

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

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American Airlines, Inc., a Delaware corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 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. )

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**Civil Action No.: 4:11CV00244**

**SABRE INC. AND SABRE TRAVEL INTERNATIONAL LTD.’S MEMORANDUM  
IN SUPPORT OF THEIR MOTION FOR LEAVE TO INTERVENE**

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## INTRODUCTION

In this lawsuit American Airlines, Inc. (“AA”) alleges, among other things, that Travelport Limited and Travelport, LP (collectively “Travelport”) and proposed-intervenors Sabre Inc. and Sabre Travel International Ltd. (collectively “Sabre”) have conspired to foreclose AA from introducing, marketing and selling its Direct Connect system for distributing AA tickets through travel agents, in violation of Section 2 of the Sherman Act. AA has named Travelport as a defendant. AA has not yet named Sabre as a defendant, though it has identified Sabre as an alleged co-conspirator in its complaint and threatened to bring a similar antitrust suit against Sabre.

Sabre, Travelport, and AA’s Direct Connect all provide computerized reservations systems (“CRSs”) used by travel agents, corporate travel purchasers, and consumers to find and book flights. Sabre Inc. is the operating company that owns Sabre Travel International Ltd., the entity that contracts with the airlines to provide reservation services. The CRSs owned by Sabre and Travelport are known as global distribution systems (“GDSs”). GDSs operate globally and allow travel agents and corporate travel purchasers to, among other things, search and comparison shop airfares from multiple airlines, hotels, rental car companies and other travel providers. By contrast, AA’s Direct Connect allows travel agents, corporate travel purchasers, and consumers only to search for and book AA flights. It does not allow comparison shopping across airlines.

AA alleges that Travelport has conspired with unnamed co-conspirator GDSs to block entry of AA’s Direct Connect into the market as a nascent CRS competitor. It is clear that the other principal unnamed GDS is Sabre. AA dedicates an entire section of its complaint to Sabre’s allegedly anticompetitive actions, identifying Sabre by name.

In order to preserve its rights and protect its interests, Sabre moves to intervene in this case to defend against AA's allegations against Sabre, to dispute AA's allegations that Sabre is involved in an unlawful conspiracy, and to bring Sabre's own antitrust claims against AA. Sabre's own allegations will implicate and contradict many of the facts alleged in AA's suit against Travelport. For example, AA alleges that Sabre and Travelport's actions have foreclosed AA's Direct Connect from the market. By contrast, as shown in the attached proposed complaint, Sabre will allege that AA has unlawfully conditioned access to AA's complete airfare information on use of AA's Direct Connect product. (*See* S APX A at 8-11, Proposed Complaint ¶¶ 16-23.) AA has forced travel agents and corporate travel purchasers to accept a CRS product they do not want as part of its campaign to undermine the pro-competitive fare transparency that the Sabre GDS enables.

Any resolution of the claims already at issue in this case without Sabre's participation would impair Sabre's ability to protect its interests in a separate suit. The existing parties in this suit will not adequately represent Sabre's interests. Sabre therefore timely moves to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, because Sabre's defense and proposed claims share questions of law and fact with the claims at issue here, Sabre moves for permissive intervention under Rule 24(b)(1)(B). Judicial economy mandates that all of these claims, all flowing from the same underlying facts, be adjudicated in this forum.

If the Court grants Sabre's motion, Sabre intends to file the attached antitrust claim against AA. (*See generally* S APX A, Proposed Complaint.) Sabre also intends to move to dismiss allegations currently asserted against Sabre under Federal Rule of Civil Procedure 12(b)(6).

## BACKGROUND

### I. Allegations Against Sabre in AA's Complaint

AA did not limit allegations in its Complaint to Travelport and Orbitz alone. Rather, the Complaint attacks the GDS industry as a whole for having “engaged in a broad and unlawful multi-part anticompetitive scheme.” (Cmplt. ¶ 7.) The Complaint makes clear that Sabre is part of this alleged scheme. It identifies Sabre by name as one of five GDSs that have allegedly conspired with Travelport to maintain “the GDS monopoly position.” (*Id.* ¶ 8(v); *see* ¶ 3 (listing Sabre along with Amadeus and the three GDSs controlled by Travelport: Galileo, Apollo, and Worldspan).) In fact, an entire section of the Complaint is labeled “Contemporaneous Actions by Sabre.” (*Id.* ¶¶ 91-96.)

The Complaint lodges allegations of anticompetitive conduct against *all* of the GDSs. It alleges that “*the GDSs* charge the airlines a supracompetitive ‘booking fee’ for each reservation that a travel agent makes through a GDS,” (*id.* ¶ 4 (emphasis added)), and that the “[*t*]*he GDSs* frequently share with the travel agents that use their systems a portion of the supracompetitive booking fees they charge the airlines,” creating an incentive for agents to use the GDS that charges the highest booking fee (*id.* ¶ 5 (emphasis added)).

It goes on to charge that “Travelport, Orbitz, *and other industry participants* have, individually and collectively, retaliated against American in an unprecedented manner in response to American’s direct connect technology initiative” – an initiative AA says will put competitive pressure on the “dominance” of the GDS model. (*Id.* ¶ 9 (emphasis added).) “Travelport, Orbitz, and *other industry participants* have undertaken attacks against American that have been swift and punitive.” (*Id.* (emphasis added).) AA complains that Travelport doubled AA’s booking fees for reservations made outside the United States and that Travelport caused AA’s flights to be displayed less frequently relative to other carriers’ flights. (*Id.* ¶10.)

In a section devoted to “Contemporaneous Actions by Sabre,” AA levies identical attacks against Sabre. (Cmplt. ¶¶ 91-96 (describing how Sabre doubled booking fees and biased display of AA’s flights in January 2011).) There is no question that the “other industry participants” AA alludes to throughout the Complaint include Sabre.

AA treats Travelport as little more than a representative example of what it characterizes as a systemic attack on the airlines. Entire sections of the Complaint omit all but fleeting references to Travelport in favor of a more general discussion of the GDS industry. (See Cmplt. ¶¶ 26-34, 35-42.) And several of the specific allegations in the Complaint target not just Travelport, but the GDS industry as a whole. It alleges that GDSs have collectively been involved in the following:

- Requiring exclusionary provisions in participating carrier agreements. “Travelport *and other GDS providers* have staggered the termination dates of their agreements with participating airlines, which maximizes their bargaining leverage against each carrier. An airline negotiating with a GDS knows that its competitors have signed agreements that contain a [Most-Favored Nation clause]. If the airline does not agree to the MFN, it knows it will be placed at a significant competitive disadvantage relative to other airlines that are paying ‘discounted,’ albeit supracompetitive, booking fees to *the GDS*. . . . American could not survive if excluded from or materially disadvantaged in the Travelport GDSs *or any other significant GDS*.” (Cmplt. ¶¶ 49-50 (emphasis added).)
- Requiring exclusionary terms in travel agency subscriber agreements. “Travelport *and other GDS providers* enter into long term contracts with travel agents . . . [that] help to ensure that airlines have no choice but to participate in *each GDS* if they want to be able to sell tickets through travel agents that subscribe to that GDS.” (*Id.* ¶¶53-54 (emphasis added).)
- Exclusionary acts and agreements targeting applications developers. “*GDSs* have for years maintained restrictive covenants in their agent/GDS contracts preventing the use of agency tools which blended GDS airline inventory with non-GDS airline inventory – all in a monopolistic attempt by the GDSs to prevent comparative displays and non-GDS bookings . . .” (Cmplt. ¶ 75 (quoting Jan. 5, 2010 ARTA Press Release) (emphasis added).)

- Retaliatory acts upon AA. “Travelport, Orbitz and *other industry participants* have, in fact, stood ‘shoulder to shoulder’ in punishing American for promoting the use of technology that could disrupt their monopolistic distribution system.” (Cmplt. ¶ 77 (emphasis added).)

In sum, AA’s Complaint alleges that

Travelport, Orbitz, and *other industry participants* intended to do more than merely punish and coerce American. Their attacks sought to send a message to other airlines, travel agents, and technology providers that efforts intended to erode the power of the GDS distribution model and/or to introduce more competition into the provision of airline booking services will be met with a quick, collective, and harsh response.

(Cmplt. ¶ 97 (emphasis added).)

## **II. AA’s Threats To Sue Sabre**

Sabre need not speculate whether AA plans to file a similar antitrust suit against it based only on AA’s Complaint in this case. AA has explicitly threatened to sue Sabre for antitrust violations like those at issue here. (*See* S APX B at 56, 5/3/11 Gilliland Declaration ¶ 4.)

On January 10, 2011, AA filed a contract action and request for TRO against Sabre in Tarrant County court. During several conversations in and around mid-January, after AA filed suit, AA executives told Sabre’s Chairman and CEO Michael S. Gilliland and other Sabre executives that AA intended to file an antitrust suit against Sabre if the parties did not agree to a temporary stand down of the ongoing litigation in order to engage in further contract negotiations. (*See id.*) Shortly thereafter, AA and Sabre entered a Stand Down Agreement to try to work out their differences without the overhang of pending litigation. (*See* S APX C at 57, Stand Down Agreement, introductory paragraph.) AA specifically agreed in the Stand Down not to file any antitrust claims against Sabre, and Sabre agreed not to commence litigation against AA. (*See id.*, Stand Down Agreement ¶ 6.) The Stand Down expires on June 1, 2011.<sup>1</sup>

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<sup>1</sup> This Motion to Intervene does not violate the Stand Down Agreement because Sabre has not “commence[d] any litigation against AA.” American commenced this litigation; Sabre merely



### **III. Sabre's Claims Against AA**

Not only do AA's claims against Sabre parallel its claims against Travelport, as shown in the attached complaint, Sabre's own antitrust claims against AA implicate many of the same factual questions at issue in AA's complaint against Travelport. (*See* S APX A at 8-11, Proposed Complaint ¶¶ 16-23.) For example, AA alleges that Sabre and Travelport have foreclosed AA's Direct Connect from entering the CRS market. To the contrary, the truth is that AA has engaged in anticompetitive conduct to force travel agents and corporate travel purchasers to use Direct Connect against their will.

Among other things, GDSs allow travel agents, corporate travel purchasers, and consumers to comparison shop for airfares easily and transparently. Comparison shopping among airfares forces the airlines to keep fares competitive. Not surprisingly, AA and some other airlines prefer that customers not be able to comparison shop so readily. For this reason, AA has embarked on a campaign to drive travel agents, corporate travel purchasers, and consumers away from GDSs and towards AA's own proprietary CRS, Direct Connect. Travel agents, corporate travel purchasers, and consumers cannot view competing airlines' fares or flights on Direct Connect.

In furtherance of its campaign, AA has engaged in a series of anticompetitive acts to force travel agents and corporate travel purchasers to switch away from the Sabre GDS. Among other things and as alleged in the attached proposed complaint, AA has coerced travel agents and corporate travel purchasers who want to view and book the full range of AA's fare information to use AA's Direct Connect product instead of a GDS. AA has engaged in this and other

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seeks to join the fray. Moreover, American violated the spirit, if not the letter, of the Stand Down Agreement by filing suit against Travelport naming Sabre in its complaint.

anticompetitive conduct in order to acquire and maintain monopoly power over flight routes where it has a dominant share, as well as to foreclose competition in the CRS market.

## ARGUMENT

### I. Sabre Has A Right To Intervene As A Defendant To Protect Its Interests

Federal Rule 24(a)(2) provides for intervention as of right “[o]n timely motion . . . [when the applicant] claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the [applicant]’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2).

This motion is timely. AA filed suit on April 12, 2011, less than two months ago. *See Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977) (“By filing their petition less than one month after learning of their interest in this case, the appellants discharged their duty to act quickly,” even though the court had already entered its order and the proposed-intervenors had already been affected by the decree.).

Rule 24(a)(2) requires the applicant to show three additional elements: (1) that it has an interest relating to the property or transaction involved in the action; (2) that disposition of the action may impair the applicant’s ability to protect its interest “as a practical matter”; and (3) that its interest is not adequately represented by the present parties. Fed. R. Civ. P. 24(a)(2). *See, e.g., Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir. 1970).

*First*, Sabre has a protectable interest in these proceedings. That interest must be a “direct, substantial, legally protectable interest,” but it does not have to be “of a legal nature identical to that of the claims asserted in the main action . . . . All that is required by the terms of the rule is an interest in the property *or other rights* that are at issue.” *Diaz*, 427 F.2d at 1124 (citation omitted) (emphasis added). Sabre anticipates that AA will bring antitrust claims against

it that are identical to the claims AA alleges against Travelport. The current suit therefore implicates Sabre's rights. Sabre has more than a mere "betting interest" in this litigation, *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1380-81 (7th Cir. 1995) (citations omitted), because Sabre is all but named as a defendant. *See LG Electronics Inc. v. Q-Lity Computer Inc.*, 211 F.R.D. 360, 365 (N.D. Cal. 2002) (allowing Apple to intervene as of right in a patent suit to oppose the plaintiff's motion to amend its infringement contentions to include Apple products).

Even if AA were not to bring suit against Sabre, Sabre's rights and interests would nevertheless be implicated here. AA has alleged that Sabre is participating in a conspiracy. AA has alleged that certain actions taken by Sabre violate the antitrust laws. Resolution of these claims will, at the very least, implicate Sabre's continuing ability to engage in its business activities, including participating in trade associations with Travelport. Sabre has a protectable interest in raising its defenses in the instant suit.

*Second*, disposition of this action may impair Sabre's ability to protect its interest "as a practical matter." Sabre need not show that collateral estoppel would prevent it from raising its arguments in a separate proceeding. *Diaz*, 427 F.2d at 1124. It is enough that the parties to this suit may take legal positions against Sabre's interest. AA claims that Travelport and Sabre conspired to monopolize the market for airline-ticket distribution. AA likely will use this suit to discover evidence against Sabre and otherwise to lay groundwork for a suit against Sabre. Sabre is powerless to defend itself without intervening here. On May 25, 2011, Travelport filed a Rule 12(b)(6) motion to dismiss AA's claims against it, including the conspiracy claim. (D.E. 37.) The Court's legal rulings on those issues could impact AA's case against Sabre. Foreclosing

Sabre's participation in these proceedings would therefore hurt Sabre's interests as a practical matter, which is all Rule 24(a)(2) requires.

*Third* and finally, the present parties do not adequately represent Sabre's interests. In defending the conspiracy claim against it, Travelport has no incentive to ensure that its positions will not affect Sabre's defenses. Again, AA has every incentive to use this case to prepare for a future suit against Sabre without Sabre present to defend its interests. Rule 24(a)(2) requires this Court to allow Sabre to intervene in this case as of right.

## **II. Permissive Intervention Is Appropriate Because AA's Claim Against Sabre and Sabre's Own Claim Against AA Share Questions Of Law and Fact With This Case**

Even if this Court finds that Sabre lacks a right of intervention, it should exercise its discretion to permit Sabre to intervene. Permissive intervention is appropriate where the applicant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "The 'claim or defense' portion of Rule [24(b)(1)(B)] has been construed liberally." *Newby v. Enron Corp.*, 443 F.3d 416, 422-23 (5th Cir. 2006) (citing *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975)); see also *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940) ("This provision [Rule 24(b)(1)(B)] plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.").

AA has expressly threatened to bring claims against Sabre that are similar, if not identical, to the claims it makes against Travelport. Likewise Sabre's antitrust claims against AA share common questions of fact with AA's claims in this case.

Sabre is one of five GDSs that AA alleges has engaged in anticompetitive conduct to monopolize the airline-ticket distribution market. (See Cmplt. ¶ 3.) AA's Complaint refers to Sabre as a co-conspirator with Travelport and includes an entire section on Sabre's

contemporaneous actions. (*Id.* ¶¶ 91-96.) The Complaint alleges that Sabre charged supracompetitive booking fees and retaliated against AA by manipulating the display of AA's fares in its systems. (*Id.* ¶¶ 91-96.) AA has threatened Sabre with an antitrust suit that will raise claims identical to those at issue here. (*See* S APX B at 56, Gilliland Declaration ¶ 4.) Clearly Sabre's defense to that suit will share common questions of law and fact with this case.

Sabre's own claims against AA also share fact questions with this case. Contrary to AA's assertions here, AA has engaged in anticompetitive conduct to, among other things, force travel agents and corporate travel purchasers to use its Direct Connect system against their will instead of the GDSs, including Sabre's GDS, for booking tickets on American's flights.

AA alleges that the GDSs have charged the airlines supracompetitive booking fees so that they can then pay travel agents incentives to use the GDSs instead of AA's Direct Connect. (*See* Cmpl. ¶¶ 4-5.) Sabre, by contrast, alleges that AA has unlawfully tied access to its full fare content to a product that travel agents do not want in order to maintain or acquire monopoly power over its dominant flight routes and to foreclose competition.

Sabre's defenses and its own claims share many questions of law and fact with AA's claims already in this suit. The threatened claims against Sabre are likely identical to the current claims against Travelport. And Sabre will show that contrary to AA's claims, it is AA that has engaged in anticompetitive conduct to, among other things, force travel agents and corporate travel purchasers to take an inefficient alternative to Sabre's GDS. This Court should exercise its discretion to permit Sabre to intervene in this case.

## **CONCLUSION**

Sabre respectfully asks this Court to allow it to intervene as of right as a defendant in this case. In the alternative, Sabre asks the Court to exercise its discretion to permit Sabre to

intervene because Sabre's defense of AA's anticipated claims against it and Sabre's own claims against AA share common questions of fact with AA's claims in this case.

Dated: June 1, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on this 1<sup>st</sup> day of June, 2011, a true and correct copy of the foregoing document was filed electronically via the CM/ECF system, which gave notice to all counsel of record.

*/s/ Scott A. Fredricks* \_\_\_\_\_

Scott A. Fredricks