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FOR RELEASE OR DELIVERY  
EXPECTED THURSDAY MORNING  
APRIL 5, 1979

STATEMENT OF  
HENRY ESCHWEGE, DIRECTOR  
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE  
HOUSE SUBCOMMITTEE ON COMMERCE, CONSUMER AND MONETARY AFFAIRS  
OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS *HSE01501*  
ON  
[ FEDERAL RESPONSE TO CONSUMER FRAUD IN THE TRAVEL INDUSTRY ]

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE HERE TODAY AT YOUR REQUEST TO DISCUSS WITH YOU  
OUR ONGOING REVIEW OF FEDERAL CONTROLS OVER TOUR OPERATORS  
AND TRAVEL AGENTS. WE WILL ADDRESS SOME OF THE INDUSTRY'S  
PROBLEMS AND VARIOUS OPTIONS AVAILABLE TO RESOLVE THEM.

BACKGROUND

PURCHASING A PACKAGE TOUR IS LIKE BUYING A PRODUCT OFF  
THE SUPERMARKET SHELF. SOMEONE ELSE--THE TOUR OPERATOR--HAS  
CHOSEN THE DESTINATION, HOTEL, TRAVEL DATES, ITINERARY, ETC.  
THE CONSUMER CAN DECIDE TO BUY THE PACKAGE OR MAKE HIS OWN  
ARRANGEMENTS. MANY CHOOSE THE PACKAGE TOUR BECAUSE OF THE  
CONVENIENCE AND SECURITY IT OFFERS.

THE ROLE OF THE TOUR OPERATOR IS TO CONSOLIDATE THE  
SERVICES OF AIRLINES OR OTHER TRANSPORTATION CARRIERS AND  
GROUND SERVICES SUPPLIERS INTO A TOUR WHICH IS SOLD THROUGH  
RETAIL TRAVEL AGENTS. THESE AGENTS SERVE AS CONDUITS OF  
INFORMATION AND MONEY BETWEEN SUPPLIERS OR TOUR OPERATORS

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AND CONSUMERS. BECAUSE THE TRAVEL AGENT HAS LITTLE CONTROL OVER THE TOUR, HE HAS LIMITED RESPONSIBILITY FOR ITS FAILURE OR SUCCESS. PRIMARY RESPONSIBILITY RESTS WITH THE TOUR OPERATOR.

THE TOUR OPERATOR INDUSTRY IS OFTEN CHARACTERIZED AS RISKY, AND NOT ENORMOUSLY PROFITABLE. OPERATORS COME AND GO WITH GREAT EASE. ACCORDING TO A 1975 STUDY BY TOUCHE ROSS & CO., OPERATORS EARN AN AVERAGE BEFORE-TAX PROFIT MARGIN OF 3 PERCENT OF SALES. HOWEVER, THERE IS POTENTIAL FOR HIGH RETURN ON EQUITY SINCE THE NECESSARY INVESTMENT IS RELATIVELY SMALL COMPARED TO THE POTENTIAL SALES.

RESPONDING TO HEAVY PROMOTION FROM AIRLINES AND TOURIST AGENCIES, AMERICAN HOUSEHOLDS TOOK ABOUT 312 MILLION TRIPS IN 1977. PACKAGE TOURS ARE INCREASINGLY BECOMING A LARGER PORTION OF THE TRAVEL MARKET. THE DEPARTMENT OF COMMERCE, IN ITS SOON TO BE RELEASED 1977 NATIONAL TRAVEL SURVEY, ESTIMATES THAT 18.7 MILLION TRIPS WERE PART OF A PACKAGE TOUR, AND THAT 23.7 MILLION TRIPS INVOLVED THE USE OF TRAVEL AGENTS. ALTHOUGH IT IS NOT KNOWN PRECISELY HOW MUCH WAS SPENT ON PACKAGE TOURS, WE ESTIMATE THAT IT WAS AT LEAST \$4 BILLION.

WHEN A TRAVELER PURCHASES A PACKAGE TOUR HE DEVELOPS VARIOUS EXPECTATIONS. THESE EXPECTATIONS ARE DERIVED FROM GLOSSY MULTI-COLOR TRAVEL BROCHURES, AND A TRAVEL AGENT'S SALES PITCH. ALTHOUGH THE TRAVELER'S EXPECTATIONS MAY SOMETIMES BE UNREALISTIC, HE DOES HAVE A RIGHT TO EXPECT THAT

- ALL COSTS, BOTH INCLUDED AND OPTIONAL, WILL BE FULLY DISCLOSED;
- SERVICES AND ITEMS PROMISED WILL BE DELIVERED;
- ADVANCE PAYMENTS WILL BE SAFEGUARDED; AND
- LEGITIMATE COMPLAINTS WILL BE SATISFACTORILY RESOLVED.

COMPLAINTS RECEIVED BY FEDERAL AGENCIES, AND DISCUSSED EARLIER AT THESE HEARINGS, ATTEST TO THE FACT THAT FOR SOME, THESE CONSUMER RIGHTS ARE VIOLATED. ALTHOUGH MOST TRAVELERS DO NOT EXPERIENCE MAJOR PROBLEMS WITH THE PACKAGE TOURS THEY PURCHASE, A FEDERAL TRADE COMMISSION (FTC) INVESTIGATION OF THE INDUSTRY REVEALS THAT PROBLEMS DO EXIST AND MAY AFFECT AS MANY AS 800,000 TRAVELERS A YEAR. THESE PROBLEMS ARE:

- FAILURE TO RECEIVE ADVERTISED ITEMS,
- LACK OF CONSUMER NOTIFICATION OF SIGNIFICANT CHANGES IN THE PACKAGE TOUR PRIOR TO DEPARTURE,
- OMISSION OF SIGNIFICANT INFORMATION FROM THE CHARTER CONTRACT AND BROCHURES, AND
- LIMITATION OF LIABILITY CLAUSES IN TOUR CONTRACTS AND THE OVERALL QUESTION OF WHO IS LIABLE IF A PACKAGE DOES NOT MATERIALIZE ACCORDING TO CONTRACT.

A SUMMARY OF FTC'S FINDINGS CONCERNING THESE PROBLEMS, ALONG WITH EXAMPLES ARE INCLUDED IN THE APPENDIX.

FEDERAL REGULATION  
OF PACKAGE TOURS

FEDERAL AUTHORITY TO REGULATE THE TOUR OPERATOR INDUSTRY

IS DISJOINTED. FTC IS RESPONSIBLE FOR PREVENTING UNFAIR INDUSTRY TRADE PRACTICES, AND THE VARIOUS TRANSPORTATION REGULATORY AGENCIES--CIVIL AERONAUTICS BOARD (CAB), INTERSTATE COMMERCE COMMISSION (ICC), AND THE FEDERAL MARITIME COMMISSION (FMC), REGULATE THE MODAL ASPECTS OF THE TOUR. EACH AGENCY HAS RESPONSIBILITY FOR THE ECONOMIC REGULATION OF THE TRANSPORTATION CARRIERS WITHIN THEIR MODAL JURISDICTION-- CAB (AIR), ICC (BUS, RAIL, AND SMALL SHIPS), AND FMC (SHIPS)-- BUT THEY HAVE EXERCISED ONLY LIMITED CONTROLS OVER PACKAGE TOURS.

CAB HAS BEEN THE MOST AGGRESSIVE REGULATORY AGENCY IN EXERCISING CONTROLS OVER PACKAGE TOURS, PRIMARILY BECAUSE ABOUT 95 PERCENT OF ALL TOURS INVOLVE AIR TRANSPORTATION. CAB'S CONTROLS, HOWEVER, CONCERN MAINLY CHARTER TOURS. RECENTLY, CAB STRENGTHENED CONSUMER PROTECTION REGULATIONS CONCERNING AIR CHARTER TOURS. THESE REGULATIONS, WHICH BECOME EFFECTIVE MAY 1, 1979, ALLOW PASSENGERS TO CANCEL AND OBTAIN REFUNDS IF MAJOR CHANGES ARE MADE IN THE TOUR, AND CONTROL AIR CHARTER ADVERTISING AND THE TOUR OPERATOR'S CONTRACT WITH THE CONSUMER.

ICC REQUIRES BUS TOUR OPERATORS TO OBTAIN AN OPERATING LICENSE. TO OBTAIN A LICENSE ICC REQUIRES OPERATORS TO DEMONSTRATE A NEED FOR BUS SERVICE AND THEIR ABILITY TO PERFORM SUCH SERVICES. BOTH BUS TOUR AND AIR CHARTER OPERATORS, AS WELL AS LARGE VESSEL CRUISE OPERATORS REGULATED BY FMC, ARE

REQUIRED TO PROVIDE BONDS OR OTHER FINANCIAL SECURITY TO INSURE REFUNDS IN CASE THE TRANSPORTATION IS NOT PROVIDED.

PRESENTLY, FEDERAL AGENCIES EXERCISE LIMITED CONTROLS OVER PACKAGE TOURS RESULTING IN LIMITED PROTECTION TO TRAVELERS AGAINST UNFAIR AND DECEPTIVE TOUR INDUSTRY PRACTICES. MOST FEDERAL CONTROLS RELATE PRIMARILY TO THE TRANSPORTATION PHASE OF A TRIP. ACCOMPANYING LAND ARRANGEMENTS, SUCH AS HOTEL ACCOMMODATIONS, ARE NOT COVERED EXCEPT WHEN SOLD AS PART OF AN AIR CHARTER. THE U.S. TOUR OPERATORS ASSOCIATION ESTIMATES THAT LESS THAN 20 PERCENT OF PACKAGE TOURS INVOLVE AIR CHARTERS. THUS, MOST NON-TRANSPORTATION ASPECTS OF PACKAGE TOURS ARE NOT SUBJECTED TO ANY FEDERAL CONTROLS, INCLUDING:

- TOURS USING SCHEDULED AIR TRANSPORTATION,
- TOURS USING RAIL OR SMALL SHIPS (ACCOMMODATING LESS THAN 50 PASSENGERS),
- TOURS WHICH PROVIDE NON-TRANSPORTATION SERVICES ONLY,
- LARGE VESSEL CRUISES WHICH EMBARK U.S. TRAVELERS AT FOREIGN PORTS, AND
- NON-TRANSPORTATION SERVICES INCLUDED IN BUS TOURS.

LACK OF FEDERAL CONTROL IS DUE PRIMARILY TO THE ABSENCE OF A CLEAR LEGISLATIVE MANDATE FOR ANY AGENCY TO CONTROL THE ABOVE ASPECTS OF THE TRAVEL INDUSTRY. FEDERAL AGENCIES GENERALLY HAVE NO SPECIFIC LEGISLATIVE AUTHORITY TO REGULATE PACKAGE TOURS. TO THE EXTENT PACKAGE TOURS ARE REGULATED,

THE AGENCIES' AUTHORITY STEMS FROM THEIR BASIC AUTHORITY FOR THE ECONOMIC REGULATION OF THE VARIOUS MODAL CARRIERS WHICH PROVIDE THE TRANSPORTATION PORTION OF PACKAGE TOURS. HOWEVER, THEIR AUTHORITY TO REGULATE THE LAND ARRANGEMENTS PORTION OF A TOUR REMAINS UNCLEAR.

THE FTC HAS BROAD AUTHORITY TO PROTECT CONSUMERS AGAINST UNFAIR AND DECEPTIVE BUSINESS PRACTICES, BUT IS PRECLUDED FROM EXERCISING JURISDICTION OVER TRANSPORTATION CARRIERS. WHEN TOUR OPERATORS ARE ALSO TRANSPORTATION CARRIERS, IT IS QUESTIONABLE WHETHER FTC COULD CONTROL THEIR OPERATIONS INCLUDING THEIR NON-TRANSPORTATION ACTIVITIES. A RECENT COURT CASE, FTC v. MILLER, 549 F.2d 452 (7th Cir. 1977) CAN BE INTERPRETED AS HOLDING THAT ANY BUSINESS CONSIDERED HAVING CARRIER STATUS WITH A REGULATORY TRANSPORTATION AGENCY COULD ENJOY IMMUNITY FROM FTC JURISDICTION. THIS, COUPLED WITH THE UNCLEAR RESPONSIBILITY OF THE REGULATORY TRANSPORTATION AGENCIES, HAS RESULTED IN A REGULATORY GAP.

VARIOUS OPTIONS ARE AVAILABLE TO FILL THIS GAP AND PROVIDE GREATER PROTECTION TO THE TOURING PUBLIC. THESE INCLUDE:

- SELECTIVE ENFORCEMENT CASES OR ADDITIONAL REGULATIONS TO TEST THE BOUNDS OF EACH AGENCY'S LEGISLATIVE AUTHORITY,
- STATE REGULATION,
- INDUSTRY SELF-REGULATION, AND
- CONGRESSIONAL LEGISLATION CLEARLY DELINEATING THE AUTHORITY FOR CONTROLLING PACKAGE TOURS.

TESTING THE FEDERAL  
REGULATORY BOUNDS

ONE POSSIBLE APPROACH TO FILLING THE FEDERAL REGULATORY GAP OVER PACKAGE TOURS WOULD BE FOR EACH REGULATORY AGENCY TO ATTEMPT TO EXTEND ITS CONTROLS OVER TOUR OPERATORS. UNDER THIS APPROACH, CAB, ICC, AND FMC WOULD EXTEND THEIR AUTHORITY OVER TOUR OPERATORS BY SEEKING JUDICIAL CLARIFICATION OF THEIR LEGISLATIVE AUTHORITY. EACH AGENCY COULD TEST THE BOUNDS OF ITS AUTHORITY BY INITIATING SELECTIVE ENFORCEMENT CASES THROUGH THE JUDICIAL SYSTEM, OR BY ISSUING ADDITIONAL REGULATIONS. TO THE EXTENT THESE CONTROLS COULD NOT BE EXTENDED, FTC WOULD ATTEMPT TO FILL THE GAPS.

THIS OPTION REPRESENTS ONE OF THE LESS DRASTIC MEASURES FOR DEALING WITH TOUR INDUSTRY ABUSES. ITS PRIMARY ADVANTAGE IS THAT IT ATTEMPTS TO MAXIMIZE USE OF THE FEDERAL REGULATORY MACHINERY ALREADY IN PLACE, AND SEEKS TO PROVIDE COMPREHENSIVE FEDERAL REGULATION OF THE TOUR INDUSTRY WITHOUT ADDITIONAL LEGISLATION.

REGULATION OF THE TOUR INDUSTRY IN THIS MANNER, HOWEVER, HAS SOME DISTINCT DISADVANTAGES. IT MIGHT TAKE YEARS, THROUGH THE JUDICIAL PROCESS, TO DETERMINE WHETHER CAB, ICC, FMC, AND FTC COLLECTIVELY HAVE SUFFICIENT AUTHORITY TO REGULATE ALL ASPECTS OF THE PACKAGE TOUR INDUSTRY, AND TO RESOLVE JURISDICTIONAL CONFLICTS AMONG THEM.

ASSUMING THAT THE REGULATORY AGENCIES HAVE ADEQUATE AUTHORITY TO REGULATE THE INDUSTRY, AND THAT THE JURISDICTIONAL

CONFLICTS COULD BE RESOLVED, THIS APPROACH STILL SUFFERS FROM A MAJOR DRAWBACK. IT WOULD CONTINUE THE FRAGMENTATION OF FEDERAL REGULATION OF THE PACKAGE TOUR INDUSTRY.

IN PICKING UP REGULATORY CONTROL OVER TOUR ACTIVITIES CURRENTLY NOT SUBJECT TO REGULATION, FTC WOULD END UP WITH A CONGLOMERATION OF UNRELATED BITS AND PIECES OF THE TOUR INDUSTRY. SUCH FURTHER SPLINTERING OF FEDERAL CONTROLS COULD SUBJECT THE TOUR INDUSTRY TO DUPLICATIVE REGULATORY BURDENS, AND INCREASE CONFUSION AND FRUSTRATION AMONG TRAVELERS SEEKING FEDERAL INTER-CESSION IN RESOLVING COMPLAINTS.

FOR EXAMPLE, IF CAB IS UNABLE TO EXTEND ITS CONSUMER PROTECTION REGULATIONS TO PACKAGE TOURS USING SCHEDULED AIR TRANSPORTATION AND FTC IS ABLE TO FILL THIS GAP, CONSUMER PROBLEMS WITH CHARTER TOURS WOULD BE DIRECTED TO CAB WHILE THOSE PROBLEMS WITH PACKAGE TOURS USING SCHEDULED AIR TRANSPORTATION WOULD GO TO FTC--A DISTINCTION THE TRAVELER MAY NOT UNDERSTAND.

FINALLY, THIS ALTERNATIVE IS CONTRARY TO THE GROWING TREND TOWARD FEDERAL WITHDRAWAL FROM THE ECONOMIC REGULATION OF TRANSPORTATION. UNDER RECENT DEREGULATION LEGISLATION, MOST OF CAB'S ECONOMIC REGULATORY RESPONSIBILITIES ARE BEING PHASED OUT. A SIMILAR TREND IS TAKING PLACE AT ICC. AS THE ECONOMIC REGULATORY FUNCTIONS OF THE TRANSPORTATION AGENCIES ARE PHASED OUT, THEIR CONSUMER PROTECTION FUNCTIONS WILL PROBABLY HAVE TO BE ASSUMED BY OTHER FEDERAL AGENCIES. THEREFORE, CONTINUATION OF SPLINTERED ENFORCEMENT OF CONSUMER PROTECTION CONCERNING PACKAGE TOURS, MAY MERELY POSTPONE THE INEVITABLE.

## STATE REGULATION

SOME STATES HAVE ATTEMPTED TO CONTROL ABUSES IN THE TRAVEL INDUSTRY AND PROTECT LOCAL CONSUMERS. PRESENTLY FIVE STATES HAVE ENACTED LAWS COVERING TRAVEL AGENTS OR TOUR OPERATORS DOING BUSINESS WITHIN THEIR BORDERS: NEW YORK, RHODE ISLAND, OHIO, CALIFORNIA, AND HAWAII. OTHERS HAVE SIMILAR LEGISLATION PENDING.

THE CONCEPT OF REGULATING TRAVEL AGENTS AND TOUR OPERATORS IS STILL FAIRLY NEW. THE STATES WHICH HAVE PASSED LEGISLATION HAVE NOT HAD MUCH EXPERIENCE TO DATE AS TO HOW THEIR REGULATIONS AFFECT THE TRAVEL INDUSTRY.

THE CONTROLS INSTITUTED OR PROPOSED BY THE STATES HAVE BEEN PRIMARILY REGISTERING, LICENSING, AND DISCLOSURE REQUIREMENTS. CONNECTED WITH THE LICENSING REQUIREMENT, IN SOME INSTANCES, IS A BONDING REQUIREMENT OR SOME PROOF OF FINANCIAL STABILITY. THE DEGREE OF COVERAGE OVER BOTH TRAVEL AGENTS AND TOUR OPERATORS VARIES AMONG THE STATES.

THE AMERICAN SOCIETY OF TRAVEL AGENTS HAS DEVELOPED MODEL LEGISLATION FOR STATE REGULATION OF TRAVEL AGENTS. THE SOCIETY IS PROMOTING THIS MODEL ACT AS A MEANS OF GETTING BASIC UNIFORMITY AMONG THE STATES PASSING LEGISLATION.

STATE CONTROL OF THE INDUSTRY DOES NOT APPEAR TO BE AN ENCOURAGING ALTERNATIVE, BECAUSE OF THE MOBILITY OF OUR SOCIETY AND THE BASIC INTERSTATE NATURE OF TOURS. A PIECEMEAL STATE-BY-STATE APPROACH PROBABLY WOULD NOT BE EFFECTIVE, AND THE PROSPECTS FOR UNIFORMITY AMONG THE STATE LAWS IS UNLIKELY.

## INDUSTRY SELF-REGULATION

WITH THE CURRENT EMPHASIS ON REDUCING GOVERNMENT REGULATION, THIS MAY BE AN OPPORTUNE TIME TO ENGAGE THE TOUR INDUSTRY IN POLICING ITS OWN PROBLEMS. THIS COULD BE ACCOMPLISHED THROUGH A COMBINED CONSUMER PROTECTION FUND AND REDRESS MECHANISM FOR TOUR PASSENGERS, SUCH AS HAS BEEN PROPOSED BY TWO TRADE ASSOCIATIONS--THE AMERICAN SOCIETY OF TRAVEL AGENTS AND THE AIR CHARTER TOUR OPERATORS OF AMERICA.

IN ESSENCE, THE TWO INDUSTRY GROUPS HAVE SUGGESTED A JOINT FEDERAL AND INDUSTRY EFFORT. THE GOVERNMENT WOULD WORK WITH THE INDUSTRY IN SETTING UP THE OPERATING REQUIREMENTS AND CONSUMER SAFEGUARDS FOR THE SYSTEM, BUT THE ACTUAL OPERATION OF THE FUND WOULD BE PRIMARILY THE INDUSTRY'S RESPONSIBILITY. WE WON'T GO INTO THE DETAILS OF THEIR PROPOSALS, WHICH WE UNDERSTAND HAVE ALREADY BEEN DISCUSSED AT THESE HEARINGS, BUT WE WILL HIGHLIGHT WHAT WE BELIEVE ARE THE MOST IMPORTANT FEATURES OF THE PLANS.

THESE TWO INDUSTRY PLANS, THOUGH DIFFERING IN DETAILS, BOTH PROVIDE FOR A TRUST FUND TO PROTECT PASSENGERS FROM OPERATOR DEFAULTS ON AIR CHARTER TOURS ONLY. THE FUND WOULD BE ADMINISTERED BY A BOARD COMPOSED EITHER OF INDUSTRY OR A COMBINATION OF GOVERNMENT AND INDUSTRY REPRESENTATIVES. THE BOARD WOULD APPOINT A COMMISSIONER TO HEAR CLAIMS AGAINST MEMBER TOUR OPERATORS. THE COMMISSIONER'S DECISIONS COULD BE SUBJECT TO ARBITRATION IF THE CLAIMANT DISAGREED WITH THE

DECISION. THE CONSUMER WOULD ALSO KEEP THE RIGHT TO PURSUE CLAIMS AGAINST THE TOUR OPERATOR THROUGH THE REGULAR COURT SYSTEM.

THE CONCEPT IS NOT NEW. THE UNITED KINGDOM AND THREE PROVINCES IN CANADA HAVE SET UP CONSUMER PROTECTION FUNDS FOR TOUR PASSENGERS. THE ONTARIO, CANADA, FUND ILLUSTRATES HOW SUCH A PLAN CAN OPERATE SUCCESSFULLY. TOUR OPERATORS AND TRAVEL AGENTS SELLING TOURS PAY INTO THE FUND; THE CONSUMER THEN IS PROTECTED IN CASE ANY OF THE PARTICIPATING OPERATORS OR AGENTS DEFAULT IN PROVIDING TOUR SERVICES OR REFUNDS. THE ONTARIO FUND COVERS TOURS USING BOTH CHARTER AND SCHEDULED TRANSPORTATION.

THE TRUST FUND CONCEPT COULD BE USED IN THE UNITED STATES TO COVER ALL TOURS--THOSE USING CHARTER AND SCHEDULED TRANSPORTATION AND ON ALL MODES. BOTH THE CHARTER TOUR OPERATOR AND THE TRAVEL AGENT ASSOCIATIONS AGREE THAT THEIR ORIGINAL PROPOSALS COULD BE EXPANDED TO INCLUDE MORE THAN JUST AIR CHARTER TOURS.

WE SEE MANY POTENTIAL BENEFITS FROM USE OF THE FUND. THE FEDERAL REGULATORY AGENCIES WOULD BENEFIT FROM A REDUCTION IN THE TIME THEY MUST SPEND POLICING HARD TO ENFORCE REGULATIONS. THE TOUR OPERATORS WOULD BENEFIT BY BEING FREED FROM MANY COMPLEX FEDERAL REGULATIONS, SUCH AS CAB'S RESTRICTIVE ESCROW REQUIREMENTS FOR CHARTER TOURS. CONSUMERS WOULD HAVE GREATER ASSURANCE THAT THEIR TRAVEL FUNDS WERE PROTECTED AND THAT A CLEAR COURSE OF ACTION COULD BE TAKEN IN THE EVENT AN OPERATOR FAILED TO PROVIDE SERVICES OR REFUNDS.

THE FUND IS NOT A NECESSARILY EASY ANSWER, HOWEVER. THE LARGER TOUR OPERATORS WE SPOKE WITH ALL VOICED STRONG OPPOSITION TO THE FUND IDEA. SOME TOUR OPERATORS BELIEVE THAT THE FUND WOULD RESULT IN REPUTABLE TOUR OPERATORS UNDERWRITING THE LOSSES OF BAD OPERATORS. IN ADDITION, THEY BELIEVE THAT THE FUND WOULD INVITE A FLOOD OF CONSUMER COMPLAINTS IF IT WERE OPEN TO CLAIMS INVOLVING QUALITY OF SERVICE OR PARTIAL NON-PERFORMANCE.

WE BELIEVE THAT THE FUND COULD BE SET UP TO MINIMIZE THESE PROBLEMS. PAYMENT TO A CONSUMER FROM THE FUND WOULD NOT ABSOLVE THE OPERATOR'S LIABILITY. RATHER, THE CONSUMER WOULD SUBROGATE HIS RIGHTS TO THE FUND WHICH, IN TURN, WOULD COLLECT FROM THE TOUR OPERATOR, IF SOLVENT. CONCERNS THAT THE FUND WOULD INVITE CONSUMER COMPLAINTS CONCERNING QUALITY OF SERVICE MAY BE JUSTIFIED. HOWEVER, THESE COMPLAINTS ARE ONLY FESTERING NOW, AND TO THE EXTENT THEY ARE VALID, THEY SHOULD BE PAID.

SOME OF THE COMPLEXITIES COULD BE RESOLVED BY USING A STEP APPROACH TO SETTING UP THE FUND. THE EXTENT OF THE FUND'S COVERAGE AND LEVEL OF PARTICIPATION COULD GRADUALLY BE EXPANDED. THE FUND'S COVERAGE COULD BE INITIALLY LIMITED TO DEFAULTS. WHEN THE FUND HAS GAINED EXPERIENCE HANDLING SUCH CLAIMS IT COULD BE EXPANDED TO COVER OTHER CLAIMS INVOLVING QUALITY OF SERVICE OR PARTIAL NON-PERFORMANCE.

PARTICIPATION IN THE FUND COULD INITIALLY BE OPTIONAL. THE OPERATOR CHOOSING TO PARTICIPATE WOULD STILL BE SUBJECT TO FEDERAL REGULATIONS COVERING SUCH MATTERS AS ADEQUATE DISCLOSURE

STATEMENTS. PARTICIPATION WOULD, HOWEVER, EXEMPT THE TOUR OPERATOR FROM THE MORE CUMBERSOME FINANCIAL REGULATIONS WHICH WOULD OTHERWISE BE IMPOSED BY THE REGULATORY AGENCIES.

POSSIBLY THE MOST DIFFICULT COMPLICATION TO RESOLVE IS THE INTERAGENCY COORDINATION NECESSARY TO ESTABLISH THE FUND. FTC WOULD BE THE PRIME CANDIDATE TO COORDINATE THIS EFFORT BECAUSE OF ITS EXPERTISE IN INDUSTRY TRADE PRACTICES.

DESPITE THE POSSIBLE COMPLICATIONS WITH SETTING UP THE FUND, WE BELIEVE IT COULD PROVIDE THE CONSUMER WITH VALUABLE PROTECTIONS AND MINIMIZE THE REGULATORY BURDEN OF THE INDUSTRY. THE FUND COULD PROVIDE LONG-TERM BENEFITS BY ESTABLISHING SELF-REGULATION AS A VIABLE ALTERNATIVE FOR CONSUMER PROTECTION.

CLEARER LEGISLATIVE AUTHORITY

THE TOUR OPERATOR INDUSTRY DEVELOPED PROMINENCE DURING THE POST-WORLD WAR II PERIOD, YEARS AFTER THE CREATION OF THE TRANSPORTATION REGULATORY AGENCIES. THUS, TOUR OPERATORS WERE NEVER THE FOCAL POINT OF ANY ONE FEDERAL AGENCY. RATHER, CONTROLS WERE DEVELOPED ACCORDING TO THE PRIMARY MEANS OF TRANSPORTATION USED IN THE TOUR. BECAUSE INTER-MODAL TOURS ARE COMMON PLACE TODAY, THIS APPROACH IS INEFFECTIVE AND HAS ALLOWED SOME TOUR OPERATIONS TO ESCAPE ANY OVERSIGHT. CONGRESSIONAL LEGISLATION CLEARLY DELINEATING AUTHORITY TO CONTROL UNFAIR TRADE PRACTICES IN THE TOUR OPERATOR INDUSTRY WOULD CLOSE THIS REGULATORY GAP AND SIMPLIFY OVERSIGHT AND ENFORCEMENT.

FTC IS A PRIME CANDIDATE TO RECEIVE THIS AUTHORITY. DESIGNATED THE NATION'S PRIMARY PREVENTER OF UNFAIR AND

DECEPTIVE PRACTICES AFFECTING COMMERCE, FTC HAS DEVELOPED THE NECESSARY EXPERTISE TO EFFECTIVELY CONTROL THE TOUR OPERATOR INDUSTRY.

UNDER THIS ALTERNATIVE, EACH TRANSPORTATION REGULATORY AGENCY WOULD RETAIN CONTROL OVER THE TRANSPORTATION PART OF THE TOUR ONLY. THE REMAINING TOUR ACTIVITIES--LAND PACKAGES, ADVERTISING, CONTRACTS, ETC.--WOULD BE SUBJECT TO FTC JURISDICTION. ALTHOUGH SOME JURISDICTIONAL OVERLAP MAY OCCUR, IT COULD BE MINIMIZED.

HAVING FTC AS THE FOCAL POINT FOR ENFORCING CONSUMER PROTECTION IN THE TOUR INDUSTRY WOULD NOT ONLY HELP CONSUMERS, BUT WOULD ALSO HELP TOUR OPERATORS. NO LONGER WOULD THEY BE SUBJECTED TO DIFFERING AND FRAGMENTED CONTROLS. FTC COULD STANDARDIZE CONSUMER PROTECTION CONTROLS FOR ALL TOUR PACKAGES REGARDLESS OF THE TYPE OF TRANSPORTATION EMPLOYED. THIS WOULD FACILITATE A MORE LOGICAL AND UNIFORM ENFORCEMENT POLICY.

ANOTHER IMPORTANT REASON FOR SELECTING FTC AS THE LEAD AGENCY IS THAT UNDER THE AIRLINE DEREGULATION ACT OF 1978, CAB IS GRADUALLY BEING PHASED OUT BY 1985. BECAUSE MOST OF THE TOUR PACKAGE CONTROLS DERIVE FROM CAB, THEY WOULD PROBABLY HAVE TO BE TRANSFERRED TO FTC BEFORE 1985 ANYWAY.

#### TENTATIVE CONCLUSIONS

WE WERE IN THE PROCESS OF DRAFTING A REPORT TO THE CONGRESS ON THE PACKAGE TOUR INDUSTRY WHEN WE LEARNED OF YOUR INTEREST TO HAVE US DISCUSS OUR OBSERVATIONS AT THESE HEARINGS.

ACCORDINGLY, THE VARIOUS FEDERAL AGENCIES INVOLVED HAVE NOT BEEN GIVEN AN OPPORTUNITY TO FORMALLY COMMENT ON OUR TENTATIVE CONCLUSIONS AND PROPOSALS.

GREATER CONTROLS TO PROTECT THE TOURING PUBLIC ARE NEEDED, BUT MAY BE DIFFICULT TO ACHIEVE UNDER THE CURRENT DISJOINTED FEDERAL REGULATORY STRUCTURE. ESTABLISHING A FEDERAL FOCAL POINT FOR ENFORCING CONSUMER PROTECTION IN THE TOUR INDUSTRY COULD HELP UNIFY FEDERAL CONTROLS. ALSO, IN LIGHT OF THE PRESENT DEREGULATION MOOD, STEPS COULD BE TAKEN TO PLACE MORE RELIANCE ON SELF-REGULATION IN THE TOUR INDUSTRY.

SPECIFICALLY WHAT SEEMS TO BE NEEDED IS CLEAR LEGISLATION MANDATING ONE AGENCY, FTC, TO ENFORCE UNFAIR AND DECEPTIVE PRACTICES CONCERNING PACKAGE TOURS. ONCE GIVEN THE AUTHORITY, FTC'S REGULATION OF THE INDUSTRY SHOULD FOCUS ON THE FOLLOWING.

- REQUIRING GREATER AFFIRMATIVE DISCLOSURE OF BASIC TOUR INFORMATION IN BROCHURES AND CONTRACTS.
- MODIFYING THE TYPICAL LIABILITY LIMITATION CLAUSE IN CONTRACTS TO STRIKE OUT LANGUAGE WHICH IS CLEARLY UNCONSCIONABLE AND UNENFORCEABLE.
- REQUIRING THE TRAVELER TO BE PROMPTLY NOTIFIED OF IMPORTANT CHANGES IN A PACKAGE TOUR AND THAT HE BE GIVEN THE OPTION TO CANCEL WITHOUT PENALTY.
- ALLOWING THE TRAVELER TO SUE THE TOUR OPERATOR IN THE JURISDICTION WHERE HE PURCHASED THE TOUR PACKAGE. THIS COULD BE ACCOMPLISHED BY REQUIRING TOUR

OPERATORS TO DESIGNATE TRAVEL AGENTS WHICH  
SELL THEIR TOURS, AS THEIR AGENTS FOR ACCEPT-  
ING SERVICE OF PROCESS.

IN ADDITION, CONGRESS SHOULD DIRECT FTC TO ASSIST THE  
TOUR OPERATOR INDUSTRY IN GRADUALLY IMPLEMENTING A CONSUMER  
PROTECTION FUND. INITIALLY THE FUND COULD PROTECT THE CON-  
SUMER FROM TOUR OPERATOR DEFAULTS ONLY. AS EXPERIENCE WITH  
THE FUND DEVELOPS, THE INDUSTRY COULD THEN BE ALLOWED TO  
ESTABLISH, ON A TRIAL BASIS, A CONSUMER REDRESS MECHANISM  
TO RESOLVE PARTIAL NON-PERFORMANCE AND QUALITY OF SERVICE COM-  
PLAINTS.

MR. CHAIRMAN WE WILL BE GLAD TO RESPOND TO ANY QUESTIONS  
YOU MAY HAVE.

SUMMARY OF THE  
FEDERAL TRADE COMMISSION'S  
INVESTIGATION OF THE TOUR INDUSTRY

IN EARLY 1976 THE FEDERAL TRADE COMMISSION (FTC) INITIATED AN INVESTIGATION OF THE PACKAGE TOUR INDUSTRY. DURING ITS INVESTIGATION IT RECEIVED ABOUT 3,000 COMPLAINTS FROM TRAVELERS, AND SUBPOENAED DATA FROM VARIOUS TOUR OPERATORS. THE FOLLOWING IS A SUMMARY OF THIS DATA BY MAJOR TYPE OF COMPLAINT.

FAILURE TO PROVIDE ADVERTISED ITEMS

FTC ESTIMATES THAT PERHAPS THE MOST COMMON UNPLEASANT EXPERIENCE OF TRAVELING CONSUMERS IS THE FAILURE TO RECEIVE ONE OR MORE ADVERTISED ITEMS. ABOUT 36 PERCENT OF THE COMPLAINTS FTC RECEIVED RELATE TO THIS AREA; COMPLAINT FILES OF SUBPOENAED OPERATORS REVEALED A SIMILAR PATTERN.

THE DIFFERENCE BETWEEN WHAT IS PROMISED AND WHAT IS DELIVERED MAY RANGE FROM MINOR TO WHOLLY UNACCEPTABLE, SUCH AS NOT RECEIVING A PROMISED FLOWER LEI OR DAILY BREAKFAST, TO COMPLAINTS ABOUT BEING TRANSPORTED TO THE WRONG DESTINATION.

SOMETIMES REFUNDING THE VALUE OF THE MISSED ITEM IS OF LITTLE CONSOLATION. FOR EXAMPLE, ABOUT 1,000 FOOTBALL FANS FROM PENNSYLVANIA PURCHASED A TOUR PACKAGE TO THE 1975 SUPER BOWL IN MIAMI. THE TOUR INCLUDED ROUND TRIP AIR TRANSPORTATION, ROOM ACCOMMODATIONS, AND TICKETS TO THE SUPER BOWL. THE AIR TRANSPORTATION AND ACCOMMODATIONS WERE DELIVERED, BUT NOT THE

TICKETS. OBVIOUSLY, RETURNING THE PURCHASE PRICE OF THE TICKETS IS NOT A SATISFACTORY SOLUTION.

LACK OF NOTIFICATION OF CHANGES

ALMOST ALL TOUR OPERATORS HAVE A HIGH INCIDENCE OF COMPLAINTS INVOLVING THE NOTIFICATION OR LACK THEREOF OF CHANGES IN TOURS. ACCORDING TO FTC'S EXAMINATION OF COMPLAINTS AGAINST TOUR OPERATORS, THE RANGE OF NOTIFICATION COMPLAINTS VARIED FROM 28 TO 90 PERCENT. IN FACT THE INVESTIGATION DISCLOSED A WIDESPREAD PRACTICE BY MANY TOUR OPERATORS OF RADICALLY CHANGING SIGNIFICANT AND MATERIAL FEATURES OF MANY TOURS WITHOUT NOTICE. ALTERNATIVELY, IF NOTICE IS GIVEN, FTC CLAIMS IT IS GIVEN SO LATE (EVEN THOUGH THE OPERATOR KNEW OF THE CHANGE MUCH EARLIER) THAT THE TRAVELER HAS NO CHOICE BUT TO ACCEPT THE CHANGE.

AMONG THE CHANGES FOR WHICH NOTIFICATION IS OFTEN NOT GIVEN INCLUDE:

- SEVERE ITINERARY CHANGES, ELIMINATION OF TURKEY FROM GREECE-TURKEY PACKAGE AND SUBSTITUTING ISRAEL.
- CHANGE IN CLASS OF HOTEL OR LOCATION, SUBSTITUTING A HOTEL IN DOWNTOWN WAIKIKI RATHER THAN A HOTEL IN A DESERTED PART OF MAUI--WELL AWAY FROM "CIVILIZATION."
- CHANGING DEPARTURE OR ARRIVAL POINT, DAY, OR TIME, SUCH AS DEPARTING FROM PHILADELPHIA INSTEAD OF THE SCHEDULED NEW YORK AIRPORT NECESSITATING A BUS RIDE TO PHILADELPHIA.

CONSUMER COMPLAINTS AND SUBPOENA RETURNS SHOW THAT IN MANY INSTANCES THE TOUR OPERATORS WERE AWARE, MONTHS IN ADVANCE OF DEPARTURE, THAT MAJOR COMPONENTS OF THE PREVIOUSLY ADVERTISED TOURS WOULD NOT BE FORTHCOMING. FREQUENTLY, HOWEVER, NO NOTICE OF CHANGE IS GIVEN TO CONSUMERS. AT OTHER TIMES THE INFORMATION ABOUT THE CHANGE IS WITHHELD UNTIL THE CONSUMERS HAVE BOARDED THE PLANE.

IN ONE SUCH COMPLAINT THE CONSUMER STATED HE WAS ADVISED IN MID-FLIGHT THAT EMPLOYEES OF THE DESIGNATED HOTEL HAD BEEN ON STRIKE FOR A MONTH. REGARDLESS, THE TOUR WAS PUT UP AT THE HOTEL. PORTERS WERE NOT AVAILABLE TO CARRY LUGGAGE AND THE PLACE WAS FILTHY. TO COMPOUND THE DISCOMFORT, THE NEXT HOTEL ON THE TOUR WAS A SUBSTITUTION WITH ROOMS CARRYING A PRICE THAT WAS ALMOST HALF THE PRICE OF ROOMS AT THE ORIGINAL HOTEL. FURTHER, THE SUBSTITUTED HOTEL WAS IN AN OUT OF THE WAY LOCATION REQUIRING A LARGE EXPENDITURE OF MONEY ON UNANTICIPATED TAXI FARES. NO REFUND WAS OFFERED.

OMISSION OF SIGNIFICANT INFORMATION

ADEQUATE DISCLOSURE OF INFORMATION ABOUT A PACKAGE TOUR IS IMPORTANT FOR THE CONSUMER TO MAKE AN INTELLIGENT CHOICE NOT ONLY BETWEEN PACKAGED TOURS BUT ALSO WHETHER TO MAKE HIS OWN ARRANGEMENTS. THE CONSUMER NEEDS TO KNOW THAT THE HOTEL PICTURED IN THE BROCHURE MAY BE SUBSTITUTED, THAT THE DESTINATION OR DEPARTURE CITY IS UNCERTAIN, OR THAT THE PRICE MAY INCREASE PRIOR TO DEPARTURE.

SINCE TRAVEL CONSUMERS USUALLY CONTRACT FOR SERVICES TO BE SUPPLIED IN THE FUTURE, THEIR BEING NOTIFIED OF SIGNIFICANT CHANGES IN ITINERARY, PRICE, OR HOTEL IS ESSENTIAL IN THEIR CHOICE OF WHICH TOUR TO BUY. ACCORDING TO FTC, TOUR OPERATORS GIVE VIRTUALLY NO INFORMATION IN THEIR BROCHURES AS TO THE METHOD OF NOTIFICATION FOR ANY CHANGES OR INDEED, IF NOTICE WILL BE GIVEN AT ALL.

ANOTHER PROBLEM, ACCORDING TO FTC, IS THE TRAVELER'S INABILITY TO ASCERTAIN EASILY FROM THE BROCHURE WHO THE TOUR OPERATOR IS, OR WHETHER IN FACT THERE IS ONE AND WHO IS LIABLE IF SOMETHING GOES WRONG. FTC REVIEWED 30 BROCHURES CHOSEN AT RANDOM FROM A RETAIL TRAVEL AGENT. THE REVIEW REVEALED THAT ONLY IN 8 OUT OF 30 BROCHURES COULD IT EASILY DISCERN WHO WAS THE TOUR OPERATOR.

#### LIMITATION OF LIABILITY CLAUSES

BASED ON CONSUMER COMPLAINTS AND SUBPOENA RETURNS, FTC BELIEVES BROAD EXCULPATORY CLAUSES ARE BOILERPLATE IN THE TRAVEL INDUSTRY. IN FACT, FTC UNCOVERED ONLY ONE OPERATOR THAT DID NOT HAVE AN EXTREMELY BROADLY PHRASED LIMITATION OF LIABILITY CLAUSE, TYPICALLY INSERTED IN THE FINE PRINT OF THE BROCHURE.

FTC FOUND THAT ALMOST INVARIABLY OPERATORS LIMIT THEIR LIABILITY FOR ACTS OF GOD (NATURAL DISASTERS, BAD WEATHER, ETC.) ACTS OF THIRD PARTIES (STRIKES, POLITICAL TURMOIL, ETC.) AND MOST IMPORTANTLY THE FAILURE, FOR WHATEVER REASON, OF ANOTHER PARTY TO PERFORM ITS CONTRACT WITH THE WHOLESALER (HOTELS FAILING TO HONOR RESERVATIONS, SIGHTSEEING COMPANY FAILING TO

SHOW UP, ETC.) LESS UNIVERSAL, BUT NEVERTHELESS IN A SIGNIFICANT NUMBER OF CASES, OPERATORS ATTEMPT TO EXCULPATE THEMSELVES FROM THEIR OWN NEGLIGENT ACTS. FOR EXAMPLE, ONE TOUR OPERATOR'S BROCHURE SAYS THAT IT "SHALL NOT BE OR BECOME LIABLE OR RESPONSIBLE IN ANY WAY IN CONNECTION WITH SUCH MEANS OF TRANSPORT OR OTHER SERVICES OR FOR ANY LOSS, INJURY OR DAMAGE TO OR IN RESPECT OF ANY PERSON OR PROPERTY HOWEVER ARISING."

ACCORDING TO FTC, COURTS GENERALLY HAVE UPHELD EXCULPATORY CLAUSES IN CASES WHERE THE PLAINTIFFS SOUGHT DAMAGES FOR PHYSICAL INJURIES SUFFERED IN THE MIDST OF A TOUR AND WHERE THOSE DAMAGES WERE NOT CAUSED BY THE OPERATOR'S NEGLIGENCE. GENERALLY THE CLAUSES HAVE BEEN DISREGARDED WHERE THE PLAINTIFF SUED FOR A FAILURE TO DELIVER THE TOUR AS REPRESENTED. ALTHOUGH THESE CLAUSES RARELY AFFECT THE OUTCOME OF ANY LITIGATION (EXCEPT PHYSICAL INJURIES), THEY MAY IN FACT DETER MANY CONSUMERS FROM ACTIVELY ASSERTING THEIR RIGHTS.