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

AMERICAN AIRLINES, INC., 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

TRAVELPORT 'S MEMORANDUM IN SUPPORT OF MOTION TO STAY DISCOVERY PENDING A DECISION ON TRAVELPORT'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

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INTRODUCTION

Defendants Travelport Limited and Travelport, LP (collectively, "Travelport") oppose plaintiff American Airlines, Inc.'s ("AA's") attempts to obtain expedited discovery through a premature Rule 16(a) case management conference and renew the motion to stay discovery pending a decision on Travelport's dispositive Rule 12(b)(6) motion. Travelport has filed a new Rule 12(b)(6) motion that addresses AA's First Amended Complaint (the "Amended Complaint"). Like its predecessor, this motion would dispose of all claims against Travelport and, if granted, would obviate the need for expensive antitrust discovery.

This case is not a genuine antitrust action to protect consumers but an attempt by AA to enhance its leverage in the stalled negotiations over contracts with Travelport that are set to expire this summer. With contract expirations approaching, AA has been attempting to turn up the heat on Travelport by asking that antitrust discovery begin early so that AA can start running up Travelport's expenses before the contracts expire and before Travelport's motion to dismiss is even decided.

Discovery at this stage of the litigation, however, remains premature. Although AA amended its complaint, it failed to correct any of the fatal defects in the original. AA continues to rely on an implausible product market – Travelport services to travel agents that subscribe to Travelport. This is a market in which Travelport is a monopolist by definition. The market excludes travel agents who choose to use any of Travelport's competitors. Courts routinely dismiss monopolization claims based on such contrived "single-brand" markets.

AA has yet to provide any coherent explanation as to why it needs discovery prior to the Court's decision on Travelport's dispositive motion. All that we have is conjecture about a future preliminary injunction request that may or may not be necessary depending on what actions Travelport may or may not take after the contracts expire. Such conjecture about a future preliminary injunction does not justify burdening the parties and third parties with far-reaching antitrust discovery. Nor should the Court have to bear the burden of managing such discovery prior to a determination that AA has even stated a claim upon which relief can be granted.

The scope of relevant discovery in an expedited proceeding is uncertain as AA remains silent about what legal grounds, if any, would entitle it to a preliminary injunction. What little AA has said about fast-track discovery reveals that it would be a large and expensive undertaking. AA has recently narrowed its proposed documents requests from its earlier "Non-Exhaustive List of Document Preservation Categories." *Compare* App. at 6-10 (attaching Hartmann Letter of April 27, 2011) *with* App. at 13-15 (attaching Rothman Letter of June 10, 2011). But AA's requests remain far reaching– asking for much more than copies of documents Travelport produces to the Department of Justice ("DOJ") or in the Illinois contract litigation. Moreover, it is impossible to determine whether these document requests are relevant, much less narrowly tailored, to AA's needs because AA has not yet explained the legal grounds upon which it would seek preliminary relief.

The Court need not intervene to order expedited discovery because of a possible preliminary injunction motion that may or may not be filed. The overwhelming weight of the relevant precedent, designed to promote judicial economy and avoid wasteful

discovery proceedings, supports deferral of antitrust discovery until a decision on the dispositive motions that have already been filed.

PROCEDURAL BACKGROUND

Relief Requested. AA served its original complaint in April. After Travelport moved to dismiss, AA superseded its original complaint by filing an amended complaint. Based on its single-brand product market, AA seeks treble damages for alleged antitrust violations occurring in the United States and several European nations. The claimed antitrust violations are alleged to have started more than four years ago.

Despite the fact that AA initiated this case in April and amended its complaint, it still does not seek a temporary restraining order or a preliminary injunction grounded in any factual allegations of imminent harm. Rather, the Amended Complaint seeks a "permanent injunction" to bar "unlawful retaliatory conduct." Am. Compl. at ¶ 159. It also requests "such other permanent injunctive relief, as the Court deems appropriate, designed to create market conditions capable of dissipating Travelport's unlawfully maintained monopoly power." *Id*. at ¶ 160.

Scheduling and Case Management. Under the Federal Rules, a Scheduling Order issued by the Court is due on July 26. Fed. R. Civ. P. 16(b). This is the earlier of 120 days after service or 90 days after a defendant in this case first appeared. *Id*. The parties must hold a discovery conference at least three weeks before the Scheduling Order is due. *Id*. at 26(f). As such, AA, Travelport, Sabre, and Orbitz must hold their Rule 26(f) discovery conference by July 5 and thereafter submit their Joint Status Report to the Court. The Federal Rules bar either side from conducting discovery at this time absent compelling circumstances justifying accelerated proceedings.

Motions Pending. When AA amended its complaint, Travelport and Orbitz each had a dispositive Rule 12(b)(6) motion to dismiss pending. Also pending was Travelport's motion to stay discovery until the Court decided Travelport's Rule 12(b)(6) motion. AA's filing of an amended complaint renders moot each of these earlier motions addressing the original complaint. *See, e.g., Nowell v. Coastal Bend Surgery Ctr.*, 2011 U.S. Dist. LEXIS 10005, at *1-2 (S.D. Tex. 2011) (amended complaint renders earlier filed motion to dismiss moot). The parties stipulated that the defendants will file new Rule 12(b)(6) motions to dismiss directed at the Amended Complaint. Stipulation Concerning Response to Travelport's and Orbitz's Rule 12(b)(6) Motions to Dismiss the Complaint [Doc. No. 76]. Travelport today filed a new Rule 12(b)(6) motion challenging the Amended Complaint.[1]

ARGUMENT

Travelport's request for a discovery stay pending resolution of its dispositive motion is an unremarkable and sensible request. "[I]t is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (citation omitted).

I. The Court Has Broad Authority to Stay Discovery

"A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987). Although a stay of discovery is not automatic when a dispositive motion is pending, "[a] stay of discovery may be appropriate where the

[1] Travelport's Rule 12(b)(3) motion was also rendered moot by AA's filing of the Amended Complaint, but Travelport will not file a new Rule 12(b)(3) motion addressed to the Amended Complaint.

disposition of a motion to dismiss might preclude the need for discovery altogether thus saving time and expense." *Von Drake v. NBC*, 2004 U.S. Dist. LEXIS 25090, at *3 (N.D. Tex. 2004) (quoting in part *Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 436 (5th Cir. 1990)).

Among the factors that inform the Court's discretion are: the strength of the dispositive motion, the scope of relevant discovery, the burden of responding to discovery of this magnitude, and the need for immediate discovery. *See Von Drake*, 2004 U.S. Dist. LEXIS 25090, at *3; *Rio Grande Royalty Co. v. Energy Transfer Partners, L.P.*, 2008 U.S. Dist. LEXIS 112721, at *3-4 (S.D. Tex. 2008). Courts have wide discretion in determining whether these factors weigh in favor of deferring discovery proceedings until the potentially dispositive motion is decided. *Id.*

II. The Strength of Travelport's Motion to Dismiss Favors a Stay

The strength of Travelport's Rule 12(b)(6) motion weighs heavily in favor of a stay. In assessing whether the strength of a motion to dismiss favors a stay of discovery, the Court need not predict the ultimate outcome of the motion to dismiss. It is sufficient that "substantial arguments for dismissal" are made that "might preclude the need for discovery altogether thus saving time and expense." *Von Drake*, 2004 U.S. Dist. LEXIS 25090, at *2 (granting motion to stay).

Motions that may dispose of "many, it not all, of the claims asserted" carry more weight. *Id.* In contrast, courts provide less weight to motions directed at only a subset of the claims. *Ford Motor Co. v. U.S. Auto Club*, 2008 U.S. Dist. LEXIS 34240, at *3 (N.D. Tex. 2008) ("it is significant to note that defendant does not seek dismissal of the entire case" but rather only "injunctive and declaratory relief" for a portion of the claims). Travelport's motion to dismiss challenges the product market definition upon which the

antitrust case stands and further challenges the remaining state business tort counts on federal preemption grounds.

AA's entire Amended Complaint skates on thin ice. The antitrust claims depend on a single-brand product market, a rare exception in antitrust law. Since the governing Supreme Court decision in this area, no antitrust actions against a GDS – neither private nor public – have survived a motion to dismiss on this single-brand product market theory. Such a product market definition conflicts with established, modern antitrust precedent. AA's Amended Complaint is thus not the type of antitrust complaint that can provide the court, upon a quick review, with a high degree of confidence that it will survive a motion to dismiss. *See In re Graphics Processing Units Antitrust Litig*., 2007 U.S. Dist. LEXIS 57982, at *23-24 (N.D. Cal. 2007) ("Nor is this a case where it is almost certain that the complaint is viable, such as is often true where guilty pleas have already been entered in parallel criminal cases.").

Complaints relying on single-brand markets are routinely dismissed at the pleadings stage. *See Todd v. Exxon*, 275 F.3d 191, 200 n.3 (2d Cir. 2001) ("Cases in which dismissal on the pleadings is appropriate frequently involve … failed attempts to limit a product market to a single brand . . .."). In light of the potential for opportunistic litigation, courts will not allow plaintiffs to plead a single-brand product market except in the rarest of circumstances. A well developed body of law, including Supreme Court and Fifth Circuit precedent, delineates the limited circumstances in which plaintiffs can open the door to expensive monopolization litigation using an alleged single-brand product market. The alleged product market consisting of Travelport services for travel agents using Travelport does not fit this exception. This product market definition should be

federal court-tested before AA can open the doors to expansive and expensive antitrust discovery.

III. Stays Are Especially Appropriate for Antitrust Litigation

Motions to stay discovery pending a decision on a potentially dispositive Rule 12(b)(6) motion "are granted with substantial frequency" in antitrust litigation. *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 331, 336 (N.D. Ill. 2005). That antitrust litigation imposes extreme costs has been recognized by the Supreme Court. *Twombly*, 550 U.S. at 558-59.

Pointing to *Twombly*, a district court in this Circuit recently granted a motion to stay and stated that "[p]roving an antitrust conspiracy of unspecified timing and scope is precisely the type of 'sprawling, costly and hugely time-consuming undertaking'" that should not be rushed into. *Dowdy & Dowdy Partnership v. Arbitron, Inc.*, 2010 U.S. Dist. LEXIS 108798, at *5 (S.D. Miss. 2010) (quoting *Twombly*, 550 U.S. at 559). The district court concluded that the "equities and potential harm to the defendants . . . weigh[ed] heavily in favor of granting a stay of discovery" so as to avoid "very expensive" antitrust discovery. *Dowdy*, 2010 U.S. Dist. LEXIS 108798, at *6.

While *Twombly* did not "erect an automatic, blanket prohibition on any and all discovery before an antitrust plaintiff's complaint survives a motion to dismiss, . . . to allow antitrust discovery prior to sustaining a complaint would defeat one of the rationales of *Twombly*, at least when the discovery would be burdensome." *In re Graphics Processing Units Antitrust Litig.*, 2007 U.S. Dist. LEXIS 57982, at *23. It is now common practice, albeit not a categorical rule, for courts to defer discovery proceedings in complex antitrust cases until a decision on the dispositive motion. *Rio Grande Royalty Co.*, 2008 U.S. Dist. LEXIS 112721, at *2-4 (S.D. Tex. 2008) ("staying

discovery may be particularly appropriate in antitrust cases, where discovery tends to be broad, time-consuming and expensive"); *McLafferty v. Deutsche Lufthansa A.G.*, 2008 U.S. Dist. LEXIS 81627, at *6 (E.D. Pa. 2008) ("[D]elaying discovery until the Court can determine whether or not Plaintiffs have pled the facts necessary to proceed" with antitrust litigation will "help to streamline the expensive discovery process, and, thereby, minimize the burden on counsel, parties and the Court").[2]

1. Discovery burdens in this case will be substantial

There is no doubting that this lawsuit can be expected to impose significant discovery burdens on the parties, third parties, and the Court. *See* App. at 8-10 (attaching AA's Non-Exhaustive List of Document Preservation Categories). The time period of the business practices AA is challenging exceeds four years. The alleged antitrust violations occurred in geographic markets in Europe as well as the United States. AA is challenging the business practices of two GDSs (Travelport and Sabre) and an online travel agency (Orbitz).

Discovery in the case will require the Court to expend significant resources. As in all major litigations there is no doubt that issues relating to coordination and scheduling will confront the Court. In addition, discovery in a case of this magnitude will almost certainly result in some disputes over the scope of responses, privilege

[2] *See also In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 629 (7th Cir. 2010) (complaint must show "a sufficiently plausible case of price fixing to warrant allowing the plaintiffs to proceed to discovery"); *Coss v. Playtex Prods. LLC*, 2009 WL 1455358, at *1 (N.D. Ill. 2009) ("Antitrust cases are typical of the types of cases where discovery is so burdensome and costly to parties that a stay pending decision on a motion to dismiss may be appropriate."); *DSM Desotech Inc. v. 3D Sys. Corp.*, 2008 U.S. Dist. LEXIS 87473, at *6 (N.D. Ill. 2008); (granting stay of discovery pending resolution of motions to dismiss because "[a]s the Supreme Court, the Seventh Circuit, and this court have all recognized, discovery in any antitrust case can quickly become enormously expensive and burdensome on defendants."); *In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007) (staying discovery pending resolution of motions to dismiss and allowing very limited discovery during re-pleading because "the Supreme Court has recognized that staying discovery may be particularly appropriate in antitrust cases").

designations, confidentiality, and a host of other issues. The number of potential disputes will be exacerbated by the number of third parties involved in discovery, many of whom may come to the Court in an attempt to limit their burden and costs.

In short, this case fits well within the long-line of antitrust cases where courts have used their discretion to stay discovery pending a ruling on a motion to dismiss because of the significant costs this discovery would impose.

2. AA's expedited discovery requests are not narrowly tailored

In addition to the Non-Exhaustive List of Document Preservation Categories ("Non-Exhaustive List") that AA will seek absent a stay of discovery, *see* App. at 8-10, AA recently sent a letter to Travelport and Sabre counsel outlining the categories of documents it wants on an expedited basis. *See* App. at 13-15 (attaching Rothman Letter of June 10, 2011). Courts, however, will not grant expedited discovery unless the proposed requests are narrowly tailored to an articulated, time-sensitive need. *See Dimension Data North America, Inc. v. NetStar-1*, 226 F.R.D. 528, 532 (E.D.N.C. 2005) (denying expedited discovery request that was not "narrowly tailored"); *Philadelphia Newspapers v. Gannett Satellite Info. Network, Inc*., 1998 U.S. Dist. LEXIS 10511, at *6 (E.D. Pa. 1998) (same). AA's recent letter request is neither narrow, nor tailored to a specific need.

AA's recent letter request outlines nine broad categories of documents that cover Travelport's U.S. and international operations. These requests go far beyond merely asking Travelport to provide copies of documents produced to the DOJ or in the Illinois contract litigation. AA seeks seven other categories of documents that are broader in several respects and would require Travelport to conduct additional intrusive and expensive document searches, collections, and reviews. For example, AA's requests are

not limited to Travelport's U.S. operations. The alleged "retaliatory actions" highlighted in the Amended Complaint occurred outside the United States and thus AA's expedited discovery requests cover Travelport's international operations. *See* App. at 13-15, bullet 5 (Rothman Letter of June 10, 2011) (requesting documents about Travelport's alleged increases in AA booking fees and so-called "display bias," both of which are based on events occurring outside the United States).

The very fact that AA identifies seven categories of documents in addition to its requests for the documents produced to the DOJ and in Illinois shows that AA wants Travelport to bear the expense of collecting, reviewing, and producing documents Travelport hasn't already collected. This belies AA's assertion that "Travelport … will soon be producing to the DOJ largely the same documents that American will be requesting." AA's Rule 16(a) Reply [Doc. No. 73] at 3. Moreover, AA asks Travelport to bear the additional expense of collecting, reviewing, and producing these documents on an expedited basis "in which the time to respond to discovery requests is shortened." *Id*. at 3.

AA's proposed discovery appears to be designed to advance AA's short term commercial objectives and not any fast-track antitrust case to remedy consumer harm. AA is seeking Travelport's internal discussions and strategies for the renegotiation of the AA-Travelport contract. *See* App. at 13-15, bullets 3-4 (Rothman Letter of June 10, 2011). While it is understandable that AA would like this proprietary information for the current round of contract negotiations, this lacks any connection to any alleged antitrust violation crying out for quick judicial intervention.

Nor does AA's letter say whether this is the full scope of discovery that AA would seek on an expedited basis or before the dispositive motions are decided. Will AA request depositions? Will AA request interrogatories? Will AA request third-party discovery? Will AA revert back to its full "Non-Exhaustive List?" AA does not say.

IV. AA Lacks a Compelling Justification for Immediate Discovery

The filing of a well-grounded preliminary injunction motion may, under proper circumstances, justify tailored, expedited discovery. When the party seeking discovery has not filed a preliminary injunction motion specifying the need for early judicial intervention, courts deny expedited discovery as premature. *See Edgenet, Inc. v. Home Depot, U.S.A., Inc.,* 259 F.R.D. 385, 387 (E.D. Wis. 2009) ("Edgenet has not sought a preliminary injunction or a temporary restraining order against Home Depot and, as such, the claim to expedite discovery is premature"); *Dimension Data*, 226 F.R.D. at 531-32 (motion for expedited discovery is "not reasonably timed [when] plaintiff has not yet filed a … motion for a preliminary injunction, setting out in detail the areas in which discovery is necessary in advance of a determination of preliminary injunctive relief"); *Carter v. Ozoeneh*, 2009 U.S. Dist. LEXIS 45679, at *8 (W.D.N.C. 2009) (denying motion because "plaintiffs have not even filed a motion seeking preliminary injunctive relief").

Moreover, the possibility of a future preliminary injunction motion is not enough to depart from standard federal practice. Time and time again, courts have refused to allow expedited discovery on the basis of conjecture about a future injunction motion. *El Pollo Loco, S.A. de C.V. v. El Pollo Loco, Inc.*, 344 F. Supp. 2d 986, 991 (S.D. Tex. 2004) (rejecting claim that expedited discovery is justified by "the possibility that Plaintiff might seek injunctive relief in the future"); *Dimension Data*, 226 F.R.D. at 529, 532

(refusing expedited discovery needed to "adequately prepare" for an anticipated preliminary injunction); *Momenta Pharms., Inc. v. Teva Pharms. Indus*., 2011 U.S. Dist. LEXIS 18562, at *6-7 (D. Mass. 2011) (refusing expedited discovery to support future anticipated preliminary injunction motion).

AA's sole justification for immediate antitrust discovery is that it "anticipate[s]" preparing and filing a preliminary injunction motion in the future. AA's Request for Rule 16(a) Conference [Doc. No. 33] at 4. When would this preliminary injunction motion come to light? It will "likely" be filed this summer if the parties are unsuccessful in commercial negotiations to renew their contracts and Travelport continues to "refuse[] to provide American with any assurances that it will cease engaging in further damaging and anticompetitive conduct when those [contract] amendments expire." *Id*.

AA all but admits that it currently faces no imminent harm that would justify seeking a preliminary injunction for which expedited discovery would be necessary: "Although the defendants complain that American has not specified the basis for the preliminary injunction that it may be forced to file, American has not done so because it does not yet know the precise punitive actions that Travelport (and Sabre) will take." AA Rule 16 Reply [Doc. No. 73] at 3; *see also id*. at 10 ("AA is not currently in a position to predict what form the GDS Defendants' retaliatory conduct will take this time…"). Because AA does not yet know whether or on what grounds it would bring a preliminary injunction motion, AA is trying to create as broad an evidentiary base as possible to "prepare" for every possible preliminary injunction scenario. *See id*. at 14-15. ("…immediate discovery is necessary to enable American to prepare . . . a motion for a

preliminary injunction . . ..."). This scatter-shot approach hardly qualifies as narrowly tailored discovery.

Yet, AA seeks an expedited Rule 16(a) conference "to discuss American's anticipated motion this summer" and to "apprise the Court of anticipated preliminary injunction proceedings." AA's Request for Rule 16(a) Conference [Doc. No. 33] at 1, 4. The proper way to "apprise the Court" of these issues is to provide a well-founded preliminary injunction motion, but AA chose not to do that.

AA's legal grounds for a preliminary injunction also remain a mystery. Presumably AA is not seeking a preliminary injunction on the grounds that Travelport has monopolized product markets in the United States and Europe over more than four years and has engaged in conspiracies to monopolize these markets with unnamed coconspirators. Maybe the motion instead would deal with just one of the six counts of the Amended Complaint. Maybe it would deal with a subset of factual allegations. The underlying wrongs supporting a future preliminary injunction motion might be grounded in antitrust, business torts, or contract – AA has not said.

All that AA has described is the ultimate relief it would seek in a preliminary injunction case. The relief AA anticipates requesting is strange to say the least. AA "would anticipate" seeking some form of an order by the Court providing "clear assurance" that Travelport will not (1) "introduce any biasing to American's flights in their GDS displays," (2) "terminate the underlying . . . agreements," (3) "increase American's booking fees," or (4) "otherwise change any other current practice or course of doing business." App. at 11-12 (attaching Rothman Letter of May 13, 2011); *see also* AA's Request for Rule 16(a) Conference [Doc. No. 33] at 6.

None of these statements about anticipated preliminary injunction relief provide a coherent framework for the Court to manage expedited discovery proceedings. First, the display bias issue is hard to address because there are no underlying factual allegations relating to display bias. The Complaint does not allege that Travelport has biased displays in the United States or allege facts showing that Travelport has threatened to do so. The Complaint contains a factual allegation of display bias in Europe, not the United States. Nor does AA provide any explanation of what violation of law – antitrust, business tort, or contract – supports injunctive relief on display bias.

Second, any request for a preliminary injunction barring "terminat[ion] of the underlying . . . agreements" extends beyond anything said in AA's 42-page Amended Complaint. Missing is any allegation that Travelport has threatened to terminate the agreement or that the exercise of contractual termination rights is a violation of antitrust law or some form of a business tort. As AA's brief recognizes, the agreements "expire," AA's Request for Rule 16(a) Conference [Doc. No. 33] at 4, and thus there is no issue concerning termination during the life of the agreement. Moreover, Travelport and AA are already in contract litigation in Illinois state court. Any claims for preliminary injunctive relief focusing on the duration of the contract or contractual termination rights can be heard by the state court now handling the contract disputes.

Third, AA's request for a preliminary injunction to freeze booking fees would at least have some tangential connection to the antitrust complaint (the Amended Complaint appears to seek treble damages based on alleged overpayment of booking fees) but this is not a permissible antitrust remedy in an injunctive relief application in court, much less in an expedited proceeding. A price freeze is not sought in the Amended Complaint; nor

could it be. Any price controls on travel distribution services would have to come from Congress, U.S. Department of Transportation regulations, or a European regulatory agency, not an order in a private lawsuit. There are myriad problems with court regulation of pricing. Is AA the sole beneficiary of price controls or is this industry wide pricing? What if Travelport's input costs rise? What if its products or services are enhanced? What is the time period for the price freeze? What countries?

For present purposes, the problem is that any injunctive relief related to the level of booking fees would require substantial underlying fact discovery, evidentiary briefing, and expert testimony. AA's Amended Complaint alleges that Travelport charged high booking fees over the years and asks for treble damages, apparently measured as the difference between Travelport's supposed "exorbitant" or "monopolistic" booking fees and booking fees at the "competitive" level. Am. Compl. at ¶ 16 ("American has suffered significant harm in the form of exorbitant booking fees"); *id*. at ¶ 113 ("Travelport [has] been able to maintain [its] per segment booking fees at monopolistic levels, and American is entitled to recover the resulting overcharges."). This kind of heavy lifting would be part of the damages phase of a proven case of illegal monopolization, not a rushed proceeding.[3]

Fourth, AA's open-ended request that Travelport indefinitely freeze its business practices – forbidding Travelport from changing "any other current practice or course of

[3] The booking fees that AA now refers to as "exorbitant" or "monopolistic" are precisely the same heavily discounted booking fees from the agreement that AA deemed "competitive" when it used its negotiating leverage to demand them in 2006. *See* App. at 16 (attaching Press Release, Travelport, Galileo International and American Airlines Sign New Five-Year, Full Content Distribution Agreements (May 7, 2006), http://travelport.mediaroom.com/index.php?s=43&item=208) ("'Establishing a competitive distribution agreement with Galileo helps us meet key business objectives to broaden the distribution of American Airlines' fares at lower costs,' said David Cush, senior vice president, Global Sales for American Airlines. 'With its broad travel agency subscriber base both offline and online, Galileo offers competitive channels to providing a cost-effective and comprehensive distribution platform over the long-term.'").

doing business" – can be quickly tossed aside. This type of all-encompassing mandatory injunction is not a tenable court remedy and does not provide any guidance for the Court to manage expedited, tailored discovery.

CONCLUSION

For the foregoing reasons, the Court should deny AA's request for the Court to conduct a Rule 16(a) case management conference and grant Travelport's motion to stay antitrust discovery pending a decision on its dispositive Rule 12(b)(6) motion to dismiss.

Dated: June 27, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 2011, I electronically filed 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/ Walker C. Friedman
Walker C. Friedman