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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael C. Malaney, Katherine R. Arcell,)
Kieth Dean Bradt, Jose' M. Brito, Jan Marie)
Brown, Robert D. Conway, Rosemary)
D'Augusta, Brenda K. Davis, Pamela Faust,)
Carolyn Fjord, Don Freeland, Ted Friedli,)
Donald V. Fry, Gabriel Garavanian, Harry)
Garavanian, Yvonne Jocelyn Gardner, Lee M.)
Gentry, Jay Glikman, Donna M. Johnson,)
Valarie Ann Jolly, Gail S. Kosach, Rozann)
Kunstle, Steve Kunstle, John Lovell, Len)
Marazzo, Lee McCarthy, Lisa McCarthy,)
Patricia Ann Meeuwesen, L. West Oehmig, Jr.,)
Cynthia Prosterman, Deborah M. Pulfer,)
Sharon Holmes Reed, Dana L. Robinson,)
Robert A. Rosenthal, Bill Rubinsohn, Sondra)
K. Russell, Sylvia N. Sparks, June Stansbury,)
Clyde D. Stensrud, Sherry Lynne Stewart,)
Wayne Taleff, Gary Talewsky, Annette M.)
Tippetts, Diana Lynn Ultican, J. Michael)
Walker, Pamela S. Ward, David P. Wendell,)
Christine O. Whalen, and Suraj Zutshi,)

Plaintiffs,)

v.)

UAL CORPORATION, UNITED AIR LINES,)
INC., and CONTINENTAL AIRLINES, INC.)

Defendants.)

CASE NO.: **CV-10-02858 (RS)**

FIRST AMENDED
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
AGAINST VIOLATIONS OF
SECTION 7 OF THE
CLAYTON ANTITRUST ACT

JURY TRIAL DEMANDED

1 Plaintiffs are and will be direct purchasers of airline tickets from one or both of the
2 defendants. The plaintiffs bring this action under Sections 4 and 16 of the Clayton Antitrust Act,
3 15 U.S.C. §§ 18, 26, for damages, divestiture, and an injunction prohibiting further violations of
4 Section 7 of the Clayton Act, 15 U.S.C. Section 18, arising from and out of the anti-competitive
5 combination of the defendants, and demand trial by jury, and complain and allege as follows:

6 **INTRODUCTION**

7 1. On May 3, 2010, the defendants announced that they had agreed to combine in an
8 all stock transaction, valued at more than \$8 billion, merging United Air Lines, Inc. (“United”)
9 and Continental Airlines, Inc. (“Continental”), eliminating the substantial competition between
10 them, and merging to create the world’s largest airline. It is proposed that the unlawful combine
11 would operate under the United name. On September 17, 2010, United and Continental
12 announced that the shareholders of both company’s approved the merger. Despite shareholder
13 approval and public announcements about continuing efforts at “integration” during the relevant
14 period, United and Continental have continued to operate as separate airlines.

15 2. The effect of the merger between United and Continental may be substantially to
16 lessen competition, or to tend to create a monopoly, in the transportation of airline passengers in
17 the United States and certain submarkets and in violation of Section 7 of the Clayton Antitrust
18 Act, 15 U.S.C. § 18.

19 3. The probable and planned anticompetitive effects of this unlawful combination
20 are increases in prices and fares, elimination and/or curtailment of services, elimination or
21 curtailment of frequency of flights, curtailment of capacity of aircraft and available seats for
22 passage, elimination of tens of thousands of jobs, the deterioration of quality of service, the
23 addition of charges for amenities otherwise considered part and parcel of the service, the
24 elimination or substantial cutback of traffic to hubs, the creation of monopolies for passenger
25 air traffic from and to major cities, and the encouragement and trend to further concentrate the
26 industry toward ultimate monopoly.

27 4. Plaintiffs are individuals who have purchased airline tickets from one or both of
28 the defendants in the past, and expect to continue to do so in the future. They are threatened with

1 loss or damage by the defendants' merger in violation of Section 7 in the form of higher ticket
2 prices and diminished service, and, accordingly, they bring this action for damages, divestiture,
3 and for injunctive relief, prohibiting further violations of Section 7 of the Clayton Act, 15 U.S.C.
4 Section 18.

5
6 **JURISDICTION**

7 5. This action is brought under Sections 4 and 16 of the Clayton Antitrust Act, 15
8 U.S.C. §§ 15, 26, to secure damages for and injunctive relief against the defendants by reason
9 of their violations of Section 7 of the Clayton Antitrust Act, 15 U.S.C. Section 18. This Court
10 has subject matter jurisdiction of the federal antitrust claims asserted in this action under
11 Sections 4 and 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 15, 26, and Title 28 United States
12 Code Sections 1331 and 1337.

13 **THE PARTIES**

14 6. Each of the plaintiffs named herein below is an individual and a citizen of the
15 state listed as the address for each such plaintiff, and in the four years next prior to the filing
16 of this action, each plaintiff has purchased airline tickets from one or both of the defendants,
17 and each plaintiff expects to continue to purchase airline tickets from one or both of the
18 defendants or their merged entity in the future:

19 Michael C. Malaney, 5395 Egypt Creek NE., Ada, MI 49301;

20 Katherine R. Arcell, 4427 S. Miro St., New Orleans, LA 70125;

21 Keith Dean Bradt, 690 W 2nd St, Suite 200, Reno, NV 89503;

22 Jose' M. Brito, 2715 Sage Bluff Ct., Reno, NV 89523;

23 Jan Marie Brown, 975 Kennedy Dr., Carson City, NV, 89706;

24 Robert D. Conway, 6160 W Brooks Ave., Las Vegas, NV 89108;

25 Rosemary D'Augusta, 347 Madrone St., Millbrae, CA 94030;

26 Brenda K. Davis, 11022 Old Military Trail, Forney, TX, 75126;

27 Pamela Faust, 6227 Whileaway Dr., Loveland, Ohio 45140;

28 Carolyn Fjord, 4405 Putah Creek Road, Winters, CA 95694;

1 Don Freeland, 73801 White Sands Dr., Thousand Palms, CA 92276;
2 Ted Friedli, 8 Chelton Way, Long Branch, NJ 07740;
3 Donald V. Fry, 6740 Northrim Ln., Colorado Springs, CO 80919;
4 Gabriel Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;
5 Harry Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;
6 Yvonne Jocelyn Gardner, 10-Gold Coin Ct., Colorado Springs, CO 80919;
7 Lee M. Gentry, 7021 Forestview Dr., West Chester, OH 45069-3616;
8 Jay Glikman, 4265 Marina City Dr #809, Marina del Rey, CA 90292;
9 Donna M. Johnson, 1864 Masters Dr., DeSoto, TX 75115;
10 Valarie Ann Jolly, 2121 Dogwood Loop, Mabank, TX 75156;
11 Gail S. Kosach, 4085 Ramrod Cir., Reno, NV 89519;
12 Rozann Kunstle, 7210 Fleetwood Ct., Colorado Springs, CO 80919;
13 Steve Kunstle, 7210 Fleetwood Ct., Colorado Springs, CO 80919;
14 John Lovell, 1834 Whirlaway Ct., Kentwood, MI 49546;
15 Len Marazzo, 1260 Springer Ct., Reno, NV 89511;
16 Lee McCarthy, 35 Lancashire Place, Naples, FL 34104;
17 Lisa McCarthy, 35 Lancashire Place, Naples, FL 34104;
18 Patricia Ann Meeuwsen, 1062 Wedgewood, Plainwell, MI 49080;
19 L. West Oehmig, Jr., 1017 East Brow Road, Lookout Mountain, TN 37350;
20 Cynthia Prosterman, 527 20th Ave., San Fransisco, CA 94121;
21 Deborah M. Pulfer, 16264 E. Mason Rd., Sidney, OH 45365;
22 Sharon Holmes Reed, 622 Grandview Ave., Kingman, AZ 86401;
23 Dana L. Robinson, 127B Palm Bay Terrace, Palm Beach Gardens, FL 33418;
24 Robert A. Rosenthal, 4659 Bridle Pass Drive, Colorado Springs, CO 80923;
25 Bill Rubinsohn, 261 Old York Road, Jenkintown, PA 19046;
26 Sondra K. Russell, 1206 N. Loop 340, Waco, TX 76705;
27 Sylvia N. Sparks, 3320 Conte Drive, Carson City, NV 89701;
28 June Stansbury, 363 Smithridge Park, Reno, NV 89502;

1 Clyde D. Stensrud, 1529 10th St W., Kirkland, WA 98033;
2 Sherry Lynne Stewart, 6565 Foxdale Cir., Colorado Springs, CO 80919;
3 Wayne Taleff, 768 Farmsworth Ct., Cincinnati, OH 45255;
4 Gary Talewsky, 14 Cow Hill Rd., Sharon, MA 02067;
5 Annette M. Tippetts, 2783 East Canyon Crest Dr., Spanish Fork, Utah 84660;
6 Diana Lynn Ultican, 9039 NE Juanita Dr, #102, Kirkland, WA 98034;
7 J. Michael Walker, 11865 Heather Ln., Grass Valley, CA 95949;
8 Pamela S. Ward, 1322 Creekwood Dr., Garland, TX 75044;
9 David P. Wendell, 100 Vine St., Reno, NV 89503;
10 Christine O. Whalen, 1131 Pine St., New Orleans, L, 70118; and
11 Suraj Zutshi, 3333 Saratoga Ct., Sparks, NV 89431

12 7. Defendant UAL Corporation (“UAL”) is a corporation incorporated under the
13 laws of the State of Delaware with its principal place of business in Chicago, Illinois.

14 8. Defendant UAL is a holding company that owns and operates defendant
15 United.

16 9. United operates the world’s fourth largest airline and the third largest domestic
17 carrier, with more than 108 billion revenue passenger miles (“RPMs”) in 2008.

18 10. One RPM equals one passenger flown one mile. RPMs are the commonly
19 accepted measure of airline sizes in the industry.

20 11. United is engaged in the business of transporting passengers and cargo and has
21 approximately 43,700 full-time employees.

22 12. United operates domestic hubs at Los Angeles, San Francisco, Denver,
23 Chicago, and Washington, D.C.

24 13. United operates a foreign hub in Tokyo to serve its Asia-Pacific route system.

25 14. United serves European cities.

26 15. United serves Latin American cities.

27 16. United will serve African cities beginning in the second quarter 2010.
28

1 17. United is a founding member in the so-called Star Alliance®, a global airline
2 alliance with defendant Continental as well as Adria, Air Canada, Air China, Air New
3 Zealand, ANA, Asiana Airlines, Austrian Airlines, Blue 1, bmi, Brussels Airlines, Croatia
4 Airlines, Egyptair, Polish Airlines, Lufthansa, Scandinavian Airlines, Shanghai Airlines,
5 Singapore Airlines, South Africa Airways, Spanair, Swiss International Air Lines, TAP
6 Portugal, Thai Airways International, Turkish Airlines, and US Airways. Star Alliance®
7 members have a combined 19,700 daily flights to 1,077 airports in 175 countries.

8 18. By reason of that Star Alliance® association “the management teams [of
9 United and Continental] have come to know one another really very well.”

10 19. United has agreements with eight domestic feeder/regional carriers, including
11 Atlantic Southeast Airlines, Colgan Airlines, ExpressJet, GoJet Airlines, Mesa Airlines,
12 Shuttle America, SkyWest Airlines, and Trans States Airlines.

13 20. United has membership in United Express®, which includes Air Wisconsin,
14 Skywest, Mesa, Republic Airlines, Chautauqua Airlines, Shuttle America, and Trans States
15 Airlines.

16 21. Defendant Continental Airlines (“Continental”) is a corporation incorporated
17 under the laws of the State of Delaware with its principal place of business in Houston, Texas.

18 22. Continental is the fourth largest domestic carrier and the fifth largest airline in
19 the world, with more than 80 billion RPMs in 2008.

20 23. Continental, together with its subsidiaries and divisions Continental Express,
21 (consisting of ExpressJet Airlines and Chautauqua Airlines) and Continental Connection
22 (comprised of Cape Air, Colgan Air, CommutAir, and Gulfstream International Airlines), has
23 more than 2,700 daily departures throughout the Americas, Europe and Asia, serving 132
24 domestic and 137 international destinations.

25 24. Through its alliance partners, including its membership in StarAlliance®, of
26 which defendant United is also a member, Continental serves more than 750 additional
27 destinations.

28 25. Continental has and operates hubs in Houston, Cleveland, Guam, and Newark.

1 continuous and uninterrupted flow of interstate commerce. Airline travel is a continuous and
2 uninterrupted flow of interstate commerce. Materials used in the construction of airplanes are
3 purchased and shipped in a continuous and uninterrupted flow of interstate commerce.

4 38. Any restraint of trade in the transportation of airline passengers in the United
5 States, including the restraints specifically alleged in this complaint, directly and substantially
6 restrains and affects interstate commerce.

7 **CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

8 39. On May 3, 2010, United and Continental announced an agreement in which the
9 two carriers will combine to form a new company with an equity value of \$8.3 billion.

10 40. On September 17, 2010, United and Continental announced that both
11 company's stockholders had approved a merger of the two airlines

12 41. On or about October 1, 2010, United and Continental announced that they had
13 closed their merger.

14 42. The new airline will be called United.

15 43. The chief executive officer of the combined company will be Jeff Smisek, the
16 current chairman, president, and CEO of Continental.

17 44. Glenn Tilton, chairman, president, and CEO of defendant UAL Corporation
18 ("UAL"), will serve as non-executive chairman of the combined company's Board of
19 Directors through December 31, 2012, or the second anniversary of closing, whichever is
20 later.

21 45. Mr. Smisek will become executive chairman of the Board when Mr. Tilton
22 ceases to be non-executive chairman.

23 46. Through secret and private meetings, Mr. Smisek of Continental met on more
24 than one occasion with Mr. Tilton of UAL.

25 47. One or more the secret and private meetings of Mr. Smisek and Mr. Tilton
26 were carried on outside of their offices, including hotel rooms.

27 48. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
28 discussed the purposes and probable effects of the merger.

1 49. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
2 discussed airline fares in general and specifically.

3 50. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
4 discussed the frequency of flights.

5 51. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
6 discussed the elimination or curtailment of the use of hubs.

7 52. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
8 discussed the curtailment of capacity.

9 53. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
10 discussed the firing of employees.

11 54. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
12 discussed the type of aircraft to be eliminated.

13 55. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
14 discussed the charges for services previously given to passengers for free.

15 56. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
16 discussed the possible combination of American Airlines and US Airways.

17 57. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
18 discussed the potential fare increases in the monopoly submarkets that would be created by the
19 combine.

20 58. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
21 discussed the potential fare increases in the duopoly submarkets created by the combine.

22 59. The combined company and its regional partners will carry over 120 million
23 passengers per year, provide access to more than 370 destinations in 59 countries, have
24 approximately \$30 billion in annual aggregate revenues and \$7.4 billion in unrestricted cash,
25 operate a mainline fleet of 693 aircraft, and employ approximately 76,900 people worldwide.

26 60. Combined, United and Continental will have more than 203 billion RPMs.
27 Domestically, their combined RPMs comprise 21 percent of domestic capacity, which tops the
28

1 current domestic leader, Delta Air Lines, Inc., which had 189 billion RPMs in 2009, which
2 comprises a market share of 20 percent.

3 61. Globally, the combined company will control 53 percent of all traffic on Pacific
4 routes.

5 62. Together, United and Continental serve 30 common international destinations,
6 representing 65% of their total international seat capacity.

7 63. If the merger is consummated, the new combined United will surpass Delta as
8 the largest domestic airline for flights across the Atlantic ocean, with 40 percent of passenger
9 traffic, and would control 53 percent of traffic across the Pacific ocean.

10 64. If the merger is consummated, the United States will be left with just three
11 international airlines: the new combined United, Delta, and American, while U.S. Airways
12 Group, Inc. will trail a distant fourth with less than one-third the share of American's.

13 65. If the merger is consummated, it will result in lower capacity; that is, fewer
14 seats in the sky, which, in turn, will result in higher ticket fares for consumers.

15 66. J.P. Morgan estimates that, if the merger closes, defendants would reduce their
16 overall capacity by 8 percent.

17 67. Defendants' merger would take place in and further concentrate an already
18 highly concentrated market, characterized by mergers, including the most recent merger of
19 Delta and Northwest Airlines in 2006, which made Delta the world's largest carrier, a title that
20 will be passed to the new combined United.

21 68. In addition, defendants themselves are the products of mergers and
22 acquisitions.

23 69. In 1985, United bought its Pacific routes from Pan American World Airways,
24 making United a major international carrier.

25 70. For its part, Continental acquired Frontier, People Express, and New York Air
26 in 1987.

27 71. Others mergers include that between Northwest and Republic Airlines in 1986,
28 and between U.S. Airways and America West in 2005.

1 72. On September 27, 2010, Southwest Airlines, the 2nd largest air carrier in the
2 United States as measured by revenue passenger miles (“RPMs”), announced that it had
3 agreed to acquire AirTran Airways, the seventh largest domestic carrier as measured by
4 RPMs, for \$1.37 billion in cash and stock

5 73. On May 2, 2011, Southwest and AirTran closed their merger.

6 74. It has been reported that US Airways CEO, Doug Parker, publicly expressed
7 his interest several times this year in merging with a competitor.

8 75. As a general matter, the media has reported that either US Airways and/or
9 American are likely merger candidates.

10 76. Attached hereto as Exhibit A and hereby incorporated herein by reference is a
11 chart depicting the history of mergers and increasing concentration in the United States airline
12 industry. Attached hereto as Exhibits B and C are the rankings of the top airlines in the United
13 States pre-merger and post-merger.

14 77. The new United will operate 8 hubs, including hubs in the four largest U.S.
15 cities.

16 78. Defendants’ merger will increase market concentration in four of the 100
17 largest U.S. cities, namely, Washington, D.C., San Diego, Seattle, and New Orleans.

18 79. In addition, at the airport level, the following 17 domestic airports will
19 experience undue increases in market concentration as a result of the defendants’ merger:
20 Houston Intercontinental (combined United will control 64 percent market share), Newark
21 Liberty International (55 percent market share on domestic routes; 65 percent for international
22 travel), San Francisco International (40 percent market share), Chicago O’Hare International
23 (35 percent market share), Los Angeles International, New Orleans, Cleveland Hopkins,
24 Denver, San Diego, Orange County, Honolulu (HNL), Ontario California, Las Vegas, Tampa,
25 Sacramento, Yampa Valley Colorado, and Vail.

26 80. The new combined company’s dominance at the airports listed in paragraph 21
27 is substantially likely to result in higher fare prices for flights to or from those airports.
28

1 81. Defendants have overlapping non-stop flights on 12 routes, including, inter
2 alia, Newark to Chicago, Cleveland to Chicago, Denver to Newark, and Houston to Denver.
3 Defendants' combination is likely to result in higher fare prices on these routes.

4 82. If the combination of United and Continental were allowed, ten airports would
5 be a monopoly. This creation of monopolies in these markets will likely result in increases in
6 fares and reduction of service.

7 83. If the combination of United and Continental were allowed, 120 airports would
8 be a duopoly. This creation of a duopoly in these markets will likely result in increases in
9 fares and reduction of service.

10 84. If the combination of United and Continental were allowed, 454 airports would
11 be reduced to three competitors. This creation of a triumvirate in these markets will likely
12 result in increases in fares and reduction of service.

13 85. If the combination of United and Continental were allowed, 387 airports would
14 be reduced to four competitors. This creation of an oligopoly in these markets will likely
15 result in increases in fares and reduction of service.

16 86. If the combination of United and Continental were allowed, 143 airports would
17 be reduced to five competitors. This creation of an oligopoly in these markets will likely
18 result in increases in fares and reduction of service.

19 87. If the combination of United and Continental were allowed, the combine would
20 have monopoly service from San Francisco to Houston, from San Francisco to Newark, from
21 Denver to Newark, from Newark to Dulles, Washington, D.C., from Houston to Dulles,
22 Washington, D.C., from Cleveland to Denver, and from Cleveland to Dulles, Washington,
23 D.C. This creation of monopolies in these markets will likely result in increases in fares and
24 reduction of service.

25 88. Non-stop service is typically preferred by some passengers.

26 89. United and Continental overlap on 12 non-stop airport pair routes. For seven
27 of the 12 non-stop overlapping airport routes (generally between a United hub and a
28 Continental hub), there are currently no other competitors.

1 90. In March 2010, Continental initiated non-stop service between Los Angeles
2 and Kahului Airport in Hawaii, which is also served by United.

3 91. Relevant competition exists between airports in which at least one of the end
4 point cities of the two airlines exists. For example, passengers traveling from San Francisco to
5 Newark could consider airlines serving other airports at both end point – Oakland or San Jose
6 instead of San Francisco and John F. Kennedy and La Guardia instead of Newark.

7 92. In addition, there is overlap between markets served by United out of Chicago
8 and Continental out of Cleveland. For example, 52 out of 62 domestic airports served by
9 Continental from Cleveland are also served by United from Chicago.

10 93. A passenger traveling internationally may view alternate routes to a location in
11 Europe as substitutable. Continental and United serve many of the same international
12 destinations in Europe and the Americas from their Newark and Dulles hubs, respectively.
13 These include, for example, Amsterdam, Brussels, Frankfurt, London, Montreal, Paris, Rome,
14 San Paulo, and Toronto.

15 94. Similarly, both airlines also serve many international destinations from their
16 mid-West hubs – most notably United’s hub at Chicago and Continental’s hub at Houston.
17 Such destinations include Amsterdam, Cancun, Edmonton, London, Paris, San Jose Cabo,
18 Tokyo, and Vancouver.

19 95. United and Continental serve 30 common international destinations,
20 representing 65 percent of their total international seat capacity.

21 96. Following deregulation in 1978, many mergers and acquisitions took place:
22 Delta Air Lines merged with Western Airlines; United Airlines acquired Pan American
23 Airlines’ Pacific routes; Northwest acquired Republic Airlines; American Airlines and Air
24 California merged; American acquired TWA; America West acquired US Airways; and in
25 October 2008 Delta acquired Northwest.

26 97. In addition, since deregulation, the legacy carriers bought or controlled the new
27 and growing feeder airlines with the specific purpose and intent of preventing them from
28 becoming major competitors.

1 98. In addition, defendants compete now on hundreds of domestic connecting
2 routes, where competition will be reduced or eliminated as a result of defendants' merger.

3 99. Continental also competes with United on service to Europe, Canada, Asia, and
4 Latin America, where competition will be eliminated or substantially diminished by
5 defendants' merger. For example, defendants' merger would substantially lessen competition
6 on routes between the U.S. and Beijing, where United and Continental provide substantial
7 connecting services.

8 100. Furthermore, the new airline will operate in a more highly concentrated market.
9 The Herfindahl-Hirschman Index or HHI for the United States airline industry will increase
10 from 2251 from 2790 for the so-called Legacy carriers (major hubbed airlines), and from 1912
11 to 2343 for the Legacy carriers plus Southwest Airlines. As a result, prospects for effective
12 collusion among the airlines remaining after defendants' merger will substantially increase.

13 101. The potential for increased collusion among the remaining airlines is
14 significant, because the domestic passenger airlines, including, *inter alia*, these defendants,
15 have in the past colluded to fix prices with regard to airfares, surcharges, and cargo prices, and
16 to fix other terms and conditions of air transportation and travel.

17 102. In addition to the degree of market concentration, there are significant barriers
18 to entry in the relevant market, as well as a history of a lack of successful new entry. There
19 have been only two new major carriers in recent years: Southwest Airlines and Jet Blue, and
20 both of these entrants took substantial time to develop and still remain small factors in the
21 market. On the contrary, the relevant market has been characterized by the exit, rather than
22 the entry, of firms. In addition, defendants' combination will create an airline with ten hubs,
23 making entry into markets between such hubs particularly difficult for a non-hub carrier
24 because the intended entrant does not have access to feed traffic and because the combined
25 United, as hub carrier, will have significant marketing advantages. The prospect of new entry
26 is therefore unlikely to eliminate any of the anticompetitive effects that will eventuate from
27 the defendants' merger and the increasingly concentrated structure of the relevant market.
28

1 103. The defendants' merger is causing harm to consumers, including the plaintiffs,
2 by generating higher airfares, by reducing the number of flights on particular routes, and by
3 eliminating air service to smaller communities. Consumers, including the plaintiffs, will thus
4 pay more for less airline service than would be the case in the absence of defendants' merger.

5 104. The merger has resulted in countrywide fare increases.

6 105. The merger has resulted in job losses.

7 106. In February 2011, Representative Sheila Jackson Lee of Houston called for a
8 plan from United-Continental, in the wake of the announcement by Continental that it would
9 eliminate 500 jobs in Houston, beginning in April 2011, as the carrier combines with United.

10 107. Five network carriers reported decreased employment numbers from December
11 2009-December 2010: American Airlines, US Airways, Alaska Airlines, Continental Airlines,
12 and United Airlines.

13 108. On or about June 2011, it was announced that Continental would layoff
14 redundant positions in Guam, as a result of the United-Continental merger.

15 109. Labor contracts with unions have not been completed.

16 110. The defendants' merger is also likely to lead to other mergers and further
17 concentration in the already highly concentrated relevant market. If defendants' merger
18 closes, American Airlines, which until the Delta-Northwest merger was the largest domestic
19 airline, will likely combine with another carrier, like U.S. Airways, the only remaining
20 medium-sized carrier. Both of the CEO's of American and U.S. Airways have already
21 indicated publicly of their approval of the elimination of capacity and of their desire to further
22 concentrate the industry and eliminate even more capacity, with the obvious result of higher
23 fares. For example, on or about April 2011, US Airways CEO, Doug Parker, forecasted that
24 there would be another major merger within the United States airlines sector. This would
25 leave three main players: American, Delta, and United.

26 111. More recently, the president of American Airlines parent company, AMR
27 Corporation, told the Times of London that he hoped to merge his company with the
28 International Airlines Group, which owns British Airways and Iberia. Generally, American is

1 viewed as being the next player to merge, as it has gone from being the largest airline in the
2 industry to the third largest.

3 112. United States Representative James Oberstar (D-Minn.), chairman of the House
4 Committee on Transportation and Infrastructure, has publicly opposed defendants' merger.
5 He wrote in a May 5, 2010, letter to the Department of Justice that, if defendants' merger is
6 consummated, "carriers will concentrate their efforts on fortress hubs and on the routes they
7 dominate. There will be strong incentives to refrain from competition. There will be less
8 service and fares will rise."

9 113. There are 29 major airports in the United States, located in the following cities:
10 Atlanta, Baltimore, Boston, Charlotte, Chicago, Dallas, Denver, Detroit, Fort Lauderdale,
11 Houston, Las Vegas, Los Angeles, Miami, Minneapolis, New York, Newark, Orlando,
12 Philadelphia, Phoenix, Portland, Salt lake City, San Diego, San Francisco, Seattle, Tampa, and
13 Washington D.C.

14 114. Each major U.S. passenger airline, including defendants United and
15 Continental, has the ability and financial capacity to offer competitive flights between any two
16 major cities in the United States, whether or not they are currently offering such flights.

17 115. Each major U.S. passenger airline, including defendants United and
18 Continental, has the ability and financial capacity to establish a competitive presence in any of
19 the major airports located throughout the United States by, inter alia, leasing or otherwise
20 utilizing terminal slots, hiring employees, and directing more flights to and from the given
21 airport.

22 116. Since the major airlines already offer flights to and from various major U.S.
23 cities, each such airline, including defendants United and Continental, necessarily has the
24 managerial expertise to offer similar flights between any two major cities in the United States.

25 117. The major U.S. passenger airlines, including defendants United and
26 Continental, frequently trade, sell, lease or purchase slots from other airlines in each of the
27 major 29 airports throughout the United States.

28

1 118. The major U.S. passenger airlines with significant market share in specific
2 regions or major airports, including defendants United and Continental, endeavor to keep
3 other major airlines from entering the market with competitive flights. However, Continental
4 has entered the Maui market against United and Delta has entered the Chicago market against
5 United and American, showing that the potential competition without a merger allows new
6 entry into markets.

7 119. On information and belief, each of the major U.S. passenger airlines, including
8 defendants United and Continental, has created internal documents reflecting a financial and
9 economic cost/benefit analysis of increasing its presence in each or many of the major U.S.
10 airports.

11 120. According to the United States Government Accountability Office, the
12 combination of United and Continental would “result in the loss of one effective competitor
13 (defined as having at least five percent of total traffic between airports) in 1,135 markets
14 (called airport pairs) effecting almost 35,000,000 passengers ...”

15 121. Paragraph 120 is true and correct.

16 122. On information and belief, each of the major U.S. passenger airlines, including
17 defendants United and Continental, has created internal documents reflecting its analysis of
18 how the market for air transportation would be impacted within each regional market or major
19 U.S. airport by the entry of another major U.S. passenger airline into that region or major
20 airport.

21 123. The entry of United or Continental into regions or major airports that are
22 dominated, controlled, or serviced by other major passenger airlines would result in lower
23 prices, increased service levels, and/or other pro-competitive effects on flights within the
24 region to or from the given major airport.

25 124. As the foregoing paragraphs show, the effect of the defendants’ merger, may
26 substantially lessen competition, or to tend to create a monopoly in the relevant markets.

27 125. By reason of the defendants’ proposed merger, the plaintiffs are threatened
28 with and have suffered loss or damage in the form of higher ticket prices and diminished

1 service. If the defendants’ merger is consummated, the plaintiffs will sustain irreparable harm
2 for which damages will be unable to compensate plaintiffs, in that service once lost cannot
3 easily be restored. Accordingly, plaintiffs bring this action for both preliminary and
4 permanent injunctive relief against defendants’ merger.

5 **VIOLATION ALLEGED**

6 **Clayton Act, Section 7**

7 126. The conduct of defendants described hereinabove, specifically their agreement
8 to merge, constitutes a violation of Section 7 of the Clayton Antitrust Act, 15 U.S.C. § 18, in
9 that the effect of the proposed merger of defendants may be substantially to lessen
10 competition, or to tend to create a monopoly in the transportation of airline passengers in the
11 United States and the transportation of airline passengers to and from the United States on
12 international flights; by reason of which violation the plaintiffs are threatened with loss or
13 damage in the form of higher ticket prices and diminished service, as well as irreparable harm
14 for which damages will be inadequate to compensate plaintiffs, such that plaintiffs are entitled
15 to bring suit under Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26, to obtain
16 preliminary and permanent injunctive relief against defendants’ merger, and to recover their
17 cost of suit, including a reasonable attorney’s fee.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, plaintiffs demand the following relief from this Honorable Court:

20 A. Declaring, finding, adjudging, and decreeing that the agreement of the
21 defendants to merge violates Section 7 of the Clayton Antitrust Act, 15 U.S.C. § 18.

22 B. A final judgment of divestiture requiring defendants to unwind their merger
23 and permanently enjoining them from merging in the future.

24 C. A preliminary injunction requiring during the pendency of this action
25 that the defendants hold separate and not commingle their two businesses that have been
26 combined pursuant to their merger, so that divestiture may be expeditiously and effectively
27 accomplished following trial on the merits and judgment in plaintiffs’ favor.

1 D. Judgment awarding plaintiffs such damages, trebled, as they show themselves
2 to have sustained during the pendency of defendants' merger prior to an order of divestiture.

3 E. Awarding to plaintiffs their cost of suit, including a reasonable attorney's fee,
4 as provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.

5 F. Granting to plaintiffs such other and further relief to which they may be entitled
6 and which the Court finds to be just and appropriate.

7 **JURY TRIAL DEMANDED**

8 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs Demand a trial by jury of
9 all claims asserted in this Complaint so triable

10
11 Dated: August 22, 2011

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EXHIBIT A

Origins of Legacy Airlines and Southwest

History of Mergers and Acquisitions

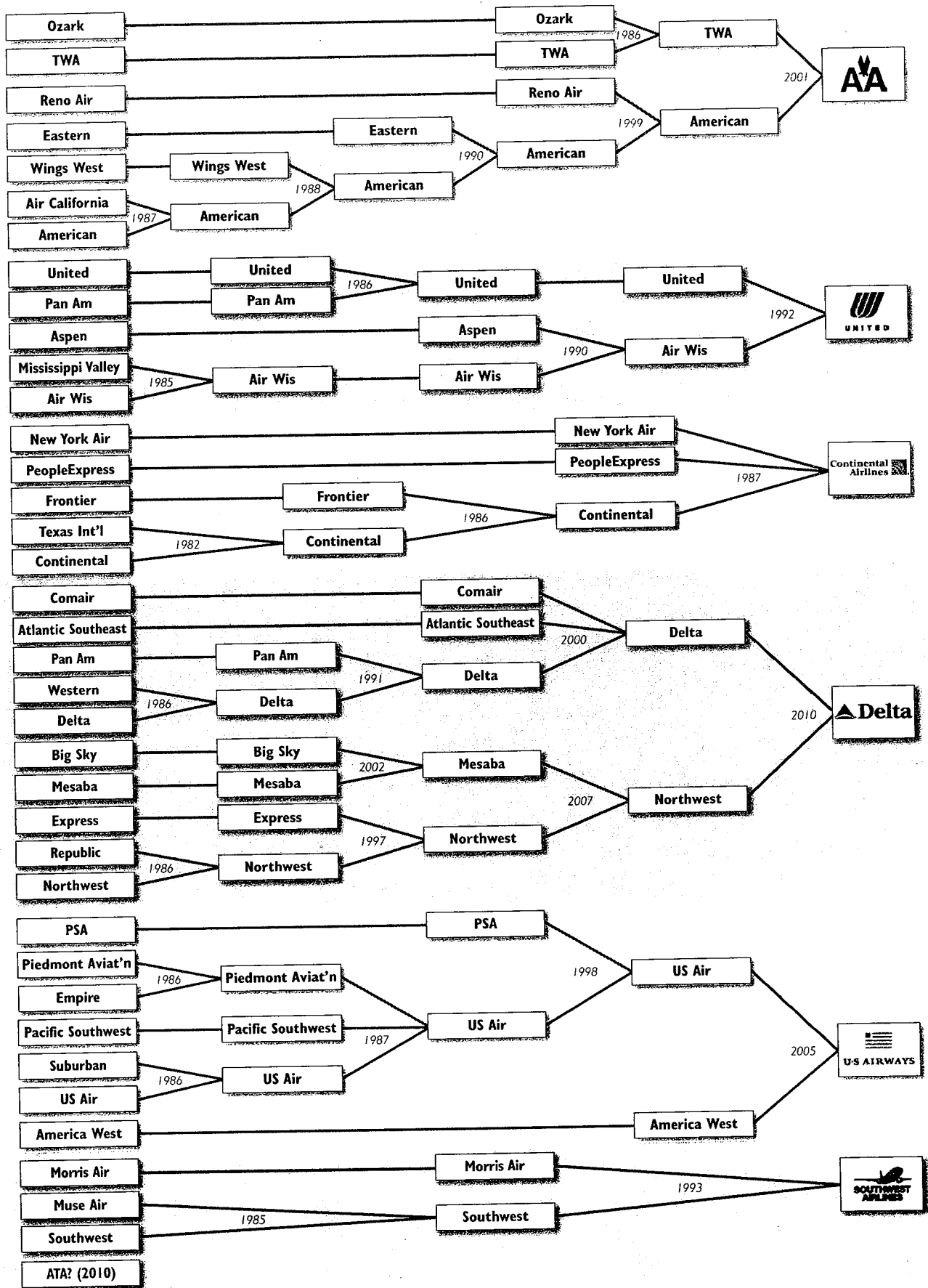
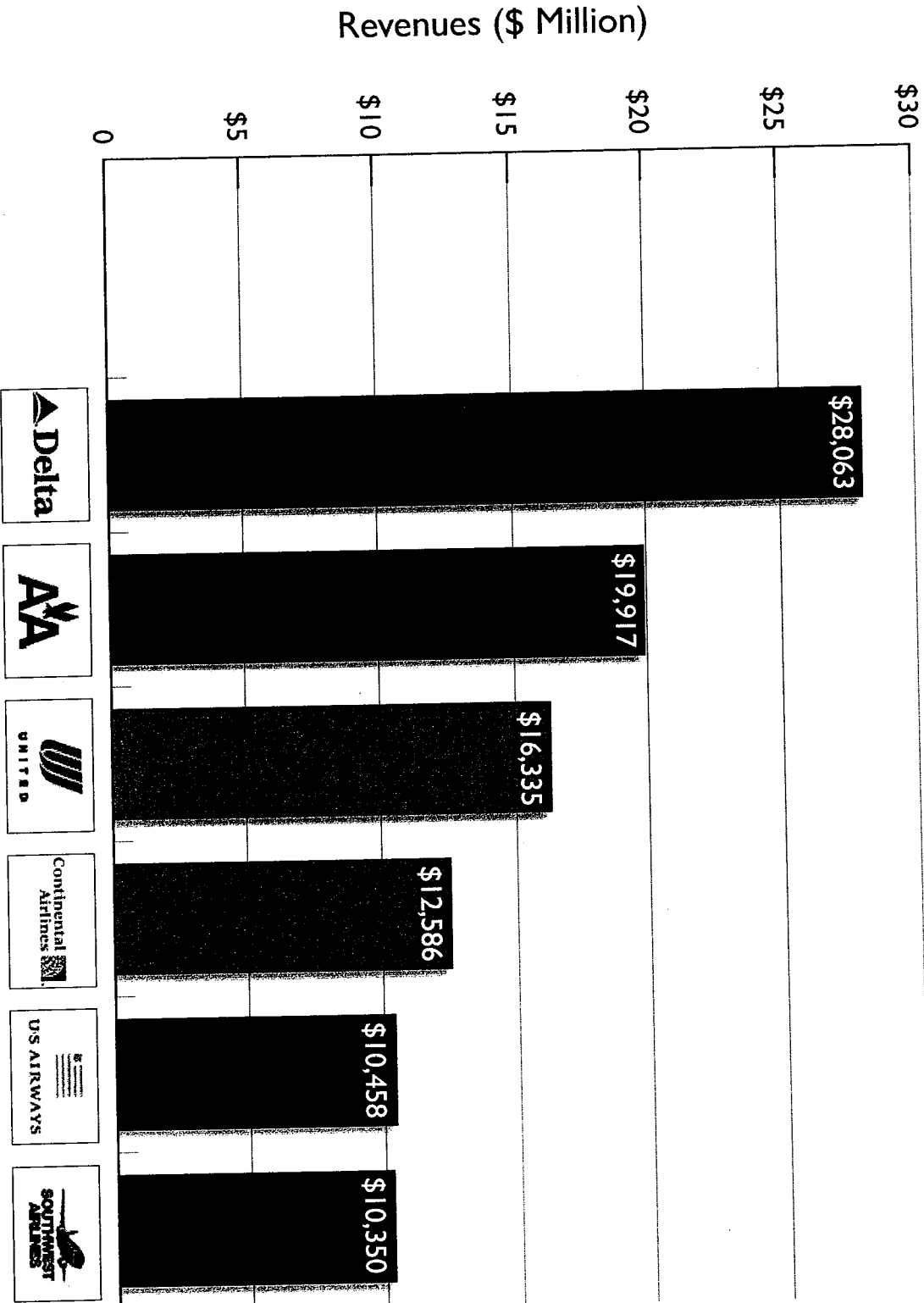


EXHIBIT B

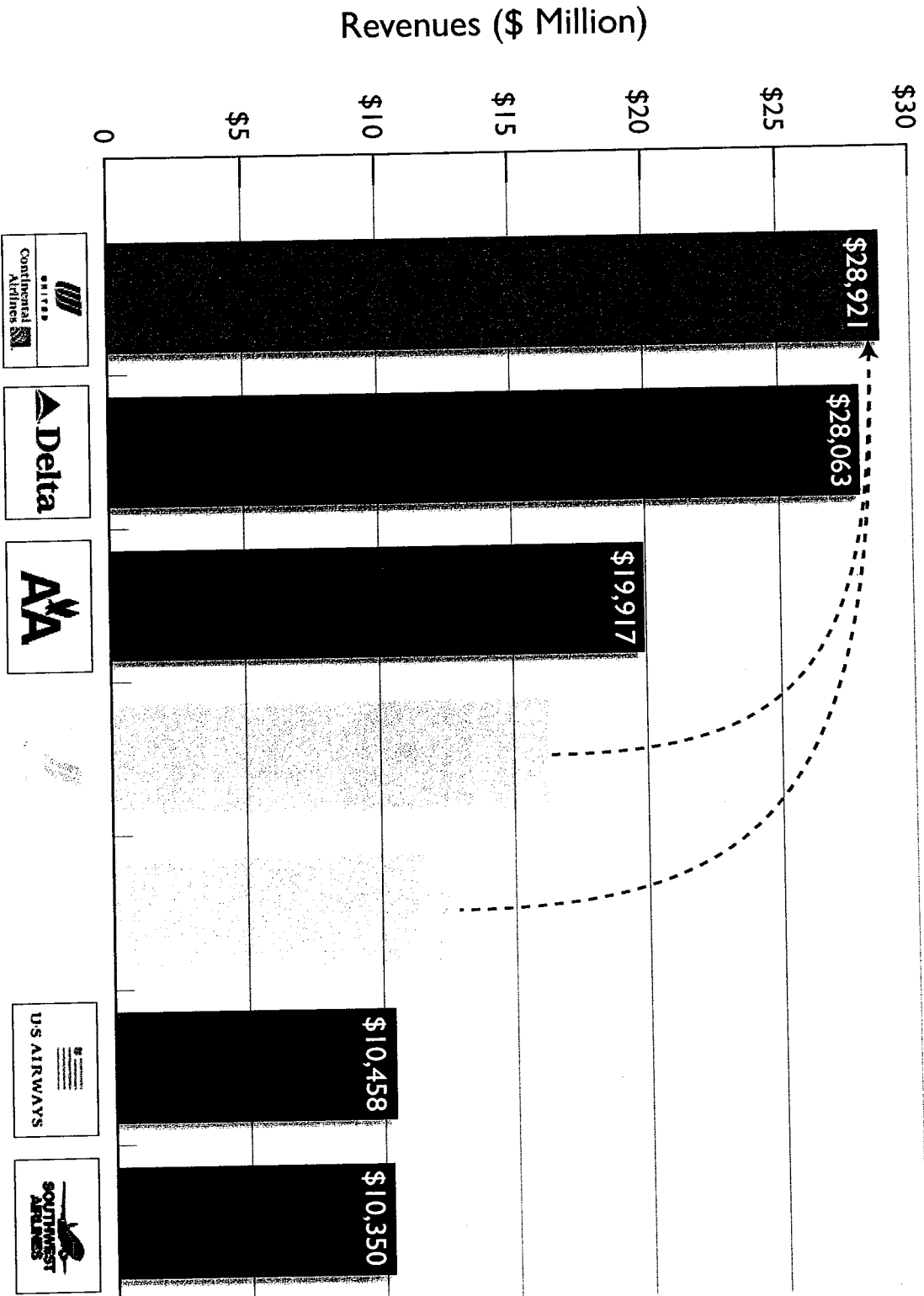
Rankings of Top Airlines in U.S. Revenues (Pre-Merger - 2010)*



* Source: Fortune magazine, May 3, 2010

EXHIBIT C

Rankings of Top Airlines in U.S. Revenues (Post-Merger)*



* Source: Fortune magazine, May 3, 2010