## 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.

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;

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.

**Civil Action No. 4:11-cv-00244-Y** 

# DEFENDANT ORBITZ WORLDWIDE, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Orbitz Worldwide, LLC ("Orbitz") respectfully moves to dismiss plaintiff
American Airlines, Inc.'s ("American") Third and Fourth Claims for Relief (the only claims
asserted against Orbitz) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As
pleaded, American's First Amended Complaint fails to state a claim upon which relief can be
granted as to Orbitz. In support of this motion, Orbitz files its Brief in Support of its Motion to
Dismiss, an Appendix and a Proposed Order.

This motion is made on the grounds that American's First Amended Complaint fails to state a claim against Orbitz as a matter of law because: (1) the Subscriber Services Agreement, an alleged unlawful exclusive dealing agreement which forms the basis of American's claims against Orbitz, is not alleged to—and does not—foreclose a "substantial share" of any pleaded market, and American's Sherman Act claims against Orbitz thus fail as a matter of law. See Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320 (1961); Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2 (1984); Apani Southwest, Inc. v. Coca-Cola Enterprises, Inc., 300 F.3d 620 (5th Cir. 2002); Star Tobacco, Inc. v. Darilek, 298 F. Supp. 2d 436 (E.D. Tex. 2003). (2) Orbitz was a wholly owned subsidiary of defendant Travelport, the other party to the Subscriber Services Agreement, when that agreement was executed, and has remained an affiliate of Travelport at all times since then, and is therefore legally incapable of conspiring with Travelport for purposes of the antitrust laws. See Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). And, (3) the remaining allegations in the First Amended Complaint fail to adequately plead Orbitz's involvement or participation in any conspiracy to monopolize any pleaded market, as required by the Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).

For these reasons and those stated in its supporting Brief and Appendix, as well as in any Reply Brief and at oral argument, if any, Orbitz respectfully requests that the Court dismiss with prejudice the First Amended Complaint's Third and Fourth Claims for Relief against it for failure to state a claim upon which relief can be granted.

#### DATED: June 15, 2011 Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

On June 15, 2011, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, Fort Worth Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

<u>s/ Christopher S. Yates</u>Christopher S. Yates

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