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I wish to comment on the arguments made by Air Europa in its "Answer in Opposition to Motion for Leave for Supplemental Filings" (document DOT-OST-2013-0214-0006).

Air Europa seems to be suggesting that DOT either has no jurisdiction, or should make a discretionary choice on public policy grounds not to exercise its jurisdiction, over false and deceptive practice in the sale of air transportation, when those practices involve online marketing that is not "directed" to customers physically located in the U.S. These arguments are wrong, and should be rejected by DOT on both legal and public policy grounds.

As a legal matter, DOT's regulatory authority and jurisdiction over false and deceptive airline practices, pursuant to 49 USC § 41712, does not depend on the nationality of the airline or the passenger, or the physical location of the passenger at the time of purchase of a ticket.

All air carriers and foreign air carriers operating flights to, from, or within the U.S., and all sales of transportation on such routes, are – and should remain – subject to DOT jurisdiction.

As a practical matter, marketing on the "World Wide Web" is inherently global. Attempts to identify the physical location of visitors to a Web site from their IP addresses are inherently unreliable. U.S. citizens and residents – especially, it should go without saying, purchasers of international airline tickets – travel internationally. One of the many reasons they buy airline tickets online is the ability to buy tickets wherever in the world they are.

The choice of a language or country from a menu on a Web site should not be taken as indicative of the prospective customer's nationality or geographic location.

U.S. citizens and residents speak many languages. Given a choice between versions of a Web site, they will probably make that choice based on the language in which they are most comfortable, not their geographic location. And they are likely to leave that language version bookmarked, and return to it for future purchases, wherever they travel.

An English-speaking U.S. citizen and resident presented with a Web site in an unfamiliar language is likely to click on the Union Jack, if they see one. That doesn't mean they are in the United Kingdom, but rather that they would prefer the English-language version of the site.

Similarly, a Spanish speaking U.S. citizen and resident, seeing a Web site in English, may choose to click on the Spanish flag, or choose "España" if they see a menu of countries, or go through a proxy server that gets them the "Spanish" site. That doesn't mean they are in Spain, just that they would prefer to use a Spanish-language version of the site, if they can find one.

Travellers routinely use proxy server that cause their Web queries to appear to be coming from other countries. Often they don't even know that they are using a proxy server in another country. One of the most popular Web browsers on mobile devices, for example, is Opera Mini. People use Opera Mini because it is fast and sends less costly data over the mobile network. Most users of Opera Mini probably don't realize that it achieves these results by routing requests and responses through Opera's compression servers. Those servers are mostly in Europe, where Opera is based. So Opera Mini users are typically redirected to the "European" versions of Web sites, even when users are physically located in, and connecting to the network from, the U.S.

Given that all online marketing is by its very nature directed at a global audience, and the impossibility of distinguishing Web sites "directed" at customers in certain geographic locations, any attempt by DOT to limit its exercise of enforcement jurisdiction on the basis of determinations of geographic targeting of online marketing would be likely to lead to jurisdictional gaps with other countries. Bad actors would have an incentive to craft their deceptive online marketing to fall through those gaps.

Air Europa's suggestion of a possible conflict of laws is simply absurd. It is a normal and expected part of the operation of any international flight that the rules of both countries must be complied with. Complying with both U.S. and Spanish truth-in-advertising rules should pose no difficulty. No country requires airlines to characterize airline-imposed fees as taxes.

I urge DOT to reject the dangerously anti-consumer arguments by Air Europa, to uphold Mr. Edelman's complaint, and to reaffirm the commitment of the DOT to fully exercise its enforcement authority against false and deceptive practices in online sales of air transportation on all routes subject to DOT jurisdiction (to, from, or within the U.S.), regardless of the geographic location of the ticket purchaser at the time of purchase.

Respectfully submitted,

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/s/

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