



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.

s/ Christopher S. Yates  
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