

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 1, 2010

The Honorable Christine A. Varney
Assistant Attorney General
U.S. Department of Justice, Antitrust Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Varney:

I am writing to you about the proposed acquisition by Google, Inc. (“Google”) of ITA Software Inc. (“ITA”). This deal has the potential to greatly impact the robust online air travel search and booking markets relied on today by millions of consumers and it warrants a careful review by the Antitrust Division to determine whether it will substantially harm competition and consumers in the markets affected. While I take no position on the ultimate legality of this acquisition under the antitrust laws, I will detail the concerns raised by a number of industry participants and consumer advocates that I believe warrant careful review.

Over the last decade, consumers have greatly benefited from the emergence of air travel search through the Internet. Online air travel search provides consumers with information about and access to millions of flights and fares. This has no doubt greatly enhanced the transparency of airfares, contributing to lower prices and the elimination of online travel agent booking fees. As consumers increasingly search for flights and other travel services online, travel has become a critical segment of e-commerce. According to some industry sources, nearly 40 percent of online expenditures in the United States are related to travel.

Today a great deal of competition exists in the marketplace for air travel search on the Internet. Consumers can choose from individual airlines, online travel agents (“OTAs”, such as Expedia, Orbitz, and Travelocity) and metasearch providers (such as Kayak, Bing Travel and TripAdvisor, for example). These companies compete with one another to attract consumers with comprehensive and personalized access to information about airline schedule and fares, as well as advertising on their websites. Notably, many of the top OTAs and meta searches power all or part of their air travel searches with technology that they license from ITA. ITA makes the leading technology for searching and displaying airline routings and fares. Many of ITA’s customers believe that access to ITA’s technology is critical to competition in online air travel search because it cannot be matched by other players in the travel search industry. They claim that ITA’s superior access to information and superior technology enables it to provide faster and better results to consumers. As a result, some of these industry participants and independent experts fear that the current high level of competition among online travel agents and metasearch providers could be undermined if Google were to acquire ITA and start its own OTA or metasearch service. If this were to happen, they argue, consumers would lose the benefits of a robustly competitive online air travel market.

As an independent provider of air travel search functionality, ITA currently has the incentive to license its service broadly as it has done since its inception. However, the incentives

could change if ITA is acquired by Google. Participants in the on-line travel industry are concerned that Google could refuse to make the key components of ITA software available on reasonable terms to other online travel industry participants by raising the price for a renewed license or refusing to license improvements to the software. Such a course of action, they argue, could effectively degrade competition among air travel search providers and Google could drive more consumers to its own online air travel search services, in the long run harming competition in that market. As a result, consumers would suffer harm if there is less price transparency from competing air travel search providers, which would harm consumers' ability to obtain the lowest airfares.

Notably, Google has promised to honor existing ITA software licensing agreements. However, in order to ensure against substantial lessening of competition, at a minimum, the Justice Department should obtain a consent decree to ensure that Google's promise is enforceable and implemented in good faith.

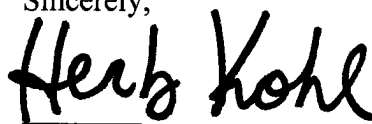
Another important aspect of this acquisition is Google's dominant position in general Internet search and the fact that a substantial proportion of online travel searches start with a Google search. The deal's critics argue that, once it acquires ITA, Google would have the ability to manipulate search results and the display of those results in a manner that would push consumers toward its own travel services. Thus, they fear that Google could both steer consumers to its own services, should it develop its own consumer search service, and/or to the highest bidder. And in doing so, they fear Google could degrade the functionality of its air travel search competitors, ultimately setting itself up as the gatekeeper to online air travel commerce. Should the Justice Department find this argument compelling and harm to consumers likely, it should seriously consider conditioning any approval to this deal by prohibiting Google from selling search positioning or otherwise biasing its air travel search results in a commercially motivated way.

I should note that I have not reached any final conclusions on these issues and whether or not this transaction presents a likelihood of substantial harm to competition under the Clayton Act. The proponents of the merger believe that this transaction will be beneficial to consumers by enhancing and improving travel searches on Google. They also argue that ITA faces substantial competition from global distributions services (GDSs) and other search technologies which will keep its licensing practices in check.

Nonetheless, for the reasons explained above, I believe this transaction raises very important competition issues which are critical to ensuring that consumers benefit from robust competition and transparency in online air travel search. Therefore I urge the Department of Justice to scrutinize it closely to ensure that the transaction does not substantially harm consumers or competition in this vital industry.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Herb Kohl". The signature is written in a cursive, slightly slanted style.

HERB KOHL

Chairman, Subcommittee on Antitrust,
Competition Policy and Consumer Rights