

United States Senate  
WASHINGTON, DC 20510

April 28, 2015

The Honorable Anthony Foxx  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Foxx:

We are writing to express concerns about measures in International Air Transport Association (IATA) Resolution 787, which the Department of Transportation approved on August 6, 2014. Resolution 787, which is supported by the airline industry, would permit the “personalized pricing” of airline tickets, a practice that allows one consumer to be charged more than another consumer for the same seat on the same flight based upon personal information collected about the individual. Personalized pricing is defined as charging each consumer a unique price for airfare based on a combination of seat availability and a consumer’s personal characteristics, which requires the large-scale collection, use and storage of sensitive personal information by airlines and travel agents for the purpose of quoting airfare prices to customers.

As a result of the implementation of Resolution 787, these practices could lead to unfair discriminatory practices, and it raises some serious questions regarding consumer protection and privacy. For example, airlines, using consumer zip code information, may offer special fares to consumers who live in more affluent zip codes to entice them to travel more frequently while failing to provide those same discounts in lower income areas. On the other hand, business travelers who regularly fly the same routes could face higher prices.

While the Department of Transportation has rightfully prohibited airfare vendors from using consumer-provided information to discriminate against consumers based on “race, creed, color, sex, religious or political affiliation, disability or national origin,” the department explained:

*“Whether other potential bases for price discrimination, such as income level, marital status, and trip purpose, would be unreasonably discriminatory or constitute an unfair or deceptive trade practice we leave to future determination.”<sup>1</sup>*

By excluding these forms of discrimination from its prohibitions, the department opens the door for airfare vendors to possibly engage in these forms of discrimination. Although under Resolution 787, consumers will still have the option to decline to provide personal information to the airlines and shop anonymously, we remain concerned that Resolution 787 does not contain adequate measures to prevent airfare vendors from penalizing consumers by charging higher prices for those who choose not to share their information. We are concerned that airlines could penalize consumers who do not provide personal information, as well as could engage in discriminatory pricing practices with customers who do share their information.

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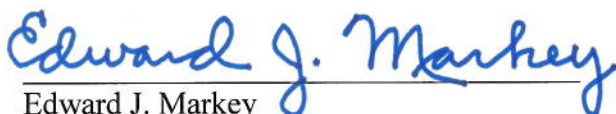
<sup>1</sup> Action on IATA Agreement Issued by the Department of Transportation on May 21, 2014, pg 13. Order 2014-5-7

Because of the concerns outlined above, we ask that you provide written answers and information to the following questions and requests:

1. Please describe in detail the changes to the airfare purchasing process that IATA Resolution 787 may allow.
  - a. Please explain how IATA Resolution 787 would enable personalized pricing for airfare.
  - b. Please describe how the department will ensure that airfare vendors will not penalize consumers who choose to shop anonymously and not to participate in personalized pricing.
2. Please describe how the department evaluated potential benefits and harms to consumers from the proposals contained in IATA Resolution 787. Please additionally describe the department's efforts to mitigate harms to consumers posed by personalized pricing.
3. Please explain how the department evaluated IATA Resolution 787 for potential abusive or discriminatory practices by airfare vendors against consumers.
  - a. Why did the department exclude discrimination based on "income level, marital status, and trip purpose" from its list of prohibited discriminatory behavior?
  - b. What safeguards exist in the department's Action on IATA 787 to protect against discriminatory practices?
4. Please describe the privacy requirements that will govern information collected by airfare vendors using personalized pricing.
  - a. What steps has the department taken to ensure the privacy and security of the information that consumers will provide to airfare vendors using personalized pricing?
  - b. Please indicate any restrictions the department has placed upon airfare vendors to prevent the dissemination and/or selling of consumers' personal information collected as a result of personalized pricing.

Thank you for your attention to this important matter. Please provide responses to these questions no later than May 19, 2015. If you have any questions, please have a member of your staff contact Joseph Wender or Grace Ogilby in Senator Markey's Office at (202-224-2742).

Sincerely,



Edward J. Markey  
United States Senator



Bill Nelson  
Ranking Member  
U.S. Senate Committee on Commerce,  
Science & Transportation



Maria Cantwell  
Ranking Member  
Subcommittee on Aviation Operations,  
Safety, and Security



Al Franken  
United States Senator



Richard Blumenthal  
United States Senator



Cory Booker  
United States Senator