

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4
5 MICHAEL C. MALANEY, ET AL *

*

6 VS. * C.A. NO. CV-10-2858

*

7 UAL CORPORATION, ET AL *

8 *****

9 ORAL DEPOSITION OF DARREN BUSH

10 VOLUME 1

11 AUGUST 21, 2010

12 *****

13 ORAL DEPOSITION of DARREN BUSH, produced as a
14 witness at the instance of the Defendants, and duly
15 sworn, was taken in the above-styled and numbered cause
16 on August 21, 2010, from 8:58 a.m. to 2:33 p.m., before
17 Carol Jenkins, CSR, RPR, CRR, in and for the State of
18 Texas, reported by machine shorthand, at the offices of
19 Vinson & Elkins, 1001 Fannin, Suite 2500, Houston, Texas
20 77002, pursuant to the Federal Rules of Civil Procedure.

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25

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2

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FOR THE DEFENDANTS:

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12 -AND-

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13 Freshfields Bruckhaus Deringer

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15 ALSO PRESENT:

Mr. Scott Garber

16 Mr. Derrick Howard (Via telephone for portion of
morning session)

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1 DARREN BUSH,

2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. FORREST:

5 Q. Would you please state your name for the

6 record?

7 A. Darren Bush, D-a-r-r-e-n B-u-s-h.

8 Q. And, Mr. Bush, did you submit a report in this

9 matter?

10 A. I did.

11 Q. And in that report did you refer to 13 nonstop

12 overlaps?

13 A. That, I did.

14 Q. Okay. And have you done any work to determine

15 the number of passengers that fly those 13 routes on an

16 annual basis?

17 A. I have not.

18 Q. Let me mark as Exhibit No. 1000, which is the

19 number that we're starting with, a document entitled O&D

20 Passengers in Nonstop Overlap City Pairs.

21 (Exhibit 1000 marked.)

22 Q. (By Ms. Forrest) Mr. Bush, do the routes on

23 what's been marked as document 1000 correspond to the 13

24 overlap routes that you had referenced in your report?

25 A. I believe they do, yes.

1 Q. Do you have any reason to doubt that the
2 numbers listed as annual passengers on the right-hand
3 side correspond to the annual passengers for those
4 routes on --

5 A. I don't have any reason to doubt that, no.

6 Q. Okay. And would you agree with me that the
7 total number of annual passengers on the 13 overlap
8 routes that have been marked in Exhibit 1000 are
9 11,199,157?

10 A. That is what the document says, yes.

11 Q. How many of the 49 plaintiffs in this matter
12 have flown a single one of these 13 overlap routes in
13 the last year?

14 A. I do not know.

15 Q. Have you looked at any information relating to
16 the travel patterns of the 49 plaintiffs in this matter?

17 A. I have not.

18 Q. Have you looked at the Rubinfeld report which
19 listed some data relating to the travel patterns for the
20 plaintiffs in this matter starting at Exhibit No. 33?

21 A. I have looked at the Rubinfeld report, yes, I
22 have.

23 Q. Did you look at Exhibit No. 33 of the Rubinfeld
24 report?

25 A. I did.

1 Q. Do you have any reason to doubt the accuracy of
2 the information contained in Exhibit 33 relating to the
3 travel patterns of the 49 plaintiffs in this matter?

4 A. May I see that exhibit?

5 Q. We'll go through it; but from your recollection
6 as you sit here today, do you recall taking issue with
7 any of the information relating to the travel patterns
8 for the 49 plaintiffs in this matter reflected in
9 Exhibit 33 of the Rubinfeld report?

10 A. Given that I have not looked at the travel
11 patterns of the 49 plaintiffs, I do not have any reason
12 to doubt anything related to them at the moment.

13 Q. Okay. So the answer would be no?

14 A. No.

15 Q. Yes, the answer would be no, right?

16 A. Yes, the answer would be no.

17 Q. Okay. Thank you.

18 All right. So do you know how many of the
19 49 plaintiffs have flown a United or a Continental
20 flight on any one of these 13 routes?

21 A. I do not.

22 Q. You don't because you didn't look at any of the
23 information relating to the travel patterns of the 49
24 plaintiffs, right?

25 A. No. That was not my task.

1 Q. And so you did not look at any of the travel

2 information --

3 A. That's correct.

4 Q. -- relating to the 49 plaintiffs?

5 A. That's correct.

6 Q. Thank you.

7 Okay. Let's talk about the New York to

8 San Francisco route.

9 A. Okay.

10 Q. Have you done any calculation as to what
11 percentage of annual passengers relate to the New York
12 to San Francisco route?

13 A. No. Again, I have not looked at anything
14 relating to the number of annual passengers on a plane.

15 Q. Let me mark as Exhibit No. 1001 a document
16 entitled O&D Passengers in Nonstop Overlap City Pairs.

17 (Exhibit 1001 marked.)

18 Q. (By Ms. Forrest) Mr. Bush, you'll see at the
19 bottom of the page that's been marked as Exhibit No.
20 1001, there is a reference to New York to San Francisco
21 as percent of total. Do you see that?

22 A. I do.

23 Q. Okay. And do you see it says 18.2 percent?

24 A. I do.

25 Q. Do you have any reason to believe that

1 mathematically 18.2 percent does not represent the
2 percentage of annual passengers flying on a New York to
3 San Francisco route as part of the total of the
4 11,199,157?

5 A. Can you repeat that question?

6 Q. Yeah. I'll do that again. Okay. Do you have
7 any reason to disbelieve the fact that as a matter of a
8 mathematical calculation, the percentage of the total
9 number of annual passengers on these overlap routes for
10 the New York to San Francisco route is 18.2 percent?

11 A. Okay. No, I do not.

12 Q. Thank you.

13 A. Excuse me one second. It's roasting in here,
14 so I'm going to take off my jacket.

15 Q. Sure. Have you done any calculations relating
16 to the percentage of each round trip that passengers
17 represent on any of the 13 or all of the 13 overlap
18 routes?

19 A. Percentage in terms of what?

20 Q. Yeah. Let's just take 11 -- you've got
21 11,199,157 total annual passengers on the 13 overlap
22 routes, correct?

23 A. Yes.

24 Q. Have you done any work to calculate what
25 percentage a single round trip would represent of that

1 number?

2 A. No.

3 Q. Okay. Let me mark as Exhibit No. 1002 a

4 single-page document entitled O&D Passengers in Nonstop

5 Overlap City Pairs.

6 (Exhibit 1002 marked.)

7 Q. (By Ms. Forrest) Mr. Bush, do you have any

8 reason to doubt that as a matter of mathematical

9 calculation a single round trip for one of the

10 passengers on the overlap routes in terms of a total

11 number of annual passengers represents .000018 percent?

12 A. I do not.

13 Q. Have you done any calculation of the total

14 number of annual passengers on the 13 nonstop routes if

15 they were calculated using airport pairs?

16 A. I have not.

17 Q. Let me mark as Exhibit No. 1003 a document

18 entitled O&D Passengers in Nonstop Overlap Airport

19 Pairs.

20 (Exhibit 1003 marked.)

21 Q. (By Ms. Forrest) Do you have any reason to

22 doubt that if calculated on an airport pair basis, the

23 total number of annual passengers on the 13 overlap

24 routes referenced in your report equal 4,342,207?

25 A. I do not.

1 Q. Have you done any calculation as to the
2 percentage that the Newark/San Francisco airport pair
3 route represents of the total number of overlap routes
4 if calculated on an annual passenger basis?

5 A. No.

6 Q. Let me mark as Exhibit 1004 a single-page
7 document entitled O&D Passengers in Nonstop Overlap
8 Airport Pairs.

9 (Exhibit 1004 marked.)

10 Q. (By Ms. Forrest) Do you have any reason to
11 doubt that as a matter of mathematical calculation the
12 EWR/San Francisco route if calculated in terms of a
13 percentage of total annual passengers represents 12
14 percent?

15 A. That seems correct, according to this document.

16 Q. Have you done any work to calculate the
17 percentage that a single round trip would represent of
18 the total number of passengers on the 13 overlap routes
19 if calculated on an airport pair basis?

20 A. Could you repeat that question?

21 Q. Sure. Let me actually restate it.

22 Have you done any work to calculate what
23 percentage of the total number of passengers on an
24 airport pair basis for the 13 nonstop overlap routes,
25 calculated on an airport pair basis, a single round trip

1 would represent?

2 A. No.

3 Q. Let me mark as Exhibit No. 1005 a document
4 entitled O&D Passengers in Nonstop Overlap Airport
5 Pairs.

6 (Exhibit 1005 marked.)

7 Q. (By Ms. Forrest) Mr. Bush, do you have any
8 reason to doubt that as a matter of mathematical
9 calculation each round trip passenger represents .000046
10 percent of total passengers on the 13 overlap routes if
11 calculated on an airport pair basis?

12 A. I do not.

13 Q. Do you have any information that specifically
14 indicates that a particular plaintiff is going to fly a
15 single one of the 13 nonstop overlap routes which you've
16 referenced in your report?

17 A. No.

18 Q. Do you have any reason to believe that a single
19 one of the 49 plaintiffs will experience a fare increase
20 on any one of the 13 overlap routes in the next year, if
21 the merger is consummated? Let me restate the question.

22 A. Thank you.

23 Q. Okay.

24 A. Actually, I think I can answer this.

25 Q. Actually, let me restate the question.

1 Have you talked to any of the 49

2 plaintiffs?

3 A. No.

4 Q. Have you investigated the travel plans for any

5 of the 49 plaintiffs?

6 A. No.

7 Q. As a result of that, Mr. Bush, it's true, isn't

8 it, that you don't have any idea what the travel plans

9 are for any of the 49 plaintiffs?

10 MR. SHULMAN: Objection to form.

11 A. That's true.

12 Q. (By Ms. Forrest) Okay. So you don't know, do

13 you, whether or not any of the 49 plaintiffs will be

14 purchasing a single ticket on any of the 13 overlap

15 routes which you've referenced in your report over the

16 next 12 months; is that right?

17 A. That's correct.

18 Q. You don't know whether or not a plaintiff will

19 have to actually pay money for a single ticket relating

20 to a single one of the overlap routes which you've

21 referenced in your report for the next year, two years,

22 even three years?

23 A. I do not know the travel plans of the

24 plaintiffs. Therefore, I do not know whether or not

25 they will fly any of those airport pairs that I have

1 listed.

2 Q. Do you know whether or not any of the 49
3 plaintiffs are going to fly at all over the next year?

4 A. I do not.

5 Q. Do you have any information then which
6 specifically would lead you to a reasoned conclusion
7 that indicates that the 49 plaintiffs will be
8 specifically harmed if this merger is consummated?

9 A. No.

10 Q. Are you offering an opinion that a single one
11 of these 49 plaintiffs is specifically harmed by this
12 merger?

13 A. No, I am not. That was not my task.

14 Q. Now, you worked for an entity called the TEA,
15 didn't you?

16 A. Yes, I did.

17 Q. What does the TEA stand for?

18 A. The Transportation Energy and Agriculture
19 Section of the Antitrust Division of the United States
20 Department of Justice.

21 Q. You were a staff attorney there?

22 A. I was.

23 Q. You were a young staff attorney there?

24 A. I was.

25 Q. You were a junior staff attorney?

1 A. At the onset, I was a junior staff attorney.

2 Q. And you are familiar, aren't you, with the fact
3 that the TEA has both staff economists and lawyers?

4 A. Yes.

5 Q. And there were a number of economists at the
6 TEA when you were at the TEA; is that right?

7 A. Yes.

8 Q. And you know, don't you, that the TEA today
9 still continues to have a number of economists on staff?

10 A. The TEA does not have economists who act as
11 economists in their section. The economists are housed
12 in a separate section.

13 Q. You're right. You are aware, aren't you, that
14 the TEA works with economists who are employed by the
15 Department of Justice Antitrust Division, aren't you?

16 A. That's correct.

17 Q. And that those economists have a substantial
18 amount of experience in analyzing the economic issues
19 relating to airline mergers; isn't that right?

20 A. That's correct.

21 Q. And are you familiar with the fact that Oliver
22 Richard is one of those economists?

23 A. He was. I did not work with him when I was
24 there at the time.

25 Q. Okay. Let's talk about today. Are you aware

1 that Oliver Richard is an economist employed by the
2 Antitrust Division of the Department of Justice today?

3 A. I am.

4 Q. Are you aware that Oliver Richard is an
5 individual who does work, economic work, relating to the
6 competitive issues in the airline industry?

7 A. I am.

8 Q. Are you aware that Tom Whalen is currently an
9 economist employed by the Antitrust Division of the
10 Department of Justice?

11 A. Yes, I am.

12 Q. And you're aware, aren't you, that Mr. Whalen
13 also does work relating to economic issues regarding
14 airline issues?

15 A. Yes, I am.

16 Q. Okay. Let me restate that because I think I
17 used the word issues a couple of times. I hate to see
18 that on the transcript.

19 Are you aware that Tom Whalen is an
20 economist who works on competition issues relating to
21 airlines?

22 A. Yes, I am.

23 Q. Are you aware of an individual by the name of
24 Craig Peters?

25 A. Yes, I am.

1 Q. Are you aware that Mr. Peters is employed by
2 the Antitrust Division of the Department of Justice?

3 A. Yes.

4 Q. Are you aware that Mr. Peters is an individual
5 who has experience working at the Department of Justice
6 analyzing competitive issues regarding airlines?

7 A. Yes, I am.

8 Q. Collectively taken together, would you agree
9 with me that the economists employed by the Antitrust
10 Division of the Department of Justice have decades of
11 experience in analyzing airline competition issues?

12 A. I can't answer that because they are not fully
13 tasked only to examine airline transactions. I do
14 recognize that they do have substantial experience with
15 a variety of different mergers, including airlines.

16 Q. Would you agree with me that collectively, the
17 economists at the Antitrust Division of the Department
18 of Justice have spent more time doing economic work
19 relating to airline mergers than you have?

20 A. That is probably true.

21 Q. Have you run any regressions in the last year
22 yourself?

23 A. I have not.

24 Q. Have you developed any regression programs
25 yourself in the last year?

1 A. I have not.

2 Q. Have you done an econometric model of any type
3 in the last, say, five years?

4 A. I have not.

5 Q. Would you agree with me that the economists at
6 the Department of Justice Antitrust Division are
7 qualified to analyze the competitive issues relating to
8 airline mergers?

9 MR. SHULMAN: Objection to form.

10 A. I'm also not sure I understand the question.

11 Q. (By Ms. Forrest) Let me put it differently.

12 Would you agree with me that Oliver Richard is an
13 individual who is qualified to analyze competitive
14 issues regarding airline mergers, or do you just not
15 know?

16 A. Well, competitive issues is the tricky thing
17 because --

18 Q. Let me restate it.

19 MR. SHULMAN: Excuse me. I object to your
20 interrupting the witness.

21 MS. FORREST: Well, if he says it's
22 confusing, I want to make sure the question is clear.

23 MR. SHULMAN: You interrupted him. I
24 mean, he was answering, but you interrupted him.

25 MS. FORREST: I want to make sure

1 everybody gets to their plane.

2 MR. SHULMAN: That's not a reason.

3 Q. (By Ms. Forrest) Do you want to continue, or
4 do you want me to restate the question and make it
5 clear?

6 A. I'd like to be able to answer, because I don't
7 want you to think I'm just holding you up. I want you
8 guys to catch your planes, of course.

9 Q. My plane is tomorrow. So I'm not in a rush for
10 time. I'm just trying to be cognizant of everyone else.

11 A. When you say competitive issues, competitive
12 issues are an intersection of fact, law and economic
13 analysis. And I think they can answer certain
14 components of that, but not others.

15 Q. Let me ask you a different question. You
16 already mentioned you're aware that Oliver Richard works
17 on airline issues at the Department of Justice Antitrust
18 Division, right?

19 A. Yes.

20 Q. And he's an economist, right?

21 A. Yes.

22 Q. Do you have any reason to doubt that he is good
23 at his job?

24 A. I have no reason to doubt that, no.

25 Q. Do you have any reason to doubt that Tom Whalen

1 is good at his job?

2 A. I have worked with many people at the
3 Department of Justice, and I think that they are, for
4 the most part, good at their jobs.

5 Q. And do you have any reason to doubt that Craig
6 Peters is good at his job?

7 A. For the same reason, I have no reason to doubt
8 that he is good at his job.

9 Q. Are you familiar with a woman by the name of
10 Donna Kooperstein?

11 A. Yes, I am.

12 Q. And her name is spelled K-o-o-p-e-r-s-t-e-i-n;
13 is that right?

14 A. I am very familiar with Ms. Kooperstein.

15 Q. What's Donna Kooperstein's position within TEA,
16 if you know?

17 A. She's currently the section chief of the
18 Transportation Energy and Agriculture section.

19 Q. Would you agree with me that one of Ms.
20 Kooperstein's responsibilities relates to airlines when
21 they come before her?

22 A. That is correct.

23 Q. And are you familiar with an individual by the
24 name of Bill Stallings?

25 A. I have only met Bill Stallings on a couple of

1 occasions.

2 Q. Are you aware that Mr. Stallings is also

3 employed by the TEA?

4 A. I believe he is a assistant lead section chief

5 of TEA.

6 Q. Do you know whether or not Mr. Stallings also

7 has responsibility in part for reviewing airline

8 mergers?

9 A. He definitely does, as he is directly under

10 Donna.

11 Q. Do you know an individual by the name of Mike

12 Billiel spelled B-i-l-l-i-e-l?

13 A. Yes, I do.

14 Q. And are you aware that Mr. Billiel is also

15 employed by the Antitrust Division of the Department of

16 Justice?

17 A. Yes, he is.

18 Q. And you're aware that Mr. Billiel works within

19 TEA; isn't that right?

20 A. Yes, he does.

21 Q. Do you have any reason to believe that Donna

22 Kooperstein is not good at her job?

23 A. I do not.

24 Q. Do you have any reason to believe that Bill

25 Stallings is not good at his job?

1 A. I do not.

2 Q. Do you have any reason to believe that Mike

3 Billiel is not good at his job?

4 A. I do not.

5 Q. You're aware, aren't you, that the

6 Delta/Northwest merger was cleared?

7 A. Yes, I am.

8 Q. Have you studied at all how fares have trended

9 since the Delta/Northwest merger was cleared?

10 A. I have not.

11 Q. Have you done any modeling of fares in the

12 airline industry at all?

13 A. I have not.

14 Q. Have you reviewed any information which would

15 provide you with fare trends since 2000 in the airline

16 industry?

17 A. No, I have not.

18 Q. Are you aware that fares have trended downward

19 since the Delta/Northwest merger?

20 A. That would not surprise me.

21 Q. Why would it not surprise you?

22 A. First and foremost, we've been in a recession,

23 demand has been down, and travelers have not been

24 traveling to the same degree, fares have trended

25 downward. This is inspite of the fact there's been

1 capacity reductions by most of the airlines.

2 Q. Despite that fact?

3 A. Yes.

4 Q. So there have been capacity reductions and also
5 fare decreases?

6 A. Yes. And I want to be more specific about
7 that. We're talking average fares. This is not
8 necessarily all fares on all routes.

9 Q. Let me show you what we will mark as Exhibit
10 No. 1006, a single-page document entitled Change in
11 Average Domestic O&D Fares pre and post DL/NW merger.
12 (Exhibit 1006 marked.)

13 Q. (By Ms. Forrest) Are you familiar, Mr. Bush,
14 with the data set entitled U.S. Department of
15 Transportation O&D Survey?

16 A. Yes, I am.

17 Q. Do you have any reason to doubt the accuracy of
18 the information relating to fares that is reflected on
19 Exhibit 1006?

20 A. I do not.

21 Q. Have you studied any information relating to
22 whether or not Delta Northwest have achieved any of the
23 synergies which they projected in connection with their
24 merger?

25 A. No.

1 Q. You haven't looked, have you, at whether or not

2 Delta Northwest has, in fact, exceeded the synergy

3 projections for its merger?

4 A. No.

5 Q. Have you ever read the Delta Northwest 10-K?

6 A. Yes.

7 Q. Have you read the Delta 10-K?

8 A. Yes.

9 Q. Before it merged with Delta Northwest?

10 A. Yes.

11 Q. Let me mark as Exhibit No. 1007, a two-page

12 document which is dated December 31st, 2008, or I should

13 say it's dated for the fiscal year ended December 31st,

14 2008 for Delta Airlines.

15 (Exhibit 1007 marked.)

16 Q. (By Ms. Forrest) I'm going to point your

17 attention in particular on the second page of the

18 document which is the 32nd page of the overall 10-K, a

19 paragraph which begins, "We believe that we will

20 recognize \$500 million in synergy benefits in 2009." Do

21 you see that?

22 A. Yes, I do.

23 Q. Do you have any reason to doubt that Delta was

24 of the view that it would recognize \$500 million in

25 synergy benefits in 2009 as of the fiscal year ended

1 2008?

2 A. I have no reason to doubt that they believed
3 they would achieve 500 million in synergy benefits.

4 Q. And you have no information, do you, as to
5 whether or not Delta Northwest, in fact, achieved or
6 even exceeded those synergy benefits, do you?

7 A. I do not.

8 Q. Have you read the 2009 Delta Airlines 10-K?

9 A. I have.

10 Q. Let me mark as Exhibit No. 1008 a two-page
11 document which is dated as of the fiscal year ended
12 December 31, 2009, entitled Delta Airlines.

13 (Exhibit 1008 marked.)

14 Q. (By Ms. Forrest) Turn, if you would, please,
15 to the second page of what's been marked as Exhibit No.
16 1008. Do you see a section entitled Merger Synergies
17 towards the middle of that page?

18 A. Yes, I do.

19 Q. Do you see that it states, "As a result of our
20 integration efforts, we achieved more than \$700 million
21 in merger synergy benefits in 2009, and we are targeting
22 an additional \$600 million in merger synergy benefits in
23 2010." Do you see that?

24 A. Yes, I do.

25 Q. Do you have any reason to believe that that is

1 an inaccurate statement?

2 A. I have no reason to doubt it's an inaccurate
3 statement, with the caveat that I do not know how they
4 define synergy benefits.

5 Q. Let me actually restate the question, because I
6 think there may have been some confusion in the way you
7 answered my question.

8 Do you have any reason to doubt that Delta
9 Northwest achieved more than \$700 million in merger
10 synergy benefits in 2009 and was targeting an additional
11 \$600 million in synergy benefits in 2010 as of the
12 fiscal year ended December 31, 2009?

13 A. I have no reason to doubt that they believed
14 that they would achieve more than 700 million in synergy
15 benefits, however they defined it, in 2009, targeting
16 more than 600 million in synergy benefits, however they
17 defined it, in 2010.

18 Q. Do you have any reason to believe that Delta
19 did not, in fact, achieve \$700 million in merger synergy
20 benefits in 2009? We've used the word before
21 "believed," and so I want to change that. Let me
22 restate the question, so you understand why I'm making
23 the distinction.

24 Do you have any reason to believe that
25 Delta did not, in fact, achieve more than \$700 million

1 in merger synergy benefits in 2009?

2 MR. SHULMAN: Objection to form.

3 A. I have no reason to believe that they had not,
4 in fact, achieved 700 million in synergy benefits,
5 however they defined it, in 2009.

6 Q. (By Ms. Forrest) Okay. Have you looked at any
7 press releases or articles relating to Delta Airlines in
8 July of 2010?

9 A. Yes.

10 Q. Are you aware that Delta's chief financial
11 officer said that synergies have exceeded our
12 expectations, and will be a key factor as we strive to
13 keep our nonfuel unit costs flat for the full year in
14 July of 2010?

15 A. Repeat that question. I'm sorry.

16 Q. Yeah. Do you recall that Hank Halter, Delta's
17 chief financial officer, made a statement in July of
18 2010 that, quote, "Synergies have exceeded our
19 expectations, and will be a key factor as we strive to
20 keep our nonfuel unit costs flat for the full year."

21 Do you recall that statement?

22 A. Yes, I do.

23 Q. Do you have any reason to believe that Mr.
24 Halter was not being truthful when he made that
25 statement?

1 A. I have no reason to believe he was not being
2 truthful when he made that statement.

3 Q. Did you do any work to analyze the number of
4 nonstop overlaps in the Delta/Northwest merger?

5 A. I examined it, but I was not -- I did not
6 engage in any great analysis of the Delta/Northwest
7 merger, no.

8 Q. Are you aware that there were more nonstop
9 overlaps in the Delta/Northwest merger than there are in
10 the United/Continental merger?

11 A. Of that I am aware, yes.

12 Q. Are you aware that Mr. Alioto's firm and many
13 of the plaintiffs in the instant lawsuit brought an
14 action seeking injunctive relief in connection with the
15 Delta/Northwest merger?

16 A. I am aware of that, yes.

17 Q. And are you aware that that lawsuit was
18 dismissed voluntarily?

19 A. Yes.

20 Q. And are you aware that Mr. Alioto and the
21 plaintiffs who filed a suit for injunctive relief
22 relating to the Delta/Northwest merger did not receive
23 an injunction?

24 A. Yes.

25 Q. Have you spoken with Mr. Alioto or any of the

1 counsel for plaintiffs in this action about that
2 lawsuit?

3 A. They had mentioned it at breakfast that they
4 had brought that suit. That is the only time that I've
5 heard talk of it, and the first time.

6 Q. Did they explain to you why they dismissed the
7 suit?

8 A. No.

9 Q. Did they tell you they received money in
10 settlement of that action?

11 A. I believe they did say they settled. I
12 couldn't recall if they just received attorneys' fees or
13 settled.

14 Q. You mean settled for money for the plaintiffs?

15 A. Yes.

16 Q. Are you being compensated in this matter?

17 A. I am.

18 Q. And how are you being compensated? Is it on an
19 hourly basis, or is it going to be sort of a contingency
20 type of arrangement?

21 A. My standard practice is a 10,000-dollar
22 retainer that is charged against \$500 an hour.

23 Q. How much have you billed in this matter so far?

24 A. Definitely over my retainer. Probably close to
25 20 or so thousand dollars.

1 Q. When were you first retained for this matter?

2 A. I was retained for this matter, I cannot be

3 certain, but it was somewhere around August 5th or 6th.

4 Q. Have you been paid for any of the work that you

5 have done in this matter?

6 A. I have not.

7 Q. Now, you said that your standard practice is a

8 10,000-dollar retainer; is that right?

9 A. Yes.

10 Q. Have you ever been retained as an expert or

11 potential expert in any other court proceeding?

12 A. I have been retained as a potential expert,

13 yeah, in a couple of different court proceedings.

14 Q. Have you ever testified in any other court

15 proceeding?

16 A. I have not.

17 Q. Have you ever been deposed in any other court

18 proceeding?

19 A. You're my first.

20 Q. Have you ever been deposed ever in your life

21 before?

22 A. I have not.

23 Q. Have you ever testified at trial?

24 A. I have not.

25 Q. Have you ever been qualified as a witness by a

1 court of law?

2 A. No.

3 Q. Have you ever been qualified as an expert
4 economist by any court?

5 A. No.

6 Q. Have you ever been qualified as an expert in
7 anything by any court?

8 A. No.

9 Q. Have you ever even proposed yourself as an
10 expert in any filing with any court?

11 A. No.

12 Q. You've never been a professor of economics,
13 have you?

14 A. No, I have not.

15 Q. And your appointment at the University of
16 Houston is in the law school; is that right?

17 A. That's correct.

18 Q. You are not a professor in economics at the
19 University of Houston, are you?

20 A. That is not where my appointment sits, no.

21 Q. You are not a professor of economics at the
22 University of Houston; is that right?

23 A. That is correct.

24 Q. And you have never taught a class on economics
25 at the University of Houston; is that right?

1 A. No.

2 Q. That is not right?

3 A. No. I have not taught a class at the

4 University of Houston.

5 Q. So let me restate that question so we can get a

6 clear answer. Have you ever taught a class in economics

7 at the University of Houston?

8 A. Well, I have not had a class in the economics

9 department. Antitrust law, of course, is related to

10 economics, and I teach a variety of antitrust courses

11 that have economic components to it.

12 Q. But you are a law professor?

13 A. That is correct.

14 Q. You're not an economics professor?

15 A. That is correct.

16 Q. And you've never been an economics professor?

17 A. I have taught in the economics department, but

18 I have not acted as an economics professor.

19 Q. And the economics department that you taught in

20 was as a TA at the University of Utah; is that right?

21 A. That's correct.

22 Q. You've never taught as a tenured professor in

23 any economics department in this entire country; is that

24 right?

25 A. That's correct.

1 Q. You're aware, aren't you, that the
2 Delta/Northwest merger was cleared by the Department of
3 Justice?

4 MR. SHULMAN: You asked that already.

5 MS. FORREST: No. I asked a different
6 question.

7 Q. (By Ms. Forrest) You're aware, aren't you,
8 that the Delta/Northwest merger was cleared by the
9 Department of Justice?

10 A. I am.

11 Q. You've provided some testimony before Congress
12 relating to the United/Continental merger; is that
13 right?

14 A. That's correct.

15 Q. Who contacted you to provide that testimony?

16 A. I have testified twice about this. The first
17 instance, it was Senate staff; and the second instance
18 on the House, it was Congresswoman Sheila Jackson Lee.

19 Q. And you testified on behalf of yourself and the
20 American Antitrust Institute?

21 A. That is correct.

22 Q. And you provided written testimony in
23 connection with congressional testimony in the
24 United/Continental merger?

25 A. That's correct.

1 Q. And was that written testimony reviewed by any
2 individuals associated with the American Antitrust
3 Institute prior to its submission?

4 A. Yes.

5 Q. Were there comments provided by any individuals
6 at the American Antitrust Institute on your written
7 testimony for the United/Continental merger?

8 A. There were a couple of comments. I can't
9 recall what they were. Nothing substantial.

10 Q. But did you make their comments or consider
11 their comments in connection with providing your written
12 testimony before Congress relating to the
13 United/Continental merger?

14 A. I think I may have changed a couple of typos;
15 but apart from that, I don't recall anything
16 substantial.

17 Q. Okay. Do you know whether or not any
18 individuals -- how many individuals commented on your
19 written congressional testimony from the AAI, which is
20 the acronym which stands for the American Antitrust
21 Institute?

22 A. I'm trying to recall. I think maybe three or
23 four.

24 Q. What were the names of the individuals from the
25 AAI who commented upon your written congressional

1 testimony that you submitted in connection with the
2 United/Continental merger?

3 A. I think Diana Moss, Burt Foer.

4 Q. How do you spell his last name?

5 A. F-o-e-r. Quite honestly, I don't recall the
6 others. It was on e-mail; and, you know, I get a lot of
7 e-mails. So I'm not quite sure.

8 Q. Is Ms. Foss a --

9 A. I'm sorry. Moss. M-o-s-s.

10 Q. I'm sorry. Is Ms. Moss a lawyer?

11 A. She's an economist.

12 Q. Is Mr. Burt Foer a lawyer or an economist?

13 A. I know Mr. Foer worked at the FTC. I believe
14 it was on the attorney side.

15 Q. And you said that the comments that were made
16 by these individuals were essentially nonsubstantive,
17 they were in the nature of typos and things like that?

18 A. I believe so, yes.

19 Q. They didn't provide you with any substantive
20 input on your written congressional testimony?

21 A. No.

22 Q. And the dates of your written submissions were
23 May 27th, 2010 and June 16th, 2010?

24 A. That sounds about right.

25 Q. So let me just actually restate the question,

1 so we have it clear for the record.

2 Is it the case that you provided written
3 testimony to Congress on May 27th and June 16th of 2010?

4 A. Those sounds correct.

5 Q. And that testimony was provided on behalf of
6 yourself and the AAI; is that right?

7 A. Yes.

8 Q. Did you have to get any formal authorization
9 from the AAI to submit it on behalf of the AAI?

10 A. Yes. Initially there was some confusion as to
11 whether or not I'd be testifying on behalf of AAI or
12 not, but I did get what is essentially board approval to
13 provide the testimony on behalf of AAI.

14 Q. Did you do any economic modeling in connection
15 with the creation of your written testimony for Congress
16 dated May 27th or June 16th, 2010?

17 A. I did not.

18 Q. Did you do any regressions relating to the
19 congressional testimony which you provided in written
20 form on May 27th or June 10th, 2010?

21 A. I did not.

22 Q. Did you do any analysis of particular
23 concentration levels for any overlap routes relating to
24 the United/Continental merger in connection with the
25 written congressional testimony which you provided on

1 May 27th and June 10th of 2010?

2 A. Could you repeat that question?

3 Q. All right. Did you do any economic

4 concentration work where you looked at the specific

5 concentration of overlap routes in connection with the

6 written testimony which you submitted to Congress on May

7 27th and June 16th, sorry, 2010?

8 A. I did not.

9 Q. Okay. And if in my prior questions I had said

10 June 10th, I meant to say June 16th. And you understood

11 that, right?

12 A. I understood that.

13 Q. Did anybody pay for any portion of the creation

14 of the written testimony which you submitted on May 27th

15 and June 16th of 2010?

16 A. No.

17 Q. You did that on your own time?

18 A. On my own time.

19 Q. Okay. Have you told any individuals from the

20 AAI that you are providing expert opinion in this

21 matter?

22 A. Yes, I have.

23 Q. Have you received approval to do so?

24 A. I have not.

25 Q. Did you seek approval to do so?

1 A. I did not.

2 Q. How long did it take you to write your written
3 testimony that you submitted to Congress on May 27th of
4 2010?

5 A. I got notification approximately, I want to
6 say, three or four days before it happened. They gave
7 me a very short fuse.

8 Q. And so you essentially put together some legal
9 analysis of the United/Continental merger, and then
10 submitted that in written form?

11 A. Yes.

12 Q. You weren't submitting it, really, economic
13 work in connection with your congressional testimony; is
14 that right?

15 A. Well, again, antitrust analysis is law,
16 economics and facts. So to that extent, yes. But, no,
17 I did not have my economist hat on.

18 Q. You did not have your economist hat on in
19 connection with providing the written testimony that you
20 submitted to Congress on May 27th, 2010; isn't that
21 correct?

22 A. That is correct.

23 Q. And you did not have your economist hat on in
24 connection with providing your written testimony to
25 Congress on June 16th of 2010; is that right?

1 A. I did not.

2 Q. Okay. Let's mark your written testimony dated

3 May 27th, 2010 as Exhibit No. 1009.

4 (Exhibit 1009 marked.)

5 Q. (By Ms. Forrest) Let's also mark as Exhibit

6 No. 1010 your written congressional testimony dated June

7 16th, 2010.

8 (Exhibit 1010 marked.)

9 Q. (By Ms. Forrest) When you were employed by TEA

10 at the Department of Justice.

11 A. Yeah.

12 Q. You were never employed as an economist, were

13 you?

14 A. That's correct.

15 Q. You've never been on the staff of any economist

16 consulting firms, have you?

17 A. No.

18 Q. Have you published any articles on economics in

19 any peer-reviewed economic journals?

20 A. I have an article on Electric Utility Mergers

21 in the Review of Industrial Organization, which is

22 peer-reviewed.

23 Q. Have you ever published any articles on airline

24 economics in any peer-reviewed economic journal?

25 A. No.

1 Q. You see what I've placed before you as Exhibits

2 No. 1009 and 1010?

3 A. Yes.

4 Q. Is Exhibit No. 1009 a copy of the written
5 testimony which you submitted to the Congress on May
6 27th, 2010?

7 A. It is.

8 Q. Is Exhibit No. 1010 a copy of the testimony
9 which you provided to the House Judiciary Committee on
10 June 16th, 2010?

11 A. It is.

12 Q. Would you agree with me that the content of
13 Exhibits No. 1009 and 1010 are substantially the same?

14 A. They are substantially similar.

15 Q. Was it the case that you actually used Exhibit
16 1009 to create 1010?

17 A. I did, indeed.

18 Q. And, in fact, most of it is exactly the same,
19 right?

20 A. It is substantially similar. I believe I
21 changed some footnotes and added some things; but they
22 are substantially similar, that's correct.

23 Q. You didn't do any economic analysis between the
24 time you created Exhibit 1009 and 1010, did you?

25 A. I did not.

1 Q. Now, you also submitted an expert report in
2 this matter, did you not?

3 A. I did.

4 Q. What are you an expert in?

5 A. I'm sorry. I'm not understanding the question.

6 Q. What are you -- are you proposing yourself as
7 an expert in a particular discipline in connection with
8 this matter?

9 A. No, still not sure. I understand what you're
10 getting at.

11 My task was to analyze the markets, and I
12 don't usually distinguish between what I do as a law
13 professor and what people do in economic analysis. So
14 to say I'm an expert in something, I suppose I would say
15 I'm an expert in antitrust law and economics; and I have
16 substantial experience in airline markets.

17 Q. Okay. Are you an expert in airline markets?

18 A. Yes, I would say I am.

19 Q. Based upon what?

20 A. Based upon my experience at the DOJ, based upon
21 my publications on airline markets, based upon my study
22 of airline markets over the past 10 to 12 years.

23 Q. Now, you said part of your expertise is based
24 upon your position at the TEA; is that right?

25 A. That's correct.

1 Q. And that's your expertise in airline markets
2 that we're talking about, right?

3 A. That's correct.

4 Q. Okay. Are you an expert economist in airline
5 markets?

6 A. No, I am not.

7 Q. Are you an expert economist in airline pricing?

8 A. No, I'm not.

9 Q. Are you an expert economist in airline
10 capacity?

11 A. No.

12 Q. Are you an expert economist in airline
13 concentration?

14 A. No.

15 Q. You mentioned that as part of the basis for
16 your expertise in airline markets, was your position at
17 TEA, right?

18 A. That's correct.

19 Q. And at TEA, we've established that you were a
20 junior staff attorney?

21 MR. SHULMAN: Objection to form.

22 A. I started out as a junior staff attorney, yes.

23 Q. (By Ms. Forrest) And how long were you at the
24 TEA?

25 A. Three years.

1 Q. So by the time you were done, you were a
2 three-year attorney?

3 A. By mathematical definition, yes.

4 Q. As of the time that you left the TEA, would you
5 have considered yourself to have been an expert in
6 airline markets?

7 A. No.

8 Q. Now, you also mentioned that you had some
9 publications which underlay the basis for your being an
10 expert in airline markets. Do you recall that?

11 A. Yes.

12 Q. Okay. What publications in airline markets
13 have you published in any peer-reviewed journals?

14 A. None.

15 Q. You also said that you had just studied airline
16 markets; is that right?

17 A. That's correct.

18 Q. Sort of on your own time?

19 A. As a professor, everything is on my time, so
20 yes.

21 Q. As a professor in law?

22 A. That's correct.

23 Q. Let's mark as Exhibit No. 1010 the proposed --

24 MR. YDE: 1011.

25 Q. (By Ms. Forrest) I'm sorry. Is it 11? Sorry.

1 1011, the proposed report of Darren Bush. And I'm
2 sorry, I actually only have one extra copy because I had
3 to get it sent. If you have your own copy and you want
4 to use it, you're welcome to do that.

5 A. If we want to save paper.

6 (Exhibit 1011 marked.)

7 A. Did you need this back?

8 Q. (By Ms. Forrest) I don't need it back. But if
9 you want to share, because I don't have extra copies for
10 counsel. It was just given the location of where we
11 are.

12 How many hours did you spend creating
13 what's been marked as 1011 which is the report that
14 you've submitted in this matter?

15 A. I don't have to go back and look; but a
16 substantial amount of hours, yes.

17 Q. Would you agree with me that there are many
18 sections of your report which has been marked as Exhibit
19 1011 which are word for word the same as your written
20 congressional testimony which has been marked as Exhibit
21 No. 1009 and 1010?

22 A. There are portions, yes.

23 Q. That are word for word the same, right?

24 A. That's correct.

25 Q. Let's go through Exhibit No. 1009 just for a

1 moment, if we could, which is the written congressional
2 testimony which you submitted on May 27th, 2010. Why
3 don't you turn, if you would, please, to page 5 of your
4 report at the same time, which has been marked as
5 Exhibit No. 1011.

6 A. Okay. Repeat that, please.

7 Q. I'd like you to open up Exhibit 1009, which is
8 your May 27th congressional testimony and turn to page
9 3.

10 A. 3, got it.

11 Q. Then I'd like you to take Exhibit No. 1011,
12 which is your report, and turn to page 5.

13 A. Got it.

14 Q. Okay. Do you see the first paragraph of your
15 report which is on page 5 entitled the first -- which
16 begins the first question that must be addressed?

17 A. Yes.

18 Q. Okay. And if you compare that to the first
19 paragraph on page 3 of the May 27th, 2010 congressional
20 testimony, which has been marked as Exhibit No. 1009,
21 would you agree with me that these are substantially the
22 same, if not exactly the same?

23 A. They are essentially the same, not exactly the
24 same.

25 Q. Okay. And the changes that you did were

1 relatively minor?

2 A. Yes.

3 Q. Okay. Turn, if you would, please, to page 4 of
4 your congressional testimony of May 27th which has been
5 marked as Exhibit No. 1009.

6 A. Got it.

7 Q. Okay. And turn, if you would, also, to page 7
8 of your report.

9 A. (Witness complies.)

10 Q. Do you see that the first paragraph, the first
11 full paragraph of page 4 of your May 27th testimony
12 marked as Exhibit No. 1009, has got substantial
13 similarity to the paragraph on page 7 of your report
14 almost beginning similarly?

15 A. Yes.

16 Q. And look, if you would, at page 4 at the bottom
17 of your congressional testimony dated May 27th, 2010
18 where it says, "The next issue typically raised by
19 airline mergers." Do you see that?

20 A. Yeah.

21 Q. Let's just take that whole paragraph, let's go
22 on to the next page, all the way down to the end of that
23 paragraph which ends "Memphis and Detroit." Do you see
24 that?

25 A. Yes.

1 Q. Okay. And if you look at the top of page 8 of
2 your report, do you see that there is a paragraph, there
3 are two paragraphs there on page 8 of your report which
4 contain substantially the same information as that which
5 is contained on page 4 of your May 27th testimony?

6 A. Yes.

7 Q. And turn, if you would, please, to page 9 of
8 your report. And also turn to page 5 of the May 27th,
9 2010 testimony.

10 A. Uh-huh.

11 Q. Are you there? Are you with me?

12 A. Yes, I am.

13 Q. Let's compare, if you would, please, the
14 paragraph at the bottom of the page on page 5 of the May
15 27th, 2010 testimony, to the paragraph at the top of
16 page 9 of your proposed report. Do you see that?

17 A. Yes.

18 Q. Both paragraphs begin, "In other markets,
19 United and Continental may be potential competitors."
20 Do you see that?

21 A. Yes.

22 Q. Okay. And you would agree with me that those
23 paragraphs are substantially the same, would you not?

24 A. Yes, they are.

25 Q. Okay. And turn, if you would, please to page 6

1 of your May 27th testimony and to page 11 of your
2 report.

3 A. (Witness complies.) Okay.

4 Q. Do you see on page 11 of your report in the
5 first paragraph in the third sentence it begins, "As an
6 example, the combined firm would potentially have the
7 ability to eliminate downstream markets." And it goes
8 on.

9 A. Yes.

10 Q. Actually, it says "downstream marketers" on
11 your report. Do you see that?

12 A. That's why AAI approval is so important, so
13 they catch all those typos.

14 Q. And if you look at the bottom of page 6 of your
15 May 27th, 2010 testimony, do you see a paragraph also
16 beginning, "As an example, the combined firm would
17 potentially have the ability to eliminate downstream
18 marketers"?

19 A. Yes.

20 Q. They didn't catch the typo there, did they?

21 A. No.

22 Q. That's too bad. And that continues all the
23 through, do you see where it says on the May 27th
24 testimony, "The upshot is that sellers" --

25 A. Wait a second. Why is marketer a typo?

1 Q. Isn't that what you told me, it was a typo?

2 You said they catch those typos. Do you think it's not

3 a typo?

4 A. No. Those downstream marketers are the

5 downstream buyers, so...

6 Q. It's the same in both the May 27th testimony

7 and in your proposed report; is that right?

8 A. That's correct.

9 Q. And would you agree with me that the paragraph

10 on the May 27th testimony beginning with "as an example"

11 all the way through on to page 7 where it says,

12 "distorting market competition," that that is

13 essentially the same as the information which you've got

14 on -- strike that. Let me start over again.

15 Do you see where it says "as an example"

16 in both the May 27th testimony and also in your report?

17 A. Yes.

18 Q. Okay. And do you see down to the word in your

19 report, the phrase "the status quo" on page 11?

20 A. I see it.

21 Q. Would you agree with me that the wording

22 between page 6 of your congressional testimony from "as

23 an example" down to "the status quo" and the wording in

24 your report on page 11 are substantially the same?

25 A. That's correct.

1 Q. This goes on and on. You would agree with me,
2 wouldn't you, that there is substantial overlap between
3 your congressional testimony and your report?

4 MR. SHULMAN: Object to counsel's comment.

5 A. There is substantial similarity between my
6 congressional testimony and my expert report. If there
7 had been substantial dissimilarity, I think that would
8 have been intellectually dishonest, if I were to contort
9 my views to the will of either plaintiff or defendant.

10 Q. (By Ms. Forrest) Let's go on page 12 of your
11 report and page 7 of your congressional testimony.

12 A. Yes.

13 Q. Do you see the paragraph that begins "once an
14 industry is concentrated"?

15 A. Yes.

16 Q. Okay. You see that in your congressional
17 testimony?

18 A. Yes.

19 Q. Do you see that same paragraph which begins
20 "once an industry is concentrated" on page 12 of your
21 report?

22 A. Yes.

23 Q. And that wording is substantially similar, is
24 it not?

25 A. Yes.

1 Q. Turn, if you would, please, to page 8 of your
2 congressional testimony dated May 27th, 2010.

3 A. (Witness complies.)

4 Q. And do you see the paragraph which begins,
5 "entry by low cost carriers will not cure these
6 effects"?

7 A. Yes.

8 Q. Turn, if you would, please, to page 13 of your
9 report.

10 A. Already there.

11 Q. And do you see that it also begins "entry by
12 low cost carriers will not cure these effects"?

13 A. Yes.

14 Q. And the paragraph that begins "LCC entry" all
15 the way down through profitability on that route, on the
16 route, that wording is substantially the same between
17 those two documents; is that right?

18 A. That is correct.

19 Q. Turn, if you would, please, to page 18 of your
20 report.

21 A. (Witness complies.)

22 Q. And do you see where it says "cost savings or
23 market power?"

24 A. Yes.

25 Q. And turn, if you would, please, to page 9 of

1 your May 27th, 2010 congressional testimony.

2 A. I'm already there.

3 Q. Okay. And let's take a look at page 9 of your
4 congressional testimony dated May 27th, 2010, page 10,
5 page 11, all the way through the first half of page 12.

6 A. (Witness complies.) Yes.

7 Q. And let's turn in your report from page 18, 19,
8 20, let's see, all the way through to the end of the
9 first paragraph on page 21.

10 A. Yes.

11 Q. Would you agree that the wording between your
12 congressional testimony dated May 27th, 2010 and those
13 pages of your proposed report are substantially, if not
14 identical, substantially the same, if not identical?

15 A. I'll agree that they're substantially the same,
16 yes.

17 Q. If you turn, please, to page 13 of your
18 congressional testimony, at the bottom it says "as
19 evidence to support my concern."

20 A. Yes.

21 Q. Would you agree with me that you also utilized
22 the portion "as evidence to support my concern" on page
23 13 of your congressional testimony, all the way down
24 through page 14, through page 15 and up through the
25 beginning of page 16 in your proposed report?

1 A. Yes.

2 Q. And would you agree with me that if you look at
3 page 16 of your congressional testimony, all the way
4 down through the remainder of page 16, all the way up
5 through the first half of page 17, that you also
6 utilized those portions in your report?

7 A. Yes.

8 Q. Have you ever read the Morrison 2001 study
9 entitled Actual Adjacent and Potential Competition:
10 Estimating the Full Effect of Southwest Airlines?

11 A. Yes.

12 Q. And you're aware, aren't you, that that article
13 found that the presence of Southwest had a large impact
14 on fares on routes, even if Southwest served the route
15 from the adjacent airport?

16 A. Yes.

17 Q. And do you have any reason to question the
18 economic results of that study?

19 A. Yes, I do.

20 Q. Did you ever do any economic work that sought
21 to replicate the work that Morrison had done in his 2001
22 study entitled Actual Adjacent and Potential
23 Competition?

24 A. I have not sought to replicate that work, no.

25 Q. Did you do any regressions that sought to

1 replicate regressions that Morrison had done in his 2001
2 study?

3 A. Definitely not.

4 Q. Did you ever speak to Morrison about his 2001
5 study?

6 A. I have not.

7 Q. Did you do any economic work specifically that
8 sought to analyze the results that the Morrison 2001
9 study came up with?

10 A. No.

11 Q. Have you read the Goolsbee and Syverson 2008
12 paper entitled How do Incumbents Respond to the Threat
13 of Entry?

14 A. Sounds familiar, but I don't have any specific
15 recollection of it.

16 Q. You don't recall as you sit here today having
17 read that?

18 A. I recall reading it. I just don't have any
19 specific recollection.

20 Q. Do you recall whether or not you did any work
21 that sought to replicate any of the conclusions in the
22 Goolsbee and Syverson 2008 paper?

23 A. I have not.

24 Q. And let me see if I can refresh your
25 recollection. Are you aware that the Goolsbee and

1 Syverson study found that the presence of Southwest had
2 a large impact on fares even if it did not serve the
3 route in question, but instead, was present at an end
4 point?

5 A. Yes.

6 Q. And do you have any reason to doubt the
7 accuracy of his results?

8 A. Well, can you repeat that question or rephrase
9 it?

10 Q. Sure. Did you do any work that sought to
11 replicate any of the work done by Goolsbee and Syverson
12 in their 2008 paper entitled How do Incumbents Respond
13 to the Threat of Entry?

14 A. No, I have not.

15 Q. Did you do any economic analysis to determine
16 whether or not the results of that study were somehow
17 wrong?

18 A. No, I have not.

19 Q. Have you read the article by Jan Brueckner
20 entitled International Airfares in the Age of Alliances?

21 A. Yeah.

22 Q. And that was a 2003 work? Do you recall that?

23 A. Yes. I'm sorry. I was nodding.

24 Q. And do you recall that in that work, Dr.
25 Brueckner demonstrated that the elimination of double

1 marginalization could reduce fares?

2 A. Yes.

3 Q. And what's double marginalization? Do you know
4 what that phrase means?

5 A. Yes, I do.

6 Q. What does it mean?

7 A. It means when you have essentially monopoly
8 power in a route, you can, through integration, reduce
9 certain pricing components of that. Does that make any
10 sense?

11 Q. Are you aware of the phrase monopoly power ever
12 showing up anywhere in Jan Brueckner's work entitled
13 International Airfares in the Age of Alliances?

14 A. It does not.

15 Q. That's your wording, right?

16 A. Yes.

17 Q. Would you agree with me that double
18 marginalization can refer to the following type of
19 instance: when you've got two independent firms, each
20 of which is pricing independently for a particular
21 origin and destination, so if a passenger is going to
22 fly one segment on one firm and the second segment on
23 the second firm, the tickets will be priced to build in
24 the margins of each of the carriers?

25 A. Right. And by combining those into a single

1 firm, you reduce the profit, the markups on the routes.

2 Q. So there's a reduction in the double markups?

3 A. Right.

4 Q. That has, would you agree with me, as a matter
5 of economic theory, a downward pricing pressure on
6 fares?

7 A. Yes. As a matter of theory.

8 Q. As a matter of theory. And you're aware of the
9 work that Jan Brueckner did where he looked at the
10 elimination of double marginalization with actual data?

11 A. Yes.

12 Q. And you're aware that he showed that the
13 elimination of double marginalization, in fact, led to
14 downward pricing pressure on fares?

15 A. I'm aware of that.

16 Q. Okay. And did you ever seek to replicate the
17 work that Jan Brueckner had done in connection with that
18 paper?

19 A. I have not.

20 Q. Do you have any reason to doubt the accuracy of
21 Jan Brueckner's economic analysis in connection with his
22 paper entitled International Airfares in the Age of
23 Alliances?

24 A. I have not.

25 Q. Have you ever done any work that sought to

1 determine whether or not as a matter of economic theory
2 the elimination of double marginalization did not result
3 in downward pricing pressure?

4 A. I have not.

5 Q. Have you ever looked at fare reductions in the
6 context of double marginalization or the reduction of
7 double marginalization at all?

8 A. No.

9 Q. Have you read the Ito, I-t-o, and Lee 2007
10 paper entitled Domestic Codesharing, Alliances and
11 Airfares in the U.S. Airline Industry?

12 A. I recall it, but not with any great
13 specificity.

14 Q. Do you recall having read it?

15 A. I do.

16 Q. And do you agree that that study found that the
17 reduction of double marginalization could also reduce
18 fares?

19 A. Yes.

20 Q. And do you have any reason to doubt the
21 economic work that underlay the Ito and Lee study?

22 A. I do not.

23 Q. You're familiar with an airline called
24 Southwest?

25 A. Yes, I am.

1 Q. Okay. And does Southwest have a business model
2 similar to other low cost carriers, by and large?

3 A. Can you be more specific? Because they have
4 some degrees of a business model that's close to other
5 low cost carriers, but they have kind of their own
6 unique thing going on in terms of how they approach
7 markets.

8 Q. So is Southwest a low cost carrier?

9 A. It could be characterized as such, yes.

10 Q. And you would agree with me that certain
11 aspects of the Southwest business model follow what is
12 generally considered to be a point to point business
13 model for certain low cost carriers?

14 A. Sort of. Southwest doesn't really -- it's not
15 really a hub carrier, per se, in the same way that the
16 large network carriers are. But when it does point to
17 point when it approaches entering cities, it does not
18 approach it as a single point to point typically. They
19 try to see how much of a -- it's almost a cascading
20 effect, how much they can have a presence there in terms
21 of nonstop service. So they don't usually just
22 typically enter in one single end point. So it's not
23 point to point service, per se.

24 Q. So it's more like almost a quasi network
25 carrier?

1 A. No. Not so much that either. They do try to
2 take advantage of point of origin effects with respect
3 to when they enter a city. And those cities are
4 typically not in business markets. They tend to be
5 outside, you know, airports they can get in and out of
6 more readily. They make their profit by a quick
7 turnaround, so that their planes stay up in the air
8 longer. So they tend to, when they enter these markets,
9 try to have a sufficient presence so they have more than
10 a single flight going to more than one designation in
11 these markets.

12 Q. Do you fly Southwest?

13 A. I do not.

14 Q. Do you fly Continental?

15 A. I do.

16 Q. Are you a Continental frequent flier?

17 A. I am.

18 Q. What status do you have?

19 A. I'm elite.

20 Q. You're elite?

21 A. I am.

22 Q. You fly a lot?

23 A. Yes, I do. I am a big fan of Continental

24 Airlines.

25 Q. Do you ever fly United?

1 A. I have not flown United in many, many years;
2 and it's been more than a decade.

3 Q. What other carriers have you flown in the last
4 year?

5 A. In the last year, I live in Houston. So I
6 don't fly pretty much anything other than Continental.

7 Q. That's how you reached elite status?

8 A. Yes.

9 Q. Do you use the lounges?

10 A. I do not.

11 Q. Why not?

12 A. I'm only a humble professor. I don't have a
13 lot of money.

14 Q. So you're not in the lounges because you're not
15 flying business class? You're flying typically coach?

16 A. That's correct.

17 Q. But you've reached elite status that allows you
18 to get preboarding and other benefits?

19 A. Yes.

20 Q. And you can get some upgrades and things like
21 that?

22 A. Yes.

23 Q. Have you found it a value to yourself
24 personally to be a member of the Continental frequent
25 flier program?

1 A. Yes, I have.

2 Q. A pretty good value?

3 A. I am a big fan of Continental, yes. It's a
4 great frequent flier program.

5 Q. Now, are you aware that Southwest has got the
6 largest passenger share measured by O&D today?

7 A. Yes.

8 Q. And are you aware that Southwest's passenger
9 share, O&D passenger share, will still be greater than a
10 merged United/Continental, post merger?

11 A. Yes.

12 Q. When did you look at that, those shares?

13 A. Just very recently. The last couple of weeks.

14 Q. Did you do it in connection with your
15 assignment in this case?

16 A. I don't think I billed for it; but I was
17 curious about it, yes.

18 Q. Let me mark as Exhibit No. 1012 a single page
19 document entitled U.S. Domestic Passenger Shares After
20 Merger.

21 (Exhibit 1012 marked.)

22 Q. (By Ms. Forrest) You're aware, aren't you,
23 that United and Continental don't have a single
24 overlapping hub?

25 A. That's true.

1 Q. Okay. And you're aware, aren't you, that
2 United and Continental have not a single overlapping
3 metal to metal route internationally?

4 A. Metal to metal route internationally, yes,
5 okay.

6 Q. Do you see what I've marked as Exhibit No.
7 1012?

8 A. Yes, I do.

9 Q. And do you see it indicates that Southwest has
10 22.3 percent of O&D passenger share?

11 A. Yes.

12 Q. And do you do see that a merged
13 Continental/United would have 16.3 percent O&D passenger
14 share?

15 A. Yes.

16 Q. Do you have any reason to doubt the accuracy of
17 those numbers?

18 A. I do not.

19 Q. Do those numbers correspond roughly to what you
20 yourself looked at a couple of weeks ago?

21 A. They are roughly the same, yes.

22 Q. And do you see that post merger, Delta will
23 have 18 percent of O&D passenger share?

24 A. Yes.

25 Q. And would you agree with me that post merger,

1 United will be No. 3 in terms of O&D passenger share in
2 the United States?

3 A. That's correct.

4 Q. And that Southwest will be the largest carrier
5 in terms of O&D passenger share in the United States?

6 A. That's correct.

7 Q. Are you aware that Southwest competes for
8 business travelers?

9 A. I am really reluctant to say that they do.
10 They try their hardest to attract business passengers of
11 a certain type. Specifically, and I want to be
12 intellectually careful about this, the passengers they
13 seek to attract are ones who perhaps do not value the
14 network benefits that Continental offers, the things
15 that I value, for example, the frequent flier programs,
16 I don't value the lounge, but others do, and who are
17 willing to entertain going to airports that are not
18 necessarily the business destination airports.

19 Q. Would you agree with me that the CEO of
20 Southwest is more competent to talk about the types of
21 passengers that he competes for than you are?

22 MR. SHULMAN: Objection to form.

23 A. I would not agree with that.

24 Q. (By Ms. Forrest) Let me put it differently.

25 A. It has been often my experience that CEOs say

1 one thing and perhaps maybe do another, because there is
2 an organizational structure that does shift beyond the
3 CEO.

4 Q. Do you think you know the characteristics of
5 the Southwest passengers better than Southwest's own
6 CEO, Mr. Kelly?

7 MR. SHULMAN: Objection to form.

8 A. The characteristics of the passengers?

9 Q. (By Ms. Forrest) Correct.

10 A. As in the makeup of what the purpose of their
11 flying is?

12 Q. All characteristics.

13 A. I'm not entirely willing to say that, no.

14 Q. Okay. Let me ask you: Have you ever studied
15 the characteristics of Southwest passengers?

16 A. I have not taken survey data of what Southwest
17 passengers are, no.

18 Q. Have you ever done any economic work that
19 sought to determine the percentage of Southwest
20 passengers that were flying for business versus leisure
21 travel?

22 A. No, I have not.

23 Q. Is your information relating to Southwest
24 passenger makeup basically your anecdotal information
25 you've obtained from reading in the industry?

1 A. It's based upon my reading in the industry and
2 information that I've gleaned over the years about
3 Southwest Airlines and their model, yes.

4 Q. And when you say information that you've
5 gleaned over the years, have you looked at any internal
6 Southwest business plans?

7 A. I have not.

8 Q. Have you ever been exposed to any confidential
9 Southwest business information at all?

10 A. In the past ten years, I have not.

11 Q. Okay. Now, let's mark as Exhibit No. 1013 a
12 news article entitled Southwest Targets Business Fliers
13 as it Comes to New York City.

14 (Exhibit 1013 marked.)

15 Q. (By Ms. Forrest) You're welcome to read the
16 entire article, but I was going to point your attention
17 to the quote from the CEO, Gary C. Kelly, listed on the
18 bottom of the first page of what's been marked as
19 Exhibit No. 1013. That quote is the following, quote,
20 "We are very dependent on business travelers, so we're
21 not a leisure airline like some of our smaller
22 competitors are." Do you see that?

23 A. Yes.

24 Q. Do you have any reason to believe that Mr.
25 Kelly did not make that statement?

1 A. I have no reason to believe that he didn't.

2 I'll try that again. I have no reason to believe he did

3 not make that statement. Do you mind a moment if I read

4 this real quick?

5 Q. Go for it.

6 A. Thank you.

7 MR. SHULMAN: Is this a good time for a

8 break?

9 MS. FORREST: Why don't we finish with

10 this one document, and then we can certainly take a

11 break.

12 MR. SHULMAN: All right.

13 A. Excellent. Southwest has in the past --

14 Q. (By Ms. Forrest) No. There's actually no

15 pending question.

16 A. Yeah.

17 Q. Okay. Are you done reading it?

18 A. Yes. I'm sorry.

19 Q. Okay. Let's take a break.

20 (Short recess from 10:13 a.m. to 10:21

21 a.m.)

22 Q. (By Ms. Forrest) Are you familiar with an

23 airline called AirTran?

24 A. Yes, I am.

25 Q. Are you familiar that AirTran competes for

1 business passengers?

2 A. I do know they attract some segment of the

3 business passenger, yes.

4 Q. And do you know that AirTran won an award for

5 being the best domestic airline in business class

6 service in 2010?

7 A. Yes.

8 Q. Do you know that AirTran also came in silver,

9 got a silver award for the best domestic frequent flier

10 program for the Leading Edge Awards in 2010?

11 A. I was not aware of that.

12 Q. Let me mark as Exhibit No. 1014 a document

13 entitled Executive Travel, Advice and Insight for -- and

14 by -- Today's Executive.

15 (Exhibit 1014 marked.)

16 Q. (By Ms. Forrest) Do you see at the bottom of

17 the first page of Exhibit 1014 it says, "Best domestic

18 airline for business class service," and it has the

19 bronze award going to AirTran Airways?

20 A. Yes.

21 Q. You have no reason to doubt that AirTran got

22 that award?

23 A. I have no reason to doubt that at all.

24 Q. If you turn to the next page of Exhibit 1014,

25 do you see how it says best frequent flier program?

1 A. Yes.

2 Q. Do you see how the silver award was given to

3 AirTran Airways?

4 A. Yes, I do.

5 Q. And do you see underneath that, it says, best

6 domestic airline for overall customer service?

7 A. Yes.

8 Q. Do you see that AirTran got the silver award

9 for that category?

10 A. I do.

11 Q. Do you have any reason to doubt that AirTran,

12 in fact, received those awards?

13 A. I have no reason to doubt that at all.

14 MR. SHULMAN: Given the performance of

15 Delta Air, I'd have reason to doubt the credibility of

16 it.

17 MS. FORREST: Well, we can swear you in,

18 Dan, but you're not the witness.

19 Q. (By Ms. Forrest) Do you know that AirTran has

20 a corporate travel program?

21 A. Yes, I do. Yes, I am.

22 Q. Let me mark as Exhibit No. 1015 a two-page

23 document entitled AirTran A2B Corporate, tell your CEO

24 about the smartest corporate travel program available.

25 (Exhibit 1015 marked.)

1 Q. (By Ms. Forrest) Do you ever recall seeing
2 Exhibit 1015 prior to your deposition today?

3 A. I have not.

4 Q. Do you see that on the first page of Exhibit
5 1015, it says, "We invite you to sign up for AirTran
6 Airways' A2B corporate travel program if your company
7 meets the following requirements." And then it
8 continues. You do see that?

9 A. Yes.

10 Q. Do you have any reason to doubt that AirTran,
11 in fact, offers an AB2 corporate travel program?

12 A. I have no reason to doubt that at all.

13 Q. Have you done any analytical work to determine
14 if the characteristics of Southwest Airlines and AirTran
15 Airlines business travelers differ from business
16 travelers on network carriers?

17 A. I'm sorry. Repeat that question.

18 Q. Sure. Have you done any analytical work in
19 which you have sought to determine whether or not the
20 business travelers flying on Southwest and AirTran have
21 different characteristics from business travelers flying
22 on network carriers?

23 A. If by analytical work you mean regression
24 analysis and things of that sort, no.

25 Q. Have you ever studied that question in a

1 intensive way?

2 A. Intensive?

3 MR. SHULMAN: Object to the form of the
4 question.

5 A. I have examined it. I don't know what would be
6 intensive. I've looked at it but not in any way that
7 would require economic modeling or a great number of
8 hours.

9 Q. (By Ms. Forrest) Okay. How many hours have
10 you spent looking at that question?

11 A. Good question. Probably fewer than four.

12 Q. You have spent fewer than four hours of time
13 looking at the question of whether or not the
14 characteristics of Southwest and AirTran's business
15 travelers differ from business travelers of legacy or
16 network carrier airlines?

17 A. I'm sorry. I misunderstood the question. I
18 thought you were talking specifically about AirTran.

19 Q. Let me rephrase the question.

20 A. Okay.

21 Q. Have you done any analytical work to determine
22 whether or not the characteristics of business travelers
23 flying on Southwest Airline or AirTran differ from
24 business travelers flying on network carriers?

25 MR. SHULMAN: Object to the form of the

1 question.

2 A. Again, I'm still not quite sure what you're
3 asking. The question, I see what you're getting at.
4 But I have spent some time looking at the issue. I
5 don't know how much time I've spent looking at the
6 issue. Moreso with Southwest than AirTran.

7 I do know Southwest frequent flier program
8 and their kind of business, equivalent to Continental's
9 frequent flier program, and I do know what they offer
10 and what Continental offers to different degrees, but
11 that's to the extent of it.

12 Q. (By Ms. Forrest) Let's put aside the frequent
13 flier programs for the moment. Have you sought to
14 determine if there are any differences in the
15 characteristics of business travelers who are flying on
16 Southwest and AirTran from the characteristics of
17 business travelers flying on network carriers?

18 A. I have not.

19 Q. Have you done any analytical work looking at
20 what routes business travelers fly on Southwest
21 Airlines?

22 MR. SHULMAN: Object to the form of the
23 question.

24 A. I am sure that to varying degrees, business
25 travelers do fly on Southwest Airlines. I do not know

1 the makeup of those business passengers, except that
2 they will tend to be flying into airports that are less
3 congested than, say, the hubs of the airlines that are
4 before us in this question.

5 Q. (By Ms. Forrest) Do you know whether or not
6 any business travelers fly into LaGuardia flying on
7 Southwest Airlines?

8 A. I am sure that they do.

9 Q. Do you know whether or not any business
10 travelers fly into the Houston area on Southwest
11 Airlines?

12 A. I'm sure that they do.

13 Q. Do you know whether or not any business
14 travelers fly into LAX on Southwest Airlines?

15 A. I'm sure that they do.

16 Q. Do you know whether or not any business
17 travelers fly into Chicago on Southwest Airlines?

18 A. I'm sure that they do.

19 Q. Have you done any analytical work to study the
20 growth of small carriers, including low cost carriers,
21 over the last ten years?

22 MR. SHULMAN: Object to the form of the
23 question.

24 A. I have noticed that there are numerous entrants
25 in the LCC market, as well as several exits in the LCC

1 market.

2 Q. (By Ms. Forrest) Have you done any work that
3 looked at the LCC growth since the Delta/Northwest
4 merger?

5 A. No, I have not.

6 Q. Let me mark as Exhibit No. 1016 a single-page
7 document entitled Small Carrier Growth since the
8 Delta/Northwest Merger.

9 (Exhibit 1016 marked.)

10 A. Okay.

11 Q. (By Ms. Forrest) Do you have any reason to
12 doubt that the small carriers as defined on Exhibit 1016
13 have experienced a 10.2 percent growth since the
14 Delta/Northwest merger?

15 A. No, I do not.

16 Q. Have you done any analytical work that studied
17 the number of routes that small carriers fly in 2010?

18 MR. SHULMAN: Object to the form of the
19 question.

20 A. I understand that LCCs fly on numerous routes
21 in the United States, yes.

22 Q. (By Ms. Forrest) And you're aware that they
23 have routes that go into and out of various hub cities?

24 A. Yes, oftentimes low cost carriers, as they're
25 typically described, fly into hubs.

1 Q. Okay. And there are low cost carriers that fly
2 into Chicago; is that right? We talked about Southwest
3 just a minute ago?

4 A. Southwest flies into Midway, as I recall.

5 Q. Is Midway in Chicago?

6 A. I'm not quite sure where Midway is. It's
7 midway between somewhere and something, but it's not
8 Chicago O'Hare Airport.

9 Q. It's not Chicago O'Hare Airport, but is Midway
10 in Chicago?

11 A. I have no idea as to the geographic identity of
12 Midway Airport.

13 Q. You don't know where Midway is?

14 A. I know where Midway is. I just don't know if
15 it's where it is with relation to Downtown Chicago.

16 Q. Do you know whether or not Midway is, in fact,
17 closer to Downtown Chicago than O'Hare?

18 A. Certainly in terms of miles traveled, I do not.

19 Q. How about by any metric?

20 A. I do not.

21 Q. Do you know whether or not low cost carriers
22 fly into Denver?

23 A. Yes, they do.

24 Q. Do low cost carriers fly into the
25 Washington/Baltimore area?

1 A. Low cost carriers fly into the
2 Washington/Baltimore area, primarily to Baltimore.

3 Q. But do they fly into Reagan at all?

4 A. I believe there are some that do, yes.

5 Q. And IAD?

6 A. Yes.

7 Q. And IAD is Dulles, right?

8 A. Dulles, yes.

9 Q. So low cost carriers fly into each and every
10 one of the Washington area airports; is that right?

11 A. That's correct.

12 Q. And for the San Francisco Bay area, do low cost
13 carriers fly into the San Francisco Bay area?

14 A. I believe that some do, yes.

15 Q. Okay. And do low cost carriers fly into the
16 L.A. basin area?

17 A. Can you define what L.A. basin is?

18 Q. How about Burbank?

19 A. Yes.

20 Q. Do low cost carriers fly into LAX?

21 A. Yes.

22 Q. Is Southwest the biggest carrier at LAX, in
23 fact?

24 A. I would imagine they are.

25 Q. That they are?

1 A. Yes.

2 Q. And do low cost carriers fly into Houston?

3 A. Yes.

4 Q. And you don't fly them, though?

5 A. I do not.

6 Q. Do low cost carriers fly into New York?

7 A. Into the New York area, yes.

8 Q. And they fly to JFK?

9 A. Yes, they do.

10 Q. And they fly to LaGuardia?

11 A. And they fly to Newark.

12 Q. They fly to all three New York airports; is

13 that right?

14 A. That's correct.

15 Q. And low cost carriers fly into Cleveland?

16 A. Yes.

17 Q. Do you know that low cost carriers have

18 frequent flier programs?

19 A. Yes, I do.

20 Q. Do you know that every single low cost carrier

21 has got a frequent flier program in the domestic United

22 States?

23 A. That is true.

24 Q. Are you a member of any low cost carrier

25 frequent flier programs?

1 A. I am not.

2 Q. Why not?

3 A. Typically, the low cost carriers, particularly
4 where I sit, offer fewer destinations than the dominant
5 hub carrier. And where I used to live in Salt Lake
6 City, it was exactly the same, because I was in a Delta
7 hub.

8 Now, it is true that Southwest is in
9 Hobby. But personally speaking, Hobby is not my
10 preferred airport because it is way further south and
11 I'd have to drive through downtown.

12 Q. If you lived in downtown, would Hobby be a
13 potential preferred airport for you?

14 A. It would not. Personally.

15 Q. Just for you personally?

16 A. (Witness shakes head.)

17 Q. Have you studied the characteristics of
18 individuals in the Houston area and determined what
19 their preferred airports are?

20 A. No, I have not.

21 Q. Are you aware that each of the low cost
22 carriers have frequent flier programs which also have
23 partnerships with banks?

24 A. Yes.

25 Q. And they're all associated with credit card

1 programs, aren't they?

2 A. I believe so, yes.

3 Q. And the legacy carriers also have frequent
4 flier programs?

5 A. Yes, they do.

6 Q. And the legacy carriers and network carriers
7 both have frequent flier programs?

8 A. Yes, they do.

9 Q. And network carriers also have frequent flier
10 programs that have associations with various kinds of
11 banks and credit cards?

12 A. Network carriers have associations with banks,
13 credit cards, flower delivery services, restaurants,
14 hotels, a whole host of different services.

15 Q. And so does Southwest, right?

16 A. That's correct.

17 Q. All right. Let me mark as Exhibit No. 1017 a
18 two-page document entitled LCCs and Small Carriers FFPs,
19 frequent flier programs.

20 (Exhibit 1017 marked.)

21 Q. (By Ms. Forrest) Do you see what's been marked
22 as Exhibit 1017?

23 A. I do.

24 Q. Do you see it's got on the left-hand side
25 certain low cost carriers identified, then a frequent

1 flier program start date, a column for number of
2 members, and then a column for other?

3 A. I do.

4 Q. And do you see that the column for other refers
5 to credit card partnership programs for the frequent
6 flier --

7 A. I do.

8 Q. -- programs?

9 Do you have any reason to doubt the
10 accuracy of the information contained on Exhibit 1017?

11 A. I do not.

12 Q. Do you know that Virgin America also competes
13 for business customers?

14 A. I do.

15 Q. Do you know that Frontier Airlines also
16 competes for business customers?

17 A. I do.

18 Q. Do you know of any LCC that specifically does
19 not compete for business customers?

20 A. No.

21 Q. Would you agree with me that the LCCs compete
22 with network carriers on a variety of routes?

23 A. Yes. LCCs do compete with network carriers on
24 a variety of routes.

25 Q. Have you done any work to determine the share

1 of LCCs at any of the 13 overlap routes that you've
2 identified in your report?

3 A. I have done some preliminary work. There are
4 some difficulties with the -- I would be using the tran
5 stat database, and there's some difficulties with
6 deploying that.

7 Q. So you have not completed your work with
8 looking at LCCs shares on the 13 overlap routes that are
9 referred to in your report; is that right?

10 A. That's correct.

11 Q. Have you come to any preliminary conclusions
12 relating to LCC shares on the 13 overlap routes at all?

13 A. I have some preliminary conclusions with
14 respect to some of those routes with respect to how much
15 market share Continental and United possess, if we're
16 defining in terms of airport pair.

17 Q. Let's talk about LCCs. Do you have any
18 conclusions that you have reached relating to the LCC
19 share on any of the 13 overlap routes referred to in
20 your report?

21 A. No.

22 Q. Let me mark as Exhibit No. 1018 a single-page
23 document entitled Nonstop Overlaps.

24 (Exhibit 1018 marked.)

25 Q. (By Ms. Forrest) Okay. Do you see that there

1 are LCC O&D passenger shares reflected on what's been
2 marked as Exhibit 1018?

3 A. I do.

4 Q. Do you have any information currently in your
5 possession which would lead you to believe that the
6 shares indicated on Exhibit 1018 are inaccurate?

7 A. I do not.

8 Q. You're aware, aren't you, that on the 13
9 overlap routes that you've referred to in your report,
10 there are a variety of competitors other than United and
11 Continental; isn't that right?

12 A. You have to be a bit more specific because if
13 we're talking airport pair markets, there are some
14 routes in which there are no other competitors.

15 Q. Let's talk about city fares for a moment.

16 A. Yes.

17 Q. Would you agree with me that on a city pair
18 basis, if we include both connecting and nonstop
19 competitors.

20 A. Okay. So if we're including connecting and
21 nonstop competitors, sure.

22 Q. So let me put the question together. Would you
23 agree with me on the 13 overlap routes referred to in
24 your report, if analyzed on a city pair basis and
25 including both connecting and nonstop competitors, there

1 are a variety of competitors on each and every one of
2 those 13 overlap routes other than United and
3 Continental?

4 A. Yes. If I were in one of these cities and
5 trying to go to one of these destinations that are
6 paired with it, and if I were willing to fly from any
7 airport and fly nonstop or connect, yes, then I would
8 have a plethora of options.

9 Q. And let me mark as Exhibit No. 1019 a
10 single-page documented entitled Nonstop Overlap City
11 Pairs, Nonstop and Connecting Competitors.

12 (Exhibit 1019 marked.)

13 Q. (By Ms. Forrest) Do you see what's been marked
14 as Exhibit No. 1019?

15 A. I do.

16 Q. Okay. Do you see that each of the 13 overlap
17 routes referenced in your report are listed on the
18 left-hand side of this document?

19 A. I do.

20 Q. Okay. And do you see that there are a list of
21 nonstop and connecting competitors listed for each one
22 of those routes?

23 A. Yes.

24 Q. Do you have any reason to doubt the accuracy of
25 the information contained on Exhibit No. 1019?

1 A. I do not.

2 Q. Would you agree with me that LCCs share
3 measured on an O&D basis has increased dramatically over
4 the last 12 years?

5 MR. SHULMAN: Objection to form.

6 A. I will agree with you that LCC shares have
7 increased.

8 Q. (By Ms. Forrest) Would you agree with me that
9 LCC share has experienced significant growth over the
10 last 12 years?

11 A. Yes, I would agree to that.

12 Q. Have you done any work of the trends of LCC
13 growth over the last 12 years compared to the trends in
14 network carrier growth over the same period of time?

15 A. I have seen work of that sort, but I have not
16 done it personally.

17 Q. What have the results of that work been that
18 you've seen?

19 A. LCC shares on an O&D basis have increased to a
20 great degree with the network carriers.

21 Q. Do you have any numbers associated with that
22 that you can recall?

23 A. I don't recall the numbers, but I'm sure you
24 have it in the document.

25 Q. Let me mark as Exhibit No. 1020 a single-page

1 document entitled LCC Passenger Share Over Past 12
2 Years.

3 (Exhibit 1020 marked.)

4 Q. (By Ms. Forrest) Do you see what's been marked
5 as Exhibit No. 1020?

6 A. I do.

7 Q. Do you see that it shows that from 1998 until
8 2009, LCCs have grown from 19.9 percent of domestic O&D
9 passenger share to 37.7 percent?

10 A. I do.

11 Q. Do you see that on an O&D passenger share
12 basis, network carriers share has declined from 76.3 to
13 60 percent?

14 A. I do.

15 Q. Do you have any reason to doubt the accuracy of
16 these share numbers?

17 A. I don't.

18 Q. Have you done any analytical work to determine
19 the extent to which nonstop passengers on United and
20 Continental Airline routes are currently exposed to LCC
21 options, where they actually have LCC options?

22 MR. SHULMAN: Objection to form.

23 A. Yeah. Can you rephrase that question, please?

24 Q. (By Ms. Forrest) Sure. Sure. United and
25 Continental fly all over the country, right?

1 A. That's correct.

2 Q. And they fly, in fact, thousands of routes if
3 you include connecting routes and nonstop routes; is
4 that right?

5 A. That's correct.

6 Q. Okay. Have you done any work to determine the
7 extent to which United and Continental's passengers who
8 want to fly nonstop have LCC options on those very same
9 routes?

10 A. Yes, I have. I think the thing you probably
11 wanted to add into your question, but maybe not, is
12 we're still talking on a city pair basis versus airport
13 pairs; is that correct?

14 Q. Let's talk about it on a city pair basis for
15 the moment.

16 A. Okay.

17 Q. Have you studied the extent to which United and
18 Continental passengers who want to fly nonstop have LCC
19 options?

20 A. Yes.

21 Q. And what have you found in terms of the results
22 of that work?

23 A. In terms of LCC options, in terms of city
24 pairs, the traveler in many of the hub destination
25 regions have options with respect to LCCs.

1 Q. Have you determined what percentage of United
2 and Continental passengers who want to fly nonstop have
3 LCC options?

4 A. No, I have not.

5 Q. Let me mark as Exhibit No. 1021 a single-page
6 document entitled Network Carrier Nonstop Passengers
7 with LCC Options.

8 (Exhibit 1021 marked.)

9 A. Sorry. Go ahead.

10 Q. (By Ms. Forrest) Have you had a moment to look
11 at what's been marked as Exhibit No. 1021?

12 A. I have.

13 Q. Do you have any reason to doubt the accuracy of
14 the information reflected on this page?

15 A. No.

16 Q. I believe we've already spoken about this; but
17 just so the record is clear, you're aware, aren't you,
18 that LCCs compete at all of United's and Continental's
19 domestic hubs?

20 A. Yes.

21 Q. Have you done any work that has looked at the
22 increases in routes that the LCCs have experienced at
23 those hubs --

24 A. No.

25 Q. -- over the last ten years?

1 A. I'm sorry. I didn't let you finish. No.

2 Q. Let me mark as Exhibit No. 1022 a single-page
3 document entitled LCCs Compete at all of United's and
4 Continental's Domestic Hubs.

5 (Exhibit 1022 marked.)

6 Q. (By Ms. Forrest) Have you had a moment to take
7 a look at what's been marked as Exhibit 1022?

8 A. One moment.

9 Yes.

10 Q. Do you see on the right-hand column there are a
11 series of hub areas listed: Denver, New York/Newark,
12 Washington, San Francisco, Cleveland/Akron, Los Angeles?
13 Do you see that?

14 A. Yes. Although the footnote down at the bottom
15 indicates that these aren't, in fact, specifically hubs,
16 but hub regions as you have correctly stated.

17 Q. Hub region, right. And so for Denver, let's
18 just talk about Denver for a second. Does Denver have
19 more than one airport?

20 A. No.

21 Q. And so Frontier is flying into the same hub
22 airport that United is flying into; is that right?

23 A. Correct. That is the only one from what I can
24 tell of the footnote, that is a single airport.

25 Q. How about Southwest, does Southwest fly into

1 LAX?

2 A. That is true, yes.

3 Q. So let's just start with Denver here. So do

4 you have any reason to doubt that Frontier has increased

5 destinations from 19 to 60 during the period from 2000

6 to 2009 in Denver?

7 A. No.

8 Q. And do you have any reason to doubt that since

9 2004, Southwest has added 40 destinations in Denver?

10 A. No.

11 Q. Okay. If we go to Newark, New York/Newark, do

12 you see that?

13 A. I see that.

14 Q. Do you have any reason to doubt that jetBlue

15 has added 50 destinations in that area?

16 A. I am absolutely certain they did.

17 Q. And that's at JFK?

18 A. Yes.

19 Q. Have you ever done any elasticity analysis that

20 sought to determine the extent to which passengers at

21 the three New York airports find them substitutable?

22 A. I have not.

23 Q. Have you ever reviewed any work that has looked

24 at elasticities relating to the three New York airports?

25 A. I have not.

1 Q. Do you have any economic basis that would
2 suggest that the three New York airports do not compete
3 with one another in terms of economic work that you have
4 looked at?

5 A. I am sure that the three airports in New York
6 compete with each other to some degree consistently,
7 yes.

8 Q. Now let's look at Washington. So you see that
9 since 2000, AirTran has increased destinations from 1 to
10 26?

11 A. I'm sorry. Washington, D.C.?

12 Q. Yes.

13 A. Yes.

14 Q. And do you know that AirTran flies into Reagan?

15 A. Yes.

16 Q. And do you know that AirTran flies into Dulles?

17 A. Yes.

18 Q. And do you know that AirTran flies into

19 Baltimore?

20 A. Yes.

21 Q. Do you have any reason to doubt the accuracy of
22 that information?

23 A. I do not.

24 Q. And do you see that it says under Washington
25 that jetBlue has added six destinations in Washington?

1 A. I see that.

2 Q. And do you have any reason to doubt that

3 jetBlue has, in fact, added six destinations in

4 Washington?

5 A. No.

6 Q. And San Francisco, do you see that it indicates

7 that Virgin America since 2007 has added 11

8 destinations?

9 A. Yes.

10 Q. Okay. And do you have any reason to doubt that

11 Virgin America has, in fact, added 11 destinations?

12 A. No.

13 Q. Okay. And Virgin America is flying out of

14 which airport, to the best of your knowledge?

15 A. I believe Virgin is flying out of -- I can't

16 remember exactly whether it's National or Dulles.

17 Q. I'm sorry. We're talking now about San

18 Francisco.

19 A. Yes. It's SFO. I'm sorry.

20 Q. Do you know that Virgin America flies out of

21 SFO?

22 A. Yes.

23 Q. And SFO is the same airport that United has its

24 hub in; is that right?

25 A. That's correct.

1 Q. So let's look at Cleveland/Akron. Do you see
2 that?

3 A. Yes.

4 Q. And Cleveland is a hub airport for Continental;
5 is that right?

6 A. That's correct.

7 Q. And Southwest flies into the Cleveland airport;
8 is that right?

9 A. That's correct.

10 Q. And Southwest, do you see it says serves five
11 destinations from Cleveland?

12 A. Yes.

13 Q. And do you have any reason to doubt the
14 accuracy of that information?

15 A. No.

16 Q. Do you have any reason to doubt the accuracy of
17 the information relating to AirTran in terms of its
18 service from Akron increasing from one to seven routes?

19 A. No.

20 Q. If you look at Los Angeles, do you see -- and
21 we spoke about this earlier -- that it says that
22 Southwest is the largest carrier from Los Angeles in
23 terms of domestic O&D passengers?

24 A. Yes.

25 Q. And that it has more passengers than

1 Continental and United combined; is that right?

2 A. Yes, that's true.

3 Q. Do you have any basis to believe that that will

4 change as a result of this merger?

5 A. No, I do not.

6 Q. Do you have any basis to believe that the

7 information relating to Los Angeles regarding jetBlue

8 adding 12 destinations is inaccurate?

9 A. No.

10 Q. And relating to Los Angeles again, do you have

11 any information that would lead you to believe that the

12 addition of eight destinations by Virgin America since

13 2007 is inaccurate?

14 A. No.

15 Q. Do you have any basis to believe that this

16 merger will result in the exit of any of these carriers

17 from these hub airports?

18 A. I have no reason to believe that the merger

19 will cause the exit of any carrier from a hub airport or

20 hub region, no.

21 Q. Do you have any information which would lead

22 you to believe that any LCC will exit a route anywhere

23 in this country as a result of this merger?

24 A. Well, if you look at the company documents,

25 which Continental and United have graciously provided,

1 there is a discussion of synergies. And one of the
2 major synergies that Continental and United describe is
3 a attraction of a greater degree of passengers which,
4 absent any fare increases, would come from increased
5 traffic. I would suspect that that increased traffic
6 would come from other competitors.

7 On hub to hub routes between Continental's
8 hubs and United's hubs, to the extent there are LCC
9 competitors in those airport pairs, you would expect to
10 see that the combined firm would obtain a
11 disproportionate share of traffic and would have a
12 greater ability to respond to LCC presence in that city
13 pair or airport pair and an easier time getting the LCC
14 out of that airport pair market.

15 Q. Have you done any economic work in which you
16 have analyzed whether or not LCCs will exit any route
17 anywhere in this country as a direct result of the
18 United/Continental merger?

19 MR. SHULMAN: Objection, form.

20 A. To my knowledge no one would be able to have
21 that information ex-ante.

22 Q. (By Ms. Forrest) Have you done any work to
23 analyze the additional passenger share which you believe
24 United and Continental will achieve over and above their
25 combined share on any route?

1 A. I have not.

2 Q. Okay. Have you done any work, then, to
3 determine exactly how much share United and Continental
4 would allegedly take away from any LCC as a result of
5 this merger?

6 A. I have not.

7 Q. So when you spoke before about increased
8 traffic on United and Continental as a result of the
9 merger that might come from other carriers, that was not
10 based upon analytical work, was it?

11 MR. SHULMAN: Objection to form.

12 A. I was taking the Continental and United
13 documents on their face value.

14 Q. (By Ms. Forrest) You have not yourself done
15 any independent work to analyze any increase in traffic
16 by United and Continental that would result from this
17 merger; is that right?

18 A. I have not.

19 Q. Have you looked at the Rubinfeld report?

20 A. I have.

21 Q. And you've seen that Rubinfeld talks about
22 increases in traffic on certain routes coming from this
23 merger?

24 A. Yes, I have.

25 Q. And are you aware that one of the opinions

1 which Dr. Rubinfeld puts forward is that some of that
2 increase in traffic will come from new passengers
3 flying?

4 A. I am aware that he states that, yes.

5 Q. And have you sought to analyze the bases for
6 Dr. Rubinfeld's conclusions, or have you just sort of
7 read the report?

8 MR. SHULMAN: Objection to form.

9 A. As you cast it, I have sort of read the report.

10 Q. (By Ms. Forrest) You haven't sought, have you,
11 to replicate any of the regression analyses that Dr.
12 Rubinfeld did in connection with his analysis of
13 increase in traffic?

14 A. I have not.

15 Q. And you're aware that Dr. Rubinfeld ran some
16 QSI, Quality Service Index analyses?

17 A. Yes, I am.

18 Q. And have you run a Quality Service Index
19 analysis?

20 A. I have not.

21 Q. Have you ever analyzed regressions relating to
22 a QSI analysis, ever?

23 A. I have not.

24 Q. Have you ever talked to any airline about their
25 QSI model?

1 A. I have not.

2 Q. Have you read the Heyer, Wilder and Shapiro

3 paper relating to QSI?

4 A. I have.

5 Q. You're aware that Carl Shapiro is currently the

6 lead economist at the DOJ Antitrust Division?

7 A. I am.

8 Q. And you're aware that Carl Shapiro in the

9 Heyer, Shapiro, Wilder paper endorses QSI as a possible

10 model for evaluating airlines?

11 A. I am aware he endorses that as a model, yes.

12 And so does very probably Ken Heyer, his co-author.

13 Q. Have you sought to replicate any of the work

14 conducted in that paper?

15 A. I have not.

16 Q. Do you have any reason to believe that the

17 conclusions reached in the Heyer, Shapiro, Wilder paper

18 are wrong?

19 A. I do not.

20 Q. Now, we were talking about whether or not you

21 are aware of whether or not a single LCC will exit a

22 single route anywhere in the country as a result of this

23 merger.

24 A. Yeah.

25 Q. So I want to ask you, I just want to make sure

1 it's very clear, are you offering an opinion today in
2 which you suggest that a specific LCC will exit a
3 specific route directly as a result of this merger?

4 A. No, I'm not offering an opinion as to whether
5 or not an LCC will enter or exit any specific route as a
6 result of this merger. I am, of course, under the
7 standards of Clayton Act Section 7, determining what the
8 potential anticompetitive effects of the merger are and
9 the potential benefits, which is all regardless of this
10 methodology employed rather speculative.

11 Q. Okay. You're saying that the methodology that
12 you used in your report was speculative?

13 MR. SHULMAN: Objection to form.

14 A. No. I'm saying the endeavor of antitrust in a
15 global perspective is a forward looking analysis under
16 an incipency standard; and because it is all forward
17 looking, we are engaged in essentially a forecast.

18 Q. (By Ms. Forrest) Okay. So let's go back to
19 the routes. I take it, then, that it's the case that
20 you have not done any analytical work in which you have
21 sought to determine that a specific LCC will exit from a
22 specific route as a result of this merger? You just
23 haven't done that work; is that right?

24 MR. SHULMAN: Objection to form.

25 A. I have not done work to determine whether a

1 specific LCC will exit a route, post merger.

2 Q. (By Ms. Forrest) Okay.

3 A. Nor do I think could anyone in the current

4 situation determine whether or not an LCC will exit or

5 enter any routes afterwards.

6 Q. Have you talked to any other economists about

7 the possibility of modeling that work?

8 A. I have not.

9 Q. Have you talked to any econometricians about

10 the possibility of modeling that work?

11 A. I have not.

12 Q. Are you aware of any LCC that is likely, based

13 upon economic theory, to exit a hub of United and

14 Continental as a result of this merger?

15 A. Can you repeat that question?

16 Q. Sure. Right.

17 A. There's something at the end that I had to

18 think about.

19 Q. Are you aware of any LCC --

20 A. Uh-huh.

21 Q. I'll start over again. Are you aware of any

22 economic analysis that has been done that has indicated

23 that an LCC is likely to exit any of the

24 United/Continental hubs as a result of this merger?

25 A. To exit any of the Continental hubs or the

1 United hubs?

2 Q. Correct. As a result of this merger.

3 A. No.

4 Q. We spoke earlier about fares, and we talked
5 about fares that occurred -- airline fares that occurred
6 after the Delta/Northwest merger. Do you recall that?

7 A. Yeah.

8 Q. And we marked a document that showed there had
9 been a decrease; is that right?

10 A. That's correct.

11 Q. Have you looked at the overall fare trends from
12 1990 to 2009 in airline fares?

13 A. I have looked at the fare trends since
14 deregulation, yes.

15 Q. And deregulation was in 1978?

16 A. That's right.

17 Q. And what's the overall trend in airline fares
18 since deregulation?

19 A. The fare trend since deregulation has been
20 downward trend on average fares.

21 Q. Okay. And have you looked at specifically the
22 fare trends for United and Continental over any period
23 of time?

24 A. I have not.

25 Q. Let me mark as Exhibit No. 1023 a single-page

1 document entitled Average Price Continues to Decline.

2 (Exhibit 1023 marked.)

3 Q. (By Ms. Forrest) Have you had a moment to take
4 a look at Exhibit 1023?

5 A. I have.

6 Q. Do you have any reason to doubt the accuracy of
7 the information portrayed on this exhibit?

8 A. I do not.

9 Q. We spoke a moment ago about LCCs at
10 United/Continental hubs. Do you recall that?

11 A. Yes. At hub airport or regions.

12 Q. Right. And so let me mark as Exhibit No. 1024
13 a single-page document entitled LCC Entry that has three
14 columns: LCCs, hub airports and airports adjacent to
15 hubs.

16 (Exhibit 1024 marked.)

17 MS. FORREST: That's 1024?

18 THE COURT REPORTER: 1024.

19 A. I'm sorry.

20 Q. (By Ms. Forrest) Have you had a moment to take
21 a look at what's been marked as Exhibit 1024?

22 A. I have.

23 Q. Do you see it indicates that LCCs are
24 associated with certain hub airports and airports
25 adjacent to hubs?

1 A. Yes.

2 Q. Okay. Looking at Exhibit 1024, do you have any
3 reason to doubt the accuracy of the information on this
4 page?

5 A. I do not.

6 Q. In your report you list 13 routes which you say
7 on page 3 of your report, which has been marked as
8 Exhibit No. 1011, will be highly concentrated?

9 A. Yes.

10 Q. As a result of this merger. Do you see that?

11 A. Yes.

12 Q. Have you yourself run any Herfindahl indexes
13 associated with these routes?

14 A. I have not at the moment. As I so stated
15 previously, I'm working with the tran stat database,
16 there are some issues in that database. For example,
17 the express carriers, ExpressJet, Continental Express,
18 aren't listed independently of the dominant carrier.
19 So, for example, Continental, Continental Express, are
20 not the same carriers in that database.

21 Q. So let me ask you again. Have you done any
22 work that has sought to calculate the concentration of
23 any of the 13 -- on any of the 13 routes that you've
24 listed on page 3 of your report?

25 A. No.

1 Q. And you realize, don't you, that the ship has
2 sort of sailed? That your opinions were due today; and
3 if you don't state them today, you're done, right?

4 MR. SHULMAN: Objection to form.

5 Q. (By Ms. Forrest) But you're aware of that,
6 right? You're aware that your report was due and that
7 you were supposed to have put in your expert opinions by
8 today or you're done, right?

9 MR. SHULMAN: Objection to form.

10 A. I understand what you're saying, yes.

11 Q. (By Ms. Forrest) Okay. Now, so let's talk
12 today, because I want to know today, okay, this is not
13 rebuttal because this is an affirmative opinion which
14 you are stating on page 3 of your report.

15 So as you sit here today, taking a look at
16 the first opinion on page 3 of your report, tell me what
17 the concentration is for any one of these 13 routes.

18 MR. SHULMAN: Objection to form.

19 Objection to counsel's statement.

20 A. You're asking me about routes when I list
21 airport pairs.

22 Q. (By Ms. Forrest) Well, is an airport pair
23 going to be a route?

24 A. It is going to be a route in my opinion, yes.

25 Q. So it could be a route, right?

1 A. Sure.

2 Q. So I wasn't wrong when I used the word "route"?

3 MR. SHULMAN: Objection to form.

4 A. I like to be a little more careful than that
5 because when often people say routes, they often refer
6 to city pairs rather than airport pairs.

7 Q. (By Ms. Forrest) But I can use the word
8 "route" to refer to a city pair, I can use the word
9 "route" to refer to an airport pair, right?

10 MR. SHULMAN: Objection to form.

11 A. Sure.

12 Q. (By Ms. Forrest) So let's look at what you've
13 got here as the first opinion on page 3 of your report.
14 Do you see that?

15 A. Yes.

16 Q. And you say, "The merger will create extremely
17 highly concentrated markets," right? And then you go on
18 and you list certain airport pairs.

19 A. Yes.

20 Q. Do you see that?

21 A. I do.

22 Q. Do you have, as you sit here today, a
23 calculation of concentration for any one of those
24 airport pairs?

25 A. I have run some calculations that are, as I

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1 said, because of the tran stat database issues, I do not
2 have them for all the markets that I list because of the
3 overlap in some service by some of the express airlines.

4 Q. So let's go through them one by one. Can you
5 tell me what the concentration is that you've calculated
6 for LAX to IAH?

7 A. Not off the top of my head; but in each
8 instance, the HHIs that I ran were over 2,000. In
9 certain markets, for example, San Francisco to Newark,
10 there were monopoly; in addition, San Francisco to
11 Houston; for Denver to Houston. There were high
12 concentrations also above 2,000 in the Houston to
13 Chicago market, as well as the Newark to Chicago market.

14 I don't recall the exact calculations; but
15 in each instance, they were above the merger guidelines
16 threshold as highly concentrated.

17 Q. Now, were you using the 1992 merger guidelines
18 or the ones that were released two days ago when you
19 were determining whether or not these concentration
20 levels met certain thresholds?

21 A. I was using the 1992 guidelines.

22 Q. Do you realize that those guidelines were
23 superseded prior to the time that your report was sent
24 in?

25 A. I'm now aware of it. I did not know they had

1 actually made those official guidelines which are, of
2 course, merely guidelines.

3 Q. And you're aware of it only because I told you
4 right now in the deposition?

5 A. That's correct.

6 Q. Now, you've listed five particular routes which
7 you believe were highly concentrated, above 2,000,
8 right?

9 A. Yes.

10 Q. According to the 1992 guidelines, you think
11 that those are highly concentrated?

12 A. Yes.

13 Q. Do you know how the new merger guidelines treat
14 the number 2,000? Is it highly concentrated?

15 A. No. They've actually reduced that.

16 Q. To what? What do they call it?

17 A. Moderately concentrated, I believe.

18 Q. So under the Horizontal Merger Guidelines in
19 effect at the time that you actually submitted this
20 report, which was yesterday?

21 A. Yes.

22 Q. The airports that you have calculated as around
23 2,000, the concentration would be moderately
24 concentrated, not highly concentrated?

25 MR. SHULMAN: Objection to form.

1 A. Yes. That is true, under the new merger
2 guidelines issued, they have actually increased the
3 threshold to -- I believe it is -- 2500.

4 Q. (By Ms. Forrest) And so do you think that you
5 should, in light of that, modify the opinion that is set
6 forth on page 3 of your report to say, the merger will
7 create moderately concentrated markets?

8 A. I do not.

9 Q. Okay. Well, let's go through these. What was
10 the concentration level for SFO/EWR?

11 A. That was, I believe, 10,000.

12 Q. And what competitors did you include in the
13 SFO/EWR HHI that you ran?

14 A. Well, if they're merging to monopoly, there's
15 no other competitors on that route.

16 Q. So you didn't include, for instance, any of the
17 LCCs who fly from San Francisco to New York?

18 A. No. These are airport pairs again.

19 Q. Now, you spoke a little while ago about the
20 fact that the three New York airports compete.

21 A. That is not what I said. What you said is that
22 they compete for some classes of customers.

23 Q. And you said you had not done any work to
24 determine the elasticities between and amongst any class
25 of customers; is that right?

1 A. That's correct.

2 Q. Have you done any work at all to determine the
3 competition level between Newark, JFK and LaGuardia for
4 passengers?

5 A. No.

6 Q. Have you read anything which has indicated that
7 -- well, strike that. Let's go to San Francisco.

8 You know there's an airport in Oakland,
9 right?

10 A. And one in San Jose.

11 Q. And on page -- let's just talk about Oakland,
12 though. And on page 7 of your report, in footnote 10,
13 you state, don't you, that, "For example, Oakland may be
14 a substitute for some classes of customers for flights
15 to San Francisco." Do you see that?

16 A. Yes.

17 Q. Have you done any analysis of the extent to
18 which customers in the San Francisco/Oakland area find
19 those two airports substitutable?

20 A. No, I have not done any analysis to determine
21 to what degree people in San Francisco are willing to
22 drive to Oakland or vice versa, yeah.

23 Q. You know that BART goes to both, right?

24 A. I'm aware of that.

25 Q. And BART is the public transportation system in

1 the Bay Area?

2 A. It stands for Bay Area Rapid Transit, yes.

3 Q. And you know when you're on BART -- have you
4 been to San Francisco lately?

5 A. Yes.

6 Q. And you see the little map inside the BART?

7 A. (Witness nods head.)

8 Q. And it has a little airport sign on BART on one
9 side of the little river, and there's like a little
10 airport sign right there on the other side?

11 A. (Witness nods head.)

12 Q. Yes?

13 A. I'm aware of that, yes.

14 Q. They're pretty close together, those airports,
15 right?

16 MR. SHULMAN: Objection to form.

17 A. They are pretty close together on a map, yes.

18 Q. (By Ms. Forrest) Now, have you read any
19 academic literature which has sought to determine the
20 elasticities between passengers in San
21 Francisco/Oakland? Let me restate that.

22 Have you read any academic literature
23 which has sought to determine the substitutability for
24 passengers of the San Francisco and Oakland airports?

25 A. I have not.

1 Q. So what is your economic basis, if you have
2 one, for determining that SFO and EWR should be
3 considered as an airport pair versus a city pair?

4 Economic basis. Not just your gut.

5 MR. SHULMAN: Objection to form.

6 A. If you price out fares between any nonbusiness
7 oriented airport, which would be one of the --
8 primarily, the hubs of the merging entities and the hubs
9 of other network carriers, and you look at fares outside
10 of those airports, for example, we can talk about
11 Oakland or we can talk about Baltimore, the fare
12 differences are fairly substantial in many cases.

13 So, for example, if one were to fly from
14 Houston to National, depending on the time and, you
15 know, what type of flying we're doing, I could pay \$1200
16 and fly into National or I could pay \$800 to fly into
17 Baltimore.

18 Now, grant you that for some classes of
19 customers, they would be willing to fly to Baltimore,
20 take the 6-dollar MARC train, connect at Union Station,
21 take the Metro to where they're going in D.C.

22 Other categories of customers are
23 unwilling to do that and are willing to pay the higher
24 fare at National.

25 Q. (By Ms. Forrest) Have you sought to determine

1 the number of passengers who would pay one fare versus
2 another?

3 A. I have not.

4 Q. Okay. So when you ran your concentration
5 analysis for SFO/EWR, you were considering all
6 passengers, including those who might find there to be
7 substitutable airports, you're including them all in
8 your calculation as if there was no substitutable
9 airport; is that right?

10 MR. SHULMAN: Objection to form.

11 A. I am asking the question, if the merger is
12 consummated, which, for all I know, the Justice
13 Department did yesterday as well, then what would be the
14 effects if we do have, indeed, classes of customers that
15 are willing only to fly and are time sensitive from
16 these business airports.

17 Q. (By Ms. Forrest) Okay. So let's hold on to
18 that.

19 A. I'm sorry. Go ahead.

20 MR. SHULMAN: Had you finished?

21 A. I had not. But she -- you know, please.

22 Q. (By Ms. Forrest) What I want to know is
23 whether or not the concentration analyses that you did
24 on an airport pair basis are really concentration
25 analyses for time sensitive passengers; and whether or

1 not in contrast to that, if you were to do concentration
2 analysis for leisure passengers, you would include more
3 competitors?

4 A. It is definitely true that if I were to include
5 people who are leisure passengers, they will entertain a
6 greater degree of options. What they will do is, if
7 people are traveling on vacation, for example, they will
8 typically -- and I'm not saying this is every instance
9 -- price out their cheapest option.

10 However, I don't categorize people
11 typically straight into pigeonholes of business
12 passengers and leisure passengers, because I am aware
13 that some business passengers are, in fact, not as time
14 sensitive as others; and there are certain leisure
15 passengers who are incredibly time sensitive.

16 For example, when I am flying by myself
17 with my two children, I tend to be very time sensitive.
18 I don't really want to be dragging them from airport to
19 airport in the connection market.

20 So these two distinctions between business
21 and leisure passengers are good kind of rules of thumb,
22 but they are not the hard and fast categories.

23 Q. Let me ask it this way. Let's talk about
24 SFO/EWR, all right? Have you done any calculation of a
25 concentration for a San Francisco, generally, to New

1 York route? So if you did a calculation based upon a
2 city pair basis, have you done that?

3 A. I have not.

4 Q. Okay. Are you aware of any instance in which
5 the Department of Justice has adopted SFO to EWR as an
6 accurate airport pair as opposed to using instead the
7 city pair?

8 A. I am not aware of any instance in which the
9 Department of Justice has in litigation adopted an
10 airport pair relevant market.

11 Q. Period?

12 A. In any litigation, that's correct.

13 Q. I mean, we're expanding it now beyond SFO/EWR.
14 Just sort of make sure that we're clear.

15 A. I understood your question.

16 Q. I want to just make sure the record is clear.
17 You are not aware of the Department of Justice adopting
18 an airport pair basis for a relevant market in any
19 litigation?

20 A. That's correct.

21 Q. Okay. And are you aware in its recent merger
22 analysis relating to, for instance, the Delta/Northwest
23 merger, whether or not the Department of Justice adopted
24 an airport pair relevant market for any of the routes it
25 was considering?

1 A. It is impossible to tell from the press
2 release. Their press release indicates that there are
3 some nonstop market overlaps, but it does not specify
4 whether or not we are talking relevant market city pair
5 or relevant market airport pair.

6 Q. So you are not aware as to whether or not the
7 Department of Justice has ever adopted airport pairs as
8 a relevant market?

9 A. It has not adopted, in any litigation that I'm
10 aware of, airport pairs.

11 Q. Now, let's go back to your footnote No. 1 which
12 is on page 3 of your report, previously marked as
13 Exhibit No. 1011. And I want to walk through each of
14 these, some of these routes that we've been talking
15 about and then also the city pairs.

16 What is the concentration level for
17 SFO/IAH that you came up with?

18 A. SFO/IAH, I believe, was one of the merger
19 monopolies.

20 Q. What was the concentration level? Do you have
21 a number for me?

22 A. It's 10,000.

23 Q. And what was the Denver, was it IAK -- IAH?
24 Was it Denver? Which was Denver? Your Denver route.
25 IAH, right?

1 A. Denver/IAH, I believe, was lower. It was not a
2 merger monopoly there. But in all instances, I don't
3 recall the numbers on every single route. But they are
4 all over 2,000.

5 Q. Well, I want to get to what they really were,
6 because today is your day, okay? And today you get to
7 tell me if you've got a number, I want the number. And
8 if you don't have the number, that's just life, okay?

9 MR. SHULMAN: Objection to the statement.
10 Ask a question, please.

11 Q. (By Ms. Forrest) Okay. So for Denver/IAH,
12 what calculation did you determine for that route?

13 A. I don't recall the specific calculation at this
14 moment.

15 Q. And for Houston/ORD, what calculation did you
16 determine for that route?

17 A. I don't recall the specific calculation at this
18 moment.

19 Q. How about for EWR/ORD, what calculation did you
20 determine for that route?

21 A. I believe that one was over 3,000.

22 Q. Are you sure?

23 A. Again, I don't recall what the specific numbers
24 are. I do remember that each one of them was over
25 2,000, and I do remember that there were two to one

1 markets.

2 Q. And the two two to one markets that you

3 identified were SFO/EWR and SFO/IAH, right?

4 A. That's correct.

5 Q. Now, let's look down at footnote No. 1.

6 A. Yes.

7 Q. Okay? Cleveland. Did you do any economic
8 analysis to determine the extent to which passengers
9 find the Cleveland and the Akron airports to be
10 substitutable for one another?

11 MR. SHULMAN: Objection to form.

12 A. I have not.

13 Q. (By Ms. Forrest) Have you read any economic
14 analysis that has sought to determine the extent to
15 which Cleveland and Akron airports are substitutable for
16 one another?

17 A. I have not.

18 Q. LAX, have you done any economic analysis that
19 has sought to determine the extent to which the various
20 Los Angeles airports are substitutable with one another?

21 MR. SHULMAN: Objection to form.

22 A. I have not.

23 Q. (By Ms. Forrest) Are you aware of any economic
24 work that has sought to determine the extent to which
25 various Los Angeles basin airports are substitutable

1 with one another?

2 A. I have not.

3 Q. And for Houston, have you done any economic
4 work that has sought to determine the extent to which
5 Houston International and Houston Hobby are
6 substitutable for one another?

7 A. I have not.

8 Q. Have you read any economic research which has
9 sought to determine the extent to which Houston Hobby
10 and Houston International are substitutable with one
11 another?

12 A. I have not.

13 Q. If we go to -- we've talked about New York.
14 For Washington, have you done any economic work that has
15 sought to determine the extent to which the three
16 Washington airports are substitutable for one another?

17 MR. SHULMAN: Objection to form.

18 A. I have not.

19 Q. (By Ms. Forrest) Have you read any economic
20 work that has sought to determine the extent to which
21 the three Washington airports are substitutable for one
22 another?

23 A. I have not.

24 Q. Now, we're going to talk about Chicago. Have
25 you done any economic work that has sought to determine

1 the extent to which ORD and Midway are substitutable for
2 one another?

3 A. I have not.

4 MR. SHULMAN: Objection to form.

5 Q. (By Ms. Forrest) Have you sought to -- have
6 you read any economic work that has sought to determine
7 the extent to which ORD and Midway are substitutable for
8 one another?

9 A. I have not.

10 Q. And you've got Honolulu down here, right?

11 A. Yes.

12 Q. Honolulu is not on anybody's hub, right?

13 A. No.

14 Q. So here where you talk about -- where is the
15 Honolulu route -- LAX/Honolulu, that is not a hub to
16 hub, right?

17 A. That is not.

18 Q. The other ones are hub to hubs?

19 A. Yes.

20 Q. And do you know when the LAX to Honolulu
21 service is going to start?

22 A. I don't recall exactly when it's going to
23 start.

24 Q. Do you know whether or not it's even started?

25 A. I believe it starts -- I know it starts

1 commencing -- it's either starting or is starting

2 September 1st.

3 Q. Very good.

4 Have you done any calculations of the 13
5 routes based upon the city pair basis?

6 A. I have not.

7 Q. Have you been asked by counsel not to prepare
8 any concentration analysis of the 13 routes based upon a
9 city pair basis?

10 A. I'm sorry. Can you repeat that?

11 Q. Did the counsel who retained you in this case
12 ask you not to prepare concentration analyses for the 13
13 routes based upon a city pair basis?

14 A. No. They did not ask me not to do that.

15 Q. Did you have any conversations with counsel
16 regarding the use of airport pairs versus city pairs for
17 the 13 routes that are referenced in your report?

18 A. I have not.

19 Q. You also say that the merger eliminates
20 potential competition on routes in which United and
21 Continental could enter.

22 MR. SHULMAN: Can we take a break?

23 MS. FORREST: Sure.

24 MR. SHULMAN: You're moving on to --

25 MS. FORREST: Another point. Sure, let's

1 take a break.

2 THE WITNESS: Sure.

3 (Short recess from 11:29 a.m. to 11:40

4 a.m.)

5 Q. (By Ms. Forrest) Ready?

6 A. Uh-huh.

7 Q. Let's go back on the record.

8 Mr. Bush, have you sought to determine

9 whether or not any of the 49 plaintiffs in this case are

10 time sensitive travelers?

11 A. No.

12 Q. Let me put it a little bit differently. Do you

13 know whether or not a single one of the 49 plaintiffs in

14 this case is a time sensitive traveler?

15 A. I do not.

16 Q. Do you know whether or not any of the 49

17 plaintiffs in this case would choose not to use Midway

18 as opposed to ORD?

19 A. I do not.

20 Q. Do you know whether or not any of the 49

21 plaintiffs would choose to use JFK or LaGuardia as

22 opposed to EWR?

23 A. I do not.

24 Q. Do you know whether or not any of the 49

25 plaintiffs would choose to use Houston Hobby versus

1 Houston International?

2 A. I do not.

3 Q. Do you know whether or not any of the 49

4 plaintiffs would choose to use Akron versus Cleveland?

5 A. I do not.

6 Q. Do you know whether or not any of the 49 would

7 choose to use Burbank versus LAX?

8 A. I do not.

9 Q. Do you know whether any of the 49 would choose

10 to use Oakland versus SFO?

11 A. I do not.

12 Q. On page 3 of your report, the second opinion

13 that you state is -- or actually second conclusion.

14 It's not really couched as an opinion. Is that the

15 merger eliminates potential competition on routes in

16 which United or Continental could enter.

17 A. Yes.

18 Q. Including but not limited to LAX/Cleveland,

19 LAX/EWR and SFO/Cleveland. Do you see that?

20 A. Yes, I do.

21 Q. Are there any other examples that you would

22 like to add into that conclusion? Because you say

23 including but not limited to, so I want to get a

24 complete list.

25 A. Well, again, given that merger analysis is a

1 forward looking analysis, it's impossible to tell
2 whether or not that there would be other possibilities,
3 but for the purposes of my report, that will be a
4 complete list.

5 Q. Now, you're aware, aren't you, that Southwest
6 flies from Cleveland to Los Angeles?

7 A. I am.

8 Q. And you're aware that Southwest flies from
9 Cleveland to LAX, aren't you?

10 A. Yes.

11 Q. And you're aware, aren't you, that US Airways
12 flies from Cleveland to Los Angeles?

13 A. I'm sorry. Repeat that again.

14 Q. Are you aware that US Airways flies from
15 Cleveland to Los Angeles?

16 A. Yes.

17 Q. Are you aware that Delta flies from Cleveland
18 to Los Angeles?

19 A. Yes.

20 Q. Are you aware that American Airlines flies from
21 Cleveland to Los Angeles?

22 A. Yes.

23 Q. Are you aware that AirTran flies from Cleveland
24 to Los Angeles?

25 A. Yes.

1 Q. Are you aware that Frontier flies from
2 Cleveland to Los Angeles?

3 A. Yes.

4 Q. Are you aware, let's talk about Cleveland/San
5 Francisco, okay? Are you aware that Southwest flies
6 from Cleveland to San Francisco?

7 A. The San Francisco area, correct.

8 Q. Do you know whether or not they fly to Oakland
9 or SFO from Cleveland?

10 A. I believe it was Oakland, but...

11 Q. You don't know?

12 A. I don't know for certain, no.

13 Q. But you know they fly to the San Francisco
14 area?

15 A. I do.

16 Q. Okay. Do you know whether or not Delta flies
17 from Cleveland to San Francisco?

18 A. I believe they do.

19 Q. And do you know whether or not US Airways flies
20 from Cleveland to San Francisco?

21 A. I believe they do.

22 Q. And do you know whether or not Frontier flies
23 from Cleveland to San Francisco?

24 A. I believe they do.

25 Q. And do you know whether or not American flies

1 from Cleveland to San Francisco?

2 A. I believe they do.

3 Q. And do you know whether or not AirTran flies
4 from Cleveland to San Francisco?

5 A. I believe they do as well.

6 Q. Now, the other route that you've got listed
7 here is as a route of potential competition is LAX to
8 EWR. Do you see that?

9 A. Yes.

10 Q. Okay. You're aware, aren't you, that if you
11 look at that route on a city pair basis, there are, in
12 fact, a number of competitors who fly that route
13 already?

14 A. Yes.

15 Q. Aren't you? And, in fact, we've marked already
16 as Exhibit 1019 for identification a document which
17 shows -- actually, it doesn't.

18 Who are the competitors on a airport pair
19 -- on a city pair basis who fly today from Newark --
20 strike that.

21 Who are the competitors who fly the New
22 York area to L.A. area route?

23 A. New York area to L.A. area, I know there's a
24 number of them. I don't remember exactly which ones at
25 this point.

1 Q. Okay. Do you know that American Airlines flies
2 that route?

3 A. I'm sure they do.

4 Q. And do you know that jetBlue flies that route?

5 A. I'm sure there's quite a few carriers that fly
6 from New York to LAX.

7 Q. And do you know that Delta flies from New York
8 to LAX?

9 A. Yes.

10 Q. And do you know that Virgin America flies from
11 New York to LAX?

12 A. Yes. There are quite a few people that fly
13 from the New York area to LAX, quite a few airlines that
14 fly from New York to LAX.

15 Q. And you know that US Air flies that route?

16 A. Yes.

17 Q. And also that Alaska Air flies that route?

18 A. Yes.

19 Q. And the next statement that you make on page 3,
20 which is the third bullet down at the bottom of the
21 page, you say, "The merger will severely limit
22 connection choices for passengers traveling to and from
23 origins and destinations in the Midwest to origins and
24 destinations in the Eastern United States." Do you see
25 that?

1 A. I do.

2 Q. Have you done any analysis as to how many
3 passengers will be so effected?

4 A. I have not.

5 Q. Have you done any analysis at all that would
6 try to get underneath the statement that you set forth
7 in paragraph 3? Economic analysis.

8 MR. SHULMAN: Objection to form.

9 A. If you take a examination of what, if you live
10 in the Midwest and you are at a particular hub, then you
11 have certain connection options that make better sense
12 than others. And of those, you have Northwest and Delta
13 which have merged. So, for example, Minneapolis/St.
14 Paul, things of that sort. And you have Continental
15 United with Cleveland, Chicago. Certainly connecting
16 backwards through things like Denver and airports of
17 that sort do not make sense. So you're limited by
18 geography when you're making connections that are
19 reasonable.

20 Q. (By Ms. Forrest) Would you consider Cleveland
21 to be in the Midwest?

22 A. I would.

23 Q. And Frontier flies into Cleveland, right?

24 A. That's correct.

25 Q. And Southwest flies into Cleveland?

1 A. That's correct.

2 Q. Do you have any reason to believe that as a
3 result of this merger, either Southwest or Frontier will
4 leave Cleveland?

5 A. No. For the same reasons I stated before.

6 Q. And you would agree with me, wouldn't you, that
7 both Frontier and Southwest also fly to the East Coast?

8 A. That is true.

9 Q. Okay. And they fly into the New York area?

10 A. Yes, they do.

11 Q. And what other areas in the East Coast do they
12 fly into? Either one of those airlines fly into Boston
13 that you know of?

14 A. I believe they do. And they also fly up and
15 down the East Coast, yeah.

16 Q. And you have no reason to believe that as a
17 result of this merger, either of those airlines will
18 exit from any East Coast -- Midwest to East Coast flying
19 that they do, right?

20 A. No. For the reasons I stated before.

21 Q. You don't have any reason to believe --

22 A. Right.

23 Q. -- that they will exit?

24 A. Right.

25 Q. Now, Chicago, do you consider that in the

1 Midwest?

2 A. Yes, I do.

3 Q. And you're aware that Southwest flies into

4 Chicago?

5 A. Very much so.

6 Q. And it also flies into the -- we've talked

7 about Southwest flying into the East Coast?

8 A. Yes.

9 Q. What other LCCs fly into the Chicago area that

10 you know of?

11 A. Well, there are quite a few, but there's

12 Midwest Express. I'll wait until you're done searching

13 for documents.

14 Q. No. You can go ahead.

15 A. But my understanding is there are several LCCs

16 that fly from Midwest to the East Coast.

17 Q. Including which ones?

18 A. I know Midwest Express and Southwest, those are

19 the two I'm more aware of.

20 Q. And just to be clear, you don't have any reason

21 to believe that any LCC is going to exit from any of

22 their flying from the East Coast to the Midwest as a

23 result of this merger?

24 A. No, I do not.

25 Q. And Southwest actually flies into Minneapolis,

1 right?

2 A. Yes.

3 Q. And that's considered the Midwest? Would you

4 consider that the Midwest?

5 A. I would.

6 Q. And AirTran flies into Minneapolis?

7 A. Yes.

8 Q. Is that right?

9 Okay. And jetBlue flies into Denver; is

10 that right?

11 A. I don't know for sure if they do or not.

12 Q. Take a look at Exhibit 1024.

13 A. Yes.

14 Q. Okay. And AirTran flies into Denver?

15 A. Yes.

16 Q. And Southwest flies into Denver?

17 A. Yes.

18 Q. Frontier flies into Denver?

19 A. Yes.

20 Q. So have you done any economic analysis that

21 would determine the extent to which connection choices

22 for passengers traveling to and from origins in the

23 Midwest to origins or destinations in the Eastern United

24 States would be specifically impacted by this merger?

25 MR. SHULMAN: Objection to form.

1 A. No.

2 Q. (By Ms. Forrest) Okay. Now, you also say on
3 the next page of your report, page 4, and we're looking
4 at the top bullet on that page, and this has been marked
5 as Exhibit No. 1011, that "Competition between airline
6 networks will be reduced, including but not limited to
7 corporate travel accounts and frequent flier programs."
8 Do you see that?

9 A. Yes.

10 Q. Okay. Now, you say including but not limited
11 to, right?

12 A. Yes.

13 Q. Is there anything else that you want to add to
14 that statement as you sit here today?

15 A. No. Apart from whatever else is in my report
16 relating to network competition.

17 Q. Do you know which corporations United and
18 Continental compete for in terms of travel accounts?

19 A. No, I do not.

20 Q. Have you looked at any information which would
21 indicate to you who the most significant competitors are
22 for United for corporate travel accounts?

23 A. No.

24 Q. Have you looked at any information which would
25 indicate to you who the most significant competitor or

1 competitors are for Continental with respect to any
2 corporate travel accounts?

3 A. No.

4 Q. Do you know whether or not United and
5 Continental are each other's most significant
6 competitors for a single corporate travel account?

7 A. I do not.

8 Q. Okay. And this relates also to corporate
9 travel accounts; but on page 10 of your report, it says
10 in the second full paragraph, "United and Continental
11 may compete vigorously with each other for these
12 contracts, particularly when the corporation requires
13 significant travel on nonstop routes where the companies
14 compete." Do you see that?

15 A. Yes.

16 Q. Do you have any information which indicates to
17 you the extent to which United and Continental, in fact,
18 compete at all for corporate travel accounts?

19 A. No, I do not.

20 Q. Now, it goes on in page 10 of your report and
21 it says, "Moreover, the sheer size of the combined
22 system may make it more difficult for smaller carriers
23 to compete for those contracts." Do you see that?

24 A. Yes.

25 Q. Do you know the extent to which Southwest

1 competes for any corporate travel accounts?

2 A. I do not.

3 Q. Do you know the extent to which Southwest
4 competes with United or Continental for any corporate
5 travel accounts?

6 A. No.

7 Q. Do you know whether or not any corporate travel
8 accounts actually have both either a United and
9 Continental and one of the low cost carriers as part of
10 its corporate travel account?

11 A. I do not.

12 Q. You are aware, aren't you, that sometimes
13 corporate travel accounts will have more than one
14 carrier?

15 A. Yes.

16 Q. And you don't know whether or not LCCs are also
17 alongside of some of the network carriers, part of
18 corporate travel accounts, right? You don't know that
19 one way or the other?

20 A. I do not know the individual makeup of
21 corporate travel accounts, no.

22 Q. Now, have you done any analysis as to the
23 extent to which the size of a network carrier will make
24 it more difficult for an LCC to compete for a corporate
25 travel account?

1 A. I have not, but Continental and United have.

2 Q. Okay. Have you -- you're talking about

3 corporate documents?

4 A. Yes.

5 Q. And those are documents you've recited at the

6 back of your report?

7 A. Yes.

8 Q. So if it's there, I'll find it referenced

9 somewhere in the back of the report, right?

10 A. Yes.

11 Q. So rather than spending time today on United

12 and Continental documents, I'm going to talk about your

13 work.

14 Have you done any work which has sought to

15 determine the relationship between network size and the

16 ability of a low cost carrier to compete for a corporate

17 travel account?

18 A. I have not.

19 Q. Are you aware of any academic literature that

20 looks at network size and discusses the extent to which

21 network size impacts the ability of a low cost carrier

22 to compete for a corporate travel program?

23 A. There is no specific work that I am aware of

24 that relates to network size and corporate programs.

25 There is substantial literature on network effects,

1 however.

2 Q. The next point that you state on page 4 of your
3 report relates to efficiency claims. Do you see that?

4 A. I'm sorry. Page 4?

5 Q. Yes. Do you see the second bullet on the top
6 of that page talks about efficiency claims?

7 A. Yes.

8 Q. And you're aware, aren't you, in your reading
9 of the new merger guidelines that there are various
10 statements in there relating to the extent to which
11 efficiency claims should be considered by the Department
12 of Justice in connection with the merger analysis?

13 A. Yes.

14 Q. Did you comment at all on those merger
15 guidelines in the context of the efficiency claims?

16 A. I have not.

17 Q. You knew prior to the release of the merger
18 guidelines, did you not, that they were going to be
19 making the statements relating to efficiency claims?

20 A. I read the draft guidelines, yes, I did.

21 Q. You did comment on different parts of the draft
22 guidelines, did you not?

23 A. I did not provide comments to the Department of
24 Justice.

25 Q. Did you speak at any forums where the new

1 merger guidelines were a topic?

2 A. Yes, I did.

3 Q. And in connection with that, did you put in any

4 written materials relating to the role of efficiencies

5 with regard to the new merger guidelines?

6 A. I did.

7 Q. And are those recited in your curriculum vitae?

8 A. They are.

9 Q. Were your proposals adopted in any way by the

10 Department of Justice when it put out its new merger

11 guidelines?

12 A. No.

13 Q. Do you know whether or not the Department of

14 Justice even read them?

15 A. No.

16 Q. You don't know?

17 A. No, I don't.

18 Q. Now, one of the things that you say in the

19 second bullet on page 4 of your report, which has been

20 marked for identification as Exhibit No. 1011, is that

21 "Historically, airline mergers have not produced

22 significant benefits."

23 A. Yes.

24 Q. Okay. Have you done any economic work to

25 determine the extent to which airline mergers have or

1 have not produced any benefits?

2 A. I have not personally, no.

3 MR. SHULMAN: Objection to form.

4 Q. (By Ms. Forrest) Have you read any academic
5 literature which has looked at the extent to which
6 airline mergers may or may not have produced significant
7 benefits?

8 A. To the degree we have looked at efficiency
9 claims in mergers, as a academic endeavor, I have cited
10 those in my report.

11 Q. Let's talk about, though, with respect to
12 airline mergers in particular as opposed to mergers more
13 generally.

14 Are you aware of any economic work that
15 has sought to determine whether or not the benefits
16 projected by the parties to an airline merger have been
17 achieved or not?

18 A. I'm sorry. Repeat that question.

19 Q. Let me turn to that footnote. Let's turn to
20 footnote 46. Do you see footnote 46?

21 A. Yes.

22 Q. Footnote 46 of your report which is located at
23 page 21 references some academic literature on mergers;
24 is that right?

25 A. Yes.

1 Q. Including some academic literature on airline
2 mergers; is that right?

3 A. That's true.

4 Q. Is a single one of those articles dated after
5 the date of the Delta/Northwest merger?

6 A. No.

7 Q. The last article that you've got listed here is
8 a 2006 article, right?

9 A. That is true.

10 Q. And the Delta/Northwest merger was a 2008
11 merger?

12 A. That's correct.

13 Q. So do you know of any work which has looked at
14 whether or not the benefits projected by Delta/Northwest
15 have or have not been achieved?

16 A. No.

17 Q. And we looked earlier today at some information
18 relating to the synergies that Delta and Northwest
19 stated that they have achieved; is that right?

20 A. That is true.

21 Q. Apart from the references contained in footnote
22 46 relating to airline mergers and other mergers, all
23 right?

24 A. Uh-huh.

25 Q. Are you aware of any academic literature which

1 seeks to measure whether or not airline mergers have
2 resulted in the benefits projected?

3 A. In the whole of the econ literature, I'm
4 probably sure there are some out there; but I have not
5 seen it.

6 Q. You listed those that you had in footnote 46;
7 is that right?

8 A. Yes.

9 Q. The next point on page 4 talks about entry by
10 legacy carrier and low cost carriers. And it says --
11 and I'll read this first sentence. "Entry by legacy
12 network and low cost carriers is unlikely to discipline
13 post merger price increases."

14 A. Yes.

15 Q. It says, "LCCs face major entry barriers,
16 including substantial sunk costs." Do you see that?

17 A. Yes.

18 Q. Have you availed yourself of any information
19 that quantifies the sunk costs that a low cost carrier
20 must have in order to enter a particular route?

21 A. No, I have not.

22 Q. Do you have any information at all in your
23 possession relating to the costs for any carrier to
24 enter a route?

25 A. In terms of dollar amounts?

1 Q. Correct.

2 A. No.

3 Q. When you refer to sunk costs here, are you
4 referring to dollar amounts in part, at least?

5 A. Yes.

6 Q. Are there other sunk costs that you're
7 referring to that are not dollar amounts?

8 A. No.

9 Q. Okay. Let's look at this. You said you had
10 read the Rubinfeld report?

11 A. Yes.

12 Q. And you're aware that Dr. Rubinfeld also refers
13 to entry by low cost carriers and legacy carriers on
14 certain routes?

15 A. Yes.

16 Q. And did you look at the exhibits that he
17 referenced in connection therewith?

18 A. Yes.

19 Q. Let me mark then as Exhibit No. 1025 the expert
20 report of Daniel Rubinfeld with associated exhibits.

21 (Exhibit 1025 marked.)

22 MS. FORREST: This is off the record.

23 (Discussion held off the record for less
24 than one minute.)

25 A. I'm sorry.

1 Q. (By Ms. Forrest) Turn, if you would, please,
2 to Exhibit No. 26 of the report of Dr. Rubinfeld.

3 A. (Witness complies.)

4 Q. Did you review Exhibit 26 prior to your
5 deposition today?

6 A. Yes, I did.

7 Q. Do you have any reason to believe that the
8 information contained on Exhibit No. 26 is inaccurate?

9 A. I do not.

10 MR. YDE: Exhibit --

11 Q. (By Ms. Forrest) I'm sorry. Exhibit No. 26 to
12 the Rubinfeld report which is, in fact, Exhibit No. 1025
13 to your deposition.

14 A. Got it.

15 Q. So let me actually just restate the question,
16 so it's clear on the record.

17 We're looking at Exhibit No. 1025 to your
18 deposition which is the expert report for Dr. Rubinfeld;
19 and we're turning to Exhibit No. 26 of that report.

20 Do you have any reason to doubt the
21 accuracy of the information relating to entry and exit
22 events by carrier reflected on Exhibit 26?

23 A. I do not.

24 Q. Actually, let's just stick with the exhibits
25 for the Rubinfeld report for a moment.

1 A. Sure.

2 Q. Why don't you go back to the Exhibit No. 1 of
3 the Rubinfeld report which is contained as part of
4 Exhibit No. 1025 to your deposition.

5 A. (Witness complies.)

6 Q. Do you see that the Exhibit No. 1 relates to
7 the increase of domestic available seat miles?

8 A. Yes.

9 Q. Since 1978?

10 A. Yes.

11 Q. Do you have any reason to doubt the accuracy of
12 the information contained on Exhibit 1 to Dr.
13 Rubinfeld's report?

14 A. I do not.

15 Q. Exhibit No. 2 also indicates that there was an
16 increase in domestic revenue passenger miles since 1978.
17 Do you see that?

18 A. I see that.

19 Q. Do you have any reason to doubt the accuracy of
20 the information contained in Exhibit 2 to Dr.
21 Rubinfeld's report?

22 A. I do not.

23 Q. If you turn to Exhibit No. 3 of Dr. Rubinfeld's
24 report, it is a chart relating to the inflation adjusted
25 yield. Do you see that?

1 A. I do.

2 Q. Would you associate yield with a general

3 description of price?

4 A. State your question again.

5 Q. How do you understand the word "yield"?

6 A. No. Your original question, because I think

7 the answer is I understand what the word "yield" means.

8 Q. What does the word "yield" mean?

9 A. The word "yield" means how much, what kind of

10 revenue that we produce from seats.

11 Q. And do you have any reason to doubt the

12 accuracy of the information contained on Exhibit 3 to

13 Dr. Rubinfeld's report?

14 A. No.

15 Q. Okay. And Exhibit 4 which relates to LCC and

16 legacy passenger shares, do you have any reason to doubt

17 the accuracy of the information contained on this page

18 on Dr. Rubinfeld's report?

19 A. No.

20 Q. Exhibit 5 entitled Legacy Carriers' Exposure to

21 LCC Competition, City Pairs, 2009, do you have any

22 reason to doubt the accuracy of the information

23 contained on this page of Dr. Rubinfeld's report?

24 A. I do not.

25 Q. Exhibit 6 to Dr. Rubinfeld's report is entitled

1 Percent of Domestic Passengers on City Pairs with at
2 least 10 Percent LCC share. Do you see that?

3 A. I see that.

4 Q. And do you see that there's an increasing line
5 on Exhibit No. 6?

6 A. Yes. The general trend is an increase.

7 Q. Do you have any reason to doubt the accuracy of
8 that information?

9 A. I do not.

10 Q. If you turn to Exhibit No. 7 of Dr. Rubinfeld's
11 report, it looks at entry events on top 1,000 city
12 pairs. Do you see that?

13 A. Yes.

14 Q. Do you have any reason to doubt the accuracy of
15 the information contained in Exhibit 7 of Dr.
16 Rubinfeld's report?

17 A. I do not.

18 Q. And Exhibit 8 looks at entry, exit and
19 bankruptcy filings from 1979 to 2009. Do you see that?

20 A. I do.

21 Q. Do you have any reason to doubt the accuracy of
22 the information contained on Exhibit 8 of Dr.
23 Rubinfeld's report?

24 A. I do not.

25 Q. If you look at Exhibit 9, it has an estimated

1 cost savings. Do you see that?

2 A. Yes.

3 Q. Have you spoken to anybody at United or
4 Continental relating to any cost savings that they
5 project to be achieved in connection with this
6 transaction?

7 A. I have not.

8 Q. Do you have any reason to doubt the accuracy of
9 the information contained on Exhibit 9 insofar as the
10 two companies are estimating cost savings in these
11 amounts?

12 A. I have no reason to doubt that they believe
13 that they will achieve these synergies.

14 Q. Okay. If you turn to Exhibit 11 and 12, I take
15 it that you have not sought to replicate the work
16 relating to the United PFM or the Continental APM
17 reflected on Exhibit 10; is that right?

18 A. I'm sorry. We're going to 10?

19 Q. 10?

20 A. Oh, I'm sorry. I thought said 12.

21 No, I have not.

22 Q. And if you go to Exhibit 11, it looks like it
23 increases in available seat miles. Do you have any
24 reason to doubt the accuracy of that information as
25 output from the United PFM model?

1 A. I have not.

2 Q. Now, the next exhibit, Exhibit 12, to the
3 Rubinfeld report, looks at new frequencies on conduit
4 routes. Do you see that?

5 A. I see it.

6 Q. What do you understand a conduit route to be?

7 A. I'm not sure what they're saying in terms of
8 conduit, what a conduit route is.

9 Q. Dr. Rubinfeld's report actually will define
10 conduit routes. But let me ask you whether or not you
11 have done any analysis that would indicate to you that
12 United and Continental will not add frequencies to
13 certain routes following the merger?

14 A. No.

15 Q. You've not done any such work?

16 A. No.

17 Q. Do you have any reason to believe as you sit
18 here today that United and Continental will not add
19 frequencies to certain routes following the merger?

20 A. To certain routes, no.

21 Q. And as you sit here today, do you have any
22 information which leads you to believe that United or
23 Continental will, in fact, cut frequencies on any route?

24 A. If we're achieving -- if the goal is to achieve
25 the efficiencies that Continental and United proclaim,

1 then I would expect they would have to reduce costs in
2 some fashion; and the best way to do that is to reduce
3 frequencies on some redundant routes.

4 Q. Let's go back to Exhibit No. 9 of the Rubinfeld
5 report for a moment.

6 A. (Witness complies.)

7 Q. And this is estimated cost savings; is that
8 right?

9 A. Yes.

10 Q. Okay. Is there anything on Exhibit No. 9 that
11 indicates to you that there's a single penny of cost
12 savings coming from elimination of a frequency on a
13 United or Continental route?

14 A. I'm not entirely sure what station overlap
15 means, unless we're talking about reduction in terms of
16 ticket agents and things of that sort. But, no, it does
17 not say explicitly anything about reduction in output.

18 Q. So let's talk about what information you have
19 or have modeled. Do you have or have you modeled
20 anything that would indicate to you that United and
21 Continental will cut the frequency on a single route as
22 a result of this merger?

23 A. No.

24 Q. Now, turn, if you would, please, to Exhibit No.
25 13 of the Rubinfeld report. Do you see it says new

1 nonstop growth routes?

2 A. I do.

3 Q. Okay. Is it your understanding from reading

4 the Rubinfeld report that the routes reflected on

5 Exhibit 13 would be brand-new routes to both United and

6 Continental?

7 A. Yes.

8 Q. And that those routes would be enabled by the

9 merger?

10 A. Yes.

11 Q. Do you have any reason to doubt that United and

12 Continental, in fact, intend to fly these 25 new nonstop

13 routes?

14 A. I do not.

15 Q. When was the last time you performed a

16 regression analysis?

17 A. I have not performed a regression analysis in

18 probably 10, 12 years.

19 Q. You've read, haven't you, the portion of Dr.

20 Rubinfeld's report relating to, as we discussed earlier,

21 his QSI work?

22 A. Yes.

23 Q. And you saw that there was a calculation of

24 consumer benefits quantified as a result of that QSI

25 work?

1 A. Yes.

2 Q. And you saw that Dr. Rubinfeld had indicated
3 that there would be a reduction in quality adjusted
4 fares?

5 A. Yes.

6 Q. Do you have any reason to doubt the accuracy of
7 the information and opinions that Dr. Rubinfeld stated
8 in connection with his QSI work?

9 A. No. I don't have any reason to doubt that, no.

10 Q. Take a look, if you would, please, at Exhibit
11 No. 22 of the Rubinfeld report. Do you see how it lists
12 information relating to operating expense per available
13 seat mile for the top ten carriers?

14 A. I do.

15 Q. Do you have any reason to doubt the accuracy of
16 this information?

17 A. I do not.

18 Q. Exhibits No. 23 and 24, which have many
19 subparts, and Exhibit No. 25 relate to information
20 regarding fare dispersion. Do you see that?

21 A. I do.

22 Q. Do you have any reason to doubt the accuracy of
23 the information contained on these exhibits?

24 A. I do not.

25 Q. We've talked about Exhibit 26. Okay. If you

1 look at Exhibit No. 29, do you see that there are some
2 HHIs listed on Exhibit 29?

3 A. I'm sorry. You said 26 or 29?

4 Q. I meant 29. I'm sorry. 29 of the Rubinfeld
5 report. Do you see that?

6 A. I got it.

7 Q. It's has some HHI calculations. Do you see
8 that?

9 A. Yeah.

10 Q. Okay. And do you see that there's a
11 calculation for all carriers listed sort of up in the
12 top chunk?

13 A. Yes.

14 Q. Do you have any reason to doubt the accuracy of
15 that HHI calculation based upon a city pair analysis?

16 Strike that.

17 A. It's not city.

18 Q. Right. Let me restate the question.

19 We're looking at Exhibit No. 29 of the
20 Rubinfeld report. Do you see the portion of it relating
21 to an HHI for all carriers?

22 A. I do.

23 Q. Do you have any reason to doubt the HHI for all
24 carriers is as reflected on Exhibit No. 29?

25 A. I do not.

1 Q. And do you see that there's also an HHI that's
2 calculated with respect to legacy carriers only on
3 Exhibit 29 of the Rubinfeld report?

4 A. I do.

5 Q. And do you have any reason to doubt that that
6 is an accurately calculated HHI for legacy carriers
7 only?

8 A. I do not.

9 Q. And do you see that the last HHI calculated on
10 Exhibit 29 to the Rubinfeld report is legacy carriers
11 and Southwest?

12 A. I do.

13 Q. Do you have any reason to doubt that the HHI
14 indicated for legacy carriers and Southwest reflected on
15 Exhibit 29 of the Rubinfeld report is accurate?

16 A. I do not.

17 Q. There are also in Exhibit 30, 31 and 32,
18 there's additional information relating to concentrating
19 cities on 31, concentrating airports on -- strike that.
20 Let me start over again.

21 Do you have any reason to doubt the
22 accuracy of the information contained on Exhibit 30 of
23 the Rubinfeld report relating to concentrating cities
24 claimed by plaintiffs?

25 A. I do not.

1 Q. If you turn to Exhibit 31, do you have any
2 reason to doubt the accuracy of the information on that
3 page relating to concentrating airports claimed by
4 plaintiffs?

5 A. I do not.

6 Q. If you go to Exhibit No. 32, there's a
7 calculation there of airports served by both United and
8 Continental. Do you see that?

9 A. Yes.

10 Q. And it says that there are -- well, let me put
11 it differently.

12 Do you have any reason to doubt the
13 accuracy set forth on Exhibit No. 32?

14 A. No.

15 Q. And then there's 33, Exhibit 33, which takes up
16 many pages.

17 A. Yes.

18 Q. And that relates to the traveling information
19 regarding the 49 plaintiffs in this matter; is that
20 right?

21 A. That's correct.

22 Q. Okay. And have you -- when you reviewed
23 Exhibit 33 and all of its pieces, did you discover any
24 errors?

25 A. I did not.

1 Q. If you look at Exhibit 35, for United and

2 Continental connecting overlaps, city pairs.

3 A. Hang on a second. I'm still looking.

4 Q. Sure. It's the second to last page of this

5 document.

6 A. Right. I'm sorry. You said Exhibit 34?

7 Q. Yeah. I'm sorry. I should go to Exhibit 34.

8 The second to last page of the Rubinfeld exhibits is

9 Exhibit 34, and it states United and Continental Nonstop

10 Overlap, City Pairs. Do you see that?

11 A. Yes, I do.

12 Q. Do you have any reason to doubt the accuracy of

13 the information contained on this page?

14 A. I do not.

15 Q. And if you turn to the last exhibit which is

16 Exhibit 35, it lists United and Continental connecting

17 overlaps, city pairs, 2009. Do you see that?

18 A. Yes.

19 Q. Do you have any reason to doubt the accuracy of

20 the information contained on that page?

21 A. I do not. I don't know what time it is, but is

22 it lunch soon?

23 Q. Sure, we can take lunch. Let's break.

24 (Lunch recess from 12:19 p.m. to 1:33

25 p.m.)

1 Q. (By Ms. Forrest) Mr. Bush, are you offering
2 any opinions relating to the competitive impact, if any,
3 on international travel as a result of this merger?

4 A. No.

5 Q. You're aware, aren't you, that Continental and
6 United do not fly to all of the same destinations today?

7 A. That is true.

8 Q. And would you agree that as a result of this
9 merger, there will be some Continental's customers who
10 will have access to new on-line destinations that it
11 previously did not serve but that United served?

12 A. Yes.

13 Q. And that similarly, there will be some United
14 customers who will access to new on-line destinations
15 that Continental serves that it did not previously
16 serve?

17 A. Yes.

18 Q. Let me mark as Exhibit 1026 a single-page
19 document entitled Customer Access to New On-line
20 Destinations After Merger.

21 (Exhibit 1026 marked.)

22 Q. (By Ms. Forrest) Do you see what's been placed
23 before you as Exhibit No. 1026 to your deposition?

24 A. I do.

25 Q. And do you see that it indicates in red that

1 there will be United on-line destinations new to
2 Continental; and in blue, Continental on-line
3 destinations new to United?

4 A. Yes.

5 Q. And do you have any reason to doubt the
6 accuracy of the information contained on this page?

7 A. I don't.

8 Q. Are you aware also that the merger between
9 United and Continental would create new on-line service
10 in certain city pairs that prior to the merger may have
11 been served only by one or the other carrier in part?

12 So, in other words, let's assume for the
13 moment that there is a passenger who wants to fly from
14 an origin to a destination connecting through a
15 particular city.

16 A. Yes.

17 Q. And that they flew on the first segment on
18 United and the second segment on Continental. Are you
19 with me so far?

20 A. Right.

21 Q. Are you aware that those customers now will be
22 able to fly entirely on the new United Airline post
23 merger?

24 A. Yes. That's called seamless travel.

25 Q. And on-line destinations you understand to be

1 destinations of a single carrier?

2 A. On-line destinations, yes.

3 Q. Let me have marked as Exhibit No. 1027 a

4 single-page document entitled Merger Would Create New

5 On-line Service in 1,011 Domestic City Pairs and 1275

6 System Pairs.

7 (Exhibit 1027 marked.)

8 MS. FORREST: Off the record.

9 (Discussion held off the record for less

10 than one minute.)

11 Q. (By Ms. Forrest) Have you had a moment to take

12 a look at what's been marked as Exhibit No. 1027 to your

13 deposition?

14 A. I have.

15 Q. And do you see that it indicates that there

16 will be certain new on-line service in domestic city

17 pairs domestically, 1011?

18 A. Yes, I do.

19 Q. Do you have any reason to doubt the accuracy of

20 this information?

21 A. I do not.

22 Q. Do you know that there are areas --

23 destinations in this country which are considered to be

24 small communities and small metro areas?

25 A. Yes, I do.

1 Q. And that there's an FFA definition of small
2 community and small metro areas?

3 A. I'm aware of the definition. I don't recall
4 exactly what it is.

5 Q. But you're aware that the FFA does have a
6 definition of a small community and a small metro area?

7 A. Certainly.

8 Q. Are you aware that United and Continental each
9 serve a number of small communities and small metro
10 areas today?

11 A. I do, yes.

12 Q. And do you know whether or not together
13 following the merger, United and Continental would serve
14 an increased number of small communities and metro
15 areas?

16 Let me put it differently. Assume for the
17 moment that United today serves a -- well, actually,
18 I'll put it differently.

19 Of the new on-line -- strike that.

20 Of the domestic destinations that we had
21 looked at a few moments ago with Exhibit 1026?

22 A. Okay.

23 Q. Do you see that?

24 A. Right.

25 Q. You see that there's new on-line destinations

1 created and that there are 116 of them?

2 A. Right.

3 Q. Would it surprise you to learn that 93 of those
4 116 domestic destinations that would be new to either
5 United or Continental would be small communities?

6 A. No.

7 MS. FORREST: Let me have marked as
8 Exhibit 1028 a single-page document entitled 93 of 116
9 Domestic Destinations That Would Be New to Either United
10 or Continental Would Be Small Communities.

11 (Exhibit 1028 marked.)

12 Q. (By Ms. Forrest) Do you see what's been marked
13 as Exhibit No. 1028?

14 A. I do.

15 Q. Do you have any reason to believe that the
16 information contained on this document is inaccurate?

17 A. I do not.

18 Q. In part of your report on page 9, and your
19 report has been marked as Exhibit 1011 to this
20 deposition?

21 A. Yes.

22 Q. You have a paragraph in which you note some of
23 the benefits of this merger. Do you recall writing
24 that?

25 A. Yes.

1 Q. That's the paragraph that begins, "The larger
2 is the network in terms of scope, the greater the
3 choices for passengers in terms of destinations and
4 connection service." Do you see that?

5 A. That's true.

6 Q. And would you agree that that is one of the
7 benefits of this merger?

8 A. Yes.

9 Q. And a second benefit is, as you say on page 9
10 of your report, is "The larger the scale of operations
11 in terms of frequencies on routes, the greater the
12 options of time sensitive travelers in terms of avoiding
13 lost waiting time for flights, particularly in hubs and
14 other business markets." Do you see that?

15 A. Yes.

16 Q. And that was another benefit that you saw from
17 the merger; is that right?

18 MR. SHULMAN: Objection to form.

19 A. That's right.

20 Q. (By Ms. Forrest) And the next one on this page
21 which is page 9 of your report which has been marked as
22 Exhibit No. 1011 to your deposition states, "These
23 benefits are enhanced when passengers are rewarded with
24 frequent flier program benefits and airport amenities
25 for their loyalty to the network carrier." Do you see

1 that?

2 A. Yes, I do.

3 Q. And that was another benefit that you saw in
4 this merger, right?

5 MR. SHULMAN: Objection to form.

6 A. Yes. But I'll do the same caveat for
7 efficiencies that I will for anticompetitive effects.
8 And that is, namely, that they are looking at this
9 forward looking, and it is an incipency standard under
10 Clayton, Section 7. So when we're talking about whether
11 something tends to lessen competition on both sides of
12 the equation, we're forward looking. So it's, again,
13 the same degree of forecasting that we typically do of
14 the anticompetitive effects.

15 But yes, in general, if you have a larger
16 network carrier, those things that I have itemized on
17 page 9 would tend to be true.

18 Q. (By Ms. Forrest) So let me just talk about the
19 incipency standard for a moment and your view of it.

20 Is it the case that because it's forward
21 looking, you're not able to say, for instance, whether
22 or not some of these benefits are likely to occur? You
23 just know that they might occur; is that right?

24 A. I'm trying to think on that one because, you
25 know, when you think about something, whether it tends

1 to lessen competition or it tends to create a monopoly
2 under that standard, it is, of course, the part that
3 usually gets left out is, is it likely to tend to lessen
4 competition. And that is the standard. So we are
5 looking to see whether this is likely to occur.

6 Q. Okay. And so similarly, would you say that the
7 benefits that you've listed on page 9 are likely to
8 occur?

9 A. I would say they're likely to occur with larger
10 network carriers, that's true.

11 Q. Now, on page 18 of your report, you also say
12 that -- in the last paragraph on page 18?

13 A. Last full paragraph?

14 Q. Last full paragraph. Well, the last -- it's a
15 carryover paragraph on the next page.

16 It states in the second sentence, "The
17 first potential efficiency might arise from the
18 rationalization of the combined firms' fleets." Do you
19 see that?

20 A. Yes, I do.

21 Q. Would it be the case that rationalization of
22 United and Continental's fleets could be a benefit of
23 this merger?

24 A. Excuse me. Yes, it could very well be.

25 Q. Are you aware that in the absence of the

1 merger, United and Continental cannot fully optimize
2 their fleets?

3 MR. SHULMAN: Objection to form.

4 Q. (By Ms. Forrest) In a combined way.

5 A. Okay. That's the phrase I was looking for.

6 Q. Okay.

7 A. Because individually, of course, they can
8 optimize their fleets. But combined, it is true under
9 their current alliance, they are not able to optimize
10 fully their fleets.

11 Q. And would you agree also that in the absence of
12 a full merger, United and Continental are not able to
13 fully combine their frequent flier programs?

14 A. That is true.

15 Q. Okay. And would you agree that in the absence
16 of the merger, United and Continental are unable to work
17 under a single labor agreement?

18 A. That is true.

19 Q. And would you agree that in the absence of the
20 merger, United and Continental are unable to eliminate
21 all corporate redundancies that might exist between the
22 two companies?

23 MR. SHULMAN: Objection to form.

24 A. Yeah. That's essentially true of any merger.

25 The interesting thing about this is that when we're

1 talking about corporate redundancies, some of those
2 things that we call efficiencies in merger transactions
3 are typically things that happen in competition anyway.

4 So if you look at it that way, competition
5 can sometimes be incredibly inefficient, because we have
6 redundant marketing arms, we have redundant CEOs and
7 things of that sort.

8 Q. (By Ms. Forrest) Would you agree with me that
9 a full merger would allow United and Continental to
10 eliminate corporate redundancies that they could not do
11 in the absence of the merger?

12 MR. SHULMAN: Objection to form.

13 A. Yes.

14 Q. (By Ms. Forrest) Now, have you seen -- you've
15 looked at certain company documents; is that right?

16 A. That's correct.

17 Q. And you say in your report that you've had
18 access to the entirety of the production made to
19 plaintiffs; is that right?

20 A. Yes. I've had access to. However, your
21 production is voluminous; and I have not been able to
22 fully scan each and every document.

23 Q. In the documents which you have reviewed, --

24 A. Uh-huh.

25 Q. -- have you seen any indication at all that the

1 parties intend to raise price of fares on a single
2 route?

3 A. I have seen analysis of the potential for fare
4 increases and capacity reductions. I have not seen any
5 indication that they have any plan or design to do so.

6 Q. Have you seen any document which indicates that
7 this merger is premised upon a view that it will allow
8 the parties to, in fact, increase fares on particular
9 routes?

10 A. Given that your last clause is on particular
11 routes, I would have to say no.

12 Q. Would you agree that airlines flying the same
13 route can fly that route with different frequencies?

14 A. Yes.

15 Q. And would you agree that airlines flying on the
16 same route can have different flight times?

17 A. Yes.

18 Q. And would you agree that airlines flying on the
19 same route can have different sized planes flying on
20 that same route?

21 A. Yes.

22 Q. And would you agree that the configuration of
23 the planes that two airlines flying on the same route
24 might have, might be different?

25 A. Yes.

1 Q. And would you agree that two airlines flying on
2 the same route might have different capacity flying on
3 that route?

4 A. Yes.

5 Q. And would you agree that some airlines flying
6 on a particular route will fly that route nonstop and
7 some might fly it connecting?

8 A. That is true.

9 Q. Okay.

10 A. Some airlines do operate only on connect
11 service, that's true.

12 Q. And would you agree with me that for certain
13 passengers, connecting flights are substitutable with
14 nonstop flights?

15 A. Yes, for some passengers, connections are a
16 substitute for a nonstop.

17 Q. Are you aware that airlines offer different
18 onboard amenities?

19 A. Yes.

20 Q. And are you aware that different airlines offer
21 different airport amenities?

22 A. Yes.

23 Q. And are you aware that there are differences
24 between the frequent flier programs of the different
25 airlines?

1 A. Yes.

2 Q. Are you aware that certain airlines have

3 different minimum stay requirements?

4 A. Yes. I understand that airlines yield manage

5 to two different degrees; and, therefore, the fare

6 restrictions they impose on tickets vary.

7 Q. And would you agree with me that also different

8 airlines have different policies with respect to baggage

9 fees?

10 A. Yes.

11 Q. And would you agree with me that different

12 airlines change their fares at different times?

13 A. That can occur, yes.

14 Q. Would you agree with me that, in fact, the

15 offerings of different airlines are, in fact, quite

16 heterogeneous?

17 MR. SHULMAN: Object to the form of the

18 question.

19 A. Maybe you can phrase that.

20 Q. (By Ms. Forrest) Well, let me just try it

21 differently. Would you agree with me that the costs of

22 airlines can also differ?

23 A. Yes. Costs differ by airline. Particularly

24 that's true in broad categories of airlines.

25 Q. Are you aware that different carriers have

1 different costs per available seat mile?

2 A. Yes, I am.

3 Q. And available seat mile is sometimes referred

4 to with the acronym ASM; is that correct?

5 A. That's true. And cost per available seat mile

6 is referred to as CASM, and revenue per available seat

7 mile is sometimes referred to as RASM.

8 Q. And are you aware that different airlines have

9 different fuel costs?

10 A. Yes.

11 Q. Some airlines have been better than others in

12 terms of hedging their fuel cost; is that right?

13 A. That is true. And just -- there's a lesson for

14 Continental to be learned from Southwest at one point

15 about that, too.

16 Q. Are you aware that carriers sell tickets

17 sometimes in dozed -- a dozen or more different rate

18 classes?

19 A. Yes.

20 Q. And you're familiar with the phrase "yield

21 management system"?

22 A. Yes.

23 Q. And you're aware that airlines have yield

24 management systems?

25 A. Yes.

1 Q. And you're aware that airlines can change the
2 number of tickets offered on each fare class?

3 A. Yes.

4 Q. And that the number of tickets in a particular
5 fare class may not be apparent to a particular customer
6 when they're purchasing a ticket?

7 A. That's true.

8 Q. Would you agree that there are special
9 discounts available to certain customers?

10 A. Yes.

11 Q. And would you agree with me that certain
12 tickets are sold in bundles with things like rental cars
13 and hotels?

14 A. That is true.

15 Q. And --

16 A. And vacation resort packages, cruises and
17 things of that sort.

18 Q. Have you done any work to analyze how many
19 routes would need to be impacted in order for there to
20 be a substantial effect on competition?

21 MR. SHULMAN: Object to the form of the
22 question.

23 MS. FORREST: I'll restate.

24 Q. (By Ms. Forrest) Have you done any --

25 A. I was going to answer it.

1 Q. Okay. I'll restate it so it's clear and it
2 will be connected to it.

3 Have you done any analysis that has looked
4 at how many routes would have to be impacted in order
5 for there to be a substantial impact on competition?

6 MR. SHULMAN: Object to the form of the
7 question.

8 A. It's one of those questions that is along the
9 lines of how many licks does it take to get to the
10 center of a Tootsie Roll Pop, because the answer depends
11 upon what you think is an impact to competition and how
12 important it is.

13 So depending on the court and depending on
14 the judge's interpretation of existing case law, it
15 could be a small number. It may be quite a sizable
16 number.

17 Q. (By Ms. Forrest) In your view, how many
18 passengers have to be impacted in order for there to be
19 an effect of any kind on the competition?

20 MR. SHULMAN: Object to the form of the
21 question.

22 Q. (By Ms. Forrest) I'm not even talking about a
23 substantial effect or -- strike that. Let me start over
24 again.

25 In your view, for there to be a

1 substantial negative effect on competition, --

2 A. Okay.

3 Q. -- how many passengers have to be affected?

4 MR. SHULMAN: Object to the form of the
5 question.

6 Q. (By Ms. Forrest) Or is this along the lines of
7 you don't know how many licks it takes to get to the
8 center of a Tootsie Roll Pop?

9 A. I'm glad that analogy stuck. But it is a hard
10 question to answer because it depends on a multitude of
11 factors. It depends on the -- not just whether one
12 person is injured but to the degree to which they are
13 injured and also the dollar amount to which they're
14 injured as well.

15 So when we're talking about an individual
16 passenger, if it were just the case that one passenger
17 were injured in a merger, that is not as likely to be
18 bothersome as if a segment of the population is injured.

19 Q. Okay. How about 100 passengers?

20 MR. SHULMAN: Object.

21 Q. (By Ms. Forrest) If 100 passengers were
22 injured as a result of the United/Continental merger
23 because they had to pay \$50 more per ticket, in your
24 view, would that be a substantial injury to competition
25 on the whole?

1 MR. SHULMAN: Object to the form of the
2 question.

3 Q. (By Ms. Forrest) 100 passengers.

4 A. In my view, would I worry about 50-dollar
5 increases in fares for 100 passengers?

6 Q. Yeah.

7 A. I suppose perhaps it depends on who the
8 passenger is. If we're talking about people in rural
9 communities who are impoverished, I might be more
10 troubled than if the passenger is a business passenger
11 who already pays substantially more typically for
12 tickets. If we're talking a time sensitive type of
13 business passenger than someone willing to go connect.

14 Q. How many traveling passengers are there today
15 in the United States?

16 A. That's a good question. I don't know.

17 Q. Are there tens of millions?

18 A. There's -- in Carl Saganist terms, yes, there
19 are probably tens of millions.

20 Q. So there are tens of millions of domestic
21 traveling passengers today in the United States, right?

22 A. Okay.

23 Q. In your view, having studied impact on
24 competition, what percentage of those customers -- of
25 those individuals would need to be impacted in order for

1 there to be a substantial number of them impacted?

2 MR. SHULMAN: Object to the form of the
3 question.

4 A. Again, I really can't give you -- it's, again,
5 back to the -- and I apologize to everyone for this
6 metaphor now -- the Tootsie Roll Pop question.

7 It depends on the circumstances of the
8 passengers, the number of effected, how much they're
9 affected. It's not just the passengers that the Clayton
10 Act protects. I mean, we're talking about the
11 competition as a whole, right?

12 So, for example, I would be concerned if
13 we were talking about increases in fares but reduced
14 choice and reduced quality of service. And at the same
15 time, we have an inability of other carriers to compete
16 as effectively which may drive further consolidation.

17 So it's not just a single concern about an
18 individual passenger that gives rise to problems in
19 violation of the Clayton Act. It's a grander -- it's a
20 grander statute than that.

21 Q. (By Ms. Forrest) Let's talk about reduced
22 quality of service.

23 A. (Witness nods head.)

24 Q. Have you done any analytical work to determine
25 whether or not the United/Continental merger will, in

1 fact, result in any reduction in the quality of service?

2 A. While it is difficult to see how service could

3 get any worse, no.

4 Q. So let me just sort of restate the question.

5 Because the parties have not merged yet, right?

6 A. That is correct.

7 Q. Have you done any analysis that has sought to

8 determine whether or not the United/Continental merger

9 would result in a reduction in the quality of service?

10 A. No.

11 Q. Have you done any analysis that seeks to

12 determine whether or not the United/Continental merger

13 would result in the reduction of customer choice?

14 A. Well, by definition, in many routes, they will

15 have reduced choice.

16 Q. And you mean choice because they won't have the

17 brand of United and the brand of Continental to choose

18 from?

19 A. Yes.

20 Q. They'll have a single brand United, right?

21 A. Yes.

22 Q. Have you done any analysis that seeks to

23 determine whether or not those passengers would no

24 longer have the ability to fly on a particular route as

25 a result of this transaction?

1 A. No.

2 Q. Let's talk about prices to consumers, and an
3 increase in price, all right? How much would fares have
4 to rise, in your view, for a particular route for there
5 to be a substantial lessening of competition on that
6 route?

7 MR. SHULMAN: Object to the form of the
8 question.

9 Q. (By Ms. Forrest) And you can do it in terms of
10 percentage because the real fares may, in fact, differ.

11 A. You asked me before if I had done any
12 elasticity analysis in terms of, I believe it was city
13 pairs. I have not done that analysis. So I couldn't
14 tell you.

15 Q. And this question is a little bit different.
16 It doesn't really go to substitutability. It really
17 goes to how much would fares have to rise as a
18 percentage, for instance.

19 Let me ask it differently. Do you have an
20 opinion as to how much fares would have to rise as a
21 percentage of an overall fare in order for there to be a
22 substantial lessening of competition? You may just not
23 have an opinion.

24 A. I don't know. I mean, again, it depends on the
25 circumstances I had mentioned before.

1 Q. In the circumstances of the United/Continental
2 merger, how much would the fares have to rise on a
3 particular route in percentage terms in order for there
4 to be a substantial lessening of competition?

5 A. Well, again, I wouldn't care to speculate on
6 it.

7 Q. Let's turn, if you would, back to Exhibit 1000.
8 It's the very first one. It's maybe in the top of your
9 pile.

10 A. It is.

11 Q. Okay. Exhibit No. 1000 -- did I say 1011? I
12 meant to say 1000.

13 A. You said 1000.

14 Q. Exhibit No. 1000 lists on the left-hand side
15 the 13 overlap routes on a city pair basis that are
16 reflected in your report; is that right?

17 A. That's correct.

18 Q. Now, let's take all of these routes together.
19 Have you done any calculation of how much fares would
20 have to rise on any of these routes in order for there
21 to be a substantial lessening of competition?

22 MR. SHULMAN: Object to the form of the
23 question.

24 A. I have not.

25 Q. (By Ms. Forrest) On an airport pair basis,

1 have you done any analysis as to how much fares would
2 have to rise on the 13 routes in order for there to be a
3 substantial lessening of competition?

4 A. I have not.

5 MR. SHULMAN: Object to the form of the
6 question.

7 Q. (By Ms. Forrest) Have you reached a formal
8 conclusion that there will, in fact, be a substantial
9 lessening in competition as a result of this
10 transaction, or is it sort of like the Tootsie Roll Pop?

11 MR. SHULMAN: Go ahead.

12 THE WITNESS: You can object if you wish.
13 I was expecting it.

14 MR. SHULMAN: It was okay until the
15 Tootsie Roll Pop came in.

16 THE WITNESS: I brought that up.

17 A. I believe that there is sufficient evidence
18 that this merger could tend to lessen competition or
19 could tend to create a monopoly in many airport pair
20 markets. So I do have an opinion on that.

21 Q. (By Ms. Forrest) And I want to ask a slightly
22 different question.

23 A. Okay.

24 Q. Okay? Do you have an opinion as you sit here
25 today that this transaction will substantially lessen

1 competition?

2 A. Okay. So you are asking -- and the reason I'm
3 being cautious is not to be obnoxious, but you're asking
4 me a different question than the Clayton Act standard.

5 Q. Yeah.

6 A. You're asking me whether or not it will, and no
7 one can tell you whether or not that can happen. That
8 will happen.

9 Q. So you don't have an opinion as to whether or
10 not this transaction will substantially lessen
11 competition?

12 A. That's correct.

13 Q. Okay. Now, let's talk about the tending to,
14 okay?

15 A. Uh-huh.

16 Q. Do you have a view as to whether or not this
17 transaction will tend to substantially lessen
18 competition? And that's different from something that's
19 in your report, and that's why I want to see whether or
20 not --

21 A. Yes, it is.

22 Q. -- you have a --

23 A. No. I understand. Yes, I do believe that.

24 Q. You believe that this transaction will tend to
25 substantially lessen competition?

1 A. Yes. Now we'll add a couple more words. It is
2 likely to tend to substantially lessen competition in
3 the most awkwardly phrased statute.

4 Q. And how do you define substantially in your
5 last answer?

6 A. I would hope I would be defining it as the case
7 law has defined it.

8 Q. How about a quantification? Do you have any
9 economic quantification of what the word substantially
10 means when you use it in connection with lessening of
11 competition?

12 MR. SHULMAN: Object to the form of the
13 question.

14 A. Going back to antitrust case law, I don't have
15 any -- nor is there any substantial requirement that we
16 have a precise empirical quantification of the problem.
17 But when you're talking about market shares that are
18 pushing around, I guess we'd say, 2,000 HHI now or above
19 that, that would tend to lessen -- substantially to
20 lessen competition.

21 Q. (By Ms. Forrest) Okay.

22 A. Now, recognizing, however, the courts do not
23 require guidelines' interpretations. And, in fact, the
24 guidelines are not law. They're advisory to the
25 agencies to help them to determine whether a transaction

1 will be challenged by the Department of Justice or the
2 Federal Trade Commission. That does not necessarily
3 mean that it is the law of the land.

4 Q. Let me take a question a little bit
5 differently. Have you done any analysis that has sought
6 to determine the percentage of competition that will be
7 impacted by this transaction?

8 A. No.

9 Q. Have you done any analysis that has sought to
10 determine the percentage of competition that, as you
11 say, is likely to be substantially lessened as a result
12 of this transaction?

13 A. No.

14 Q. Have you done any quantification at all as to
15 how much competition is likely to be substantially
16 lessened as a result of this transaction?

17 MR. SHULMAN: Object to the form of the
18 question.

19 Q. (By Ms. Forrest) It's quantification.

20 A. Right. No, I have not.

21 Q. If United and Continental are allowed to merge
22 and they raise price on a route served by Southwest,
23 have you done any analysis to determine whether or not
24 Southwest would, in fact, take share away from United
25 and Continental on that route?

1 A. No.

2 Q. Have you done any -- if United and Continental
3 were to raise price after the merger on a route served
4 by Southwest, have you done any analysis to determine
5 whether or not they would be able to hold that price
6 increase for more than a transitory moment?

7 A. No.

8 Q. If United and Continental were to raise price
9 on a route served by any other carrier, have you done
10 any analysis that would indicate that those other
11 carriers would not take share away from them?

12 A. No.

13 Q. If United and Continental were to post merger
14 raise price on a route served by any other carrier, have
15 you done any work to determine whether or not they would
16 be able to hold that price increase for more than a
17 transitory duration?

18 A. I have not.

19 Q. Now, you're aware, aren't you, that the parties
20 also estimated that they projected to obtain
21 \$900 million in revenue synergies as a result of the
22 merger, aren't you?

23 A. Yes, I am.

24 Q. Have you done any analysis to determine whether
25 or not those revenue synergies are, in fact, not

1 obtainable by the parties?

2 A. No.

3 Q. Have you examined any documents in which United
4 and Continental employees discussed the \$900 million in
5 revenue synergies?

6 A. Yes.

7 Q. And have you looked at any documents relating
8 to the \$900 million in revenue synergies in which you
9 believe that the information relied upon by the United
10 or Continental employees is inaccurate?

11 A. No.

12 Q. Have you done any analysis that would indicate
13 to you that suggests that passenger demand for
14 United/Continental would not increase post merger?

15 A. No.

16 Q. Have you, apart from reading Dr. Rubinfeld's
17 report, have you read any other analyses which indicate
18 that passenger demand won't increase post merger for a
19 merged United/Continental?

20 A. How about repeating that?

21 Q. Yeah. You know, actually, I think there was
22 sort of some negatives in there.

23 You've read Dr. Rubinfeld's report?

24 A. That's correct.

25 Q. And you understand that Dr. Rubinfeld indicates

1 that there is the possibility of increased demand post
2 merger for United/Continental; is that right?

3 A. That's correct.

4 Q. And I understand that you yourself have not
5 done any analysis as to whether or not demand --
6 passenger demand for United/Continental post merger
7 would increase, right?

8 A. That's correct.

9 Q. Are you aware of any work at all that indicates
10 that demand for United and Continental will not increase
11 post merger?

12 A. I have not reviewed any work that has indicated
13 that demand will not increase post merger.

14 Q. Let's turn, if we could, to your report which
15 has been marked as Exhibit No. 1011.

16 A. Okay.

17 Q. Turn if you would, please, to page 11 of your
18 report which has been marked as Exhibit No. 1011.

19 Do you see there's a paragraph at the top
20 of that page which talks about upstream and downstream
21 competitors?

22 A. Yes.

23 Q. And it says in the second sentence, "For
24 example, contracts between the merging parties and
25 vendors and suppliers could potentially foreclose

1 competitors from obtaining vital services."

2 A. Yes.

3 Q. Do you have that?

4 A. I do.

5 Q. Do you have any information that would lead you

6 to believe that there is a single vendor who is likely

7 to be foreclosed from competing as a result of this

8 merger?

9 A. I do not.

10 Q. Do you have any information which would lead

11 you to believe that a single supplier would potentially

12 be foreclosed as a result of this merger?

13 A. I do not.

14 Q. Okay. So now you also say in the next

15 sentence, "The combined firm would potentially have the

16 ability to eliminate downstream marketers," right?

17 A. That's true.

18 Q. Do you have any evidence as you sit here today

19 that United and Continental will, in fact, eliminate any

20 downstream marketers after the merger?

21 A. I have no evidence that they will eliminate

22 downstream marketers.

23 Q. Do you have any information that would indicate

24 to you that there's any particular downstream marketer

25 who is at risk of being eliminated as a result of the

1 merger?

2 A. No.

3 Q. And then it goes on to say and other product

4 offering. So it says, "As an example, the combined firm

5 would potentially have the ability to eliminate

6 downstream marketers and other product offerings." Do

7 you see that?

8 A. I'm sorry. Where are you looking?

9 Q. It's on page 11 of your report. It's in the

10 first full paragraph.

11 A. I'm sorry.

12 Q. The third sentence.

13 A. I was looking at a different paragraph.

14 Q. I'll read the sentence again so it's clear.

15 "As an example, the combined firm would potentially have

16 the ability to eliminate downstream marketers and other

17 product offerings." Do you see that?

18 A. Yes.

19 Q. Do you know of any product offerings that are

20 likely to be eliminated as a result of this merger?

21 A. I do not.

22 Q. Now, you also say in that same paragraph, "It

23 could, for example, fully withdraw from offering

24 products to on-line travel sites." Do you see that?

25 A. Yes.

1 Q. Do you have any evidence at all that United and
2 Continental have in any way contemplated from
3 withdrawing offering products to on-line travel sites?

4 A. No.

5 Q. It goes on and it states, "Or at least secure
6 more favorable terms from them." Do you see that?

7 A. Yes, I do.

8 Q. And that is referring to the on-line travel
9 sites. Do you see that?

10 A. Yes.

11 Q. Have you seen any materials which indicate to
12 you at all that it's likely that United and Continental
13 will seek to obtain more favorable terms from on-line
14 travel sites as a result of this merger?

15 A. I have not.

16 Q. Are you familiar with the concept that increase
17 in scale can allow a company to potentially obtain a
18 better price for certain products?

19 A. Yes.

20 Q. And that price could be as a result of just
21 increased volume?

22 A. It could be a result of increased volume, yes.

23 Q. And sometimes that reduction in costs to the
24 purchaser can be passed on to its customers; is that
25 right?

1 A. Yes, potentially.

2 Q. Okay. On page 11 of your report, you also
3 state that, "Combined frequent flier programs could also
4 help cement United/Continental's control of a hub,
5 increasing switching costs for time sensitive
6 passengers." Do you see that?

7 A. I do.

8 Q. Have you done any analysis of United or
9 Continental's frequent flier programs?

10 A. No.

11 Q. Then it goes on to say, "A merged
12 United/Continental could potentially lock up more
13 traffic by tying the corporate discount percentage to a
14 commitment to steer larger volumes of business to the
15 merged carrier or to meet higher share targets on
16 particular routes." Do you see that?

17 A. Yes.

18 Q. Have you seen any information at all in
19 anything that you've reviewed in connection with your
20 assignment on this matter which indicates that a merged
21 United/Continental has any plan to tie a corporate
22 discount percentage to a commitment to steer larger
23 volumes of business?

24 A. I have not.

25 Q. That was just speculation?

1 MR. SHULMAN: Object to the form of that
2 question.

3 Q. (By Ms. Forrest) Is that statement just
4 speculation about what could occur?

5 MR. SHULMAN: Same objection.

6 Q. (By Ms. Forrest) In some femoral way?

7 A. It does say it could potentially, yes.

8 Q. And that's not based on any kind of analysis
9 that you did?

10 A. No. Again, with the merger endeavor, the
11 antitrust law, we are looking at potential theories of
12 harm and whether they could potentially lessen
13 competition.

14 Q. It's all about sort of like the Tootsie Pop?

15 MR. SHULMAN: Object to the form of the
16 question.

17 Q. (By Ms. Forrest) And trying to figure out if
18 you can get to the bottom of the Tootsie Pop or into the
19 core of the Tootsie Pop?

20 MR. SHULMAN: Object to the form of the
21 question.

22 A. I understand the metaphor having employed it,
23 but I'm not understanding the metaphor in this analogy.

24 But I understand what you're asking me.

25 Q. (By Ms. Forrest) We can move on.

1 A. No. When we are looking at the potential
2 anticompetitive effects of a merger, the first thing
3 that one should do is look at what the potential harms
4 are. And, you know, my assignment was to outline the
5 potential harms of the transaction, the potential
6 benefits of the transaction.

7 Q. And what I'm trying to make sure that I
8 understand is: When you did theorize about some
9 potential harms from the transaction, you didn't do
10 economic analysis relating to those potential harms,
11 right? You were theorizing about them?

12 MR. SHULMAN: Object to the form of the
13 question.

14 A. To the extent I was able to do the work of
15 examining company documents and other things that
16 investigators do, I was unable to unearth any documents
17 that stated anything about that.

18 Q. (By Ms. Forrest) Okay. So you didn't find any
19 documents which talked about harm to competition?

20 A. I wouldn't cast it so broadly. But I did not
21 find any documents discussing tying a corporate
22 percentage.

23 Q. Now, on the next page, page 12 of your report,
24 you state at the top, "The post merger conduct described
25 above would foreclose competition and allow for

1 subsequent reductions in available seats." Do you see
2 that?

3 A. Yes.

4 Q. Did you write that sentence, the whole thing?
5 Every word?

6 A. I don't recall if I wrote every word of that.
7 I was also working with respect to Senate testimony and
8 House testimony. I was also working on a white paper
9 for American Antitrust Institute.

10 Q. Did a lawyer write that sentence for you?

11 A. No.

12 Q. And by a lawyer, I meant counsel in this case.

13 A. Oh, no.

14 Q. Okay.

15 A. The counsel has --

16 Q. There's no question pending, actually.

17 MR. SHULMAN: Well, he hasn't finished his
18 answer, so I'll ask that you let him finish.

19 A. Yeah, counsel has not written a single word of
20 this actually, so...

21 Q. (By Ms. Forrest) Because more than 50 percent
22 of it was written before you were retained, right?

23 MR. SHULMAN: Object to the form of the
24 question.

25 Q. (By Ms. Forrest) Well, it's one way of showing

1 that counsel wouldn't have participated in that, right,
2 because you hadn't even been retained yet?

3 MR. SHULMAN: Object to the form of the
4 question.

5 A. It's a good way of showing that being paid is
6 not bias to my opinion.

7 Q. (By Ms. Forrest) You may have arrived bias.

8 Now, on page 12 of your report, which has
9 been marked as Exhibit No. 1011 to your deposition, it
10 says that "The post merger conduct described above would
11 foreclose competition and allow for subsequent
12 reductions in available seats." Do you see that?

13 A. Say that again. I'm sorry.

14 Q. Okay. On page 12 of your report at the top, it
15 states, "The post merger conduct described above would
16 foreclose competition and allow for subsequent
17 reductions in available seats." Do you see that?

18 A. Yes.

19 Q. Have you done any analysis which has attempted
20 to determine whether or not, in fact, any available
21 seats would be reduced as a result of this merger?

22 A. No.

23 Q. Have you reviewed any materials from anyone
24 that have indicated to you that available seats might be
25 reduced as a result of this merger?

1 A. No.

2 Q. We've talked about quality of service and
3 choice. You say at the bottom of that paragraph, and it
4 says, "while enabling the firm to raise fares," right?

5 A. Yes.

6 Q. Have you done any work at all that has modeled
7 out a fare impact resulting from this transaction?

8 A. As I have stated on many instances in this
9 deposition, I have not done any modeling.

10 Q. Now, you cite to some documents at the bottom
11 of page 12, an e-mail from a Mr. Cordle to Tilton. Do
12 you see that?

13 A. Uh-huh.

14 Q. You're aware, aren't you, that Mr. Cordle is
15 not employed by United Airlines?

16 A. Yes, I am.

17 Q. You weren't trying to indicate by virtue of
18 your cite that these were documents written by the
19 parties, right? The Cordle documents?

20 A. I presume that both parties in this litigation
21 would know who Cordle is.

22 Q. Do you know whether or not, in fact, Mr. Smisek
23 has any idea who Mr. Cordle is?

24 A. I do not.

25 Q. Did you read Mr. Smisek's deposition from

1 yesterday?

2 A. I was able to glance through it, and I have

3 received it this morning.

4 Q. Well, you might be interested to learn that Mr.

5 Smisek has no idea who Mr. Cordle is.

6 MR. SHULMAN: Objection to the statement

7 by counsel.

8 Q. (By Ms. Forrest) So when you state that

9 documents from the parties indicate that such capacity

10 rationalization would yield sufficient monopoly power,

11 and it goes on, right?

12 A. Yes.

13 Q. You're talking about documents physically

14 received in terms of the document production from the

15 parties, right?

16 A. That is correct.

17 Q. Not documents written by the parties, right?

18 Because Cordle is not a party.

19 A. Correct.

20 Q. Why don't you turn the page. And I want to ask

21 you about this AAI paper that you refer to at the top of

22 page 13.

23 A. Yes.

24 Q. Now, AAI wrote a paper that you cite here

25 relating to the Delta/Northwest transaction, right?

1 A. Yes.

2 Q. And you say on page 13 that "This argument
3 applies with equal veracity to the United/Continental
4 merger." Do you see that?

5 A. Yes.

6 Q. Did the AAI actually do a paper that relates to
7 the United/Continental merger?

8 A. They have not.

9 Q. You also say in the next sentence on page 13 of
10 your report which has been marked as Exhibit No. 1011 to
11 your deposition, "Moreover, should an LCC enter a route
12 in which the combined carrier holds monopoly power,
13 there is great risk that the incumbent carrier will
14 match the LCC's fares on a limited basis and add
15 capacity to the route." Do you see that?

16 A. I do.

17 Q. How much power constitutes monopoly power, in
18 your view?

19 MR. SHULMAN: Object to the form of the
20 question.

21 Q. (By Ms. Forrest) Well, strike that. Let me
22 ask it again.

23 How much share would a company have to
24 have to have monopoly power, in your view?

25 MR. SHULMAN: Object to the form of the

1 question.

2 A. Well, I usually stand with the courts on this,
3 so I will say depending on what the nature of the case
4 is, because monopoly power transcends Section 7, you
5 know, anywhere above, say, 60, 66 percent.

6 Q. (By Ms. Forrest) Have you attempted to
7 determine in the airline industry whether or not there
8 is any correlation between market share and ability to
9 raise and sustain a price increase?

10 A. I'm sorry, can you repeat that question?

11 Q. Sure. Have you attempted to -- have you
12 reviewed any literature or done any work in the airline
13 industry in particular that has attempted to determine
14 whether there is any correlation between share of an
15 airline and the airline's ability to raise and sustain a
16 fare increase?

17 A. No.

18 Q. Now, are you aware of any evidence at all that
19 United or Continental have ever engaged in predatory
20 pricing on a particular route?

21 A. No.

22 Q. Why don't you turn, if you would, please, to
23 page 14 of your report which has been marked as Exhibit
24 No. 1011. And you say at the top of that page in the
25 carryover paragraph, "Moreover, entering on the scale

1 necessary to discipline higher fares or lower quality
2 service implied by the high levels of post merger
3 concentration at United/Continental hubs would be
4 prohibitively high." Do you see that?

5 A. Yes.

6 Q. Have you done any analysis of the scale
7 necessary for any firm to discipline prices?

8 A. No.

9 Q. Have you done any analysis of the scale
10 necessary for a firm to discipline quality of service?

11 A. No.

12 Q. Towards the bottom of that next paragraph on
13 page 14 which has, as part of your report, been marked
14 as Exhibit 1011, it states, "Moreover, when new entrants
15 mount service, incumbent carriers often triple frequent
16 flier awards and utilize other means such as schedule
17 bracketing to punish rivals." Do you see that?

18 A. Yes.

19 Q. And you cite to the trial brief of the United
20 States supra note 2 at 15; is that right?

21 A. Yes.

22 Q. And that trial brief was written in 2000,
23 right?

24 A. Yes.

25 Q. It was written when you were a junior staff

1 attorney at the TEA?

2 A. Yes.

3 Q. Do you have any analysis later than the year
4 2000 which indicates that carriers often triple frequent
5 flier awards when new entrants mount service?

6 A. No.

7 Q. Do you have any information later than 2000
8 which indicates that carriers often utilize means such
9 as schedule bracketing if a new entrant mounts service?

10 A. No.

11 Q. Do you have any examples at all in the last
12 three years of a new entrant coming onto a route and a
13 carrier -- incumbent carrier on that route tripling its
14 frequent flier miles?

15 A. No.

16 Q. Do you have any examples in the last three
17 years of a new entrant coming onto a route and in
18 response, an incumbent carrier utilizing schedule
19 bracketing to punish that new entrant?

20 A. No.

21 Q. You also state in the last sentence of that
22 paragraph on page 14 of your report which has been
23 marked as Exhibit No. 1011 that "Under these
24 circumstances, rival airlines are unlikely to add
25 nonstop service between United and Continental's hub

1 cities." Do you see that?

2 A. Yes.

3 Q. Have you read any statements by any airline

4 that they are unlikely to add nonstop service between

5 United and Continental's hubs as a result of this

6 merger?

7 A. No.

8 Q. Are you aware that the United/US Air

9 transaction was cleared in Europe?

10 A. I am.

11 Q. Did you ever talk to anybody at the DOJ about

12 the reason behind their press release in the United/US

13 Air transaction?

14 A. I have not.

15 Q. By the way, on page 16 of your report, if you

16 go seven lines up, do you see the word committee?

17 A. Yes.

18 Q. Does that indicate to you that you left in a

19 portion of the carryover testimony you had provided to

20 the Senate committee?

21 A. That is highly likely.

22 Q. So that's just a typo, right?

23 A. Yes, it is.

24 Q. When you say to this committee, you're

25 referring to a congressional committee, not to the

1 court?

2 A. Yes.

3 Q. Turn, if you would, please, to page 20 of your
4 report. At the bottom of page 20 of your report, which
5 has been marked as Exhibit No. 1011, you state, quote,
6 "The problem is that the very efficiencies described by
7 this theory are substantial barriers to entry for any
8 non-network competitor. In other words, that which
9 purportedly makes the merging parties stronger also
10 kills competitors and presumably results in higher
11 prices and less competition." Do you see that?

12 A. Yes.

13 Q. Okay. Do you have any analysis available to
14 you which indicates that a single airline competitor
15 will be killed as a result of the United/Continental
16 transaction?

17 A. I don't.

18 Q. Can you identify a single competitor on a
19 single route who was driven out of business by any
20 Delta/Northwest efficiency?

21 A. No.

22 Q. Let me put the question a little bit
23 differently. Are you aware of the Delta/Northwest
24 merger being the causal reason for a competitor to have
25 left servicing a single route?

1 A. No.

2 Q. Now, let's go to your CV for a second. I want

3 to make sure that I've got something right.

4 A. Okay.

5 Q. The books that you list with Flynn and First?

6 A. Yes.

7 Q. That Antitrust: Statutes, Treaties,

8 Regulations, Guidelines and Policies?

9 A. Yes.

10 Q. You list it repeatedly, right?

11 A. Yes.

12 Q. That's just different versions of the same

13 book, right?

14 A. As is evidenced by the title, yes.

15 Q. And that's just a compilation of statutes and

16 treaties, regulations and guidelines?

17 A. That is correct.

18 Q. There's no economic work in that book?

19 A. There is not.

20 MS. FORREST: Why don't we take a break

21 for a second.

22 (Short recess from 2:29 p.m. to 2:32 p.m.)

23 MS. FORREST: So thank you, Mr. Bush. And

24 that's all I've got.

25 Actually, I think Mr. Yde has one point he

1 wants to make.

2 MR. YDE: I've got just one thing. This
3 is, Dan, just to follow up from yesterday. I do want to
4 state for the record that we're designating the Smisek
5 transcript confidential subject to the protective order,
6 and we'll deal with the formal confidentiality
7 designations later.

8 MS. FORREST: Thank you.

9 MR. YDE: Thanks, Dan.

10 THE COURT REPORTER: Did you need a copy?

11 MR. SHULMAN: Yes.

12 THE COURT REPORTER: What about a rough?

13 MR. SHULMAN: You'll have to get with my
14 office.

15 (Deposition concluded at 2:33 p.m.)

16

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19 _____
DARREN BUSH

20

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22

23 THE STATE OF TEXAS)

24 SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned

25 authority, by the said DARREN BUSH on this the _____

1 day of _____, _____.

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4 Notary Public in and for

5 the State of Texas

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7 My Commission Expires: _____

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Bush, Darren 08/21/2010 8/21/2010 8:58:00 AM

1 CHANGES AND SIGNATURE

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1 COUNTY OF HARRIS

2 STATE OF TEXAS

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4 REPORTER'S CERTIFICATE

5

6 I, CAROL JENKINS, Certified Shorthand

7 Reporter in and for the State of Texas, hereby certify

8 that this transcript is a true record of the testimony

9 given by the witness named herein, after said witness

10 was duly sworn by me.

11 I further certify that I am neither

12 attorney nor counsel for, related to, nor employed by

13 any of the parties to the action in which this testimony

14 was taken. Further, I am not a relative or employee of

15 any attorney of record in this cause, nor do I have a

16 financial interest in the action.

17 SUBSCRIBED AND SWORN TO by the undersigned

18 on this the _____ day of _____, _____.

19

20

21 _____
CAROL JENKINS, CSR, RPR, CRR

22 Certificate No. 2660

23 Date of Expiration: 12/31/2010

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