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

AMERICAN AIRLINES, INC.	§	
	§	
VS.	§	CIVIL ACTION NO. 4:11-CV-244-Y
	§	
TRAVELPORT LIMITED, et al.	§	

ORDER DENYING MOTION TO DISMISS OR TRANSFER

Before the Court is the Motion to Dismiss or Transfer (doc. 34) filed by defendants Travelport Limited and Travelport, LP (collectively, "Travelport"). By the motion, Travelport seeks an order dismissing or transferring this case pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a).[1] According to Travelport, the instant case arises out of a contract amendment entitled "Preferred Fares Amendment" ("PFA") entered into between plaintiff American Airlines, Inc. ("American"), and Galileo International, L.L.C., one of Travelport's predecessors-in-interest, on July 5, 2006. Travelport explains that the PFA contains a forum-selection clause requiring all actions arising out

[1] Rule 12(b)(3) and § 1406(a) are the procedural vehicles for dismissing or transferring an action that has been brought in an improper forum. *See* Fed. R. Civ. P. 12(b)(3); *Lim v. Offshore Specialty Fabricators, Inc.*, 404 F.3d 898, 902 (5th Cir. 2005); *Chapman v. Dell, Inc.*, No. EP-09-CV-7-KC, 2009 WL 1024635, at *3 (W.D. Tex. Apr. 15, 2009). In contrast, where an action has been brought in a forum that is "proper" within the meaning of the federal venue statutes, § 1404(a) serves as the vehicle for transferring the action to a more convenient forum. *See* 28 U.S.C. § 1404(a); *Chapman*, 2009 WL 1024635, at *4. The United States Court of Appeals for the Fifth Circuit has not decided whether a mandatory forum-selection clause (i.e., one that prohibits bringing suit in any court other than the one stipulated to by the parties) renders an otherwise proper venue improper. *See Chapman*, 2009 WL 1024635, at *3. Thus, were the Court to grant Travelport's motion, it is unclear whether § 1406(a) or § 1404(a) would be the appropriate procedural vehicle for transfer. The Court need not resolve this question, however, in light of its determination (set out below) that the forum-selection clause underlying Travelport's motion does not apply to this case.

of the PFA to be brought in a federal or state court in Cook County, Illinois.

American contends that the instant case did not arise out of the PFA and, therefore, is outside the scope of the PFA's forum-selection clause. According to American, this case is much broader than the PFA, as it challenges a great number of Travelport's actions, as well as those of other defendants. American contends that the "most-favored-nation provision" of the PFA is but one example of the type of anti-competitive conduct in which Travelport and the other defendants have engaged. Moreover, American points to a number of other contracts related to this action that contain forum-selection clauses inconsistent with the one found in the PFA.

To determine whether the instant case is governed by the forum-selection clause in the PFA, the Court "must look to the language of the parties' contract." *Dos Santos v. Bell Helicopter Textron, Inc.*, 651 F. Supp. 2d 550, 557 (N.D. Tex. 2009) (Means, J.) (quoting *Marinechance Shipping v. Sebastion*, 143 F.3d 216, 222 (5th Cir. 1998)) (internal quotation marks omitted). "If the substance of the plaintiff's claims, stripped of their labels, does not fall within the scope of the forum selection clause, the clause cannot apply." *Soil Bldg. Sys. v. CMI Terex Corp.*, No. 3:04-CV-0210-G, 2004 WL 1283966, at *4 (N.D. Tex. June 9, 2004) (Fish, C.J.) (quoting *Roby v. Corp. of Lloyd's*, 996 F.2d 1353, 1361 (2d Cir. 1993)) (internal quotation marks omitted).

After review, the Court agrees with American that the PFA's forum-selection clause does not apply to this case. The instant case involves claims against multiple defendants for alleged violations of sections one and two of the Sherman Act, as well as Texas law. American is not suing Travelport for breach of the PFA, nor do its claims otherwise center around the PFA. To the contrary, American's complaint describes a multitude of anti-competitive and exclusionary practices that have allegedly occurred on an industry-wide scale.

Indeed, there are a number of allegations in American's complaint that have little or nothing to do with the PFA. For example, American alleges that Travelport took a number of retaliatory actions against it for pursuing its "Direct Connect" technology, including doubling American's booking fees and adversely misrepresenting American's flight information. (Am. Compl. 26-27, ¶¶ 96-100.) In addition, as another example, American alleges that defendants Sabre, Inc.; Sabre Holdings Corporation; and Sabre Travel International Limited (collectively, "Sabre"), have refused to do business with American unless American foregoes its use of "Direct Connect." (*Id.* at 5-6, ¶¶ 14-15.)

Reinforcing the Court's conclusion that this case does not arise out of the PFA is the fact that there are multiple other contracts relevant to this case containing forum-selection clauses inconsistent with the one in the PFA. For instance, in the

Worldspan Content Agreement between American and Worldspan, L.P., one of Travelport's predecessors, the parties "consent[ed] to the non-exclusive jurisdiction of the courts . . . in Georgia and Texas to resolve any dispute arising out of this Agreement." (Pl.'s Resp. App. 12.)

In short, the "substance" of American's claims is outside the scope of the PFA's forum-selection clause. *See Soil Bldg. Sys.*, 2004 WL 1283966, at *4. Accordingly, Travelport's motion to dismiss or transfer is DENIED.[2]

SIGNED July 26, 2011.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

[2] In light of this ruling, the Court need not address Travelport's argument concerning the recovery of fees and costs in connection with its motion.