



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

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Paul M. Ruden, Esq.
Senior Vice President - Legal,
Industry & Government Affairs
American Society of Travel Agents
P.O. Box 23992
Alexandria, Virginia 22314

Dear Mr. Ruden:

This letter responds to your request of May 5, 1992, as supplemented by letters dated August 24, 1992 and January 6, 1993, for a statement, pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6, of the Department's current enforcement intentions with respect to the promulgation by the American Society of Travel Agents, Inc. ("ASTA") of a set of "Supplier Communications Guidelines."

You state that ASTA is a non-profit trade association of travel agencies representing nearly 50% of the 32,000 travel agency locations in the United States.^{1/} Its membership also includes approximately 10,000 companies that supply services used or sold by travel agencies or are otherwise involved in the travel industry.

ASTA proposes to publish and promote to travel industry suppliers of air, hotel, car rental, cruise, rail and tour services a set of "Supplier Communications Guidelines." ASTA intends that the guidelines will form a basic agreement between the supplier and its agents. The provisions of the proposed guidelines are as follows:

1. The supplier agrees to notify agents at the time of booking of all applicable terms (e.g., rate, commissionability, cancellation policy, etc.).

^{1/} You have estimated that ASTA's 10,000 travel agency members operate approximately 15,000 locations.

2. Commission policies are not subject to the guidelines, but rather are left to the independent decision of the supplier.
3. Supplier agrees to communicate with the agent with respect to a booking within a certain time (to be set by the supplier) after completion or cancellation of the service booked.
4. Agents shall respond to supplier requests for information within the same period of time.
5. Certain listed categories of information (e.g., name of client, booking date, etc.) shall be contained in each communication about a booking.
6. All remuneration mutually agreed upon by the supplier and the agent shall be paid within a stated time period.
7. Any decision by the supplier that the agent is not entitled to remuneration will be communicated to the agent within a stated time period.
8. Commission checks should be accompanied by information about the booking for which the commissions are being paid.

You have represented that while ASTA will attempt to persuade suppliers to agree to adhere to the guidelines, adoption of the guidelines by any particular supplier would be entirely voluntary. You also state that the determination of commission policies and levels will remain a subject of individual supplier discretion.

You state that the purpose of the guidelines is to improve the efficiency of communications between suppliers and their sales agents and to reduce transaction costs by promoting a common set of communications protocols for interactions between travel agencies and travel industry suppliers. You state that the decentralized nature of the travel business makes it difficult and expensive for agents to determine the commission policies of travel suppliers. The 30,000 travel agencies in the U.S. sell travel services on behalf of numerous hotel, car rental, airline, cruise, and tour companies.^{2/} You estimate

^{2/} For example, according to your letter of May 5, 1992, in the United States there are approximately 868 hotel companies, with an unknown number of franchisees, selling through 27,131 properties. There are 18 major rental car companies with 7,873 (Footnote continued on next page.)

that sales through travel agencies account for roughly 80% of all airline ticket sales, 95% of cruises, 30% of hotel room nights, 55% of car rentals, and 85% of packaged tours.

Travel agencies and suppliers seldom enter into explicit agency agreements. Instead, travel agencies typically make bookings in reliance upon a general industry practice of paying agents a commission for business delivered. Suppliers' commission policies vary, however, and disputes and misunderstandings frequently arise. You state that these disputes generate a significant amount of inefficient and unnecessary communication between agents and suppliers and interfere with efficient marketing of travel services.

Further, you state that there is no effective mechanism for travel agents efficiently to ascertain suppliers' commission policies. Industry directories (e.g., the Hotel & Travel Index) contain some rate and commission information, but are updated infrequently and do not contain detail on all the matters covered in the proposed guidelines. Some national hotel chains have published detailed commission policies, but franchisees sometimes do not follow the chains' policies and important details are sometimes omitted from the policies. Nor are computerized reservations systems equipped to provide detailed commission information. Moreover, since most reservations transactions are made through such systems, separate communications with suppliers to confirm commission information are time-consuming and costly.

You conclude that the ASTA guidelines would enhance efficiency by improving the flow of information and by eliminating unnecessary disputes between agents and suppliers. You also contend that the improved information will enhance competition among suppliers for travel agent bookings.

After careful consideration of the information you have provided, the Department has concluded that it has no present intention to challenge the promulgation of the proposed guidelines on antitrust grounds. The proposed guidelines appear to have a legitimate business purpose. Travel agents have a legitimate business interest in improving the efficiency of their communications with suppliers, and in improving the quality and timeliness of information. The guidelines appear to be reasonably tailored to meet those stated goals. The specific

(Footnote continued from previous page.)
outlets, of which about four thousand are operated by franchisees.

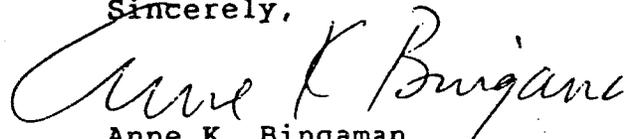
elements of the guidelines deal with the general form, timing and subject matter of communications between suppliers and agents. The guidelines do not attempt to dictate commission policies to suppliers. Indeed, they explicitly state that commission policies are subject to supplier discretion.

However, joint activity to achieve otherwise legitimate goals may present competitive risks. If ASTA's promotion of the guidelines would be accompanied by any express or implied threat that ASTA members would cease doing business with suppliers who do not subscribe to the guidelines, or who do not adopt certain commission policies, the activities could cross the line from legitimate business activity to unreasonable restraint of trade. Your letter and proposed guidelines, however, state that adoption of the guidelines by any supplier would be entirely voluntary. We interpret those statements to mean that neither ASTA nor its representatives, including its members, would make any express or implied threats that ASTA members might refuse to do business with suppliers who did not adopt the guidelines. We also interpret those statements to mean that ASTA will not suggest in any way to its members that they not do business with suppliers who do not adopt the guidelines.

This letter expresses the Department's current enforcement intention only. In accordance with our normal practices, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if actual implementation of any aspect of the proposed guidelines proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request will be made publicly available immediately and any supporting data will be made available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with paragraph 10(c) of the business review procedure.

Sincerely,



Anne K. Bingaman
Assistant Attorney General