

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

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

**PLAINTIFF AMERICAN AIRLINES, INC.’S  
REQUEST FOR RULE 16 STATUS CONFERENCE**

Plaintiff American Airlines, Inc. respectfully files this request pursuant to Fed. R. Civ. P. 16(a), that the Court convene a status conference as soon as its schedule permits, to ensure that the outstanding motions regarding the sufficiency of the pleadings are resolved efficiently rather than in a piecemeal manner that could place added burdens on the Court. Specifically, the status conference would allow the parties to:

- report on the implications of the sequence in which the outstanding motions to dismiss and motion for reconsideration are resolved on the timeline of the case; and
- confer with the Court on the current pretrial schedule in light of the outstanding motions and American’s chapter 11 bankruptcy case.

**FACTUAL AND PROCEDURAL BACKGROUND**

In April 2011, American filed this antitrust case against defendants Travelport and Orbitz. (Dkt. 1) In June 2011, American amended its Complaint to add Sabre as a defendant. (Dkt. 70) American alleges violations of Sections 1 and 2 of the Sherman Act. As described in the Amended Complaint, Sabre and Travelport, which operate global distribution systems that distribute American’s flight and fare information, control the distribution of airline tickets to a large number of business travelers and have engaged in exclusionary conduct, and defendant Orbitz, the online travel agency, benefits from Travelport’s monopoly. (Dkt. 159 at ¶¶ 1, 2)

Moreover, all defendants have entered into agreements with one another and with others to exclude competition and maintain Sabre's and Travelport's monopoly power. *Id.* at ¶1.

**A. The Lawsuit Is Currently in the Pleading Stage**

In June and July of last year, all defendants moved to dismiss American's First Amended Complaint. (Dkt. 77, 85, 97) In October, while those motions were pending, American moved for leave to file a second amended complaint based on recently-discovered information. (Dkt. 148) A month later, the Court ruled on the pending motions. It granted in part American's motion for leave to amend, allowing it to add additional claims against all defendants. *See* Order Regarding Mot. to Dismiss and Mot. for Leave to Amend (Dkt. 156) ("Order") at 38-39. Based on the Court's conclusions about what the complaint needed to plead to state a claim, however, the Order did not allow American to amend its complaint to include its claim that Sabre's and Travelport's agreements with participating airlines and travel-agent subscribers unreasonably restrain competition in violation of Section 1 of the Sherman Act. *Id.* at 39.

In December, American filed a motion for reconsideration of the Order (Dkt. 162), which is now fully briefed, in which it requested that the Court reconsider its dismissal with prejudice of American's Section 1 claim against Sabre and Travelport because the deficiencies that were identified in the Order can be remedied by further amendment. If the Court grants this motion by dismissing the claim without prejudice, American will move for leave to file an amended complaint that contains such allegations. Mot. for Reconsideration at 1-2. In its reply to Travelport's opposition to the motion for reconsideration, American provided the Court with a black-line version of its proposed amended complaint. (Dkt. 203).

Meanwhile, defendants moved to dismiss the Second Amended Complaint (Dkt. 163; 165; 169). Before filing its new complaint, American asked defendants to consent to inclusion

of specific factual allegations to address the concerns identified in the Order. Not all defendants consented. The motions, which are now fully briefed, are based in part on the alleged omission of the same kind of allegations that American is prepared to include in its pleading.

**B. All Current Deadlines End by June 15**

Although this case is still in the pleading stage, all the deadlines in the Initial Scheduling Order expire by June. (Dkt. 121) Document production ends in less than a month, on March 1, and fact discovery ends on May 15. *Id.* at 2. All expert disclosures are due by June 15, the same deadline for filing all pretrial and dispositive motions. *See id.* at 3; (Dkt. 209).

**C. American’s Request to Extend Deadlines**

In November, American commenced a chapter 11 bankruptcy case. Shortly thereafter, American moved the Court to extend the current deadlines by five months. (Dkt. 168) As the motion explains, besides the fact that discovery has been delayed and the pleadings are not set, the current deadlines collide with the important work that American needs to do in the early days of its chapter 11 case. *See id.* at 2-3. In addition, discovery continues to expand, as evidenced most recently by Travelport serving 40 new third-party subpoenas. *See American’s Opposed Motion to File Supplemental Brief in Support of its Motion to Extend Scheduling Order Deadlines* at 1. (Dkt. 211) The motion to extend remains pending.

**GOVERNING LEGAL STANDARD**

Rule 16(a) provides that a court may order the parties “to appear for one or more pretrial conferences” for such purposes as “expediting disposition of the action,” “establishing early and continuing control so that the case will not be protracted because of lack of management,” and “discouraging wasteful pretrial activities.” The rule “gives the trial court broad discretion in conducting pre-trial procedures in order to narrow the issues, reduce the field of fact controversy

for resolution, and to simplify the mechanics of the offer and receipt of evidence.” *Pacific Indemn. Co. v. Broward Co.*, 465 F.2d 99, 103 (5th Cir. 1972). The court’s “express and inherent powers enable the judge to exercise extensive supervision and control of litigation.” *Manual for Complex Litig.* §10.1 (4th ed. 2004)

### **ARGUMENT AND AUTHORITIES**

American submits this Request in furtherance of the purposes set out in Rule 16(a). The Order addressing the first round of motions to dismiss demonstrates that the Court has dedicated significant time to assessing the pleadings and issues in this case. A status conference would allow the parties to report on the implications of the Court’s resolution of the pending motions to dismiss and for reconsideration and thus serve to harmonize the relief requested and avoid needless wheel-spinning.

#### **A. A Status Conference Is Appropriate to Expedite Disposition of the Case.**

The relief requested in the motion for reconsideration could impact the Court’s ruling on the sufficiency of the pleadings, because American has proposed an amended complaint that addresses issues raised in the outstanding motions to dismiss. It will be inefficient and wasteful of the Court’s time to decide the outstanding motions to dismiss before American can include these additional allegations, with the risk that another round of motion practice with the attendant burden will be necessary. The parties and the Court would benefit by ensuring that if American’s proposed amended pleading is allowed, the new claim is also addressed in the current round of motions to dismiss.

#### **B. Setting an Appropriate Timeline Will Ensure the Case Is Not Needlessly Protracted.**

A status conference will allow the parties to confer with the Court on the current pretrial schedule in light of the outstanding motions. The parties could report on the status of discovery,

and American could report on the progress of its chapter 11 case. With this background, the Court's guidance on how to proceed will ensure the case moves forward on a timeline that makes sense and is not protracted due to lack of management.

**C. Defendants Rescinded their Initial Agreement to Join in this Request.**

Defendants initially agreed with American that a status conference with the Court after the present motions were briefed would be "productive." In response to American's appeal that defendants join in this request for a status conference, Travelport said it "agrees with Sabre and Orbitz that it would be more productive to hold a status conference after the briefing on the motions to dismiss is completed." (Exh. A) After briefing was done, and American requested defendants to join its request for a status conference (Exh. B), Travelport claimed it only agreed with its co-defendants that any status conference would be premature prior to completion of briefing. (Exh. C) All defendants now oppose having the status conference. *Id.* Nevertheless, American files this request because this is a particularly opportune time for the Court to be apprised of the case status, to allow it to most efficiently consider and resolve the outstanding motions and set the pretrial schedule going forward.

**CONCLUSION**

For these reasons, American respectfully requests that the Court schedule a Rule 16 status conference at its convenience to allow the parties to update the Court on the status of this important dispute and to ensure fair and efficient adjudication of this case.

Dated: February 6, 2012

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Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF  
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**CERTIFICATE OF CONFERENCE**

I certify that counsel for American conferred with counsel for the defendants concerning this request for a status conference, but agreement could not be reached with any defendant.

s/ Yolanda Cornejo Garcia  
Yolanda Cornejo Garcia

**CERTIFICATE OF SERVICE**

I 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 Rules 5.1(d) this 6th day of February 2012.

s/ Anna Rotman  
Anna Rotman