

Dembowski—Travelport—Michael Weiner and Michael Cowie—and Orbitz—Christopher Yates and Brendan McShane—conferred on July 5, 2011, and again on July 14, 2011, to discuss the matters herein. All parties have reviewed this Discovery Plan and agreed to its submission.

(1) Initial Disclosures

The parties will make their disclosures under Federal Rule of Civil Procedure 26(a)(1)(A) on July 19, 2011.

(2) Subjects upon which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues

(a) American's statement of the subjects on which discovery may be needed²

American's position is that discovery should commence and proceed expeditiously. Defendants' Motion to Stay discovery is without merit because Defendants have failed to satisfy their burden required to justify a stay of discovery, and American's complaint more than meets the applicable pleading burden as it contains detailed factual allegations demonstrating that the defendants are engaged in significant ongoing antitrust violations to stop American from developing an alternative channel in the distribution of airlines tickets—violations which are the subject of a parallel antitrust investigation by the Department of Justice ("DOJ"). Any delay of discovery would have detrimental effects on American's ability to prosecute its claims and protect itself from Defendants' retaliatory and otherwise unlawful, anticompetitive conduct, such as increased prices, manipulation of American's flight and fare content to travel agencies, and termination from defendants' GDS systems altogether.

American has issued, or will issue, discovery requests regarding the following topics³:

² This statement is without prejudice to the parties' rights to request discovery regarding additional topics as may become necessary during the course of this litigation.

- The relevant product and geographic market and sub-market for the distribution of airline flight, fare, and availability information to travel agents;
- The GDS Defendants' market shares in the distribution of airline flight, fare, and availability information and the power that GDSs have over airlines as a result of their role in distributing such information;
- Actual or potential competition or competitors in the distribution of airline flight, fare, and availability information;
- Barriers to entry into distribution of airline flight, fare, and availability information;
- The GDS Defendants' potential for sales growth or expansion into product or geographic markets;
- American's AA Direct Connect initiative and any other alternative channels for distributing airline flight and fare information to travel agents, Defendants' reactions and responses thereto, and Defendants' analyses and communications regarding same;
- Actions that any defendant has taken or considered taking—either independently or in concert with others—to oppose, limit, frustrate, delay, or otherwise hinder American's AA Direct Connect initiative;
- The relationships between and among the parties to this litigation, including all express or implied agreements currently existing or contemplated between or among any of the parties to this litigation, negotiations related to modifying or extending those agreements, and the allegedly anticompetitive provisions contained in the parties' contracts (including most-favored nation or full content provisions and termination dates);
- The termination of American's relationship with Orbitz on November 1, 2010, Defendants' reactions and responses thereto, and Defendants' analyses and communications regarding same;
- Defendants' communications regarding this or any other litigation between or among the parties;
- Defendants' relationships with current or former applications developers, including Defendants' actual or potential licenses or express or implied agreements therewith;

³ American has already served its First Requests for Production of Documents on each Defendant, but it intends to serve additional discovery requests, including interrogatories, and depose witnesses regarding the topics listed below.

- Booking fees that the GDS Defendants have charged to American and other airlines, including increases in those fees and the reasons therefor;
- The GDS Defendants' operating, research, and development costs;
- The GDS Defendants' relationships with travel agencies, including all express or implied agreements between or among any travel agents and the GDS Defendants, the GDS Defendants' providing of software to travel agents and the reasons for providing such software, the GDS Defendants' marketing to travel agencies, and the GDS Defendants' analyses, presentations, or studies concerning their travel agency subscribers;
- Actual, proposed, or contemplated legislation, regulation, or rule-making regarding the distribution of airline flight, fare, and availability information;
- Technology currently or formerly used or considered by Defendants for distributing or displaying American's flight or fare information;
- The DOJ's investigation into the GDS industry, including documents produced in response to Civil Investigative Demands as part of that investigation;
- Actions that any of the Defendants or any nonparties with whom they have communicated are planning to take or have contemplated taking upon expiration of the amendments to the GDS Defendants' contracts with American; and
- The use of display bias by the GDS Defendants or others acting in concert with them with respect to American's flight and fare information.⁴

(b) Defendants' statement of the subjects on which discovery may be needed⁵

Defendants believe that American's Complaint fails to state a claim under Rule 12(b)(6) and should therefore be dismissed. Accordingly, Defendants have moved to stay discovery pending the Court's ruling on their motions to dismiss. In the event that that Court denies the

⁴ American has previously asked the Defendants to agree that documents produced to the DOJ in response to CIDs and documents produced in other litigation between the parties be deemed as having been produced in this case, which would allow discovery in this case to proceed more expeditiously and efficiently. American also has asked Defendants to produce the documents they previously have produced to the DOJ in response to CIDs, but they have refused to do so.

⁵ This statement is without prejudice to the parties' rights to request discovery regarding additional topics as may become necessary during the course of this litigation.

Defendants' motions to dismiss, Defendants reserve the right to take discovery on the following additional subjects, including but not limited to:

- Competition between GDSs and single-carrier distribution channels, such as supplier.coms and direct-connect products;
- The impact of metasearch products like Kayak and Google/ITA on airline ticket distribution;
- The share of airline bookings made through non-GDS channels and trends in non-GDS share over time;
- Airline bargaining power in negotiations with GDSs;
- Trends in booking fees and financial assistance payments to travel agents over time;
- GDS investments in product improvements;
- Comparative advantages of GDS technologies vs. single-carrier distribution;
- Inefficiencies and other costs to travel agents of using single-carrier distribution vs. GDS distribution;
- Impact of single-carrier distribution on price transparency and price competition among airlines;
- Actions American has taken or considered taking to force travel agents to use direct connect technology, including but not limited to threatening to withhold content if travel agents do not switch to direct connect; terminating travel agent's ticketing authority if they do not switch to direct connect; and imposing surcharges on travel agents for booking tickets through competing distribution channels;
- American's advertising and marketing campaign during the period of its termination of Orbitz's ticketing authority;
- Communications between American and its competitors regarding any GDS or any other medium through which tickets are sold;
- Any attempts by American, Farelogix, or others to compete with any GDS for distribution of fare or other information;
- The ability of American, Farelogix, or others to compete with any GDS through incentives to travel agents;

- American’s attempts to prevent comparison shopping and to obscure the full price of its services and fares;
- American’s unbundling of services, including ancillary data, including the reasons for such unbundling;
- American’s communications to travel agents regarding Direct Connect, Farelogix, or any other facilitator of Direct Connect;
- American’s communications to travel agents regarding Sabre, Travelocity or any other GDS;
- The nature of American’s contracts with travel agents, including the duration of the contracts and any incentive payments to American;
- American’s plans to charge GDSs and travel agents for the access to AA airfares; and
- Internal and external communications regarding all of the above matters.

In addition, in the event that the Court denies the Defendants’ motions to dismiss, Defendants reserve the right to assert counterclaims and may seek additional discovery in support of any such counterclaims.⁶

(c) When discovery should be completed

The parties have been unable to agree on a proposed schedule for the case. Accordingly, they are submitting two proposed scheduling orders, attached hereto as Exhibits A and B, for the Court’s consideration.

As reflected in Exhibits A and B, the parties are in substantial agreement regarding the steps involved in the discovery process and the intervals at which they should be completed. The primary disagreement between American and Defendants is that Defendants seek to stay discovery while American’s view is that discovery should commence immediately.

⁶ Defendants dispute the assertion that they have “refused” to turn over documents already produced to the DOJ. (*See supra*, n.4.) American requested these documents in Requests for Production dated July 5, 2011, and Defendants responses are not due for several more weeks.

(d) *Whether discovery should be conducted in phases or be limited to or focused on particular issues*

Discovery should be conducted in the phases set forth in the parties' proposed scheduling orders, attached hereto as Exhibits A and B.

(3) What changes, if any, should be made in the limitations on discovery imposed under the federal or local rules, and what other limitations, if any, should be imposed?

The parties agree that due to the complex nature of this action and the number of parties involved, the 10-deposition limit imposed by Fed. R. Civ. P. 30(a)(2) should be modified. The parties have been unable to agree on a final number of depositions, and their respective proposals are below. However, the parties do agree that, to the extent any party files a motion for summary judgment or a motion for preliminary injunction in this case, or a response thereto, and relies on an affidavit from an individual who has not been previously been deposed in this case to support the motion or response, any party opposing the motion or response may notice the affiant for a deposition. Such depositions will be limited to three hours each and will not count toward the limits on the number of depositions or time for questioning set forth above. Likewise, to the extent any party lists as a trial witness any person that has not previously been deposed, the other side may notice the witness for deposition and such depositions will be limited to three hours each and will not count toward the limits on the number of depositions or time for questioning set forth above.

(a) *Plaintiff's statement*

While both sides recognize that 10 depositions per side will not be sufficient, the parties do not agree on the number of depositions that should be permitted. American proposes that each side (*i.e.* American and Defendants) be allotted the greater of forty depositions or 280 hours of questioning time for depositions of party and nonparty fact witnesses. American believes

that a forty deposition limit is appropriate in this case, given the complexity of the case, the importance of the issues to the country's transportation system, the fact that there are three separate defendants and that there are a large number of third parties that have important information relevant to this lawsuit. American further proposes that for purposes of calculating the number of depositions of fact witnesses, a deposition of a corporation pursuant to Federal Rule of Civil Procedure 30(b)(6) shall count as a single deposition even if the corporation designates multiple individuals to testify on its behalf.

(b) Defendants' statement

Defendants also recognize that 10 depositions per side will not be sufficient but cannot agree to American's proposal, which would amount to 560 hours of deposition testimony. Recognizing the complexity of this case but also believing that the parties can and should work together to avoid unnecessarily burdensome discovery, Defendants propose doubling the default limits under the Federal Rules. Specifically, Defendants propose that each side (*i.e.*, American and Defendants) be allotted the greater of twenty depositions or 140 hours of questioning time for depositions of party and non-party fact witnesses.

(4) Statement regarding whether any other orders should be entered by the Court under Fed. R. Civ. P. 26(c) or under Fed. R. Civ. P. 16(b) and (c).

The parties anticipate discovery will involve confidential information entitled to protection pursuant to Federal Rule of Civil Procedure 26(c)(i)(g). The parties are in the process of negotiating an appropriate protective order and have narrowed the issues in dispute, although there still are a few issues in dispute. To the extent the parties cannot reach an agreement, they anticipate that they will submit to the court two versions of a protective order to allow the Court to determine the appropriate order.

If this case goes to trial, the parties anticipate that an order pursuant to Federal Rule of Civil Procedure 16(c) will be necessary.

Dated: July 19, 2011

Respectfully submitted,

/s Yolanda C. Garcia

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Exhibit A

**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;)	Civil Action No.: 4:11-cv-0244-Y
)	
)	
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.)	

AMERICAN’S PROPOSED INITIAL SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16(b), this Initial Scheduling Order will govern the preparation of this case for trial. The Court, having reviewed the Discovery Plan submitted by the parties hereby establishes the deadlines set forth below to ensure that the case is expeditiously prepared for trial.

Accordingly, it is **ORDERED** that:

1. Initial Disclosures

The Plaintiffs and Defendants shall serve their initial disclosures on or before **July 19, 2011**.

2. Joinder of Additional Parties

Additional parties may be added to this proceeding no later than sixty (60) days prior to the close of fact discovery.

3. Amendment of Pleadings

Pleadings may be amended no later than sixty (60) days prior to the close of fact discovery.

4. Fact Discovery

The parties shall substantially complete their document productions by **October 1, 2011**. All fact discovery, including all depositions of fact witnesses, shall be completed by **March 1, 2012**.

5. Expert Discovery

- (a) American shall identify its experts on or before **January 3, 2012**, and shall serve reports from its experts retained under Federal Rule of Civil Procedure 26(a)(2) on or before **March 30, 2012**.
- (b) Defendants shall identify their experts on or before **February 3, 2012**, and shall serve reports from Defendants' expert(s) retained under Federal Rule of Civil Procedure 26(a)(2) on or before **April 30, 2012**.
- (c) American shall identify any rebuttal experts and serve any rebuttal expert reports pursuant to Federal Rule of Civil Procedure 26 on or before **May 15, 2012**.
- (d) Depositions of all parties' experts, including rebuttal experts, shall be completed on or before **May 31, 2012**.

6. Dispositive Motions

All potentially dispositive motions shall be filed on or before **June 15, 2012**. In accordance with the Court's Local Rules, all responses in opposition to any such motion shall be filed within twenty-one (21) days of the filing of said motion, and any reply in support of such motion shall be filed within fourteen (14) days after the filing of a response.

7. Witness and Exhibit Lists and Motions in Limine

- (a) Witness lists, separately identifying each witness that a party intends to call or may call as a witness, other than as a rebuttal witness, shall be exchanged no later than forty-five (45) days before the start of trial.

- (b) Exhibits, other than those used for rebuttal purposes, and deposition designations shall be exchanged no later than thirty (30) days before the start of trial. Any deposition counter designations and objections to exhibits shall be exchanged no later than fifteen (15) days before the start of trial.
- (c) The parties shall file any motions in limine no later than forty-five (45) days before the start of trial. Any opposition to any such motion in limine shall be filed no later than twenty (20) days before the start of trial. Any reply to such opposition to a motion in limine shall be filed no later than ten (10) days before the start of trial.

8. Trial

Trial shall commence on **September 17, 2012**, or as soon thereafter as the parties may be heard.

9. Other Items

The parties' agreement to this schedule shall not be construed as a waiver of any right or privilege under the Federal Rules of Civil Procedure, the Court's Local Rules, or any other applicable state or federal law, including any right to move to compel or preclude discovery.

10. Modification of Scheduling Order

This Scheduling Order may be modified by mutual agreement of the parties, subject to Court approval, or by motion for good cause shown. This Scheduling Order is contingent upon trial of the above-captioned matter in this Court, and shall be reconsidered in the event that this case is transferred to a different court. Nothing herein shall waive any party's right to seek a continuance of the trial date to allow additional time for the Court to rule on any dispositive motion.

SIGNED: _____, 2011

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Exhibit B

**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;)	Civil Action No.: 4:11-cv-0244-Y
)	
)	
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.)	

DEFENDANTS' PROPOSED INITIAL SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16(b), this Initial Scheduling Order will govern the preparation of this case for trial. Discovery remains premature at this stage of the case. Each Defendant has a dispositive Rule 12(b)(6) motion to dismiss pending that, if granted, would obviate the need to subject the parties and third parties to burdensome antitrust discovery. Travelport has filed a motion to stay discovery pending a decision on its dispositive motion, and defendants Orbitz and Sabre have joined in that motion. The Court, having reviewed the parties' submissions, hereby grants Travelport's motion to stay discovery pending the outcome of the Defendants' motions to dismiss.

In the event that the Court ultimately denies the Defendants' motions to dismiss, the following schedule shall be entered, with "Day 1" representing the first business day after the Court enters its last order resolving the Rule 12(b)(6) motions:

Deadline	Defendants' Proposal
Deadline for Document Production	Day 1 + 7 months
Deadline to join parties and amend pleadings	Day 1 + 6.5 months
All fact discovery complete including depositions	Day 1 + 9.5 months
Expert reports on issues where party has burden	Day 1 + 10 months
Expert reports on issues where party does not have burden	Day 1 + 11 months
Rebuttal expert reports	Day 1 + 12 months
Expert depositions complete	Day 1 + 13 months
Dispositive motions	Day 1 + 14.5 mos.
Trial	Day 1 + 16.5 mos.

The parties' agreement to this schedule shall not be construed as a waiver of any right or privilege under the Federal Rules of Civil Procedure, the Court's Local Rules, or any other applicable state or federal law, including any right to move to compel or preclude discovery. This Scheduling Order may be modified by mutual agreement of the parties, subject to Court approval, or by motion for good cause shown. This Scheduling Order is contingent upon trial of the above-captioned matter in this Court, and shall be reconsidered in the event that this case is transferred to a different court. Nothing herein shall waive any party's right to seek a

continuance of the trial date to allow additional time for the Court to rule on any dispositive motion.

SIGNED: _____, 2011

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE