



## American Society of Travel Agents

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May 5, 1992

James F. Rill  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Mr. Rill:

The American Society of Travel Agents, Inc. ("ASTA") hereby requests a Business Review Letter, pursuant to the Department's business review procedure, 28 C.F.R. 50.6, for the promulgation by ASTA of a set of "Supplier Communications Guidelines", as set forth below.

ASTA is a section 501(c)(6) trade association of professional travel agencies. ASTA's core membership consists of approximately 10,000 domestic travel agencies and more than 1,600 international travel agencies located in 125 foreign countries. ASTA's membership categories also include allied members (suppliers of services used or sold by travel agencies), travel schools, tour operators, cruise-only members and individual members. Total membership in all classes approaches 20,000.

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," the full text of which is set out in Exhibit A to this letter. Adoption of the Guidelines as official policy of any particular supplier would be entirely voluntary.

Inefficiencies currently experienced within the industry in communications between suppliers and their sales agents raise supplier costs with no concomitant benefits for consumers. Indeed, these communications inefficiencies ultimately raise prices charged to consumers. Consumers also suffer because of inefficient and inaccurate communication of supplier policies in such areas as cancellation policy. One additional consequence of these problems is that many suppliers use less efficient means of distributing their services, with resulting increases in costs and prices, and poorer service to consumers.

The root cause of these inefficiencies is that the suppliers have not communicated to their sales agencies many of the basic terms of the supplier-agency relationship and also have not communicated

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effectively many of the important terms governing the consumer-supplier transaction. Typically, except for the airlines, all supplier segments operate largely without written agreements or even written statements of policy governing either the sales agency relationship or the consumer-supplier relationship.

The purpose of the guidelines is to promote a common and understandable set of communications protocols for interactions between the 34,000 travel agency locations in the United States<sup>1</sup> and the thousands of travel industry suppliers in all categories throughout the country, and thereby improve the efficiency of communications between suppliers and their sales agents and reduce transaction costs for all parties, including the consuming public.

The promotion and adoption of the Guidelines will be procompetitive in that the Guidelines will improve the efficiency of those firms that adopt them. Those firms will attract more business from sales agents around the country who will be able to identify readily and in advance which are the most efficient firms with which to do business. The guidelines will also encourage the use of sales agents, which are the most efficient way to sell travel services, by travel suppliers for whom such agents today represent a relatively small share of sales.

#### The Economic Problem Faced By The Travel Industry

The sale of travel services in the United States is a very complex business. Consumer demand for travel services embraces not only the long-haul transportation mode but also local transportation services, hotel accommodations, and in many cases an aggregation of services from different suppliers who have no formal relationship with each other.

The distribution method of choice by the airlines is the travel agency. The 131 domestic and foreign airlines doing business in the United States through the Airlines Reporting Corporation share the use of 32,000 travel agency locations scattered throughout the country.<sup>2</sup> Travel agents account for more than 90 percent of

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<sup>1</sup> This figure is comprised of approximately 32,000 manned travel agencies that are accredited by the Airlines Reporting Corporation and an estimated 2,000 sales agencies that sell only cruises.

<sup>2</sup> These are manned locations as of December 31, 1991. There are an additional 7,359 satellite ticket printer locations that are controlled by the manned travel agencies.

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international air transportation sales and about 80 percent of all airline transportation sales.

These same travel agencies sell a much smaller share of hotel and car rental business, but, like the airlines, the suppliers of these services are located all over the country. Because many hotel properties are franchisees of national chains, the local properties are not bound by and in practice do not follow many policies established by the national chain. In particular, national chains do not control commission-paying and related disclosure practices of their franchisees.

There are approximately 868 hotel companies in the United States, selling through 27,131 properties, of which a significant, but unknown, number are franchisees. These hotels have 4,098,645 rooms available for sale each night.

The industry also includes 18 major car rental companies. The car rental firms are similar to hotels in that they often franchise their local outlets and thus do not control commission and other business policies of those local outlets. Of the 7,873 domestic car rental outlets, about fifty-one percent, or 4,037 are franchisees. Internationally, there are an additional 12,619 car rental locations, of which about 85 percent are franchised.

Normally, the computerized reservations system used by almost all travel agencies does not indicate which outlets are franchisees. The use of a national chain name, such as Holiday Inn, may imply that certain policies of the national chain apply, but in practice this turns out often not to be the case. The retail sales agent that deals with such a franchised outlet on those assumptions will often find himself embroiled in a dispute requiring many additional communications with the supplier and its national headquarters. On a national scale, these additional communications add substantially to the cost of doing business, with resulting higher prices to the public.

Although the franchised outlet accounts for the bulk of domestic car rental locations, these outlets tend to be smaller than the corporately owned facilities (franchised outlets account for only 27 percent of domestic fleet vehicles).

There are 41 cruise lines in the industry, operating 122 ships with 89,348 lowers (roughly equivalent to 44,675 beds). In addition to sales by airline-accredited travel agencies, sales of cruises are also made by sales agents who are not appointed to sell air

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transportation. These so-called "cruise only agents" number about 2,000.

In addition, there are an estimated 2,200 tour operators scattered throughout the country, most of which are independently owned. The tour operators sell thousands of different tour packages to about 800 destinations worldwide.

Given that ARC-accredited travel agencies sell about 80 percent of all airline tickets for domestic and foreign air transportation in this country and (together with cruise-only agencies not accredited by ARC) 95 percent of cruises, plus an estimated 30 percent of hotel room nights, and estimated 55 percent of car rentals and about 85 percent of packaged tours, the total dollar volume of sales accounted for by travel agencies in all areas is in the billions. While the number of "bookings" will only be in the millions, the total volume of communications annually between travel suppliers and their sales agents is also a number in the billions. If all of these communications were related only to making and confirming sales, there might be little reason for concern.

Unfortunately, many of these billions of communications are wasteful and unproductive. This is true because the parties deal with each other, to a very substantial degree, without written agreements. Travel agents often, therefore, do not have a clear understanding of the policies that the travel service suppliers intend to follow. The absence of such understanding is not cured by the high level of computerization of reservations systems in the industry. Those reservations systems contain raw information about availabilities and rates, and sometimes some information about commissions. They do not contain detailed information about the matters covered by the proposed Guidelines. As a result, disputes are commonplace about the basic terms of the deal between the travel agent and the supplier, and there are frequent disputes about what the client was sold by the travel agent. Vast numbers of additional and unnecessary communications occur between the parties in an effort to resolve the confusion and the disputes.

Some national hotel chains have published fairly detailed policies, but many important details are often not covered by them either. Moreover, since many travel agents book particular properties infrequently, agents are prevented from acquiring and retaining relevant information in a useable form. The Hotel & Travel Index contains some rate and commission information about thousands of hotel properties, but this data is updated only quarterly and may be changed by the individual properties between updates. The Index contains no details about the types of policies covered by the proposed Guidelines.

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Travel agencies typically make bookings in reliance upon the general industry practice of paying agents a commission for business delivered. This practice prevails in the airline industry, which represents the core of most travel agencies' business. It is, however, common for non-chain hotel properties, and franchisees of all types of suppliers, to fail to pay commissions to travel agents. Sometimes these refusals to pay are deliberate, but they are also often the result of misunderstandings that could be avoided if both parties were operating from an agreed position on what to expect. When suppliers depart from the general industry practice without communicating in advance their intention to do so, the result is much wasteful correspondence, telephone calls, faxes, and bookkeeping.

Some franchisees, for example, may take several months to collect sales information and forward commission checks. Travel agents have no way of knowing, today, what many properties' policy or practice is with respect to many products (e.g., those not included in the Hotel & Travel Index) or specific policies such as when commissions will be paid. Since much of the booking and confirmation process is by computer communication and is fully automated, there is no economically feasible opportunity for the agent to inquire into such practices when a booking is made. Even when telephone contact is made, there is no reliable written record of the discussions and disputes over what was said are very common. One consequence of this situation is that travel agents often begin sending dunning letters to hotels and car rental companies prematurely or for bookings in which some policy has been unknowingly violated and no commission can be expected.

Another more fundamental problem is that misunderstandings about the commissionability of particular sales arise frequently. Travel agents tend to assume that all of their sales for suppliers are commissionable unless they are told otherwise at the time of booking. Many suppliers, either through inadvertence, poor training, or deliberation, fail to volunteer that information. As a result, disputes flare up throughout the industry, with many additional letters and telephone calls trying to sort out the disputes. The nonpayment factor in the franchised portion of the hotel industry alone is estimated to range from 20 to 40 percent of commissions due travel agents on business delivered.

ASTA believes that the relatively high cost of dealing with myriad hotel properties with small but important differences in key policies has been a deterrent to travel agencies' increasing the volume of business they do with hotels, to the detriment of the agencies, the hotels and consumers.

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### Detailed Explanation of the Proposed Action

The concept behind the Supplier Communications Guidelines is that by adopting these Guidelines, suppliers can efficiently communicate to travel agents certain basic policy information that, once communicated, will increase the efficiency of business relationships and reduce the volume of unnecessary disputes and correspondence/telephone calls/faxes related to them.

The proposed Guidelines begin with explicit recognition of the right of every supplier to establish individual business practices with its agents. Nothing within the Communications Guidelines is intended or designed to usurp that authority. Adoption of these guidelines is, therefore, an individual and voluntary decision for each supplier. Once a supplier has notified its agents that it has adopted the Communications Guidelines, its agents and the supplier agree to abide by the terms contained in them until otherwise notified by either party in writing. The Guidelines thus form a basic agreement between the supplier and its agents governing the subjects covered by the Guidelines.

Section 1 of the Guidelines states that suppliers will, at the time of booking, notify agents through the most expeditious means possible of all applicable terms of a booking, such terms to include, for example: room type, rate, rate type (i.e., corporate, group, or other special rate categories), commissionability and rate, cancellation policy, confirmation number, and other special features as required for that property or service. Disclosure at the time of booking of this information will eliminate a very large percentage of avoidable disputes in the industry over the commissionability and correctness of bookings.

Section 2 reiterates that the establishment of commission policies are independent decisions of the supplier and are not subject to any guidelines.

Section 3 requires that communications with respect to each booking shall be made directly with the travel agency of record within a certain number of days of the guest's departure, completion of the service booked or cancellation, whichever is appropriate. The number of days is left up to the supplier to decide. ASTA will recommend that each supplier choose a standard format from among a number of choices, such as 30, 45, 60 or 90 days, these being the most common periods used in business. Having chosen a format, the supplier would then announce that it subscribes to the "ASTA Supplier Communications Guidelines-45", for example, signifying that 45 days is the time frame within which to expect action under each section of the Guidelines.

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The choice made by the supplier will determine what is expected in return from the travel agent. Thus, in Section 4, agents of a supplier choosing the 45-day approach, would be required to respond to supplier's request for information within the same number of days of the receipt of the request from the supplier.

In an effort to encourage both parties to provide each other with information necessary to efficiently process inquiries and bookings, Section 5 of the Guidelines requires that communications between the supplier and agent shall include, but are not limited to, certain key information: name of the client(s); booking date; check-in and check-out dates; form of payment; commission rate and/or amount, if applicable; total cost broken down into its appropriate components (i.e., rate, taxes); and, instructions for response (i.e., what information is needed and where to send the response).

These details are very commonly omitted by both suppliers and travel agents in their communications, with the result that extraordinary amounts of time are wasted trying to track down information necessary to respond to the other party.

Section 6 is designed to communicate to the travel agent what can be expected regarding transmission of payment. We reiterate here that the supplier can set whatever period it wishes. The Guidelines deal only with the question of disclosure of the policy to the travel agent.

The time period selected for Section 6 will often be different than the time period selected for Sections 3 and 4, because many suppliers pay commissions, in general, more quickly than they communicate about problems related to non-payment of commissions in particular cases. The Guidelines are not intended to force suppliers into a uniform format for paying commissions, since this, unlike general communications policy, is a subject about which the suppliers compete with each other when appealing to travel agents for business.

The full statement of a particular supplier's choice of Guidelines format would then read "ASTA Supplier Communications Guidelines-45 & 10", for example, signifying a 45-day communications period, but a 10-day commission payment policy.

To cover the situation in which the supplier claims that the travel agent is not entitled to the mutually agreed upon remuneration, Section 7 of the Guidelines requires the supplier to so inform the agent of its decision, and the reason(s) therefor, within the specified number of days of the client's departure or other completion of service, the choice of period again being the

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unilateral decision of the supplier. Agents would then know what to expect if a commission check were not forthcoming in accordance with the supplier's stated policy. As with Guidelines 3 and 4, the time period selected for Section 7 will be the same as for Section 6, so that the supplier is announcing the period within which it will pay the agreed commission or, within the same period, it will inform the agent of the reasons why the supplier believes no commission is owed.

To address another very common industry problem, that has seriously impacted the efficiency of travel agencies, Section 8 requires suppliers to include specific detailed information with commission checks to permit agents to reconcile their records. It has been commonplace for suppliers to send agents a single check for multiple transactions with no indication whatever as to the particular transactions covered. This in turn leads to more unnecessary communications as the travel agent tries to sort out what is covered by the check and what is pending.

Finally, Section 9 requires that suppliers disclose to agents whether the agent's right to commission will be honored in connection with group business that is directed to the supplier by the agent, a common source of conflict due to the absence of written and accessible supplier policies on this subject. Again, the supplier's decision whether to pay and how much to pay is not controlled or influenced by the Guidelines.

ASTA does not believe that the types of disclosures required by the Guidelines can impair competition in any way. On the contrary, by improving the content and efficiency of industry communications, competition will be enhanced. Firms that adopt the Guidelines will be making a pro-competitive appeal to the more than 34,000 sales agents in the United States that they are superior firms with which to deal because they disclose their policies in advance, agree to communicate efficiently and to provide content in their communications so that sales transactions, and issues arising from such transactions, can be handled with a minimum of conflict and a maximum of profit opportunity. Adoption of the Guidelines will reduce supplier costs and thereby ultimately reduce the cost of the travel service offered to the public. All firms will remain free under the Guidelines to set commission levels and payment periods as they see fit.

ASTA is attempting to help resolve these problems on a number of other fronts, but these other approaches have not by themselves addressed or cured the problems covered by the Guidelines. ASTA has, for example, funded the ASTA Litigation Center, an independently operated legal service for travel agents. The Litigation Center's purpose is to try to set legal precedents that

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will be beneficial to the industry. As a result of its purpose and resource limitations, the Litigation Center accepts only a few cases for representation from the hundreds that are presented to it. In one litigated case, against Seabourn Cruise Lines, the result was a settlement requiring the cruise line to publish its commission policy and its practices governing cases in which outside sales representatives moved from one travel agency to another. The expectation was that the publication of that policy would induce other cruise lines to follow suit, but none did. This, it appears, was not an issue about which the cruise lines were prepared to compete with each other for the business of travel agencies.

ASTA has also funded an independent service called ASTA Account Due, Inc. to assist travel agents with dunning services for suppliers alleged to owe commissions. ASTA Account Due addresses only one aspect of the problem and the need for it is itself a manifestation of the problems throughout the industry. ASTA Account Due is in its infancy, but early returns indicate that it is not a solution to the types of issues covered by the Guidelines.

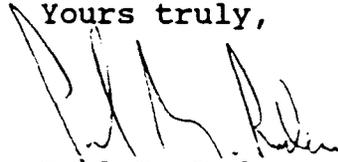
ASTA has conducted two meetings entitled "CRS Forums", in which representatives of the suppliers, the computerized reservations systems ("CRS") and travel agents addressed the shortcomings of CRS displays with respect to supplier policies governing relations with travel agents. We are advised that there are many technical limitations that prevent the CRS's from displaying much of the information that all parties agree would be desirable. Because CRS's are still evolving from the original "dumb terminals" to personal computer-based platforms, and considerable investment is still being made to upgrade all CRS services, the display of information on supplier policies of the type discussed here is not a top priority for the CRS vendors.

While we believe that significant changes in industry practices have resulted from ASTA's efforts, especially with the national hotel chains, it is clear from input we receive from ASTA members that much remains to be done. For all of the above reasons, and in particular the compelling efficiency benefits to both the industry and the consuming public, the Department should permit ASTA to try the Communications Guidelines approach and requests a statement of the Department's enforcement intentions with respect to promulgation and promotion of the ASTA Supplier Communications Guidelines as described above.

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We are, of course, ready to try to answer any questions that the Department may have.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul M. Ruden". The signature is stylized with a large initial "P" and a long horizontal stroke.

Paul M. Ruden  
Senior Vice President- Legal,  
Industry & Government Affairs