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 GRANTING PLAINTIFF'S MOTION
TO COMPEL TRAVELPORT DEFENDANTS

Pending before the Court is Plaintiff American Airlines, Inc. ("American")'s Motion to Compel Travelport Defendants ("Motion to Compel") [doc. # 256], filed March 9, 2012. In the underlying dispute, American has alleged that Travelport has, in essence, engaged in conspiracy and monopolistic and anticompetitive practices in violation of the Sherman Act by preventing American from providing an alternative means to distribute airline tickets to travel agents. American also claims that Travelport tortiously interfered with American's existing and prospective contractual relationships.

In its motion, American asserts that it has made repeated attempts over the past several months, through over forty letters and multiple conferences, to reach a compromise with Defendants Travelport Limited and Travelport, L.P. (collectively referred to as "Travelport") concerning an electronic search for documents from sixteen current and former Travelport employees that allegedly have knowledge relevant to American's claims. (Plaintiff's Motion to Compel ("Pl.'s Mot.") at 1.)[1] American claims that Travelport has refused to search the

[1] American seeks an electronic search of the files of Peg Cassidy, Ron Cole, Steve Croft, Michael Barbieri, Tony Basoukeas, Vicki Boyd, Jeff Herold, Simon Nowroz, Shaun Redgrave, Marla Rosenbloom, Lana Southwick, Nada Treckler, Michael Wake, Mike Walker, Jan West, and Caroline Wilkinson. (Pl.'s Mot. at 8; Plaintiff's Reply in Support of Motion to Compel ("Pl.'s Reply") at 1.) American also requested a search of the files of Fergal Kelly initially, and Travelport conceded to the need to search his files. American dropped its request to search the files of James Young. (Pl.'s Reply at 1.)

electronic files of these employees using a set of agreed upon search terms, even though American believes they contain responsive documents. (*Id.*)

Travelport filed a response to American's motion on March 30, 2012. Travelport claims that American already has any responsive documents that many of these employees would have because Travelport has already produced more than 1.2 million documents regarding deceptive trade practices and breach of contract, including all documents from: (1) litigation between the parties in Cook County, Illinois ("Cook County case"); (2) a Civil Investigative Demand issued by the U.S. Department of Justice ("DOJ investigation"); and (3) searching the files of twenty-six current and former Travelport employees using more than 100 search terms that Travelport negotiated with American. (Defendants' Response in Opposition to Motion to Compel ("Defs.' Resp.") at 1.) Travelport generally asserts that it has already produced documents for most of the sixteen employees as part of the Cook County case or the DOJ investigation so a search of their files would not yield any additional documents. (Defs.' Resp. at 5–9, 14; Defendants' Appendix to Response in Opposition to Motion to Compel ("Defs.' App.") at Exs. 18, 19.) As to five of the sixteen employees, Travelport claims that a search of these employees' files is also duplicative because a search of the files of other Travelport employees has already produced all possible responsive documents. (Defs.' Resp. at 10–13.) As to nine of the sixteen employees, Travelport further argues that they had no role in making one of the decisions at issue in this case. (Defs.' Resp. at 5–9.) Additionally, Travelport asserts that the burden and expense of a search of the files of Peg Cassidy, Travelport's in-house counsel, far outweighs the reward, since many of her files are privileged. (Defs.' Resp. at 11–12). Finally, Travelport claims that American's motion is untimely since the parties have been discussing the subject matter of the motion since October 2011. (Defs.' Resp. at 15–16).

Initially, this Court must determine whether American's motion was timely filed. "Courts generally look to the deadline for completion of discovery when assessing the timeliness of motions to compel." *Asghedom v. Fed. Reserve Bank of Dallas*, No. 3:08-CV-2289-O-BK, 2010 WL 4876198, at *1 (N.D. Tex. Nov. 24, 2010) (citing *Days Inn Worldwide, Inc. v. Sonia Invs.*, 237 F.R.D. 395, 397 (N.D. Tex. 2006)). Parties should first attempt to resolve discovery disputes by agreement before resorting to a motion to compel. *See Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988).

In this case, American's motion was filed nearly two months before the May 1, 2012 document production discovery deadline. Additionally, the motion was only filed after numerous failed attempts to reach a compromise with Travelport as to the employees whose files would be searched. Since American has made extensive efforts to avoid filing this motion through communications with Travelport and has also filed its motion well before the discovery deadline, this motion is timely.

Federal Rule of Civil Procedure ("Rule") 26(b)(1) permits parties to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). However, a court may limit discovery if the "the discovery sought is unreasonably cumulative or duplicative or . . . the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2)(C). Ultimately, "there is a general policy of allowing liberal discovery in antitrust cases, particularly where allegations of monopolization are involved." *Centeno Supermarkets, Inc. v. H.E. Butt Grocery Co.*, No. SA-83-CA-72, 1987 WL 42402, at *3 (W.D. Tex. Sept. 2, 1987) (citing *Kellam Energy, Inc. v. Duncan*, 616 F. Supp. 214, 217 (D. Del. 1985)).

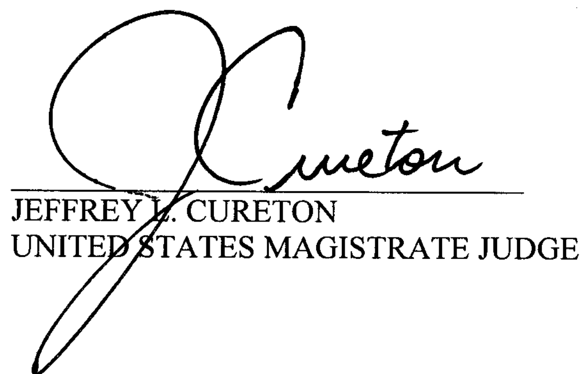
In addition, Rule 34 permits parties to obtain electronically stored information through discovery. *See In re Ford Motor Co.*, 345 F.3d 1315, 1316–17 (11th Cir. 2003). A party resisting the production of relevant electronically stored information must submit evidentiary proof "that the information is not reasonably accessible because of undue burden or cost." *See* Fed. R. Civ. P. 26(b)(2)(B); *see also Auto Club Family Ins. Co. v. Ahner*, No. 05-05723, 2007 WL 2480322, at *3 (E.D. La. Aug. 29, 2007).

As stated above, Travelport claims that it has already produced relevant documents from most of the employees American has identified as part of the Cook County case and the DOJ investigation. Travelport has not, however, satisfactorily demonstrated that a search of these employees would produce purely duplicative documentation. Apparently, the timeframe of information sought in the Cook County case is much shorter than in this case. (Pl.'s Mot. at 10; Pl.'s Reply at 5–6.) Furthermore, the Cook County case involves claims for breach of contract and deceptive trade practices, whereas the claims at issue here are broader and include antitrust, monopoly, conspiracy, and tortious interference claims. (*Id.*) While both the DOJ investigation and this case concern antitrust violations, it appears that the DOJ, not American, set the search parameters for their investigation. *See, e.g.*, 15 U.S.C. § 57b-1. Travelport has never asserted that the search parameters used in the DOJ investigation, including the search terms and time period searched, are identical to the search parameters set by the parties here, which means that a search of the requested employees could yield additional documents not found as a part of the DOJ investigation. Additionally, neither the Cook County case nor the DOJ investigation pertains to American's claims for tortious interferences. (*See* Pl.'s Mot. at 10; Pl.'s Reply at 1, 5–6.)

Travelport also seems to concede that it is highly possible that some documents have not already been discovered through the Cook County Case, the DOJ investigation, or through the search of the files of other employees.[2] Finally, American points out that the job descriptions and responsibilities of the requested employees indicate that the named individuals are likely to have documents that are relevant to American's claims. (Pl.'s Mot. App. 23; Pl.'s Reply at 7–9.) Travelport has also failed to show how much additional expense or burden these searches would produce because it has only provided the cost it has incurred thus far, not the potential cost of any additional production. (*See* Defs.' App. at 7.) Travelport must perform the requested searches so that American can have the opportunity to obtain any relevant information that has not already been discovered. Accordingly, the Court concludes that American's Motion to Compel Travelport Defendants should be GRANTED.

Based on the foregoing, it is ORDERED that American's Motion to Compel Travelport Defendants [doc. # 256] is GRANTED. It is further ORDERED that Travelport shall use the parties' negotiated search terms to review the electronic records in the possession of the sixteen employees named in footnote 1, *supra*, and produce responsive documents **no later than 4:00 p.m. on June 22, 2012.**

SIGNED May 29, 2012.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE

[2] For example, in the Declarations of Steve Croft and Ron Cole provided by Travelport along with its response, both men note that a review of their superior's files would reveal "many of my communications related to travel agencies." (Defs. App. at Exs. 17, 18). These statements seem to foreclose the assertion that there are **no** more relevant documents that might be located through a search of the additional employees' files.