Systems ("GDSs") for information about airline offerings.¹

The suboptimal quality of the information currently available through GDS-driven sales outlets – where a majority of all tickets (by value) are sold – seriously constrains consumer choice and airline competition and compromises the benefits that should flow

¹ Docket No. DOT-OST-2010-0140.

to consumers from a liberalized marketplace. Deregulation has accelerated innovation in air transportation services. Whereas the authors of deregulation envisioned a marketplace primarily driven by robust price competition, the emerging reality is a marketplace characterized by robust competition in price, service quality, and an array of optional amenities unimagined in the late 1970s. An industry once likened to a commodity business – selling seats on airplanes – has evolved into an industry characterized by constantly emerging elements of product differentiation and, when passengers agree, personalization.

Consumers have much to gain when complete and dynamic information about air travel options and their respective features is made available through *all* channels, not just airline websites, in a format that enables intermediary sellers to facilitate efficient comparison shopping by consumers among the array of available travel options, no matter how diverse their respective features may be. As the GDSs themselves have written: “To the extent that passengers have more and better information, and use that information to make more informed choices, airlines have more incentive to offer options designed to appeal to passengers, free market competition is enhanced and the need for more intrusive government diminishes.”²

IATA agrees. As explained in the Application for Approval pending in the instant docket, IATA has undertaken to develop a new electronic data transmission standard to support the distribution of air travel products and services through intermediaries. This initiative will enable *all* distributors of air travel to communicate the offerings of

² Comments of the Interactive Travel Services Association (predecessor to the Travel Technology Association) on Notice of Proposed Rulemaking, Enhancing Airline Passenger Protections, Docket No. DOT-OST-2010-0140, p. 2.

competing airlines – including innovations that may be unique to particular carriers – as comprehensively as the airlines would portray them on their own websites.

Indirect channels have become critically constrained as airlines increasingly compete with each other in ways that legacy transmittal systems no longer support. To deliver optimal benefits to the traveling public, a distribution channel must make it possible for consumers to compare available offerings and their respective features in a more textured and graphic way. Comparison shopping by consumers through channels driven by state-of-the-art technology will engender even more innovation, resulting in continued improvements in the customer's shopping experience over time – a virtuous cycle that will increase incentives to innovate in the interest of consumers. Legacy standards – inherently incapable of doing justice to the array of differentiated air travel options available today or the qualitative differences between different offerings– no longer provide an adequate platform to support the new quality of airline competition that innovation has engendered.

As explained in IATA's Application for Approval, the process of developing an updated standard for electronic data transmission capable of supporting this dramatically enhanced quality of airline competition – a standard based on XML, the internet language that drives e-commerce in every other sector – was endorsed by IATA's Passenger Services Conference (PSC) during a meeting held October 18-19, 2012. The process was spelled out in Resolution 787, for which IATA now seeks the Department's approval.

The adoption of XML to support airline distribution is not controversial. The airlines, GDSs and third party developers have all been following other industries, but movement in this direction is occurring piecemeal at a slow and uneven pace. The establishment of an agreed industry standard for the use of XML in airline transactions will provide certainty and uniformity, increasing the pace of development.

The nearly 400 comments filed in the instant docket reflect widespread interest in the Resolution, and a wide diversity of views. Approval of the Resolution was uniformly supported by the 38 airline commenters, by several senior airline executives commenting separately, by seven associations of airlines, by ATPCO and ARC, and two national rail companies. In addition, approval was urged by seven information technology companies who see expanded commercial opportunities flowing from the standard. Support also was offered by Representative Randy Hultgren, by former Aviation Consumer Action Project legal director Cornish Hitchcock, and by Aviation Professor Emeritus Nawal Taneja.

The opponents of approval, led by Open Allies for Airfare Transparency ("Open Allies") and several other advocacy organizations, include 17 travel agent and tour operators associations from the U.S., Europe and South America. Outright opposition or serious doubts also were expressed by two GDSs and more than a dozen online travel agents, traditional travel agents and corporate travel departments. The Business Travel Coalition (BTC) expressed opposition but without any indication of whom it

represents in this proceeding.³ Approximately 300 individuals and anonymous parties filed online comments opposing approval.⁴

It is fair to note that the aviation and technology parties who support approval of Resolution 787 do so because of their attraction to the opportunities likely to be engendered by a new and more contemporary messaging standard. The commercial opponents appear in the main to be current beneficiaries of the legacy distribution system. Whereas the proponents stress the added benefits of XML technology and the efficiencies flowing from an industry standard, the opponents claim that the standard would diminish price transparency, result in unfair price discrimination, and exacerbate threats to individual privacy. Because the opponents' contentions lack merit, as explained more fully below, Resolution 787 warrants approval under the public interest standard of Section 41309 of the Transportation Code.⁵

³ Section 302.4(a) of the Department's Rules of Practice provide that all filings "shall contain a proper identification of the parties concerned...." In apparent violation of that rule, the Business Travel Coalition's comments nowhere tell us who is in the Coalition or whom BTC might otherwise represent. Indeed, BTC's website suggests that, its corporate name notwithstanding, it is a consulting and lobbying company based in Radnor, PA. It says: "BTC has quietly offered many advisory and business services to the travel industry over the past 19 years. During Q4 2013 we will be moving these offerings under a new organization called the Kevin Mitchell Group (KMG) to enable a more aggressively [*sic*] promotion of these services without causing confusion in the marketplace regarding BTC's mission." Elsewhere it lists "Issue Advocacy Campaign Consulting" among those current BTC services that will be moving to the Kevin Mitchell Group in October 2013. www.businesstravelcoalition.com/services.html. The Department, IATA, and other parties have a right to know whom BTC – among the most active and aggressive critics of Resolution 787 – is representing in this proceeding.

⁴ Open Allies filed an out-of-time "Supplemental Answer" on June 5, 2013. BTC filed out of time "Supplemental Comments" on June 12, 2013. Both cited a resolution adopted at IATA's Annual General Meeting on June 3 as a basis for arguing that Resolution 787 should be withdrawn and amended. Neither included the necessary motion to file an otherwise unauthorized pleading. IATA's conditional response to those filings is at Appendix A.

⁵ See Section III, *infra*, at pp. 22-28

II. IATA's Responses to the Arguments of Opponents.

As a preliminary matter, it is important in considering the arguments of opponents of Resolution 787 to recall the limited goal of the Resolution:

- Resolution 787 calls for the development and publication of a new XML-based data transmission standard for the distribution of air travel products and services through indirect channels.
- The new standard will better support a series of pro-competition, pro-consumer business processes that airlines are already initiating.
- The use of this standard would enable airlines who already distribute their products via travel agents using one XML interface to benefit from a standard XML interface rather than multiple proprietary ones.
- The use of XML interface would enable airlines to better distribute their full products and services via travel agents than is possible using the pre-Internet EDIFACT standard.
- Wider adoption of XML would be encouraged and made more efficient with the development of a single industry standard – a single, globally harmonized way to employ that language in airline distribution.
- A common standard would enable all parties in the airline distribution value chain (airlines, travel agents, TMCs, GDSs and consumers) to connect more efficiently.
- Connection standards will mitigate existing barriers to technology providers interested in developing applications to support transparency, comparability and transactability of all airline products and services and potentially give travel agents further choices on who will be the source of the data that they use to select, book and manage their air travel.

The vast majority of the comments in opposition to Resolution 787 raise five interrelated issues. In the pages that follow, IATA will address each of those major concerns. Moreover, to reassure stakeholders and others who remain skeptical of IATA's objectives in seeking approval, IATA will offer for the Department's consideration a number of restrictions which, if incorporated in the Department's approval language, should eliminate all doubt about the limited scope and effect of Resolution 787.

A. Communications Standard vs. New Distribution Business Model

Many opponents of Resolution 787 claim that IATA is not merely seeking the Department's approval of a new data transmission standard but instead seeks approval of a new business model for distributing airline products and services through intermediary channels.⁶ Any such agreement among airlines to pursue such a new distribution model, the opponents contend, is not in the public interest because it would displace today's fare filing system – a system that has served to drive down prices to the benefit of consumers.⁷

To be useful, any new data exchange standard must be designed to accommodate all reasonably foreseeable uses of the data. The goal to be pursued under Resolution 787 is clear and simple: be as comprehensive as possible and thus give each user of the new standard maximum business process flexibility without mandating any particular business model.

How individual airlines and/or technology service providers to the industry use the new standard to enable this capability will be entirely at their discretion. An airline's choice of business model or models will be a function of its individual judgment – not

⁶ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), pp. 17-26; Business Travel Coalition Comments (DOT-OST-2013-0048-0029), p. 2; Comments of the American Antitrust Institute (DOT-OST-2013-0048-0388), pp. 2-5; Answer of the Travel Technology Association (DOT-OST-2013-0048-0376), p. 6; Joint Submission of ECTAA and GEBTA (DOT-OST-2013-0048-0214), p. 2; BCD Travel Comments (DOT-OST-2013-0048-0384), p. 1; Alaska Travel Source Comments (DOT-OST-2013-0048-0066), p. 1; Travel Resources Comments (DOT-OST-2013-0048-0060), p. 1; and Comments of Edward Hasbrouck (DOT-OST-2013-0048-0337), p. 3

⁷ Open Allies has filed a motion seeking to compel IATA to produce documents that it believes will evidence IATA's intent to replace today's business model with one that they allege is contrary to the public interest. Open Allies also expresses its belief that because IATA was not required to seek approval from the Department for an industry standard, it is only doing so to obtain approval for a new business model. Both points are addressed in Appendix B.

collective decisions made in IATA Passenger Services Conference. IATA has neither the ability nor the desire to dictate to any airline, whether or not an IATA member, that it adopt a particular business model.

This fundamental limitation on IATA's role has been misunderstood by some commenters. Several commenters expressed concern that any change in the way airlines distribute products could negatively impact their businesses. They complained that IATA had not provided more information on its alleged new business model. But IATA is unable to offer such information because IATA is unable to control or predict how airline and intermediary distribution practices will evolve once the new data transmission standard is in place.

In fact, the market is already speaking. Major GDSs have publicly announced, and mentioned in their filings in the instant docket, their growing use of XML formats in their systems.⁸ Thus far, at least three airlines have announced that they have established XML-based Application Program Interfaces (APIs) to connect their reservation systems to travel agents' desktops via Travelport, Amadeus and Sabre.⁹ Software providers commenting in this docket have also expressed their strong support for using XML in the airline distribution market.¹⁰ American Airlines has developed an

⁸ Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0375), p. 2; Answer of Sabre Inc. (DOT-OST-2013-0048-0368), pp. 3-5.

⁹ Answer of Sabre Inc. (DOT-OST-2013-0048-0388), p. 4; Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0375), pp. 2-3.

¹⁰ Comments of Farelogix Inc. (DOT-OST-2013-0048-0342), pp. 1-12; PASS Consulting Corporation Comments (DOT-OST-2013-0048-0313), pp. 1-2; T2Impact LLC Comments (DOT-OST-2013-0048-0063), p. 1; JR Technologies comments (DOT-OST-2013-0048-0176), p.1; PROS (Surain Adyanthaya) Comments (DOT-OST-2013-0048-0182), p. 1; Skeye Aviation Systems Comments (DOT-OST-2013-0048-0056), p. 1; Hexaware Technologies Ltd. Comments (DOT-OST-2013-0048-0038), p. 1 and attachment.

XML-based "Direct Connect" product that allows for direct connection between American and travel agents.

These real-world, market-based developments demonstrate that, for some, XML is already the computer language of choice for the efficient distribution of airline content to travel agents, and that market participants are already experimenting with ways to exploit its advantages. The XML-based standard envisioned in Resolution 787 will establish a common format for data transmission among all stakeholders, removing barriers to innovation and facilitating whatever robust and dynamic business models industry members choose to adopt. Nothing in Resolution 787 is intended to influence, let alone predetermine, the outcome.

To assure skeptics that Resolution 787 is intended to do nothing more than facilitate development of a new XML-based data transmission standard, IATA would not object to the Department's incorporating language in its approval expressly limiting the scope commensurately. The Department might consider an ordering paragraph along the following lines:

Approval of Resolution 787 does not constitute approval of any agreement among airlines regarding any method of distributing air transportation.

B. Passenger Privacy

A second widespread opposition argument is that Resolution 787 will require passengers to divulge personal information in order to obtain a service offering.¹¹ As support for this charge, they refer to Section 3.1 of Resolution 787, which provides a

¹¹ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), pp. 26-29; Business Travel Coalition Comments (DOT-OST-2013-0048-0029), p. 4; Comments of Orbitz Worldwide, LLC (DOT-OST-2013-0048-0378), p. 3.

description of the authentication and shopping process that would be enabled by this standard. Open Allies argues that airlines will be unwilling to make competitive offers to customers who do not authenticate themselves.¹²

To be clear, as noted in IATA's original submission,¹³ nothing in Resolution 787 directs airlines to require authentication before transmitting an offer through the travel agency channel. The XML standard will provide the *capability*, but will not include any *requirement*, to authenticate a passenger seeking a specific offer. Participants in the XML development process believe that many consumers will *want* to see personalized options, possibly including discounts or enhanced offers, and thus will choose to authenticate themselves. The experience of leading retailing websites as well as brick and mortar retailers clearly demonstrates that customers value this authentication option. The interests of those consumers should not be frustrated because others may choose not to use the same functionality.

Today's indirect distribution model does not allow authentication and associated product tailoring because the airline is not notified of the passenger's identity before the ticket is booked. Consumer interests are harmed as a result. When consumers book through an indirect seller they have a relatively primitive and generic comparison shopping experience with no personalization. To seek a more personalized experience they must access airline websites directly, making comparison shopping onerous. The

¹² Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), pp. 26-29.

¹³ Application for Approval (DOT-OST-2013-0048-0001), pp. 12-13.

introduction of an XML-powered data transmission standard – the sole objective of Resolution 787 – will furnish a platform that solves this problem.

In any case, the alleged concern that airlines will refuse to make an offer to consumers acting anonymously is unrealistic. On current airline websites, passengers are able, but are not required, to authenticate themselves in order to obtain an offer that meets their needs and/or gain reduced or free services based on their loyalty program and/or credit card status. Airlines have no business reason to require more information from passengers via the multicarrier travel agency channel than they require on their own websites, let alone to make detailed passenger authentication a prerequisite to the purchase of a ticket. The authentication elements listed in Resolution 787¹⁴ merely describe the minimum functionality necessary to benefit those consumers who choose to authenticate in an effort to find their best travel solution.¹⁵

Some opponents of Resolution 787 contend that the airlines' collection of personal information will enable them to identify less price-elastic business travelers to whom they can then charge higher fares and fees.¹⁶ The argument simply strains credulity.

This caricature assumes, contrary to business reality, that airlines will punish their most loyal and highest yield customers with higher fares or fees than they would

¹⁴ Resolution 787, Section 3.1.1.1.2.

¹⁵ It is interesting to note that Amadeus claims to pass information regarding loyalty program membership to airlines. Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0048-0375), p. 14 of Exhibit 1. Similarly, Sabre's submission points out that it has recently developed a new product line to support personalization. Answer of Sabre Inc. (DOT-OST-2013-0048-0368), p. 2. It therefore seems illogical for both to argue that personalization capabilities should not be included in an IATA-facilitated standard.

¹⁶ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), pp. 7-8, 29-30; Alaska Travel Source Comments (DOT-OST-2013-0048-0066), p. 2; Atlantis World Travel (Jody C. Ward) Comments (DOT-OST-2013-0048-0037), p. 1.

impose on those who have little or no prior relationship with the airline, and thus risk losing their patronage on competitive routes. But no airline could successfully sustain such a practice. Passengers would be able to test the attractiveness of fares offered by seeking fare quotes anonymously or by obtaining competing offers. An airline that attempted to leverage its data on a passenger to that passenger's disadvantage would be committing commercial suicide.

Finally, it is important to note that nothing in the standard will change the legal responsibilities airlines, travel agents and GDSs have to protect consumers' rights to data privacy. Regardless of the data transmission standard adopted and any implementing business use, privacy laws will continue to be enforceable against all participants in the marketing and sale of air transportation. Nothing in Resolution 787 could change that legal requirement.

IATA thus sees little basis for the privacy concerns raised by opponents. To reassure stakeholders with respect to the passenger authentication provisions of Resolution 787, however, IATA recommends that DOT consider approving its Application with the following admonition:

Approval of IATA Resolution 787 does not constitute approval of any agreement among airlines to require, as a condition of receiving an offer for air transportation, the disclosure by any passenger of personal information of any kind.

C. Mandatory vs. Optional Standard

Open Allies argues that Resolution 787 requires IATA members to use only the XML-based data transmission standard when distributing enhanced content.¹⁷ Open Allies demands that DOT decree that adherence by airlines to the resolution is entirely voluntary and that no part of the resolution is binding on any GDS, other aggregator or travel agency.

First, of course, IATA resolutions apply only to IATA member carriers – not GDSs, agents, or other participants in the distribution chain. Second, Resolution 787 does not require any carrier to distribute *enhanced* content, leaving carriers free to limit themselves to existing EDIFACT-based distribution practices should they so choose. Third, the “shall” requirement in the first paragraph of Resolution 787 is non-exclusive. It is intended to ensure that carriers distributing enhanced content make that content available in standardized format but does not foreclose carriers from *also* making content available in alternative XML or EDIFACT formats. In fact, given the time that will be required for all elements of the distribution channel to adjust to the new standard, IATA members anticipate a parallel use of EDIFACT-based distribution for a substantial period.

The decision to propose XML development by Resolution rather than Recommended Practice was intended to give all participants in the air transport distribution system confidence in developing new applications and formats for advising

¹⁷ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), pp. 6-7, 33. See also, Comments of Business Travel Coalition (DOT-OST-2013-0048-0029), pp. 5-6; Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0375), pp. 5-6.

consumers of their choices. To effect meaningful change, a standard must be widely adopted and meet the needs of all concerned. The development process set in motion by Resolution 787 is open to all interested distribution system participants. All will benefit from an assurance that, once adopted, the standard will be used by IATA members and other interlining carriers, *whether or not exclusively*, to make enhanced content available throughout the indirect distribution chain.

In the end, of course, because Resolution 787 standards are non-exclusive, they will prevail in the marketplace only if they meet the needs of all participants. IATA long ago foreclosed enforcement of Conference Resolutions¹⁸ and depends on consensus to generate adherence to beneficial standards. Thus, PSC Members have a critical interest in widespread participation by all elements of the distribution chain in the voluntary development and implementation of the new XML standard; conversely, they have no interest in attempting to cram down a standard that does not meet the needs of all.

Should DOT conclude that additional clarification of the limited mandate of Resolution 787 would be useful, the following ordering language might be appropriate:

Approval of IATA Resolution 787 does not constitute approval of any agreement among airlines to restrict their use of any other data transmission standard(s).

¹⁸ The only exception to this point is safety related. The IATA Operational Safety Audit (IOSA) program is an internationally recognized evaluation system designed to assess the safety, operational management and control systems of an airline. All IATA members are IOSA registered and must remain registered to maintain IATA membership.

D. Data Ownership

Open Allies and Amadeus argue that IATA members should not agree on the ownership of data, whether it is airline data or Passenger Name Record (PNR) data.¹⁹ They contend that data ownership should be the subject of contract negotiations and therefore should not be included in any technical data standard Resolution. IATA agrees that data ownership is an issue separate from the standard for data transmission and not to be resolved under Resolution 787. Accordingly, IATA suggests that the Department limit its order approving Resolution 787 along the following lines:

Approval of Resolution 787 does not constitute approval of any agreement among airlines regarding the ownership of the data that would be transmitted via the XML-based data transmission standard envisioned in the Resolution.

E. Backward Compatibility

Three commenters urge DOT to require striking any language from Resolution 787 that frees developers from the constraint of backward compatibility between the proposed open XML-based standard and the EDIFACT standard.²⁰ Amadeus typifies by arguing that the backward compatibility language “may be read as precluding a seamless integration of existing tools and hybrid approaches where content comes from NDC or another source for one or several carriers.”²¹

¹⁹ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), pp. 36-37; Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0375), p. 8.

²⁰ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), p. 36; Joint Submission of ECTAA and GEBTA (DOT-OST-2013-0048-0214), p. 3; Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0375), p. 7.

²¹ Comments of Amadeus IT Group SA (DOT-OST-2013-0048-0375), p. 7.

First, Amadeus and others supporting it on this issue are improperly conflating the technical issue of backward compatibility and the co-existence of enhanced content distribution and established EDIFACT-based distribution systems. Paragraph 1.2.4 of Resolution 787 requires “due consideration for established business processes, procedures and current system functionality.” Thus, IATA’s PADIS Board will continue to support EDIFACT, and IATA member comments expressly state that EDIFACT-based legacy distribution will continue until the market determines it is no longer needed. Any contention that freeing developers from a backward compatibility constraint is designed to eliminate current distribution processes and procedures is wholly unwarranted.

Second, freedom from a backward compatibility constraint will expedite development of the proposed XML enhanced content standard and reduce development costs. To achieve backward compatibility, the XML standard would be required to transmit in a manner that permitted data to be processed by EDIFACT-based software and EDIFACT based messages to be processed by XML-based software. Given the difficulty, delay and cost inherent in this process, the PSC properly decided that parallel transmittals were preferable while the market sorted out best business processes and procedures. What Amadeus and its supporters seek is a needless and costly extension of the development process that would leave new potential aggregator entrants on the sidelines for an extended period to the benefit of existing GDSs. The Department’s mission, however, is to protect competition rather than competitors;²² to sustain

²² This longstanding bulwark of the Department’s competition analysis is based on a long line of Supreme Court antitrust precedent. See, e.g., *Application of Eastern Airlines, Inc.*, Order 86-3-44 (Dkt. 46634), p. 2 (“we and the CAB consistently have held that our procompetitive policies are designed to protect

Amadeus's backward compatibility objection, the Department would have to depart significantly from that mission.

While we believe that this objection lacks credibility, we recommend that DOT avoid any confusion by adopting the following restriction on approval:

Approval of Resolution 787 does not constitute approval of any agreement among airlines to prohibit individual carriers from continuing to utilize the EDIFACT standard.

F. Other Issues

With the clarifications proposed in the foregoing discussion, approval of the resolution is indisputably in the public interest. Nevertheless, certain incumbent commenters have made arguments to the Department that should not go un rebutted.

1. Transparency

Several commenters argue that IATA is seeking to replace the existing fare filing system – a system, they maintain, that has fostered competition among airlines and resulted in low airfares and easy comparison shopping.²³ They seem to be proceeding on the mistaken premise that the standardized format envisioned in Resolution 787 mandates a change in business practice. There is no support for that premise. Nothing in Resolution 787 or IATA's request for approval deals with collective modification of

competition not competitors"); *Brown Shoe Co. v United States*, 370 U.S. 294, 320 (1962); *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328 (1990).

²³ Comments of Travel Agencies and Tour Operators Group from Latin America (DOT-OST-2013-0048-0166), p. 1; Expedia, Inc. Comments (DOT-OST-2013-0048-0320), p. 1; Travizon, Inc. (DOT-OST-2013-0048-0155), p. 1. Commenter Edward Hasbrouck argues that airlines "are required to sell tickets according to publicly-disclosed, impersonal tariffs." Hasbrouck (DOT-OST-2013-0048-0337), p. 4. Prior to deregulation that was largely true, but it is not the law today. The U.S. negotiated liberal air transport agreements with most of its aviation partners and DOT exempted airlines from filing tariffs in these markets. 14 CFR §293.10 (a) ("Air carriers and foreign air carriers are exempted from the duty to file passenger tariffs with the Department of Transportation"). So long as the liberal intergovernmental agreements remain in place, DOT is required to maintain that tariff filing exemption. 49 USC §40105(b)(A) (providing that the Department "shall act consistently with obligations of the United States Government under international agreement").

existing business practices. It is, in fact, the commenters who are seeking to turn this proceeding – which simply addresses approval of a Resolution – into a forum for reregulating airline distribution practices in the hope of preserving the existing EDIFACT-based standard. How distribution practices evolve should be left to the market and the Department’s review of Resolution 787 properly should focus on what it actually seeks to accomplish rather than hobgoblins invented by those vested in the status quo.²⁴

In effect, the opponents of approval seek to freeze the industry in its tracks – to deny consumers the benefit of a richer and more agile XML-powered distribution system. What airlines want – the essential motivation behind Resolution 787 – is the wherewithal to join the world of contemporary e-commerce. They want their customers’ experience to be far more efficient and satisfying than anything that might be developed through the use of legacy EDIFACT-based messaging -- even if GDSs more routinely included ancillary services in what they offer their customers.

The data transmission standards of EDIFACT messaging were developed 40 years ago when regulatory enactments dictated the filing and form of airline tariffs and constrained airlines’ ability to compete on price and service.²⁵ Modern carrier websites clearly reflect the changing nature of airline products and the richer choices available to passengers benefitting from enhanced content. The XML standard to be developed

²⁴ On its website, Open Allies seeks an agreement among agents and GDSs to require airlines to enter into an “all or nothing” business model: selling all ancillaries and fares in each channel or not participating in the agent channel at all – apparently without regard to the cost to distribute through that channel.

²⁵ Comments of PROS (Surain Adyanthaya) (DOT-OST-2013-0048-0182), p. 1; Comments of United Airlines, Inc. (DOT-OST-2013-0048-0370), p. 2; Comments of Cathay Pacific Airways Limited (DOT-OST-2013-0048-0010), p. 1; Comments of SAS Group (DOT-OST-2013-0048-0012), p. 1.

under Resolution 787 will enable consumers to generate and compare competing offers presenting all dimensions of the service to be provided. It will permit consumers and agents to modify their inquiries in order to explore, efficiently and dynamically, how variations in the product mix (*i.e.*, lounge access or no lounge access) would affect total trip cost. It thus will enhance transparency at the point of purchase and permit intermediaries to access comprehensive information that they can present in the form they believe best serves customer interests.

2. Value of Standards in a Competitive Economy

In their comments to the docket, the American Antitrust Institute (AAI), Sabre and Amadeus acknowledge the value of industry standards. AAI's summary is most instructive:

Technical standard setting is important in any industry that depends on physical or electronic networks to facilitate technical coordination among market participants to facilitate commerce. Examples of such industries include electricity, financial networks, telecommunications and airlines. Standards affect key parameters such as interoperability, compatibility, reliability and efficiency.²⁶

Travelport cited the need for standards in airline distribution in a public statement about NDC:

Travelport welcomes open engagement with IATA on its New Distribution Capability (NDC) initiative to ensure an effective and efficient method for delivering supplier content to all participants in the travel supply chain. In this regard, Travelport has consistently maintained that standards are an important aspect of the technology landscape in that they have the capacity to greatly improve the product offering and the customer experience.²⁷

²⁶ Comments of American Antitrust Institute (Docket OST-2013-0048-0388), p. 8.

²⁷ Travelport Comments on IATA's NDC (New Distribution Capability) Following 2012 IATA World Passenger Symposium (Atlanta, October 23, 2012).

In contrast, Open Allies argues that there is no need for an agreed data transmission standard when multiple XML schema are now being developed and implemented.²⁸ Open Allies cites the Open Axis and Open Travel Alliance schemas as evidence that there are multiple schemas in the market and argues that the Department should now stop the airlines from developing and agreeing to a single standard that best meets their needs.

Open Allies' argument evidences either a misunderstanding of Resolution 787 and the value of standards generally or a deliberate effort to avoid competition for its distributor members. Resolution 787 calls for the development of an XML-based data transmission standard that must serve the interests of all industry players. Since nothing in Resolution 787 precludes airlines from using the Open Travel scheme or advocating its adoption by the PSC, the relative efficiency of these two schemas and possibly others will ultimately set the basis of the Resolution 787 standard.

Standards are essential to the efficient functioning of networked industries like airline distribution and air travel generally. Indeed, IATA was created 63 years ago in express recognition of the airline industry's need for a trusted developer of standards to promote a safe and efficient international air transportation system. Recent IATA standards like e-ticketing, 2D barcoding for boarding passes, and baggage barcoding have enabled the industry to work together effectively and efficiently for the benefit of the air travel consumer. The now outmoded EDIFACT standard is itself an example of

²⁸ It is interesting to note that Open Allies has never challenged IATA's right to maintain the EDIFACT standard upon which the GDS networks are based.

the enormous contribution standardized data protocols can make to efficiency and consumer welfare.

3. Collaboration

Several commenters expressed concern that IATA and its members have excluded other distribution system participants from assisting in the development of the XML data transmission standard.²⁹ While some acknowledge they have participated in meetings, they express concern that some decisions on the standard were being made by airlines alone.

While only IATA members have voting participation in the Passenger Services Conference, the XML standard is in fact being developed by a Distribution Data Exchange Working Group (DDXWG). The DDXWG includes airlines, the major GDSs, travel agents and their associations as well as existing and new entrant technology providers. IATA considers it essential that the development of the standard be shaped with input from the entire industry. If the standard fails to support an essential business process or requirement from any of these stakeholders, there is risk that it will not be widely adopted and the initiative will fail to deliver on its essential goals.

Collaboration with other industry participants in fact has long been a hallmark of IATA's standard-setting activities. Thus, for example, GDSs attend meetings of IATA's Ticketing Committee, which sets standards for E-tickets and other electronic documents. The DDXWG, which includes travel agents among its membership, works

²⁹ Answer of the American Society of Travel Agents (DOT-OST-2013-0048-0379), pp. 7-9; Comments of the American Antitrust Institute (DOT-OST-2013-0048-0388), pp. 8-10; Joint Submission of ECTAA and GEBTA (DOT-OST-2013-0048-0214), pp. 2, 10; BCD Travel Comments (DOT-OST-2013-0048-0384), pp. 3-4.

in the same collaborative way; its steering group includes a travel agent, an IT provider, and ATPCO.

IATA is particularly interested in understanding the requirements of the travel agency community because the XML standard will be designed to facilitate better data transmission between airlines and agents. In that connection, beyond the working groups that are developing the standard, IATA and the World Travel Agents Associations Alliance (WTAAA) have jointly created an Airline-Agent Forum (AAF). The AAF has met twice in 2013 and facilitated a discussion between IATA and travel agent associations of the value that NDC will bring to travel agents. WTAAA publicly acknowledged the benefit of this collaborative engagement, and the AAF will meet again in July 2013.³⁰ Participants include the American Society of Travel Agents, the Association of Canadian Travel Agencies, and other associations.

III. Resolution 787 Qualifies for Approval under the Applicable Statutory Test.

A. The Opponents Have Failed to Bear Their Burden of Proof.

The foregoing discussion should leave no doubt that Resolution 787 is decidedly in the public interest. Simply stated, it contemplates the development of a standard that would deliver substantial benefits to the traveling public.

Based on the record before the Department, therefore, Resolution 787 is clearly entitled to approval under the applicable statutory test. Specifically, IATA seeks

³⁰ See WTAAA press release issued in Brussels on April 9, 2013, available at http://www.wtaaa.org/en/detail_36.aspx. ("We are pleased that IATA has opened the NDC dialogue with WTAAA, which is preeminent global travel agency association whose travel agency members are responsible for over 80 percent of all global travel agency sales," said [WTAAA Chairman Lars] Thykier.")

approval of Resolution 787 under Section 41309 of the Transportation Code.³¹ Under that standard, the Department “shall approve an agreement” when it “finds it is not adverse to the public interest and is not in violation of” the Transportation Code.³² DOT precedents recognize that the standard for approval under Section 41309 generally is much less stringent than the standard for conferring antitrust immunity under Section 41308.³³

Open Allies and others contend that Resolution 787 should be disapproved because, “given its likely adverse impact on competition,” IATA has failed to show that the resolution meets “a serious transportation need’ or ‘achieves important public benefits’ that cannot be achieved in less anticompetitive alternative means.”³⁴ That misstates IATA’s burden here. Under the terms of Section 41309, the “serious transportation need” test is applied only where an agreement has been shown to reduce competition. Subsection 41309(b)(2) makes explicit that “a party opposing an agreement . . . has the burden of proving that it substantially reduces or eliminates competition.” Of course, none of the opponents has attempted to satisfy that burden of proof.

Nor could they. DOT precedents make clear that communications standards and other facilitation resolutions produced by the IATA Passenger Services Conference typically are found to be consistent with the public interest (*i.e.*, not adverse to it). As

³¹ 49 USC §41309.

³² 49 USC §41309(b).

³³ Order 2005-12-12 (Dec. 22, 2005), 2005 WL 4720924, at *29 (*Application of Alitalia-Linee Italiane-S.p.A., et al.*; DOT-OST-2013-0048-0380)).

³⁴ Answer of Open Allies for Airfare Transparency (DOT-OST-2013-0048-0380), p. 1.

described in its 2007 order concluding its latest public interest review of the IATA Traffic Conference Provisions:³⁵

The services and agency traffic conferences generally have not been controversial. They adopt cooperative procedures that enable airlines to operate more efficiently and offer better service. The services conferences discuss matters such as interline practices and electronic ticketing, while the agency conferences discuss relationships with travel agencies. The inter-carrier agreements created through these conferences also facilitate interline transportation.

More recently, the Department has opted for expedited review of Passenger Service Conference standards and other facilitation resolutions procedures that are “designed to facilitate prompt implementation of routine but essential standard settling and interline coordination agreements.”³⁶ Thus, the Department has routinely found that IATA Passenger Service Conference resolutions on industry standards are consistent with the public interest. Rather than presuming that development of the XML standard resolution is anticompetitive, therefore, both the language of Section 41309 and Department precedents require that opponents here must actually demonstrate that the proposed XML standard would substantially reduce or eliminate competition. DOT’s precedents consistently hold that “general, vague, or unsupported objections” – like those that characterize the comments filed in opposition to approval of Resolution 787 – “are insufficient.”³⁷

³⁵ Order 2007-3-23 (Dkt. OST-2006-25307; March 30, 2007), p. 4.

³⁶ See Order 2012-4-18 (Dkt. OST-2010-0114; April 13, 2012), p. 2.

³⁷ See, e.g., Dep’t of Trans., Order 2012-1-11, *Applications of Universal Jet Aviation, Inc., for Certificates of Public Convenience and Necessity Under 49 U.S.C. 41102 to Engage in Interstate and Foreign Charter Air Transportation*, Dockets DOT-OST-2011-0150 & DOT-OST-2011-0151, 2012 WL 1048391, at *7 (Jan. 17, 2012); Dep’t of Trans., Order 2008-4-18, *Fitness Determination of McCall Aviation, Inc. as a Commuter Air Carrier Under Section 49 U.S.C. 41738*, Docket DOT-OST-2007-28657, 2008 WL

B. The Requested Additional Information Is Burdensome and Unnecessary.

Implicitly acknowledging their inability to sustain opposition to Resolution 787 on its own terms, some objectors have demanded that the Department issue broad information requests to IATA.³⁸ The purpose of these requests is to search for what these opponents believe is an additional agreement among IATA members to change their marketing practices and eliminate generally available base fares and/or anonymous fare quotations.³⁹ Nothing in Resolution 787 obligates IATA members to modify, or not to modify, their individual marketing strategies or distribution practices. Resolution 787 only looks toward *enabling each IATA member to exercise greater latitude in determining how best to distribute its own products*. IATA is not seeking approval for any coordinated distribution system or marketing methodology and has proposed language for ordering paragraphs that would define with precision what was approved and what not. Thus, the massive fishing expedition sought by opponents and the consequent cost and delay it would occasion are clearly inappropriate.⁴⁰

5525527, at *5 (Apr. 10, 2008); Dep't of Trans., Order 2001-9-11, *Essential Air Service at Devils Lake, North Dakota, Jamestown, North Dakota, and Brookings, South Dakota Under 49 U.S.C. 41731 et Seq.*, Docket OST-1997-2785, 2001 WL 1131866, at *2 (Sept. 17, 2001); Dep't of Trans., Order 96-12-34, *Essential Air Service at Glasgow, Montana Glendive, Montana Havre, Montana Lewistown, Montana Miles City, Montana Sidney, Montana Wolf Point, Montana Under 49 U.S.C. 41731 et Seq.*, Docket 42661, 1996 WL 745346, at *2 (Dec. 19, 1996).

³⁸ Motion of Open Allies (0003), p. 9.; Comments of American Antitrust Institute (DOT-OST-2013-0048-0388), p.14; Joinder of Travel Technology Association (DOT-OST-2013-0048-0004), pg. 1; Joinder of World Travel, Inc. (DOT-OST-2013-0008), p.1 (all requesting more IATA documents); and Comments of Business Travel Coalition (DOT-OST-2013-0048-0029), pp.12-16; Comments of ECTAA and GEBTA (DOT-OST-2013-0048-0166), p.9 (both proposing lists of questions for IATA).

³⁹ Open Allies' Answer (DOT-OST-2013-0048-0380), p. 4; Comments of Business Travel Coalition (DOT-OST-2013-0048-0029), p. 4.

⁴⁰ The Department "limit[s] the scope of [its] requests to the extent possible to reduce burdens on applicants and interested parties, consistent with the public interest," *id.*; indeed, the DOT and its predecessor have long expressed "concern[] about the burden that broad document production may impose," Civil Aeronautics Bd., Order 81-5-87, *TXI-Continental Acquisition, LPP Interrogatories*, Docket

In short, IATA's application for approval of Resolution 787 was properly found complete under Part 303.40 of the Department's regulations 14 C.F.R. §303.40.⁴¹ Commenters now having had a more than adequate opportunity to submit their views, the Department should proceed promptly to decision and permit Resolution 787 to be declared effective.

C. IATA's Application Is Procedurally Appropriate.

Some commenters have questioned the procedural appropriateness of IATA's application, contending that if it concerned just an XML standard, it should have been filed under the expedited Tier 1 exemption procedure defined by Order 2012-4-18 (April 13, 2012) and because it was filed instead as a Tier 3 application for approval, IATA must intend more than a standard. Others have suggested that Resolution 787 "does not require DOT approval" and is "outside DOT's regulatory jurisdiction." Such contentions are meritless.

Resolution 787 is an agreement produced under the procedures of the Passenger Services Conference, which is one of the conferences authorized by the Provisions for the Conduct of the IATA Traffic Conferences. Those Provisions have long been approved by DOT and its predecessor agency subject to stated conditions.

39285, 89 C.A.B. 795, 797 (May 14, 1981); see also Dep't of Trans., Order 2008-12-11, *Joint Application of: American Airlines, Inc.; British Airways plc; Finnair OYJ; Iberia Líneas Aéreas de España, S.A.; and Royal Jordanian Airlines Under 49 U.S.C. §§ 41308-41309 for Approval of and Antitrust Immunity for Alliance Agreements*, Docket DOT-OST-2008-0252, 2008 WL 5550438, at *4 (Dec. 19, 2008) ("[W]e believe that certain information requested by the parties is not necessary and/or would be excessively burdensome to the Joint Applicants.").

⁴¹ Certain commenters claim that IATA should have proceeded without a DOT submission if it believed that Resolution 787 had no anticompetitive effect. As the Department is aware, however, Condition #2 to the approval of the Traffic Conference Provisions requires IATA to file all conference agreements for DOT review. IATA's application explained that IATA did not propose expedited Tier 1 processing under Order 2012-4-18 because the expected filing of opposing comments required a full review under Tier 3. Application (DOT-OST-2013-0048-0001), p.17.

Condition #2 provides that IATA shall submit each conference resolution to DOT for appropriate action “prior to the agreement being declared effective by IATA or implemented by its members.” Thus, under the DOT regulatory scheme, IATA had no choice but to apply to DOT for pre-effectiveness review, and DOT has authority to conduct such a review.

As noted in the Application (at p. 17), IATA believes that the subject matter of Resolution 787 is consistent with the expedited Tier 1 exemption procedure. However, soon after the resolution was adopted, a number of the present opponents launched a vigorous campaign in the media and elsewhere, indicating their intent to prevent implementation of the resolution. Where there is opposition, the Tier 1 procedure provides that the DOT may direct that the application be re-filed under the normal less expedited procedures. In that context, IATA decided to skip the false start that would result from filing under Tier 1 and simply follow the normal procedures from the beginning.

IATA had the procedural choice of filing for approval with antitrust immunity, for approval without immunity, or for exemption from Condition #2's pre-review requirement. IATA chose to file for approval without immunity. It concluded that immunity was not needed for an agreement such as Resolution 787 or its proposed standard. On the other hand, IATA determined that if it must bear the cost and delay of overcoming the opponents' opposition before DOT, an approval (not just an exemption) was warranted. That choice, seeking approval under Tier 3 procedures, also reflected informal DOT staff guidance suggesting that application procedure. Thus, the application is procedurally appropriate in the circumstances.

IV. Conclusion

Through Resolution 787, IATA, on behalf of its member airlines, seeks to promote the development of a broad open industry standard to improve the efficiency of the airline distribution network in a way that promotes competition, innovation, and consumer benefit.

Based on the discussion in the preceding pages, the Department should quickly conclude that Resolution 787 is in the public interest and grant approval. If adopted by the industry, the new XML data transmission standard will support greater consumer choice, more competition, and more innovation. IATA believes that the approval restrictions suggested in this document will amply address any legitimate concerns about the standard.

For the foregoing reasons, IATA urges the Department approve Resolution 787 as soon as possible.

Respectfully submitted,



Douglas Lavin
Regional Vice President – North America

**Appendix A: Conditional Response to Supplemental Answer
of Open Allies for Airfare Transparency and the
Supplemental Comments of the Business Travel Coalition⁴²**

The AGM Resolution

On June 3, 2013, in Cape Town, South Africa, during IATA's 69th Annual General Meeting (AGM), IATA's membership unanimously adopted a "Resolution on New Distribution Capability (NDC)" ("AGM Resolution"). The AGM Resolution, which is reproduced at the end of this Appendix, endorsed the "continuing efforts of the broad industry to develop the enhanced standards needed to support the delivery of rich airline content across all channels."

Importantly, the AGM Resolution restated with clarity and simplicity IATA's position with regard to the most important misconceptions expressed by stakeholders about its NDC initiative – misconceptions addressed in the instant Reply. Thus, it affirmed that the enhanced standards "should support current shopping methods, including anonymous shopping by customers, while adding capabilities such as 'shopping basket', personalization and flexibility for the future."

The AGM Resolution also noted that "airlines will continue to be subject to relevant passenger privacy protection laws and regulations..." It confirmed that airlines and other industry players "would be free to decide whether or not to adopt the enhanced standards to support some or all of their distribution needs."

⁴² Open Allies and the BTC have not sought leave to file their Supplemental Answer and Supplemental Comments, respectively, and such filings are otherwise out of time. IATA provides this conditional response in the event that the Department nevertheless decides to consider these filings.

The AGM Resolution encouraged “the active participation of the entire distribution chain in the development and adoption of the enhanced standards.” It also affirmed IATA’s continued support of the existing standards for A4A/IATA Reservation Interline Message Procedures (AIRIMP) and the Passenger Airport Data Interchange Standards (PADIS).

Finally, the AGM Resolution affirmed “that each airline must make its individual, independent choice of price, product and service offers, and make independent choices of distribution strategies and partners, in accordance with applicable competition laws.”

The principles enshrined in the AGM Resolution, therefore, are wholly consistent with the letter and spirit of Resolution 787 itself as more thoroughly explained in the instant Reply.

Open Allies’ Supplemental Answer; BTC’s Supplemental Comments

Two days after the new resolution was adopted at the IATA AGM, on June 5, 2013, Open Allies for Airfare Transparency filed a “Supplemental Answer” to IATA’s request for approval of Resolution 787.⁴³ On June 11, 2013 Open Allies was echoed in “Supplemental Comments” filed by the Business Travel Coalition (BTC).⁴⁴

The OA Supplemental Answer called the Department’s attention to the AGM Resolution and said Open Allies was “cautiously optimistic” that it “might be an important step in the direction of mitigating all or some of the harmful consequences of

⁴³ Supplemental Answer of Open Allies for Airfare Transparency to Application for Approval of IATA Resolution 787, (DOT-OST-2013-0048-0401)(hereafter, “OA Supplemental Answer”).

⁴⁴ Supplemental Comments of the Business Travel Coalition, Docket No. OST-2013-0048-0402 (hereafter, “BTC Supplemental Comments”).

Resolution 787.”⁴⁵ Open Allies then noted that “any benefit from the AGM Resolution can only be realized if the pending request for Department approval of Resolution 787 is withdrawn and a modified new Resolution, which reflects the statements in the AGM Resolution, is adopted by the Passenger Services Conference . . . and resubmitted to the Department for review and public comment.”⁴⁶ Open Allies asks the Department to find that IATA’s pending application for approval of Resolution 787 “is not ripe for consideration given the ambiguities and uncertainties that have been highlighted in the Open Allies and other comments.”⁴⁷

Response of IATA

The AGM Resolution does not seek to modify, amend or expand Resolution 787 in any way. It simply expresses the AGM's recognition and support of the work being done within the Passenger Services Conference and of IATA's staff support for that work. It also sends a message to government authorities that there is broad support for the NDC initiative from airlines around the world and a message to other elements of the distribution chain that their participation in the ongoing standards development is both encouraged and welcome. The AGM's action clearly does not require any amendment to or refiling of Resolution 787.

Open Allies writes that IATA –

should withdraw its current application for approval and embody the pertinent principles of the AGM Resolution in a modified and final version of Resolution 787 approved by the PSC and re-filed with DOT. *Only then* can there be any certainty about the exact agreement for which

⁴⁵ OA Supplemental Answer, p. 2.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 10.

IATA seeks DOT approval, the purpose and effect of that agreement, and the possible consequences of DOT approval on distribution of airline services, airline competition and personal privacy rights. (Emphasis added.)⁴⁸

Open Allies is incorrect. In the unlikely event that the Department believes there is any actual uncertainty about the purpose and effect of Resolution 787, it should expressly limit its approval in the ways IATA has suggested in the preceding pages.

Open Allies seeks five numbered assurances in its Supplemental Answer. IATA's proposed limitations, if adopted as part of the Department's approval of Resolution 787, would unequivocally provide Assurances 1, 2, 3, and 5, although IATA can also assure the Department that IATA will stay within these limitations whether they are explicitly included in the Department's approval or not. Assurance 4 cannot be delivered because it is not in the public interest.

1. Resolution 787 does not define a new business model.

The first assurance sought by Open Allies relates to its conviction that, despite consistent statements to the contrary by IATA, Resolution 787 "defines a new business model for the pricing and sale of airline tickets."⁴⁹

IATA has proposed that the Department include in its approval a limitation that will leave Open Allies in no doubt about "the purpose and effect" of Resolution 787:

"Approval of Resolution 787 does not constitute approval of any agreement among airlines regarding any method of distributing air transportation."⁵⁰

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 5.

⁵⁰ P. 9, *supra*.

2. Consumers will not be required to divulge personal information.

Open Allies maintains that Resolution 787 allows airlines to require from the consumer as part of the authentication process “and before quoting any prices” the following details: name, age, marital status, nationality, contact details, and frequent flyer numbers.⁵¹

IATA has consistently explained that no consumer will be required by the proposed XML standard to divulge personal information as a prerequisite to receiving a fare quotation. Consumers who wish to take advantage of their frequent patronage of a particular airline and benefit from a more personalized offer may submit specified personal information, but wholly on a voluntary basis. Again, to leave stakeholders in no doubt about this issue, IATA has proposed that the Department include in its approval another limitation:

“Approval of IATA Resolution 787 does not constitute approval of any agreement among airlines to require, as a condition of receiving at least one offer for airline transportation, the disclosure by any passenger of personal information of any kind.”⁵²

3. Current shopping methods, including anonymous shopping by customers, will remain available.

Open Allies argues, as it did in its comments, that because Resolution 787 frees developers from the constraint of backward compatibility between the proposed open XML-based standard and the EDIFACT standard, the result will be “no interoperability

⁵¹ OA Supplemental Answer, p. 7.

⁵² P. 12, *supra*.

between NDC and the current systems.” This, Open Allies maintains, “is the explicit and specific agreement among airlines under Resolution 787.”⁵³

As explained more fully in the instant Reply,⁵⁴ Paragraph 1.2.4 of Resolution 787 requires “due consideration for established business processes, procedures and current system functionality.” Thus, IATA’s PADIS Board will continue to support EDIFACT and IATA member comments expressly state that EDIFACT-based legacy distribution will continue for a substantial period. Any contention that freeing developers from a backward compatibility constraint is designed to eliminate current distribution processes and procedures is wholly unwarranted.

But the Department need not leave this to chance. Again, IATA has proposed a limitation for the Department’s consideration that, if adopted, would eliminate any uncertainty regarding the effect of Resolution 787 in this regard:

“Approval of Resolution 787 does not constitute approval of any agreement among airlines to prohibit individual carriers from continuing to utilize the EDIFACT standard.”⁵⁵

4. NDC will enable travel agents to sell all of what airlines have on offer.

Open Allies cites an IATA press release issued shortly after adoption of the AGM Resolution and notes the following passage: “NDC will not bypass travel agents. It will enable them to sell all of what airlines have on offer.” While not included in the AGM Resolution which is the avowed basis for Open Allies’ Supplemental Answer, the quoted passage is both correct and fully consistent with the language of Resolution 787.

⁵³ Supplemental Answer. p. 10.

⁵⁴ Pp. 15-17, *supra*.

⁵⁵ P. 17, *supra*.

As explained more fully in the instant Reply,⁵⁶ travel agencies operating with today's EDIFACT-driven systems cannot display or sell all of what airlines offer on their own proprietary websites. That is a problem for consumers, to be sure, but it is also a problem for airlines that seek the widest array of marketing outlets for their offerings. NDC will represent a welcome and overdue change, as travel agents at long last will have the technical wherewithal to display airline offerings as fully and holistically as the airlines can – with the important added advantage of being able to support efficient comparison shopping by consumers.

Open Allies cites disapprovingly language in Section 1.1 of Resolution 787 that says: “. . . all product offers (including ancillaries) will be available for distribution through all channels that an airline wishes to sell them through.” Similarly, Section 1.2.6 provides: “All data will be distributed across all channels, subject to the terms and conditions determined by the airline distributing the content.” Open Allies notes that this language falls short of an agreement among carriers giving travel agents the “right” to sell all of what airlines have on offer, and that if the purpose was to create such a right, Resolution 787 will have to be amended.⁵⁷

But that of course is *not* the purpose of Resolution 787. The purpose of the quoted language is to emphasize the exciting new, consumer-friendly *possibilities* that would be available if NDC is in fact adopted by the industry. Airlines are not required to use travel agencies or intermediaries today; airlines are free to choose the channels through which they sell air transportation. Nothing in Resolution 787 is intended to alter

⁵⁶ Pp. 1-5, *supra*.

⁵⁷ OA Supplemental Answer, p. 9.

that fundamental and long-standing characteristic of air travel marketing. Indeed, any attempt to do so – to limit airlines' choice of marketing outlets in any way – would clearly be contrary to the public interest. There is clearly no reason to contemplate any amendment of Resolution 787 on this ground.

5. Airlines and other players would be free to decide whether to adopt NDC.

Finally, Open Allies notes that the AGM Resolution confirmed that airlines and other players “would be free to decide whether or not to adopt the enhanced standards to support some or all distribution needs.”⁵⁸ Open Allies contends that this language, which it likes, is inconsistent with language in Resolution 787's preamble, which it does not like. As noted in the instant Reply,⁵⁹ Resolution 787 does not require any carrier, or anyone else, to distribute enhanced content, leaving carriers free to limit themselves to existing EDIFACT-based distribution practices should they so choose. Second, Resolution 787 is intended to ensure that carriers distributing enhanced content make that content available in standardized format but does not foreclose carriers from *also* making content available in alternative XML formats or EDIFACT formats. In fact, given the time required for all elements of the distribution channel to adjust to the new standard, IATA members anticipate a parallel use of EDIFACT-based distribution for a substantial period.

Once again, the Department can resolve any residual doubt about the permissive nature of Resolution 787 by limiting its approval. As proposed by IATA in the instant Reply, the limitation would be along the following lines:

⁵⁸ *Ibid.*

⁵⁹ Pp. 13-14, *supra*.

“Approval of IATA Resolution 787 does not constitute approval of any agreement among airlines to restrict their use of any other data transmission standard(s).”⁶⁰

Conclusion

For the foregoing reasons, IATA urges the Department to reject Open Allies’ contention that Resolution 787 is not ripe for consideration. The AGM Resolution did not depart from the meaning of Resolution 787 in any way. It merely affirmed what IATA has said about Resolution 787 from the outset – that it will enable the development of a contemporary, XML-based messaging standard which will in turn spawn exciting new developments in the marketing of air transportation. It will engender a dramatically improved customer experience on all channels, facilitate consumer comparisons of holistic carrier offerings, and drive even more robust inter-airline competition than we have today.

Resolution 787 is demonstrably in the public interest and is wholly deserving of the Department’s approval.

⁶⁰ P. 13, *supra*.

FINAL RESOLUTIONS
69th IATA ANNUAL GENERAL MEETING

I. RESOLUTION ON NEW DISTRIBUTION CAPABILITY (NDC)

Introduction

NOTING that the IATA Passenger Services Conference is facilitating the definition and establishment of open XML-based enhanced data transmission standards ("enhanced standards") with the support of IATA corporate resources;

NOTING that market implementation of these enhanced standards could enable airlines to adopt new and innovative approaches to the retail distribution of products and services (referred to broadly as the "New Distribution Capability" or NDC);

RECOGNIZING that enhanced standards would enable airlines to bridge the capability gap between today's airline website and travel agency channels, providing the opportunity for robust retail capabilities across all channels;

EMPHASIZING that enhanced standards would support product differentiation, price, product and service transparency, and the ability of customers to personalize their offer through optional authentication;

RECOGNIZING that industry-wide adoption of these enhanced standards offers enhanced value for all components of the retail distribution chain;

RECOGNIZING that airlines seek to merchandise their content across all channels;

RECOGNIZING that enhanced standards will enable travel agents to have access to this content and better support their customers' travel needs;

RECOGNIZING that consumers will benefit from being able to make choices based on enriched content as well as from the ability to compare and transact airline offers via multiple channels in a transparent fashion;

RECOGNIZING that technology providers will benefit from enhanced standards upon which they can develop applications to meet the needs of airlines, agents and consumers;

RECOGNIZING that enhanced standards will enable consumers to benefit from enhanced competition at the airline and distributor levels;

EMPHASIZING that developing enhanced standards is facilitated by the active participation of all distribution players and that IATA has reached out to all industry players to encourage such participation and will continue to promote additional participation from all value added contributors in the future;

Resolution

The IATA 69th Annual General Meeting:

1. **STRONGLY ENDORSES** the continuing efforts of the broad industry to develop the enhanced standards needed to support the delivery of rich airline content across all channels.
2. **AFFIRMS** that the enhanced standards should support current shopping methods, including anonymous shopping by customers, while adding capabilities such as "shopping basket", personalization and flexibility for the future.
3. **NOTES** that airlines will continue to remain subject to relevant passenger privacy protection laws and regulations regardless of how they choose to distribute their products and services.
4. **CONFIRMS** that airlines and other industry players would be free to decide whether or not to adopt the enhanced standards to support some or all of their distribution needs.
5. **ENCOURAGES** the active participation of the entire distribution chain in the development and adoption of the enhanced standards.
6. **AFFIRMS** IATA's continued support of the existing standards for A4A/IATA Reservations Interline Message Procedures (AIRIMP) and the Passenger Airport Data Interchange Standards (PADIS).
7. **AFFIRMS** that each airline must make its individual, independent choice of price, product and service offers, and make independent choices of distribution strategies and partners, in accordance with applicable competition laws.

Appendix B: Response to Open Allies' Document Request

The opponents of Resolution 787 seek an order requiring IATA “to submit all documents in their possession that relate or refer or refer to Resolution 787 and/or NDC.”⁶¹ That motion should be denied on several grounds.

First, the motion is premised on the notion that IATA’s application is not complete unless it includes an “economic justification” that has not been presented.⁶² IATA’s application does not arise in a vacuum; its contents reflect numerous DOT orders specifying the required contents of applications for review of IATA resolutions, including the agreement text and the related Passenger Services Conference documentation. The application contains those documents and other materials and is therefore complete within the meaning of the applicable DOT precedent.⁶³

Second, Open Allies, the Business Travel Coalition and other approval opponents argue from the premise that what the Passenger Service Conference has agreed to is a “new business model” to eliminate “publicly available fares that any consumer can today view and compare anonymously.” They seek additional documents in the hope that through them such an agreement can be shown to exist. That fishing effort should be denied because the Passenger Services Conference does not have jurisdiction to adopt fares agreements. Rather, its “Terms of Reference” stated

⁶¹ Motion of Open Allies (DOT-OST-2013-0048-0003), p. 9.

⁶² *Id.*

⁶³ Since DOT issued no notice asserting that the application was incomplete within 10 days after filing, as contemplated by §303.40 of the Procedural Rules, DOT presumably has determined that the application is complete.

in the Provisions for the Conduct of the IATA Traffic Conferences, as approved by DOT and numerous other governments, provide as follows:⁶⁴

The Passenger Services Conference shall take action on matters relating to passenger services including passenger and baggage handling, documentation, procedures, rules and regulations, reservations, ticketing, schedules and automation standards.

Resolution 787 authorizes an automation standard that addresses reservations and ticketing and, thus, is within the Passenger Services Conference's jurisdiction. That jurisdiction plainly does not include pricing. Thus, there is no reasonable basis for suspecting that the Passenger Services Conference has adopted the agreement that opponents posit. Document requests seeking to establish the existence of an agreement that would be ultra vires clearly is discovery that is unduly burdensome within the meaning of DOT precedent.⁶⁵

Third, discovery is not needed to resolve the opponents' expressed concern that the Department should not approve an agreement among airlines to eliminate publicly available fare prices. IATA maintains both that Resolution 787 is not such an

⁶⁴ See Paragraph IV.3(i) of the Provisions.

⁶⁵ The Department "limit[s] the scope of [its] requests to the extent possible to reduce burdens on applicants and interested parties, consistent with the public interest," *id.*; indeed, the DOT and its predecessor have long expressed "concern[] about the burden that broad document production may impose," Civil Aeronautics Bd., Order 81-5-87, *TXI-Continental Acquisition, LPP Interrogatories*, Docket 39285, 89 C.A.B. 795, 797 (May 14, 1981); see also Dep't of Trans., Order 2008-12-11, *Joint Application of: American Airlines, Inc.; British Airways plc; Finnair OYJ; Iberia Líneas Aéreas de España, S.A.; and Royal Jordanian Airlines Under 49 U.S.C. §§ 41308-41309 for Approval of and Antitrust Immunity for Alliance Agreements*, Docket DOT-OST-2008-0252, 2008 WL 5550438, at *4 (Dec. 19, 2008) ("[W]e believe that certain information requested by the parties is not necessary and/or would be excessively burdensome to the Joint Applicants.").

agreement and that no other agreement is covered by IATA's pending application. In that context, IATA suggests that the Department simply make express in its approval order that its action does not constitute approval of any IATA agreement to eliminate publicly available fares.

Most fundamentally, DOT should recognize that the subject request for an order requiring IATA to produce documents and for subsequent rounds of comments is intended merely to produce procedural delay in reaching a decision on IATA's application. There objectors want the Department to assist them in preserving the status quo, and their requests for extensive unusual procedures should be rejected as an improper means of achieving that end.