Trip to Boston, Massachusetts, August 2 and 3, 1976
Meeting with Rodney Gould, FTC

Subject: Travel Agencies

From: Marvin Mundel

FTC investigation is inclusive except for CAB regulations which are pure airline questions. A list of prime areas of discussion: fraud and misrepresentation, misappropriation, bankruptcy, overbooking and failure to provide advertised services.

Gould doesn't believe that there is any serious link to organized crime in the travel areas. There is about one bankruptcy every month in this industry but there were even more in the late '60's and early '70's during the high point of popularity of Affinities.

Fraud and misappropriation are the most serious complaints. In regard to hotel misrepresentation, the hotel location is changed or failure to disclose that the hotel isn't completed.

Many hotels deliberately overbook. He is not sure of solution for overbooking. There may not be a contract between the wholesaler and the hotel, there may be, for example, back-to-back OTC's. Sometimes the hotels can make a wrong estimate by as much as 5% or 150%. Disney World, e.g., has no overbooking for they allow 10-day cancellation. Often times the wholesaler will negotiate with more than one hotel at a time. Big hotel chains include Hilton, Sheraton, Marriott, Holiday Inn, Howard Johnsons.

Hotel - Phony excuses--(1) strikes (rarely occur); (2) the guests overstay. Some reputable hotels will pay for room in another hotel for the first night especially in guaranteed reservations. The hotel and resort guide--terms such as deluxe, first class and economy are very misleading. May mean one thing to you, may not be same as European. Sometimes have own assistants. First class in a contract may in fact be as low as sixth class.

Solution -- require uniform language in contracts. In some of the abuses the hotel may be first class but the room is not first class. Such as Ziff Davis. Or there may be unfinished plumbing or unfinished windows. Other problem is change in itinerary especially in OTC's. Main advantages of OTC is cheaper especially to Hawaii. No serious problems created by OTC's. In regard to Affinity thye are cheaper, although there was a lot of cheating on them. Although OTC's haven't solved the problem it hasn't created any.

Two types of itinerary changes--pre-departure and post-departure. Often times the day or place is eliminated. For example, brochures often disclaim liability. The value to the participant may vary from trip to trip--the brochure usually disclaims liability for such changes. One solution--requires timely notification of changes on the itinerary. Most reputable companies will refund if there are changes in the itinerary. Especially if a country is completely eliminated. (Some commissions in this area range as high as 25% to the travel agency.

Non-appointed retail promoters. No evidence that the financial failures are any worse than they were before. Promoters should be required to post bond or escrow and a statement of experience. Such a bond and escrow have worked in CAB regulations. There should be a mechanism for refund such as the CAB regulations. Some clauses do have cancellation penalties. Some contracts usually have no express statements of cancellations. Often times the wholesaler may know 60 days in advance of changes but doesn't pass them on until the last minute or he knows of other changes far in advance. Failure to provide advertised services. Example, a guest house, in order to comply with the land services requirements, may be a "throw away" or they may advertise that the tour guide will accompany the group and there is no guide or they may fail to provide advertised welcome or farewell parties. This is usually less a case of fraud than bad planning. The key to aiding the consumer is the disclosure of the relationship between the wholesaler and the travel agent. Many travel agents are under-capatilized but they usually act in good faith. Although this is largely a federal problem, the states can go after the local crooks. They key is the disclosure of different layers of the travel operation and in some situations may be very complex. There may be many contracts between the promoters and local services who are providers of local services. Each usually tries to insulate itself from legal liability from non-performance or partial performance and pass the buck.

Carrier substitution -- Not a big problem. Destination substitution on land. E.g., they may advertise a high class hotel but sharply limit access because of limited rooms. Often times there is coercion into buying optional tours or sometimes because of delays in the flight the participant gets one night less. (The issue of liability--there could be a state fund.) You might wish to hold liable the retailer, wholesaler and local provider of services. Legislation or bonding is one answer and a financial history. The registration fee could pay for a state fund for recovery. Bankruptcy and partial failure to deliver are two different problems. The amount of bond might be a problem. He recommends a minimum of $250,000 should be enough to cover a 747 disaster.

Our hearings --establish legislation, record horror stories by having victims testify. You can then argue that even if the abuses are not frequest, they occur often enough to justify some form of state control.

Adequate protection for the consumer is necessary, and there should be strict liability for the travel agent.

August 3, 1976
Mike Waxman, FTC

Waxman stressed his views are not necessarily the views of the FTC. He is for registration or licensing. CAB because of its limited staff has done very little and federal legislation is doubtful. Jack Yohe, CAB consumer aide does not have much influence at CAB. We should determine whether the traveler is getting what he pays for especially at OTC's if he pays $15 per day. State's major role is to prevent fraud and because of its police powers it can control fraud better than the federal government. A requirement of escrows and bonds (such as the CAB) may be effective. Should require bond for the wholesaler and the agent operator. Bond for a retail agent should be minimal but for the wholesaler it should be sizeable as he is handling sizeable amounts of money and most abuses occur at this level. You could grade the bond by the volume of business. There should be clearer brochure notification for the agents who are the wholesalers. A large OTC operator is Fred Laker's back-to-back charters (this specialty is New York to London). In one brochure he may include TGC, ITC and OTC.

Jurisdiction. At what point of the transaction does the state obtain jurisdiction? Probably very early. E.g., if there is an agent or if someone along the chain pays taxes in Pennsylvania. Advantage of a bond is that it does create extra protection which a consumer needs--it spreads the cost more evenly--not he is paying the cost but has very little protection. The bond should especially require payment to the victims. E.g., Bon Voyage went bankrupt unexpectedly. You should stipulate that you can't do business without a bond. And there should be a strong penalty--either misdemeanor or a civil penalty (which would be better) and, a civil penalty would be paid to a catastrophic loss fund and also provide that this is not a tax deduction (as an aside might be necessary to include in a separate bill for constitutional purposes). One important goal of legislation is to give complete and full notification to the consumer so that he can make an intelligent choice. If the state law is tougher than the federal law, the state law will prevail but if the state law is weaker than the federal law, the federal law will prevail. Bonding might have prevented such rip-offs as the "super sting.)

Asta may have inconsistent positions -- To the federal government they may say this is something the state should control, and to the state government they say this is something the federal should control in an attempt to escape regulation altogether. Legislation should discourage contracts of adhesion (that is contracts where there is inequity of bargaining position between the parties). There should be set up some type of board to review consumer complaints. E.g., Michigan. It should be binding. See Magnuson-Moss for review body. The cost should be spread equally between the industry and the traveler or possibly on the loser. E.g., Massachusetts Housing Court and Maryland Landlord Tenant Exemption from suit limitation. There shouldn't be a trial denovo. The aggrieved consumer should feel that he can obtain prompt and equitable justice in a small claims court, e.g., Boston Housing Court. See federal anti-trust exemptions for regulated insurance. If you should align by exemption under state law if it is selling a package? The state should require bonding only for land services, for air services are regulated by the CAB.

Vertical integration sometimes a serious problem by the wholesaler and provider of service--are hotels owned by packagers? Issue sight seeing services owned by the packagers. Look for these relationships. Opposition arguments to bond or escrow--it interferes with the cash flow control--opposition by the wholesaler is using the travelers funds to finance his operation--also consider at what level do you limit cash flow.

Gould--There is no direct correlation between OTC's and number of bankruptcies--TGC is higher than OTC but safer because of 90% cancellation rule. There may be triple damages incorporated. If services are substituted use industrial rates to measure the damages. More difficult case -- what happens if the traveler still wants original hotel--may be better than the first.

Should consider flexibility to allow for changes. Consumer protection against need for consumer flexibility. Should allow flexibility for events that are beyond the control or knowledge of the industry. Require as much notification as reasonable, possibly in the brochure.

Waxman opposes that contracts of adhesion are involved. Other type of abuses advertise special facilities for elders. This may be true on the airline but when they get to the hotel they find there are no such facilities and, therefore, they are stuck at the hotel for the rest of the tour. Ask the members if they are willing usually pay for a return trip if the traveler does not like his substitute hotel -- e.g., if it is too far from Waikiki Beach. Special problems for determining damages. In regard to motor coach tours there is usually not too many problems. Basic issues for analysis: (1) fraud; (2) misrepresentations; (3) failure to deliver services; (4) breach of contract; (5) unfair trade itemization to entire contract.

Require itemization of service change as part of the price. Otherwise the listing of the price may be misleading to travelers. Or as an alternative issue should service change be outlawed. Vertical integration between the tour operators and providers of services. A relatively minor problem. Fraud is still a major problem. Is there anything wrong with travel agents setting on the board of directors of airlines?--answer, no because travel agents today have very little influence in regard to airlines--this might give them more influence.

Boston, August 4, 1976
Paula Gold, Consumer Protection Bureau, Chief of the Bureau in the Office of the Attorney General, Massahcusetts.

Horror stories--sometimes there is misrepresentation in selling travel franchises. Massachusetts plans to petition CAB to extend tour operators escrow to Affinity. A problem scope of CAB jurisdiction. Question--Can CAB regulate a non-indirect carrier? Opposition to this position is that Affinity participants are in a better bargaining position than most Affinity. Suggested unfair trade practice--If the travel agent or wholesaler knew or should have known of nonperformance. Failure to perform--How do you devine performance--non-performance cases easy but what of substantial performance? Substantial compliance and breach of warranty theory. Bonding is one solution.