IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

American Airlines, Inc., a Delaware corporation, Plaintiff, vs. Sabre, Inc., a Delaware corporation; Sabre Holdings Corporation, a Delaware corporation and Sabre Travel International Ltd., a foreign corporation, d/b/a Sabre Travel Network; Travelport Limited, a foreign corporation and Travelport, LP, a Delaware limited partnership, d/b/a Travelport; and Orbitz Worldwide, LLC, a Delaware limited liability company, d/b/a Orbitz; Defendants.	)	Civil Action No.: 4:11-cv-0244-Y

APPENDIX IN SUPPORT OF
AMERICAN AIRLINES INC.'S RESPONSE IN OPPOSITION TO
TRAVELPORT'S MOTION TO STAY DISCOVERY AND ORBITZ AND
SABRE'S JOINDER THERETO

American Airlines, Inc. respectfully files this Appendix in Support of Response in Opposition to Travelport's Motion to Stay Discovery and Orbitz and Sabre's Joinder Thereto.

Exhibit	App. Pages	Date	Description
1	1-4	6/9/03	Reply Comments of the Department of Justice

Exhibit	App. Pages	Date	Description
2	5-6	5/20/11	Bloomberg Article: "Justice Department Opens Probe of Airline Fare Distributors
3	7-9	12/08	Excerpts from the Department of Justice Antitrust Division Manual
4	10	6/21/11	Letter from K. Giulianelli, Esq. to R. Rothman, Esq.

Dated: July 18, 2011

Respectfully submitted,

/s/ Yolanda Garcia
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system pursuant to the Court's Local Rule 5.1(d) this 18th day of July, 2011.

/s/ Robert S. Velevis
Robert S. Velevis

EXHIBIT 1

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

NOTICE OF PROPOSED RULEMAKING COMPUTER RESERVATION SYSTEM REGULATIONS	) Docket Nos.	OST-97-2881 OST-97-3014 OST-98-4775 OST-99-5888

REPLY COMMENTS OF THE DEPARTMENT OF JUSTICE

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Antitrust Division

Deborah P. Majoras
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June 9, 2003

efficiencies, explicit rules prohibiting such conduct are justified.

A. Potential Harm From Strategic Exercise of CRS Market Power

Despite the airlines' CRS divestitures, some incentives and ability to engage in strategic conduct to limit airline competition remain. On the one hand, CRSs retain their ability to exercise their market power in ways that favor one airline over another, but, on the other hand, without airline ownership, CRSs have no direct incentive to do so. Conversely, airlines have a clear incentive to use CRS market power to disadvantage competitors, but, without ownership of CRSs, the airlines have no ability to do so. The airlines' and CRSs' respective incentives and abilities to exercise market power can be aligned through contract to their mutual advantage -- an airline can pay a CRS to use its market power to disadvantage the airlines' competitors in the airlines' hub markets. As before, the CRS could bias against the targeted airlines in display and functionality. And, as before, display and functionality bias would divert passengers without regard to airlines' prices or quality. In each case, the effect would be to deter expansion and entry by potentially more efficient competitors and perhaps even cause their exit from some markets.[26]

While the likelihood of "bias buying" cannot be predicted with certainty, CRSs apparently are already planning on its sale.[27] Experience shows that bias is easy to implement and effective

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[26]Costs of providing airline service in any market are lumpy. The variable costs that an airline incurs depend, in large part, on the number of flights, rather than the number of passengers flown in the market. Thus, an airline will still incur most of its costs even if it carries a few less passengers. In addition, the number of flights in a market often cannot be decreased without jeopardizing profitability. Therefore, even if an airline carries only slightly fewer passengers, it might not be able to cover its costs, and the market would no longer be profitable.

[27]*See* Comments of Amadeus Global Travel Distribution, S.A. at 53-54 (arguing that if DOT deregulates booking fees and mandatory participation, then DOT should allow CRSs to (continued...)

in limiting competition. Experience also shows that CRSs and airlines are able to estimate the value of incremental rents that could be shared through bias. As DOJ noted in its 1989 Comments, CRS vendors were able to estimate and document the incremental earnings achieved through bias. Indeed, CRS vendors used these estimates to determine how to price their systems to different subscribers. The vendors would assume that as a result of placing their system with an agent, their affiliated carriers would earn a certain percentage of additional revenues by booking more passengers on their flights than they otherwise would, and the vendors would then use those expected revenues in determining the amount of the discount to give the agent.[28] In 1988, CRS vendors' estimates of the additional airline revenues earned from their subscribers as a result of bias ranged from nine to fifteen percent of airline revenues sold through the CRS, amounting to approximately $900 million to $1.5 billion of airline revenue.[29]

The continued disproportionate strength of CRSs in the hubs of their former airline owners makes for natural partners. If the dominant CRS and airline in a city can reach an acceptable bargain, both can profit. And if bias buying does occur, consumers will be the ultimate losers – paying higher fares in the "protected" markets. For these reasons, DOT should

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[27](...continued)
bargain with airlines for display bias); Comments of Sabre, Inc. at 141-142. Bias already occurs in Internet travel websites. For example, Delta's agreement with Priceline prevents other carriers from offering seats on Priceline on routes to and from Delta's Atlanta hub. Scott Thorston, *Northwest-Delta Feud over Priceline.com Goes Public*, ATLANTA JOURNAL CONSTITUTION, Mar. 3, 2000; *see also* Comments of Midwest Airlines, Inc. at 12-17 (discussing bias in online travel agency websites).

[28]1989 Comments at 15-16.

[29]1991 Reply Comments at 3.

make it clear that future contracts and transactions between CRSs and airlines will be monitored closely to ensure that they do not result in re-integration. Also, as discussed below, some continued regulation may be advisable as well.

B. Potential Harm From Nonstrategic Exercise of CRS Market Power

The airlines' CRS divestitures leave unaffected the incentive and ability of CRSs to fully exercise their market power in nonstrategic ways. The CRSs may still have incentives to charge supracompetitive booking fees and, absent a price rule, the only constraint on their ability to do so would be any countervailing airline bargaining power.

DOT has not proposed a rule to remedy nonstrategic supracompetitive pricing by CRSs. In the past, DOJ advocated the zero price rule to constrain both the strategic and nonstrategic exercise of CRS market power over price. We pointed out the advantages of a structural rule, which relies on properly-aligned incentives. We also noted that because the zero price rule would prevent any airline from paying the CRS to disadvantage its competitors, it could eliminate the need for other rules designed to constrain the strategic exercise of CRS market power. It is clear from the NPRM, however, that DOT is unlikely to adopt the zero price rule or any other measure aimed generally at supracompetitive booking fees. 67 FR 69399.

Instead, DOT will be relying on countervailing market power by airlines to constrain CRS booking fees. Although airline bargaining power has not in the past been sufficient to produce competitive booking fees, bargaining power of airlines could increase if their ability to shift sales to the Internet and other alternative channels continues to increase significantly. DOT should assess, after some reasonable transition period, whether the alternative distribution channels have

EXHIBIT 2

Bloomberg

Justice Department Opens Probe of Airline Fare Distributors

By Mary Schlangenstein - May 20, 2011

The U.S. Justice Department is investigating possible antitrust violations by companies that distribute airline fare and flight data as they spar with carriers over control of the information.

Sabre Holdings Corp., of Southlake, Texas, and Atlanta- based Travelport Ltd. said today they were asked by the agency for information. Delta Air Lines Inc. (DAL), AMR Corp. (AMR)'s American Airlines and US Airways Group Inc. (LCC) also received requests.

The inquiry escalates tensions between airlines led by American and the so-called global distribution systems over the handling of price and schedule data used by most consumers to purchase travel. Sabre and Travelport are the largest U.S.-based GDS operators.

"This has been going on for many, many years and it's culminated in a situation where the airlines feel they're being bullied very harshly," Richard Clarke, director of Travel Technology Research, said in an interview. "The GDSs feel they have the right to exercise their economic influence the way they have. To go to court now, on the basis of antitrust, is kind of the last straw."

Gina Talamona, a Justice Department spokeswoman, said the agency is investigating possible anticompetitive practices in the global-distribution industry. Sabre and Travelport said they are cooperating.

Market Control

The two closely held companies, along with Amadeus IT Group SA in Europe, handle more than 90 percent of worldwide airline data distribution, AMR said in an earlier legal filing. Sabre and Travelport dominate the U.S. market.

Credit-default swaps on Sabre rose 57 basis points to 738 basis points, according to data provider CMA, the highest since September 2009. The swaps protect against a default on a company's debt, and typically climb as investor confidence worsens.

American in April sued Travelport and its Orbitz Worldwide Inc. (OWW) unit for alleged antitrust violations, and is in talks with Sabre to settle a separate suit over distribution of data.

The Fort Worth, Texas-based airline wants to use its Direct Connect system to provide data to online and traditional travel agents, cutting distribution costs and letting American sell travel packages tailored for individual fliers. These may include services such as early boarding that would add revenue.

AMR's View

"We need to raise more money to be successful," American Chief Executive Officer Gerard Arpey told shareholders on May 18. "More merchandising is part of that, and Direct Connect is a vehicle for it."

Travelport "is confident that it is in complete compliance with the antitrust laws," Jill Brenner, a spokeswoman, said in an interview. "Travelport welcomes the GDS industry investigation."

Sabre was asked for information and is cooperating, Nancy St. Pierre, a spokeswoman, said in an e-mail. The request, she said, included "no allegations."

Spokesmen for American and Atlanta-based Delta said they were cooperating with the Justice Department, while Tempe, Arizona-based US Airways declined to comment. Spokesmen for Southwest Airlines Co. and United Continental Holdings Inc. (UAL), which together with the other three carriers make up the five biggest in the U.S. industry, also declined to comment.

GDS companies historically have collected fees from the airlines for handling fare and flight data, and have shared a portion with the travel agents who sell the tickets.

US Airways also has sued Sabre for alleged antitrust violations. More than 35 percent, or $3.5 billion, of the Tempe, Arizona-based airline's annual revenue is booked through Sabre or Sabre-affiliated travel agents.

AMR fell 6 cents to $6.66 at 4:02 p.m. in New York Stock Exchange composite trading. Delta rose 13 cents to $11.51 and US Airways slipped 15 cents to $10.17.

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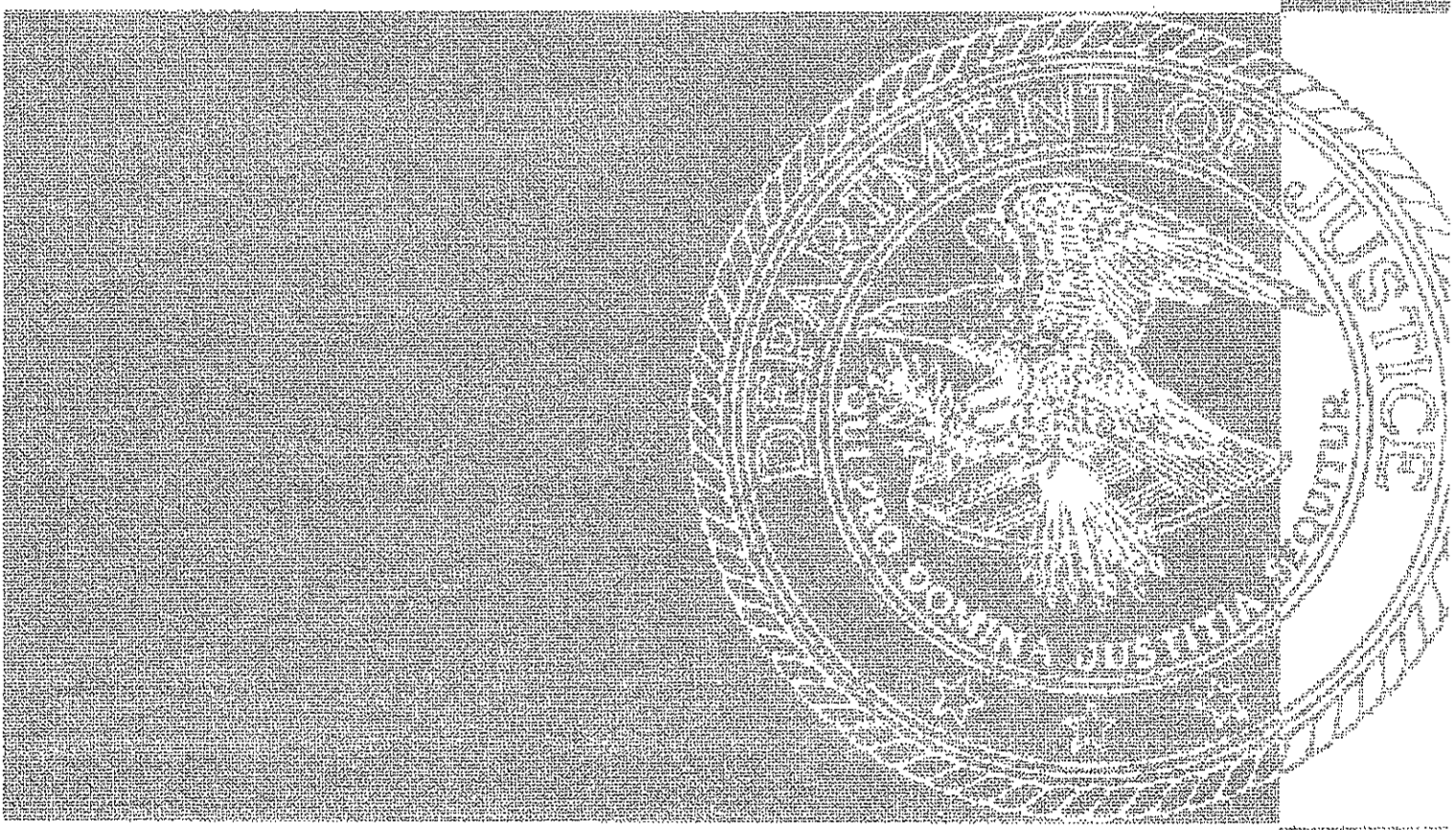
EXHIBIT 3

Antitrust Division Manual



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antitrust investigation." 15 U.S.C. § 1312(a). If there is "reason to believe" that any violation within the Division's scope of authority has occurred, there is sufficient authority to issue a CID even in the absence of "probable cause" to believe that any particular violation has occurred. *See, e.g., Australia/Eastern U.S.A. Shipping Conference v. United States*, 1982-1 Trade Cas. (CCH) ¶ 64,721, at 74,064 (D.D.C. 1981), *modified*, 537 F. Supp. 807 (D.D.C. 1982), *vacated as moot*, Nos. 82-1516, 82-1683 (D.C. Cir. Aug. 27, 1986).

The ACPA defines "antitrust investigations" to include "any inquiry" by an "antitrust investigator" to ascertain if "any person is or has been engaged in any antitrust violation or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation." 15 U.S.C. § 1311(c). An "antitrust investigator" is "any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law" 15 U.S.C. § 1311(e). "Antitrust violation" means as "any act or omission in violation of any antitrust law, any antitrust order or, with respect to the International Antitrust Enforcement Assistance Act of 1994, any of the foreign antitrust laws." 15 U.S.C. § 1311(d).

CIDs are the compulsory process tool of choice in civil antitrust investigations of potential violations of the Sherman Act, 15 U.S.C. §§ 1-7, or the Wilson Tariff Act, 15 U.S.C. §§ 8-11, and in civil investigations under the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. §§ 6201-6212. CIDs are also available for use in investigations of potential violations of the Clayton Act, 15 U.S.C. §§ 12-27; however, in merger investigations, second requests are usually the preferred form of compulsory process for obtaining information from the parties. Service of CIDs does not extend the initial waiting period. However, in bankruptcy and cash tender transactions, a second request to the acquired person does not extend the waiting period; to ensure that the necessary information is obtained in a timely fashion, the Division will generally issue both a second request and a CID to the acquired person in such a transaction. *See* Chapter III, Part D.1. In addition, CIDs are usually the only form of compulsory process available to compel production by third parties. Moreover, brief CIDs served on parties in such investigations early in the waiting period may serve to permit more precise drafting of second requests in some instances. CIDs can also be served on parties to supplement the second request, although obtaining timely production of material so requested may prove problematic.

While CIDs can be served only before the Division institutes a civil or criminal action, *see* 15 U.S.C. § 1312(a), they may be issued after the Division has decided to file a civil case and not yet actually filed the case. CIDs cannot be enforced after a complaint is filed. CIDs can also be used to investigate

compliance with final judgments and orders in antitrust cases, although in specific situations it may be more efficient to gather compliance evidence by relying upon the "visitation" provisions incorporated in most of the Division's civil judgments. A decision to issue CIDs generally involves a significant expansion in resources committed by the Division and should be made only after serious consideration and a thoughtful reassessment of the matter's potential significance.

b. Criminal Investigations

In the event that a civil antitrust investigation uncovers evidence indicating that criminal prosecution is more appropriate than civil enforcement, a grand jury investigation should be opened. Further investigation may not be conducted by CID but rather must proceed by the grand jury process. Thus, for instance, CIDs may not be used to investigate violations of Section 3 of the Robinson-Patman Act, 15 U.S.C. § 13(a), which imposes solely criminal penalties. Evidence already obtained by CIDs may, however, be presented to the grand jury. *See* 15 U.S.C. § 1313(d)(1).

c. Other Matters Wherein CID Use Is Not Authorized

CIDs cannot be issued to investigate conduct that is clearly exempt from the antitrust laws, but CIDs can be issued to determine whether specific conduct falls within an exempt category. *See* Chapter III, Part E.8.d. Nor can CIDs be issued for preparing responses to requests for Business Review Letters, *see* 28 C.F.R. § 50.6, or to investigate violations of the Federal Trade Commission Act, *see* 15 U.S.C. § 1311(a). CIDs also cannot be issued to investigate violations of the Newspaper Preservation Act of 1970, 15 U.S.C. § 1803(b); however, if the Attorney General orders a public hearing in such a case, the presiding administrative law judge may permit any party (including the Antitrust Division) to conduct discovery "as provided by the Federal Rules of Civil Procedure." 28 C.F.R. § 48.10(a)(3).

There is also no authority to issue CIDs in connection with the Division's participation in proceedings before federal regulatory agencies, but information previously gathered by CIDs validly issued for other purposes may be used in such proceedings. *See* 15 U.S.C. § 1313(d)(1). Given the statutory definition of "antitrust investigation," 15 U.S.C. § 1311(c), CIDs cannot be used to investigate possible terminations of judgments or violations of stipulations during the Tunney Act public comment period prior to entry of a consent decree.

EXHIBIT 4

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June 21, 2011

Via E-mail

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Re: *American Airlines, Inc. v. Sabre, Inc., et al.*
Civil Action No.: 4:11-CV-00244-Y

Dear Mr. Rothman:

This is in response to your letter of June 10. Your request is premature. It comes just one day after your amended complaint was filed and before the parties have even exchanged Rule 26 disclosures or had the initial scheduling conference. We see no reason to deviate from the normal discovery process in this case. Once we have a Rule 16 conference and a scheduling order, we will be prepared to start with the discovery process in compliance with the timeline set forth in that order.

Sincerely,

Karma Giulianelli

KG/csb

cc: Chris Lind
Sean Grimsley
George Cary
Steve Kaiser
Ralph Duggins
Scott Fredricks