Reply Comments of Daniel M. Kasper

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Introduction

In their initial comments, several parties have raised questions with regard to the likely competitive implications of Orbitz's ownership structure and/or various provisions in Orbitz's agreements with individual airlines.[1] Although they do not contest the fact that Orbitz would likely spur price and service competition in the distribution of airline services, some parties nonetheless object to Orbitz because they believe it is an attempt by airlines to jointly dominate distribution of air transportation. According to these parties, Orbitz would enable such domination by denying access to a significant number of fares (and, hence, seats) sold by those airlines to competing distribution channels. Therefore, a number of these parties contend, the Department should preclude airlines with an ownership interest in Orbitz (or any other on-line distributor) from providing any fares exclusively to Orbitz (or any other airline owned on-line distributor) and should instead require airline-owners to provide other distribution channels with access to all of the fares made available to any airline owned channels. Finally, some parties also object to specific provisions, including the MFN (Most Favored Nation) provision, contained in Orbitz's airline agreements. The MFN clause requires participating airlines to make available to Orbitz all non-opaque published fares made available to the general public

[1] It is noteworthy that most of the comments regarding Orbitz were made by parties that dominate existing airline distribution channels and for whom Orbitz represents the threat of new competition. Thus, it is not entirely surprising that many of the recommendations made by these commenters would, if adopted by the

through any other on-line channel,[2] including individual airline websites. According to these parties, the MFN provision is objectionable because, they believe, it would prevent airline participants from providing other distributors with exclusive rights to sell certain published fares and would therefore make it more difficult for airlines to engage in surreptitious price competition.[3]

Comments filed in support of Orbitz emphasize the important new competition benefits that Orbitz would bring to the distribution of airline services, particularly with regard to the dominant suppliers of CRS and on-line travel agency services. These comments also seek to dispel concerns raised by Orbitz's critics about the likely effects of Orbitz's agreements on the airlines' incentives and ability to engage in price competition through the use of specific distribution channels.[4]

A review of the initial comments pertaining to Orbitz makes it clear that the overriding differences in opinions stem from how one weighs the indisputably positive impact of Orbitz on competition in the distribution of air transportation – particularly with the highly concentrated CRSs and the two dominant on-line travel agencies – against the potential for competitive harm that some believe might arise from Orbitz's ownership structure and/or certain provisions in its agreements with participating airlines. In an effort to assist the Department in resolving this issue, I have analyzed the major potential

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Department, seriously weaken – or even eliminate – that threat to their existing positions posed by such competition.

[2] As explained below, in order to obtain access to fares because they have been made available by a participating airline to another distributor (e.g., Travelocity), Orbitz must also match the other terms and conditions negotiated by that distributor and the participating airline.

[3] See, for example, Comments of the American Antitrust Institute, pp. 13-14.

[4] See, for example, Comments of Orbitz, LLC and Statement of Daniel M. Kasper.

competitive "harms" identified by other parties to determine whether or not these projected effects are consistent with economic principles. Specifically, I have examined the likely effects of Orbitz on the economic incentives of airlines to engage in vigorous price competition.

Based on this analysis, I have concluded that:

a) the overall impact of Orbitz is likely to be strongly pro-competitive;

b) claims that Orbitz will dominate or monopolize the distribution of airline services are simply not credible in light of the economics and structure of the existing distribution market, as well as market share projections made by independent analysts and by Orbitz;

c) in the unlikely event such harms materialize in the future, the Department will have ample time to fashion appropriate remedies based on facts rather than speculation by Orbitz's competitors; and

d) the MFN and other provisions questioned by some parties will reduce neither the incentives nor the ability of individual airlines to engage in blatant or surreptitious price competition. Instead, the MFN provision is more likely to spur new and innovative competition by the existing on-line agencies and CRSs that currently dominate airline distribution.

Airline Interests and Incentives

Any discussion of airline incentives to use (or favor) Orbitz must start with a recognition that airlines have well-founded concerns about – and a legitimate interest in controlling –

the rising cost of distributing their products. Even using Sabre's own data, the booking fees charged by CRSs have increased since 1984 at a rate approximately 15 percent faster than the Consumer Price Index,[5] notwithstanding the fact that the costs of both computing power and data transmission – two major components of CRS costs – have fallen sharply over the same time period.[6]

A second important consideration in evaluating Orbitz is the fact that the travel agency channel is far and away the predominant distribution channel for airline services in the United States today, accounting for approximately 80 percent of all airline tickets sold. A third consideration is the dominant position in airline distribution that is held collectively by only four CRSs. In total, these four firms handle over 80 percent of all US airline bookings, with Sabre alone accounting for roughly 50 percent of all such CRS bookings.[7] A fourth important factor is that two firms – Travelocity (owned by Sabre) and Expedia (owned by Microsoft) – control over 63 percent of on-line agency sales,[8] due at least in part to the fact that they have secured exclusive access to the dominant Internet portals, i.e., the electronic gateways most consumers use to access the Internet.

An evaluation of the ownership structure of Orbitz must consider the important structural and competitive conditions that characterize the distribution of air transportation today. It should thus consider the fact that investing in a new B to C e-commerce venture,

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[5] Comments of Sabre, Inc., p. 21. The difference between the rate of increase in CRS booking fees compared to the CPI amount to 15% per year.
[6] The cost per million instructions per second (MIPS), a standard measure of computer processing efficiency, has fallen from $480 in 1978 to $4 in 1995. Likewise, the cost to transmit data declined by three orders of magnitude between the mid-1970s and the beginning of the 1990s. "Transmission Costs are Plummeting." (www.neweconomy.com)
[7] Comments of Orbitz, LLC and Statement of Daniel M. Kasper, pp. 15.

particularly one seeking to compete against entrenched incumbents in the highly concentrated CRS and electronic ticket distribution sectors, is likely to be viewed by investors as a high risk undertaking, at best. Under recent financial market conditions, investors are likely to be even more skeptical regarding the prospects for such a venture, particularly where – as here – the dominant incumbent on-line travel agents have entered into contracts giving them exclusive rights to the most heavily used Internet portals.

Moreover, since the success of Orbitz's strategy depends on its ability to obtain access to all published fares – something that requires, at a minimum, the cooperation of most major airlines – and since these same airlines would be among the principal beneficiaries of a reduction in distribution costs, it is surely not surprising that potential outside investors would demand strong evidence of major airline support for Orbitz before putting their own capital at risk. The use of a joint venture such as Orbitz is well established as an efficient and legitimate way to share such risks. Likewise, the willingness of airlines to invest in Orbitz lends important credence to the existence of significant expected cost savings and signals to the financial markets the support for Orbitz that is critical to attracting other investors.

Is An Airline Likely to Deny Other Channels Fares It Provides to Orbitz?

In an effort to evaluate some parties' concern that an airline might deny other distribution channels access to more of its fares, I have analyzed the incentives that an airline owner of Orbitz would face if requested by another distributor to make all the

[8] Comments of Orbitz, LLC and Statement of Daniel M. Kasper, pp. 17.

fares offered through Orbitz available to that distributor in return for a "bundle" of terms equivalent in value with those provided by Orbitz. In addition, I have analyzed the possibility that, absent governmental intervention, airlines would broaden significantly the categories of fares available only from individual carrier websites or from Orbitz.

My analysis of airline incentives suggests that: (a) airlines have – and will retain – strong, independent incentives to use a wide array of distribution channels for most fares/seats; (b) airlines have – and will retain – strong incentives to provide distributors with access to as many fares as these distributors can economically sell; and (c) while airlines might prefer to increase the proportion of sales transacted through their own individual websites (because these represent the least costly distribution channel), it is unlikely that it would be profitable for an airline to broaden significantly the number of fares available exclusively on its own website. Furthermore, the incentives facing airlines appear to be consistent with the interests of both consumers and competition because they encourage both airlines and other distributors to lower the cost and improve efficiency in the distribution of air transportation, which will, in turn, put downward pressure on the prices charged for airline services.

<u>Airlines Must Use a Broad Array of Distribution Channels to Attract Passengers</u>

Like producers in many other industries, airlines have strong incentives to use multiple distribution channels to sell their products. In the case of airlines, these channels include travel agents (both traditional and on-line), airline city ticket offices, airport ticket counters, direct bookings both online and over the phone, plus consolidators and third party websites such as Hotwire.com and Priceline.com. When technology permits new distribution channels to emerge, it is common for firms in competitive industries (including airlines) to move quickly to utilize these additional channels. The emergence of the Internet as a viable means of selling goods and services, for example, has resulted in its widespread adoption – by producers in virtually every sector of economy – as an *additional* distribution option rather than as a replacement for existing distribution channels.

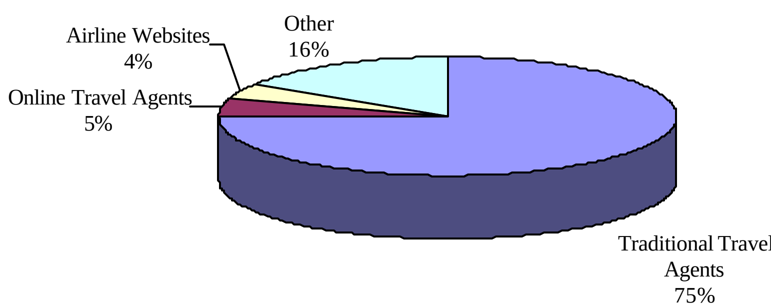
Airlines utilize many different distribution channels for the simple reason that *they must do so* in order to ensure that their products are easily accessible to the broadest possible array of prospective travelers. Indeed, no single distribution channel can cost effectively serve all potential consumers. Because attracting incremental passengers is critically important to an airline's profitability, each airline strives to match or surpass the visibility to purchasers enjoyed by its rivals. That is, airlines must compete for "shelf space" in any channel where consumers prefer to shop. As a result, competition would prevent an airline from bypassing any significant distribution channel, even if it wanted to do so. As discussed further below, it is highly unlikely that the establishment of Orbitz will change the incentives that compel airlines to use multiple channels for nearly all of their fares and seat inventories.

Despite the fact that most firms would *prefer* to sell as much of their product as possible through the least costly channel, they almost never do -- for the simple reason that the least costly channel for producers is rarely the channel preferred by most consumers.

Thus, even though airlines would prefer to sell their tickets directly to consumers via their own websites in order to reduce (or in fact eliminate) costs such as CRS booking fees and travel agent commissions, the overwhelming majority of tickets are sold through travel agencies, one of the most expensive distribution channels. Airlines continue to rely heavily on the agency channel because most consumers have demonstrated a strong preference for buying tickets from travel agents.

Estimated Share of Airline Ticket Distribution

2000



Source: "Airlines: Reshaping the Industry's Business Model", Merrill Lynch, April 8, 1999
PhoCus Wright Yearbook, 1999

Availability of E-fares

Traditionally, airlines have made most publicly available fares accessible to every distribution channel. Just as airlines have strong incentives to use every available distribution channel, they face strong incentives to ensure that each channel has access to as much of their inventory as possible. This is because consumer demand for different types of an airline's products is not, in general, segregated by distribution channel. As a result, an airline cannot typically afford to hold back any significant portion of its (publicly available) inventory from particular distribution channels. Moreover, the highly perishable nature of an airline's inventory provides an even greater incentive for each airline to ensure that it has as much "shelf space" as possible in order to minimize the number of empty seats on its flights.

The sale of low-priced distressed inventory known as "e-fares," however, would likely be uneconomic if burdened with the full cost of agency commissions and CRS booking fees. As a result, these very low margin products are typically offered only on an airline's own website, by far the lowest cost distribution channel currently available to an airline. In the case of Orbitz, however, these added costs would be more than offset by the savings an airline would realize from the approximately 30 percent CRS rebate it would get *for all of its fares sold through Orbitz.* If sales by Orbitz amounted to 2 percent of the sales of participating airlines that are now subject to booking fees, the savings to airlines would amount to $12.6 million per year.[9] It is these additional savings that make it economically worthwhile for airlines to provide Orbitz with access to their e-fare inventories.

Moreover, if other distribution outlets offer savings comparable to those offered by Orbitz[10] (i.e., reduced booking fees *on all fares sold via that outlet),* airlines would have strong incentives to make e-fares available through these additional channels. This is the case because the booking fee savings each participating airline would get on the far larger number of other fares sold would more than offset the added costs of permitting these

[9] LECG analysis of 1999 CRS marketshare and financial data.

distribution outlets to sell the small number of e-fares. If Orbitz's rebates were matched by distributors accounting for 20 percent of sales, for example, the airline savings would increase to $126 million annually.

The economic advantages are equally compelling from the perspective of individual carriers. Suppose, for example, that Travelocity offered Northwest Airlines a 30% booking fee rebate on *all* ticket sales made through Travelocity in exchange for the ability to sell Northwest's e-fares. Despite the fact that Northwest would have to absorb additional travel agent commissions and CRS booking fees on the e-fares that Travelocity booked, these costs (roughly $17 per ticket[11]) would be overshadowed by the rebates Northwest would obtain on non e-fare tickets: Northwest would gain over $3,000 in booking fee rebates for every e-fare booked by Travelocity.[12]

The willingness of participating airlines to provide e-fares to Orbitz supports the conclusion that airlines have strong incentives to use any channel that promises to reduce distribution costs. And given the substantial cost savings that an airline could obtain if another distributor (e.g., Travelocity) were to offer an airline terms truly equivalent in value to those offered by Orbitz, there is little reason to believe that the airline would not accept such an offer.

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[10] Airlines are willing to give Orbitz access to e-fares because of the savings in booking fees Orbitz offers for all fares it sells on participating airlines.

[11] E-fare ticketing costs are computed as $10 in capped travel agency commissions plus CRS booking fees for 2 segments, as the overwhelming majority of e-fares are non-stop flights.

[12] Since e-fares account for 0.1% of all tickets sold (Statement of Kenneth Mead, Inspector General, USDOT, "Internet Sales of Airline Tickets", July 20, 2000, pp. 9), Travelocity would sell 999 other tickets

Availability of Additional (Non-E) Fares

Just as an airline has little incentive to restrict the availability of e-fares from channels that could cost-effectively market them, it also has little incentive to broaden the category of fares offered only on its own website (or Orbitz's) since that would undermine the airline's ability to make its products available to the widest possible market. Major airline websites typically account for less than 10 percent of total ticket sales.[13] If an airline limited distribution of fares to Orbitz and its own website, it would lose approximately 90 percent of the distribution channel "shelf space" it currently uses to distribute such fares. As a result, the airline would lose substantial revenues to competing airlines that did not forego access to 90 percent of distribution channel "shelf space." The foregone revenues (and profits) from ticket sales that could have been made by other distribution channels would far outweigh the potential cost savings that could be realized from any incremental purchasers who were attracted to the airline's website in search of a fare exclusively available only on that website.

For purposes of illustration, suppose that Northwest Airlines chose to make its 14 day excursion and promotional fares – which account for roughly 15% of its domestic revenue – available only via its own website and Orbitz. In order for this strategy to be profitable for Northwest, the CRS rebates provided by Orbitz would have to be greater than any loss in profits from reduced sales to passengers lost as a result of the reduced

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with an average rebate of $3.12 for each e-fare it books (as calculated from data provided by US DOT and Inspector General Kenneth Mead).

[13] In 1999, US Airways and Continental booked 6% and 3.8% of their tickets on their respective websites. Northwest has booked 4.1% of its tickets on-line through the first three quarters of 2000. As it is in so

distribution channel availability of those fares. Based on Northwest data, Orbitz would have to attract nearly 80% of passengers who would have purchased these excursion tickets in order for this strategy to be profitable to Northwest.[14] But it is totally unrealistic to expect Orbitz to capture such a high proportion of passengers. To begin with, only 10-15 percent of passengers book their travel on-line. And more than 90 percent of passengers using these fares have historically booked these fares on channels other than Northwest's website, most of them using travel agents. Under highly optimistic assumptions, [15] Orbitz might be able to attract 10% of passengers seeking 14-day excursion tickets to its website; the net result to Northwest would be a $35 million annual loss. [16] These results are summarized in the table below:

Percentage of Excursion Passengers Migrating to Orbitz	Net Profit (Loss) Effect on Northwest per year
10%	-$35,093,641
25%	-$27,440,720
50%	-$14,685,851
80%	$619,993

many other ways, Southwest is a notable exception, booking a significantly higher percentage of its tickets on-line.

[14] Source: LECG analysis of Northwest data 1999 10K data and data cited in "Hub and Network Pricing in the Northwest Airlines Domestic System," by Robert Gordon and Darryl Jenkins. Analysis assumes that Northwest books 6% of tickets via their own website and earns the 1998 industry median return on revenues of 5.5% (Fortune 500).

[15] Despite the fact that Internet travel is growing, nearly half of all U.S. households are still not connected to the Internet. (Source: www.netsizer.com). Furthermore, of those households that do have access to the Internet, the vast majority (85%) do not make purchases online. (Source: "Internet Travel", Bears Stearns, April 2000).

[16] Even these figures substantially understate the negative effects such a strategy would have on Northwest. If Northwest's competitors did not limit similarly limit the availability of their excursion fares, they would be virtually certain to capture traffic and revenues that would otherwise have gone to Northwest. Since virtually all passengers have a choice of multiple carriers on a given route, many passengers who could no longer use their preferred channel to book excursion fares on Northwest would simply choose to fly on other carriers. Moreover, travel agents denied access to Northwest's excursion fares would have less incentive to sell Northwest's other fare offerings. Based on the well-recognized network effects of hub-and-spoke systems, the loss of excursion passengers would have a ripple effect on Northwest's overall system leading to reductions in flights, destinations and system profitability.

In sum, an airline would likely lose far more by restricting access to the vast majority of its fares (and seat inventory) than it could possibly hope to gain from the cost savings on any incremental sales – via Orbitz's or its own website – that such restrictions might generate.

Airline Incentives Are Consistent with Economic Efficiency and Consumer Interests

An airline's incentives to (a) use as broad an array of distribution channels as possible, (b) provide each distribution channel with access to as many fares as that channel can economically sell, and (c) increase the proportion of sales transacted through the most efficient channels are all consistent with economic efficiency and the interests of consumers. Because consumers value the ability to purchase goods and services at the lowest possible price and in ways that are most convenient for them, airlines are required as a practical matter to make the vast majority of their fares – and seat inventories – available through a wide array of distribution channels. In addition, an airline's ability to increase the proportion of sales transacted through the least costly distribution channels is restricted by a strong and persistent consumer preference for other channels – particularly for travel agencies, which currently account for approximately 80 percent of all tickets sold. As a result, airlines will continue to face strong incentives to make the overwhelming majority of their fares and seats available to all distribution channels. To the extent that other distributors want access to a miniscule number of fares[17] that would be available only on Orbitz and individual airline websites, these distributors will find it

[17] Statement of Kenneth Mead, Inspector General, USDOT, "Internet Sales of Airline Tickets", July 20, 2000, pp. 9.

necessary to meet or beat the terms offered by Orbitz. This is turn will provide an important and badly needed stimulus to competition and efficiency in the distribution of air transportation, particularly for the dominant CRSs.

The MFN Provisions Are Unlikely to Reduce Competition

Some parties have suggested that the provision in Orbitz's airline agreements that requires participating airlines to provide Orbitz with access to all their published fares on a Most Favored Nation (MFN) basis would reduce competition by precluding "special pricing deals" between an airline and other distributors that might be expected to spur additional price competition among airlines, particularly new entrants and low fare airlines.[18] Upon careful examination, however, these concerns appear to be unfounded, in part, at least, because they are based on fundamental misunderstanding of the MFN provision, airline incentives, and important facts about the nature and availability of different types of airline fares.

To begin with, Orbitz's agreement with airlines does not prevent any airline – new entrant, low-fare or large network incumbent – from entering into special pricing (or other promotional) deals. Under the terms of this agreement, for example, the MFN provisions apply only to published fares available to the general public; they do <u>not</u> apply to the wide array of special fares – including corporate fares, tour operator fares, off tariff fares, group fares, meeting and incentive fares, government fares, opaque consolidator

[18] See, for example, Comments of the American Antitrust Institute, pp. 13-14.

fares, affinity fares, auction site and other opaque fares[19] – that have been used historically by new entrants and other airlines to cut prices surreptitiously in an effort to build passenger volumes without precipitating across-the-board price wars. In fact, several post-deregulation airlines have successfully entered the airline business by negotiating special deals with large corporate customers,[20] deals that would not be precluded by Orbitz's Charter Associate Agreement, nor would they trigger the MFN provision in that agreement.

Moreover, Orbitz's agreement with airlines specifically excludes net fares from the application of the MFN provision. Thus, airlines remain free to offer other distributors the exclusive ability to purchase and re-sell seats to consumers on a net fare basis, typically at steep discounts. In short, an airline participating in Orbitz continues to have the option – consistent with its agreement with Orbitz – to offer surreptitious price reductions, should it chose to do so.

In addition, nothing in the Orbitz agreement precludes any airline from agreeing to provide Travelocity or any other on-line agency with exclusive access to non-public fares. Nor does the Orbitz agreement preclude any airline from entering a "special deal" with Travelocity (or any other distributor) whereby that airline pays for preferential display of its fare offerings.

[19] Amended and Restated Airline Charter Associate Agreement, Article 2.1 and Exhibit A.
[20] Midwest Express was established and initially owned by a large corporation that provided the carrier with a critical "base load" for its operations. More recently, ProAir used corporate "special deals" with major automakers to establish itself in Detroit.

Finally, and perhaps most importantly, the MFN provision ensures Orbitz access to the same "terms and conditions" offered to another on-line agency *if and only if* Orbitz is willing to match those terms. If Orbitz were unwilling or unable to match the terms of a special deal proposed by Travelocity to a participating airline, Orbitz would not have access to those fares based on the fact that they were made available to Travelocity, notwithstanding the MFN provision in Orbitz's airline agreements. Thus, far from stifling competition, the existence of the MFN provision will provide a powerful incentive for other on-line agencies to compete with Orbitz by offering savings to airlines with terms and conditions that Orbitz would find difficult or impossible to match.

In short, the Orbitz agreement diminishes neither the incentives nor the ability of participating airlines to negotiate "special pricing deals" with distribution channels other than Orbitz. Nor does the agreement otherwise preclude airlines from engaging in other, non-public forms of price cutting. Rather, by providing Orbitz with a competitive foothold against the entrenched on-line agencies and CRSs, it is likely that the MFN (and other provisions) in Orbitz's agreements will benefit consumers by injecting new competition in the distribution of air transportation, thereby lowering the cost of distributing airline products and, ultimately, the costs of air travel.

Proposed Regulations Would Hurt Competition, Consumers and Orbitz

Imposing a requirement that a participating airline must make all fares offered to Orbitz available to other channels would perversely affect not only Orbitz, but also competition and consumer welfare. If other distributors automatically have the right to the same fares as Orbitz, they would have little incentive to offer comparable or greater distribution cost savings to the participating airline. As a result, airlines would be unlikely to realize the full potential savings in distribution costs inherent in the Orbitz business model. Without comparable economic concessions, airlines are unlikely to make their low e-fares available to other distribution channels since the higher cost of using those channels would make these low e-fares uneconomic. As a result, airlines would be disinclined to offer these e-fares through Orbitz (or any other 3rd party distribution channel), thus denying consumers the benefits of Orbitz's unbiased display and the convenience of its one-stop comparative shopping when searching for low fares. Moreover, if Orbitz is denied access to the low e-fares that are currently available only on individual airline's websites, a key element of its strategy for attracting customers to its site would be eliminated, and this would reduce significantly the likelihood that Orbitz would emerge as an effective competitive spur to the incumbent firms that dominate the CRS and electronic ticket distribution sectors.

Summary and Conclusions

Notwithstanding the prospect that Orbitz will provide new and effective competition to the existing CRS providers, some parties apparently are skeptical of Orbitz based on the fact that it would be owned, at least initially, by several major airlines. I believe these concerns are misplaced. Orbitz is expected to garner only a tiny share of sales, even under its most optimistic projections, and there is simply no credible evidence to suggest that airlines and/or Orbitz will dominate electronic distribution, let alone the far larger distribution market.[21]

If the Department were to impose regulations on Orbitz – with the exception of non-discriminatory display bias rules – as proposed by a number of parties, it would effectively kill the threat of real competition that Orbitz poses to the entrenched suppliers of CRS and electronic distribution services. It would also foreclose for the foreseeable future the possibility of relying on market forces to discipline the cost and quality of CRS services. What will then be left is a highly-concentrated CRS business whose dominant players enjoy significant market power, insulated from the prospect of effective competition. Under these circumstances, the Department would have to consider seriously the establishment of a more robust and comprehensive regulatory regime than the current CRS rules, one that entailed more substantial regulation of CRS fees and competitive practices.

Since even under its most optimistic of assumptions, Orbitz will be only a small player in airline distribution for many years to come, it is both unnecessary and unwise to roll out the heavy regulatory artillery advocated by some parties. Rather, it would make far more sense for the Department to avoid imposing on Orbitz – and other emerging on-line distribution channels – regulations that risk killing the important competitive potential that these new options would bring to the business of distributing air transportation.

[21] A study recently released by the International Data Corporation concluded that "Airlines will not dominate online airline ticket sales, despite the planned launch of an airline-owned Web travel venture." See, "Airlines will not lead Web travel sales, study says", Reuters, September 18, 2000.

Instead, the Department should let the forces of competition play themselves out under the Department's watchful eye. If, as is likely, the effects of competition from Orbitz and possibly other new e-distributors, prove to be beneficial and efficiency-enhancing, the Department need do nothing further. If as its opponents speculate, Orbitz is used for anti-competitive purposes, the Department retains the authority to institute a rule-making or enforcement proceeding at any time. In either case, the Department will have the benefit of actual experience with competition from Orbitz and others rather than basing its decision on speculation about what might or might not happen, and how or when it might happen, in the future.