

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Michael C. Malaney, et al.,
Plaintiffs,
vs.
UAL CORPORATION,
UNITED AIR LINES, INC., and
CONTINENTAL
AIRLINES, INC.,
Defendants.

CASE NO. 3:10-CV-02858-RS

Rebuttal Report of Darren Bush

REBUTTAL REPORT OF DARREN BUSH
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AUGUST 25, 2010

I. INTRODUCTION AND SCOPE OF MY TESTIMONY

The purpose of my testimony is to help define for the Court the potential anticompetitive effects of the transaction and evaluate the alleged potential efficiencies as outlined by the parties in light of antitrust law and policy. This analysis is based upon information provided by the parties in light of my experience in antitrust investigations and analysis, examinations of airline markets, and antitrust law and policy.

While econometric modeling is sometimes a useful tool in forecasting the potential anticompetitive effects of a merger, it is not a requirement of antitrust law that plaintiffs engage in extensive and expensive econometric analysis when the anticompetitive effects of a merger are readily apparent without such analysis, as I believe to be the situation here.¹ It is unnecessary to engage in such extensive analysis when there is plain evidence of potential anticompetitive effects. The purpose of economic modeling is to support common sense, not replace it.

Regardless of the tools, merger law is a forecast. The endeavor is to determine whether the effect of the merger “*may be* substantially to lessen competition, or to *tend to* create a monopoly.”² This is a forward looking endeavor by definition, and any examination of the potential effects of a merger, whether procompetitive or anticompetitive, cannot be couched in terms of whether or not something *will* or *will not* happen. Rather, it is about likelihoods.

¹ See Deposition of Daniel L Rubinfeld p. 10-12.

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“Rubinfeld Deposition”).

² 15 U.S.C. § 18.

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Nor does antitrust law require that the antitrust enforcement agencies be given deference based upon whether or not they are competent at their jobs. In fact, the passage of the Clayton Act and the Federal Trade Commission Act in 1914 broadened the number of antitrust enforcement possibilities beyond the Department of Justice to include the Federal Trade Commission, states acting as *parens patriae*, and private individuals injured or potentially injured by certain types of anticompetitive behavior, speaking against the notion that the sole enforcer or interpreter of the antitrust laws is the Department of Justice.

II. RELEVANT MARKETS and ANTICOMPETITIVE EFFECTS

a. Nonstop Competition Between Airport-Pairs

As stated in my report, I believe that the merger will create extremely highly concentrated markets:

- The merger will create extremely highly concentrated markets—and in many instances monopoly or duopoly conditions—in numerous nonstop airport pair³ markets, including 1. LAX-IAH; 2. LAX-HNL; 3. SFO-EWR; 4. SFO-IAH; 5. IAD-CLE; 6. IAD-EWR; 7. IAD-IAH; 8. ORD-CLE; 9. ORD-EWR; 10. ORD-IAH; 11. DEN-CLE; 12. DEN-EWR; and 13. DEN-IAH.

I stated that certain categories of customers are time-sensitive, including certain business passengers. As a result, they are willing to pay a higher price for tickets that have limited or no restrictions on the time of purchase or changes in itinerary. Or as Continental

³ To repeat my expert report, it is important to refer to specific airport codes rather than city names. Often times, cities will have more than one airport, and certain classes of customers will strongly prefer one over the other. The airport codes correspond to the following cities: CLE (Cleveland); SFO (San Francisco); LAX (Los Angeles); IAH (Houston); DEN (Denver); EWR (Newark-New York City); IAD (Washington Dulles Airport near Washington, D.C.); ORD (Chicago); and HNL (Honolulu).

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Chairman, President and CEO Jeffery Smisek has stated,

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Because some customers are time-sensitive, seeking to travel from a business destination to another business destination, I deemed it important for purposes of this merger to examine airport-pair markets. I am not alone in the determination that the airport-pair may be an important relevant market in analyzing airline mergers and other potentially anticompetitive conduct.⁵

The Supreme Court has stated with respect to relevant market analysis: “The boundaries of [submarkets] . . . may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, *distinct customers, distinct prices*, sensitivity to price changes, and specialized vendors.”⁶

I will address the distinct customers in the next section. However, it should be pointed out that with respect to prices it is clear that airlines charge higher fares for

⁴ Deposition of Jeffery Smisek, p. 36, lines 16-17 (hereafter “Smisek Deposition”).

⁵ See, e.g., U.S. GOVERNMENT ACCOUNTABILITY OFFICE, ISSUES RAISED BY THE PROPOSED MERGER OF UNITED AND CONTINENTAL AIRLINES 15 (2010), but see n.22 (noting Report’s preference for city pairs). For reasons I have stated in this rebuttal report and my expert report, city-pair analysis may yield incorrect results for purposes of determining a relevant market. See also J. Bruce McDonald, *Antitrust For Airlines*, available at <http://www.justice.gov/atr/public/speeches/217987.htm>. (“The relevant market can actually be more narrow than a city pair. As airlines know well, not all passengers are the same. Some passengers will always fly nonstop, and be willing to pay more for it, while others will accept the inconvenience of stops to get a lower fare. For some business travelers, the availability of connect service may be irrelevant, because they will never accept the inconvenience. For many leisure travelers, either is a possibility. Airlines take this difference into account in their pricing. Antitrust analysis takes this “business” versus “leisure” distinction into account and considers the effect of mergers in nonstop city pair markets and also the effect in nonstop and connect markets together.”); and www.gao.gov/new.items/d02293r.pdf (“In addition, DOJ recognizes that nonstop service between cities is important because business travelers are less likely to regard connecting service as a reasonable alternative. Thus, DOJ may see a transaction as competitively problematic because of its impact on nonstop city-pair traffic. *Some cities are served by more than one commercial airport. These cities include Los Angeles, San Francisco, Chicago, New York, and Washington, D.C. In these cases, the relevant market may be an airport pair.*”)(emphasis added) See also U.S. v. Airline Tariff Publishing Co, 1994-2 TRADE CAS. ¶ 70,687 (limiting conduct based upon city or airport-pair); See also U.S. v. AMR Corp, 140 F. Supp. 2d 1141, 1145-1146, *aff’d*, 335 F.3d 1109 (10th Cir. 2003)(discussing U.S.’s allegations of monopolizing airport-pair markets).

⁶ Brown Shoe v. U.S., 370 U.S. 294, 325 (1962).

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airports that are likely business destinations than they do secondary airports more likely accessed by leisure passengers. As an example, consider the fares between IAH (Bush Intercontinental at Houston) and HOU (Houston Hobby) to IAD (Dulles), DCA (Reagan National Airport), and BWI (Baltimore-Washington International). If I were to fly on September 1, 2010 and return on September 3, 2010, I would face the following nonstop fares:

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Table 1: Fares on Flights to Washington, D.C.⁷

ORIGIN	DEST.	One-Way Fare	Airline	Fare Code	Round-Trip Fare	Airline	Fare Code
IAH	DCA	\$721	CO	B1	\$1443	CO	B1
IAH	IAD	\$633	CO	MA0INN	\$1127	CO	MA0INN
IAH	IAD	\$633	UA	EAOMN	\$1127	UA	EAOMN
IAH	BWI	\$446	CO	BA0LY	\$893	CO	BA0LY
IAH	BWI	\$446	UA	BL	\$893	UA	BL
HOU	BWI	\$269	WN	WYA7PNR	\$597.9	WN	WYA7PNR/QYA7PNR

The same fare disparities are experienced by anyone seeking a similar voyage from the San Francisco region to the New York. An individual⁸ seeking a flight from the San Francisco region to the New York area would face the following nonstop fares:

⁷ For Tables 1 and 2 and Appendix A, the source for all fares except Southwest was the Worldspan-Travelport GDS system in Plaintiff Michael Malaney's office. The source for Southwest fare information was obtained from Plaintiff David Wendell's GDS system Sabre. Both plaintiffs used, at my direction, September 1 departure dates and September 3 return dates, with 8 a.m. departure times for all airport-pairs in the chart. Each then selected the best (lowest) one-way fares on each airport-pair and each round-trip airport-pair. The chart lists nonstop flights only.

⁸ For reasons I state *infra*, I am seeking to isolate fares that might be paid by a time-sensitive passenger. Thus, the hypothetical here does not include a Saturday night layover or a twenty-one day advanced purchase that are typically used by airlines to yield manage such that time sensitive passengers do not take advantage of lower fare classes.

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Table 2: Nonstop Fares from San Francisco to New York Area

Origin	Dest.	One-Way Fare	Airline	Fare Code	Round Trip Fare	Airline	Fare Code
SFO	EWR	\$578	CO	MA7BN	\$809	CO	HR72BN
SFO	EWR	\$578	UA	EATHN	\$809	UA	HE72HN
SFO	JFK	\$139	AA	SA07XQY1	\$289	AA	SA07XQY1
SFO	JFK	\$238	DL	LA03A0SY	\$289	DL	LA03A0SY
SFO	JFK	\$306	AS	HA07A9NY	\$613	AS	HA07A9NY
SFO	JFK	\$149	UA	TAG67GS	\$309	UA	TAG67GS
SFO	JFK	\$139	VIRGIN	S7X57SL	\$289	VIRGIN	S7X57SL
SFO	JFK	\$228	JET BLUE	RH3	\$535	Jet Blue	RH3/LH7
OAK	JFK	\$228	Jet Blue	RH3	\$535	JET BLUE	RH3/LH7
SJC	JFK	\$228	Jet Blue	RH3	\$535	JET BLUE	RH3/LH7

This exercise has been repeated for airport-pairs I contend are at issue (*see* Appendix A).

If all classes of customers were basing decisions solely on price, we would expect these fares to converge. However, some classes of customers—particularly those targeted by the network carriers as described *infra*—are time sensitive and thus willing to pay more to fly out of the close-in airport (where there are fewer competitors). Therefore, to prove for purposes of a preliminary injunction hearing that airport-pairs are relevant markets does not require sophisticated and expensive econometric techniques.⁹

To my knowledge, defendants have neither engaged in any analysis nor have they provided any documentary evidence suggesting that airport-pairs are an incorrect market. Rather, Dr. Rubinfeld's analysis appears to presume city-pair markets.¹⁰

⁹ Dr. Rubinfeld states in his deposition: “

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” Rubinfeld

Deposition, p. 34, lines 14-24.

¹⁰ Dr. Rubinfeld states: “

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b. Network and Connect Competition Could be Injured

As I stated in my expert report, one of the principal arguments made by defendants in favor of the transaction is that airlines compete with larger airlines both domestically and abroad on a network basis for business travelers, or time sensitive travelers, as I classify them. I further stated:

The larger is the network in terms of scope, the greater the choices for passengers in terms of destinations and connection service. The larger the scale of operations in terms of frequencies on routes, the greater the options of time sensitive travelers in terms of avoiding lost time waiting for flights, particularly in hubs and other business markets. These benefits are enhanced when passengers are rewarded with frequent flier program benefits and airport amenities for their loyalty to the network carrier. It should be noted that in many instances, LCCs are incapable of offering some of the benefits offered by the network carriers. For example, Southwest Airlines only offers one type of seating arrangement, namely coach.¹¹

In his deposition, Continental CEO Smisek confirmed the existence of this market or submarket by noting that Continental is “

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.”¹² Thus, competition exists between network carriers that is beyond the competition that might take place to varying degrees on routes served by non-network and network carriers alike:

The airline business is characterized by several different business models that compete very effectively with each other. There are hub and spoke carriers, and we are a hub and spoke carrier. And being a hub and spoke carrier and being a carrier that tends to focus on business travelers is our niche and selling point compared to, on the other extreme, Spirit

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.” Dr. Rubinfeld Expert Report at ¶ 101.

However, Dr. Rubinfeld does not perform any analysis of the harms asserted by plaintiffs in airport-pair markets. See e.g., Rubinfeld Expert Report, Exhibits 5, 21, 24A-J, 27, 30, and 34.

¹¹ Bush Expert report at 9-10.

¹² Smisek Deposition, p. 29, lines 16-20.

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Airlines, Frontier, JetBlue, Midwest, Southwest, which are low-cost, point-to-point carriers not focused so much on the business travel.¹³

Within this network, by quoting to an AAI White Paper on the Northwest Delta merger, I noted that on thinner markets low cost carriers (LCCs) would not serve to deter any anticompetitive effects in smaller communities. I also noted that the merger could affect competition on connect airport-pair markets because the number of networks/connection options could potentially be reduced for some passengers. One of the primary reasons is that LCCs do not typically serve smaller communities. Continental CEO Smisek points this out readily: “

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”¹⁴

I also stated that the sheer size of the new United-Continental network may make it more difficult for even smaller network carriers to compete. Indeed, as Continental CEO Smisek states, this fear is one of the reasons for Continental’s seeking to be in a merger with United: “

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”¹⁵

¹³ Smisek Deposition, p. 43, line 25 – p. 44, line 10.

¹⁴ Smisek Deposition, p. 45, lines 9-14. *See also* *Id.* at p. 54 lines 19-25 (“

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¹⁵ Smisek Deposition, p. 29, lines 2-9. *See also* Smisek Deposition, p. 36, lines 11-14 (“

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One of the reasons why network carriers compete on a different level from LCCs is that network carriers possess amenities not available to the business passenger on LCCs.¹⁶ As Continental CEO Smisek states, “

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”¹⁷ The combination of an expansive network, multiple classes of service, and a frequent flyer program providing for free upgrades is not only something that LCCs typically do not offer, but also a compelling attraction to keep time-sensitive or business travelers using the network carriers and not LCCs.

I also stated that competition for corporate travel accounts could be reduced by elimination of a competing network. As Continental CEO Smisek confirmed, “

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”¹⁸ Thus, the competition for time sensitive or business travelers by the network carriers is a distinct market in which LCCs generally are not present and do not compete because of the limitations of what they offer. It is also a market where the merger of United and Continental is likely

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¹⁶ Smisek Deposition, p. 50 lines 5-7. (“
.”) See also *Id.* at p. 54, lines 5-10 (“

¹⁷ Smisek Deposition, p. 43 line 25 – p. 44 line 10.

¹⁸ Smisek Deposition, p. 59 lines 11-16. Continental CEO Smisek continues: “

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”) *Id.* at lines 17-22.

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substantially to lessen competition because of the disadvantage at which it will place the smaller network carriers.

c. Follow-on mergers and the motivation for this merger

I stated in my expert report that at the time of the Northwest/Delta merger, it was believed that more mergers would follow suit. It turns out that the current transaction was in part initiated out of fear of the network size of Northwest/Delta as well as fear that United would reattempt a merger with U.S. Airways. As Continental CEO Smisek stated in his deposition, “

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”¹⁹ There is adequate evidence in the companies’ documents to suggest that not only is this merger a follow-on merger arising in response to Northwest and Delta’s merger, but also there will be more to follow if this merger is allowed to be consummated.

d. Potential Competition

I stated in my expert report that United and Continental may be potential competitors in hub to hub routes, particularly the airport-pairs 1. LAX-EWR; 2. SFO-CLE; and 3. LAX-CLE. Network carriers are unlikely to engage in point-to-point service. Any competition in airport-pair markets between network carriers would arise

¹⁹ Smisek Deposition, p. 29, lines 2-9. See also [UALCORP 00002] (

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between the competing carriers' hubs.²⁰ Of the airport-pair markets I have discussed, the routes listed above are not served by both carriers.²¹

I also mentioned that potential competition could come on a connection basis where one carrier could be a competitive threat to match a rival's service. This point was also supported by CEO Smisek:

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In other words, endpoints which are served by one network carrier may be considered for entry by a network carrier.

III. MARKET SHARE

Because the Transtat database does not include the regional jet service by commuter airlines on behalf of the network carriers (instead listing the regional jet carriers as their own separate entities), I opted to not include those data in my expert report. However, even examining markets where the regional jets do not play a role or where their role in relation to the network carriers is determinable, it is transparent that the combined firm would create or exacerbate highly concentrated markets. Table 3 lists numerous airport-

²⁰ Smisek Deposition, p. 17, lines 16-25 (“

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” Id. at p. 19, lines 3-4.

²¹ See Rubinfeld Deposition, p. 145, lines 11-24. “

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” Rubinfeld Deposition, p. 145, lines 11-24.

²² Smisek Deposition, p. 21 line 18 – p. 22 line 4.

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pair markets in which the combined carrier would possess monopoly power, even when considered under the lens of the newly minted Horizontal Merger Guidelines with its relaxed HHI standards.²³ I should note that in many of these markets I have kept separate the regional jet carriers; when included, the HHI calculations in those airport-pair markets would increase.

²³ U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3, available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html> (changing the benchmark for highly concentrated markets to 2500 HHI). Even under these more relaxed standards, “[m]ergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power.” *Id.*

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Table 3: Market Shares for Selected Airports²⁴

Origin	Destination	United Share	Continental Share	Merged	Pre-Merger HHI	HHI Change	Post-Merger HHI
DEN	EWR	60.2%	39.8%	100.0	5,206	4,794	10,000
DEN	IAH	35.7%	46.2%	81.9	3,632	3,302	6,934
EWR	DEN	56.3%	43.7%	100.0	5,079	4,921	10,000
EWR	ORD	42.1%	11.0%	53.1	2,805	927	3,731
EWR	SFO	30.8%	69.2%	100.0	5,734	4,266	10,000
HNL	LA	32.0%	3.7%	35.7	2,473	236	2,709
IAH	DEN	38.3%	46.7%	85.0	3,843	3,574	7,417
IAH	IAD	66.1%	33.9%	100.0	5,551	4,449	10,000
IAH	ORD	17.9%	55.2%	73.1	3,552	1,978	5,530
IAH	SFO	14.5%	85.5%	100.0	7,519	2,481	10,000
LAX	HNL	31.4%	3.0%	34.3	2,503	94	2,597
ORD	EWR	41.9%	12.0%	53.9	3,058	1,008	4,067
ORD	IAH	24.8%	50.1%	74.9	3,314	2,483	5,797
ORD	CLE	18.2%	0.3%	18.5	2,152	10	2,162
SFO	EWR	42.8%	57.2%	100.0	5,105	4,895	10,000
SFO	IAH	15.0%	85.0%	100.0	7,449	2,551	10,000

Note that an HHI of 10,000 is equivalent to having a market share of 100 percent.

All of this is unnecessary, however. All that would be required to show that United and Continental are the only competitors on certain airport-pairs is to price flights from the respective airport-pairs on a nonstop basis. Moreover, the GAO Report already describes a situation in which the merging airlines lack any nonstop competitors in multiple airport-pairs:

In examining nonstop overlapping airport pairs between United and Continental, the extent of overlap is less than for connecting traffic. However, the loss of a competitor in these nonstop markets is also more significant because nonstop service is typically preferred by some passengers. For example, based on January 2010 traffic data, the two airlines overlap on 12 nonstop airport-pair routes, which are listed in figure 4.25 For 7 of

²⁴ Research and Innovative Technology Administration, Bureau of Transportation Statistics, "Air Carriers : T-100 Domestic Segment (U.S. Carriers)." Available at http://www.transtats.bts.gov/DL_SelectFields.asp?Table_ID=259&DB_Short_Name=Air%20Carriers. As I described in my deposition, many of the cities currently serviced by United and Continental are serviced by regional jets operated by, *inter alia*, Expressjet. As these RJ operators are listed separately, it is difficult to determine how to allocate market shares among them and have not listed them as market shares for the legacy carriers. To do so would only increase the concentrations within routes with HHIs below 10,000.

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these 12 nonstop overlapping airport-pair routes (generally between a United hub and a Continental hub), there are currently no other competitors. However, of these 7 airport-pair markets, all but the Cleveland-Denver market may have relevant competition between other airports in at least one of the endpoint cities. For example, passengers traveling from San Francisco (SFO) to Newark (EWR) could consider airlines serving other airports at both endpoints—Oakland or San Jose instead of SFO and John F. Kennedy (JFK) or LaGuardia instead of EWR.²⁵

As I have discussed previously, the degree to which passengers are willing to consider alternate airports in local regions as suitable substitutes this depends on the characteristics of the passengers in question. As some business and other time-sensitive passengers may prefer the benefits of a network carrier—a fact the GAO recognizes²⁶—the desire of those passengers to choose alternative airports in the face of significantly higher fares as identified in Tables 1 and 2 and Appendix A may be limited.

IV. EFFICIENCIES

While I believe that defendants believe that they will obtain the efficiencies they claim, I also believe that the proponents of airline mergers past believed they would achieve the efficiencies they claimed. It appears, however, that modeling of efficiency does not translate into actual efficiencies post-merger.²⁷ More specifically, in my expert report I expressed concern about the limitations of increasing network size in achieving efficiency. In citing the AAI Northwest/Delta report regarding the potential limitations

²⁵ See Government Accountability Office, *supra* note 5 at 17-18.

²⁶ *Id.* at 7.

²⁷ It is unclear what benefits will be passed along to consumers, or how. Dr. Rubinfeld asserts that “f.

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of increased network size, I expressed concern about whether or not the size of the network would in fact create limitations in terms of airport congestion, and staffing of gate, maintenance, baggage handling and ticketing personnel. I am not alone in this concern. As noted airline expert Paul Dempsey has stated:

Hubbing slows down an airline's operations. It requires landing a large number of aircraft, shuffling a large number of bags and passengers, and then taking off a large number of aircraft, all of which creates congestion and delay, thereby reducing efficiency and productivity in aircraft utilization and labor utilization, while increasing fuel burn. It is telling that the only major airline to have consistently been profitable year after year is Southwest Airlines, which operates a linear route system.²⁸

I am not as ardent a critic of hubbing as Professor Dempsey. However, the point of which the Court should be made keenly aware is that we have heard this before.²⁹

Merger efficiencies have historically not panned out. To ignore this fairly important point merely because the bulk of airline history has not occurred in the past two years misses the point: Network airlines have been involved in a cycle of consolidation and bankruptcy,³⁰ to the detriment of consumers everywhere.

I declare under penalty of perjury that the foregoing is true and correct, on this 25th Day of August, 2010.



Darren Bush

²⁸ Paul Stephen Dempsey, *The Financial Performance of the Airline Industry Post-Deregulation*, 45 HOUS. L. REV. 421, 439 n. 31 (2008).

²⁹ See Hubert Horan, *Testimony Before the House Committee on Transportation and Infrastructure, Aviation Subcommittee Hearing*, at Exhibit 9. (June 16, 2010).

³⁰ *Id.*

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**APPENDIX A: NON-STOP AND ONE-WAY FARES FOR AIRPORT-PAIRS
WITH MULTIPLE AIRPORTS³¹**

ORIG	DES	Non-Stop One-Way?	One Way Fare	Airline	Fare Basis	Round Trip Non-Stop?	Fare	Airline	Fare Basis
SFO	IAH	YES	\$549	CO	BL	YES	\$1,097	CO	BL
SFO	IAH	YES	\$549	UA	UAOKY	YES	\$1,097	UA	UAOKY
SFO	HOU	NO	\$448	AA	VA07ERD1	NO	\$895	AA	VA07ERD1
OAK	IAH	NO	\$185	US	TXA7NJ6P	NO	\$410	US	TXA7NJ6P/SCA7NJ4P
OAK	HOU	YES	\$270	WN	WYA7NPR	YES	\$689	WN	WYA7NPR/Y
SJC	IAH	YES	\$549	CO	BL	YES	\$1,097	CO	BL
SJC	IAH	YES	\$549	UA	BAOLY	YES	\$1,097	UA	
SJC	HOU	NO	\$405	AA	VA07ERD1	NO	\$675	AA	VA07ERD1
SFO	EWR	YES	\$578	CO	MA7BN	YES	\$809	CO	HR72BN
SFO	EWR	YES	\$578	UA	EATHN	YES	\$809	UA	HE72HN
SFO	JFK	YES	\$139	AA	SA07XQY1	YES	\$289	AA	SA07XQY1
SFO	JFK	YES	\$238	DL	LA03A0SY	YES	\$289	DL	LA03A0SY
SFO	JFK	YES	\$306	AS	HA07A9NY	YES	\$613	AS	HA07A9NY
SFO	JFK	YES	\$149	UA	TAG67GS	YES	\$309	UA	TAG67GS
SFO	JFK	YES	\$139	VIRGIN JET	S7X57SL	YES	\$289	VIRGIN Jet	S7X57SL
SFO	JFK	YES	\$228	BLUE	RH3	YES	\$535	Blue	RH3/LH7
SFO	LGA	NO	\$317	CO	KA7NN	NO	\$556	CO	UA7VSN/KA7NN
OAK	EWR	NO	\$288	US	LXA7NJ4P	NO	\$576	US	LXA7NJ4P
OAK	JFK	YES	\$228	Jet Blue	RH3	YES	\$535	BLUE	RH3/LH7
OAK	LGA	NO	\$239	UA	WAEGS	NO	\$519	UA	WAEGS/VA0HN
SJC	EWR	NO	\$482	CO	K1	NO	\$964	CO	K1
SJC	JFK	YES	\$228	Jet Blue	RH3	YES	\$535	BLUE	RH3/LH7
SJC	LGA	NO	\$124	CO	LA7ZN	NO	\$248	CO	LA7ZN
ORD	IAH	YES	\$392	CO	BL	YES	\$783	CO	BL

³¹ For source, see *supra* note 7.

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ORD	IAH	YES	\$392	UA	HAOKY	YES	\$783	UA	HAOKY
ORD	IAH	YES	\$495	AA	KA0UPPMR	YES	\$991	AA	KA0UPPMR
ORD	HOU	NO	\$397	AA	VA07ERD1	NO	\$793	AA	VA07ERD1
MDW	IAH	NO	\$403	DL	HA00A0RA	NO	\$606	DL	HA00A0RA/UA10A0 SJ
MDW	HOU	YES	\$246	WN	WYA7PNR	YES	\$490	WN	WYA7PNR
ORD	EWR	YES	\$486	CO	BA0BN	YES	\$973	CO	BA0BN
ORD	EWR	YES	\$486	UA	AU0HN	YES	\$973	UA	AU0HN
ORD	EWR	YES	\$486	AA	MA00ERP1	YES	\$973	AA	MA00ERP1
ORD	EWR	YES	\$486	US	MOOAEON X	YES	\$973	US	MOOAEONX
ORD	JFK	YES	\$112	DL	TA07A0NP	YES	\$225	DL	TA07A0NP
ORD	JFK	YES	\$112	Jet Blue	OL7	YES	\$225	Jet Blue	OL7
ORD	JFK	YES	\$112	AA	OA07ERP1	YES	\$225	AA	OA07ERP1
ORD	LGA	YES	\$112	AA	AO07ERP1	YES	\$225	AA	AO07ERP1
ORD	LGA	YES	\$112	UA	LA7KN	YES	\$225	UA	LA7KN
ORD	LGA	YES	\$112	DL	T7SHPLN	YES	\$225	DL	T7SHPLN
MDW	EWR	NO	\$497	DL	MA00A0VP	NO	\$923	DL	MA00A0VP
MDW	JFK	NO	\$123	DL	TA07A0NP	NO	\$246	DL	TA07A0NP
MDW	LGA	YES	\$239	WN	HYA3PNR	YES	\$477	WN	HYA3PNR
ORD	CLE	YES	\$120	UA	VA7KN	YES	\$241	UA	VA7KN
ORD	CLE	YES	\$120	CO	VA7ZN	YES	\$241	CO	VA7ZN
ORD	CLE	YES	\$120	AA	GA07ERDI	YES	\$241	AA	GA07ERDI
ORD	CAK	YES	\$306	UA	EAOKN	YES	\$375	UA	HE72KN
MDW	CLE	YES	\$121	WN	WYA7PNR	YES	\$245	WN	WYA7PNR
MDW	CAK	NO	\$314	DL	MA00A0UA	NO	\$390	DL	QC07A0NA
HNL	LAX	YES	\$313	HA	HLXOW	YES	\$389	HA	LXRON
HNL	LAX	YES	\$228	AA	QA0QN	YES	\$359	AA	QROQN
HNL	LAX	YES	\$228	UA	TA0NRS	YES	\$359	UA	LEONZA
HNL	LAX	YES	\$228	DL	LA00A0SC	YES	\$359	DL	UORQNI
HNL	BUR	NO	\$885	UA	ELOA7JN	NO	\$725	UA	TRA00N3

REBUTTAL REPORT OF DARREN BUSH
CONFIDENTIAL

AUGUST 25, 2010

HNL	SNA	YES	\$908	UA	ELOA7JN	YES	\$1,832	CO	ELPA73JN
HNL	SNA	YES	\$868	CO	BA7EMN	YES	\$848	CO	SROSNN
HNL	ONT	NO	\$888	CO	BLOA7HN	NO	\$1,859	CO	BLOA7HN/BSPA3HN
IAH	DCA	YES	\$721	CO	B1	YES	\$1,443	CO	B1
IAH	IAD	YES	\$633	CO	MA0INN	YES	\$1,127	CO	MA0INN
IAH	IAD	YES	\$633	UA	EAOMN	YES	\$1,127	UA	EAOMN
IAH	BWI	YES	\$446	CO	BA0LY	YES	\$893	CO	BA0LY
IAH	BWI	YES	\$446	UA	BL	YES	\$893	UA	BL
HOU	DCA	NO	\$553	DL	HA07Z0NJ	NO	\$798	DL	HA07Z0NJ
HOU	IAD	NO	\$557	AA	VA07ERD1	NO	\$842	AA	VA07ERD1
HOU	BWI	YES	\$269	WN	WYA7PNR	YES	\$598	WN	WYA7PNR/QYA7PNR
DEN	IAH	YES	\$168	CO	VA7ZN	YES	\$335	CO	VA7ZN
DEN	IAH	YES	\$168	UA	SA7KN	YES	\$335	UA	SA7KN
DEN	IAH	YES	\$168	F9	UO7PXC5	YES	\$335	F9	UO7PXC5
DEN	IAH	YES	\$165	YX	MB07FY	YES	\$329	YX	MB07FY
DEN	HOU	YES	\$169	WN	WYA7PNR	YES	\$361	WN	WYA7PNR/HYA7PNR
DEN	EWR	YES	\$593	CO	MA0BN	YES	\$767	CO	HR71BN
DEN	EWR	YES	\$593	UA	UA0HN	YES	\$767	US	QE71HN
DEN	JFK	YES	\$169	DL	UA07A0NP	YES	\$339	DL	UA07A0NP
DEN	JFK	YES	\$119	Jet Blue	UH7D23	YES	\$289	Jet Blue	YD7D23/MH7
DEN	LGA	YES	\$223	UA	SA7CN	YES	\$408	UA	SA7CN/SA10FU
DEN	LGA	YES	\$209	YX	RB00FY	YES	\$394	YX	RBOOFY/OB10FU
DEN	LGA	YES	\$239	F9	Y0EBIX1	YES	\$394	F9	MOOPX05/Q10PBXP 5

Market Shares and HHIs for United and Continental on Select Hub-to-Hub Routes in Both Directions

Origin	Destination	Market Share Percentage		Pre-Merger	HHI		Post-Merger HHI
		United	Continental		Merger Change	Merger Change	
DEN	EWR	60.2	39.8	5,206	4,794	10,000	10,000
DEN	IAH	35.7	46.2	3,632	3,302	6,934	6,934
EWR	DEN	56.3	43.7	5,079	4,921	10,000	10,000
EWR	ORD	42.1	11.0	2,805	927	3,731	3,731
EWR	SFO	30.8	69.2	5,734	4,266	10,000	10,000
HNL	LAX	32.0	3.7	2,473	236	2,709	2,709
IAH	DEN	38.3	46.7	3,843	3,574	7,417	7,417
IAH	IAD	66.6	33.4	5,551	4,449	10,000	10,000
IAH	ORD	17.9	55.2	3,552	1,978	5,530	5,530
IAH	SFO	14.5	85.5	7,519	2,481	10,000	10,000
LAX	HNL	31.4	3.0	2,503	94	2,597	2,597
ORD	EWR	41.9	12.0	3,058	1,008	4,067	4,067
ORD	IAH	24.8	50.1	3,314	2,483	5,797	5,797
ORD	CLE	18.2	0.3	2,152	10	2,162	2,162
SFO	EWR	42.8	57.2	5,105	4,895	10,000	10,000
SFO	IAH	15.0	85.0	7,449	2,551	10,000	10,000

Source:

Research and Innovative Technology Administration, Bureau of Transportation Statistics, "Air Carriers : T-100 Domestic Segment (U.S. Carriers)." Available http://www.transtats.bts.gov/DL_SelectFields.asp?Table_ID=259&DB_Short_Name=Air%20Carriers

Note:

- Non-stop segments only.
- Based on passengers transported.
- Excludes regional jet services for the major carriers.

FARES ON NONSTOP BASIS TO AND FROM AIRPORT PAIRS IN REGIONS WITH MULTIPLE AIRPORTS

ORIG	DEBT	Non-Stop One-Way?	One Way		Round Trip Non-Stop?		One Way		Round Trip Non-Stop?		
			Fare	Airline	Fare Basis	Yes	No	Fare	Airline	Fare Basis	Yes
SFO	IAH	YES	\$548	CO	BL	YES	\$1,097	CO	BL	YES	NO
SFO	IAH	YES	\$548	UA	UAOKY	YES	\$1,097	UA	UAOKY	YES	NO
SFO	HOU	NO	\$448	AA	VA07ERD1	NO	\$895	AA	VA07ERD1	NO	NO
OAK	IAH	NO	\$185	US	TXA7NLRP	NO	\$410	US	TXA7NLRP/SCA7NLRP	NO	NO
OAK	HOU	YES	\$270	WN	WYA7PNR	YES	\$688	WN	WYA7PNR	YES	NO
SJC	IAH	YES	\$548	CO	BL	YES	\$1,097	CO	BL	YES	NO
SJC	IAH	YES	\$548	UA	BAOLY	YES	\$1,097	UA	BAOLY	YES	NO
SJC	HOU	NO	\$405	AA	VA07ERD1	NO	\$675	AA	VA07ERD1	NO	NO
SFO	EWR	YES	\$578	CO	HATBN	YES	\$609	CO	HRT2BN	YES	NO
SFO	EWR	YES	\$578	UA	EATHN	YES	\$609	UA	HE72N	YES	NO
SFO	JFK	YES	\$139	AA	SA07XQY1	YES	\$289	AA	SA07XQY1	YES	NO
SFO	JFK	YES	\$238	DL	LAD3ADSY	YES	\$289	DL	LAD3ADSY	YES	NO
SFO	JFK	YES	\$306	AS	H407ASNY	YES	\$613	AS	H407ASNY	YES	NO
SFO	JFK	YES	\$149	UA	TAG87GS	YES	\$309	UA	TAG87GS	YES	NO
SFO	JFK	YES	\$139	VIRGIN	57X67BL	YES	\$289	VIRGIN	57X67BL	YES	NO
SFO	JFK	YES	\$228	JET BLUE	RHJ	YES	\$535	Jet Blue	RHJLH7	YES	NO
SFO	LGA	NO	\$317	CO	KATNN	NO	\$658	CO	UA7VSNKA7NN	NO	NO
OAK	EWR	NO	\$288	US	LXATNLRP	NO	\$576	US	LXATNLRP	NO	NO
OAK	JFK	YES	\$228	Jet Blue	RHJ	YES	\$535	JET BLUE	RHJLH7	YES	NO
OAK	LGA	NO	\$239	UA	WAEGS	NO	\$519	UA	WAEGSYA07H	NO	NO
SJC	EWR	NO	\$482	CO	K1	NO	\$964	CO	K1	NO	NO
SJC	JFK	YES	\$128	Jet Blue	RHJ	YES	\$535	JET BLUE	RHJLH7	YES	NO
SJC	LGA	NO	\$124	CO	LATZN	NO	\$248	CO	LATZN	NO	NO
ORD	IAH	YES	\$392	CO	BL	YES	\$783	CO	BL	YES	NO
ORD	IAH	YES	\$392	UA	HAOKY	YES	\$783	UA	HAOKY	YES	NO
ORD	IAH	YES	\$495	AA	KADUPPWR	YES	\$991	AA	KADUPPWR	YES	NO
ORD	HOU	NO	\$397	AA	VA07ERD1	NO	\$793	AA	VA07ERD1	NO	NO
MDW	IAH	NO	\$403	DL	H400ADRA	NO	\$606	DL	H400ADRA/UA1DA0SJ	NO	NO
MDW	HOU	YES	\$246	WN	WYA7PNR	YES	\$490	WN	WYA7PNR	YES	NO
ORD	EWR	YES	\$488	CO	BA0BN	YES	\$973	CO	BA0BN	YES	NO
ORD	EWR	YES	\$488	UA	AU0HN	YES	\$973	UA	AU0HN	YES	NO
ORD	EWR	YES	\$488	AA	MA00ERP1	YES	\$973	AA	MA00ERP1	YES	NO
ORD	EWR	YES	\$488	US	MO0AEOAK	YES	\$973	US	MO0AEOAK	YES	NO
ORD	JFK	YES	\$112	DL	TA07ADNP	YES	\$225	DL	TA07ADNP	YES	NO
ORD	JFK	YES	\$112	Jet Blue	CL7	YES	\$225	Jet Blue	CL7	YES	NO
ORD	JFK	YES	\$112	AA	CA07ERP1	YES	\$225	AA	CA07ERP1	YES	NO
ORD	LGA	YES	\$112	AA	AC07ERP1	YES	\$225	AA	AC07ERP1	YES	NO
ORD	LGA	YES	\$112	UA	LATZN	YES	\$225	UA	LATZN	YES	NO
ORD	LGA	YES	\$112	DL	T7SHPLN	YES	\$225	DL	T7SHPLN	YES	NO
MDW	EWR	NO	\$497	DL	MA00ADVP	NO	\$923	DL	MA00ADVP	NO	NO
MDW	JFK	NO	\$123	DL	TA07ADNP	NO	\$246	DL	TA07ADNP	NO	NO
MDW	LGA	YES	\$239	WN	HYA3PNR	YES	\$477	WN	HYA3PNR	YES	NO
ORD	CLE	YES	\$120	UA	VA7KN	YES	\$241	UA	VA7KN	YES	NO
ORD	CLE	YES	\$120	CO	VA7ZN	YES	\$241	CO	VA7ZN	YES	NO
ORD	CLE	YES	\$120	AA	GA07ERD1	YES	\$241	AA	GA07ERD1	YES	NO
ORD	CAK	YES	\$306	UA	EACKN	YES	\$375	UA	HE72KN	YES	NO
MDW	CLE	YES	\$121	WN	WYA7PNR	YES	\$245	WN	WYA7PNR	YES	NO
MDW	CAK	NO	\$314	DL	MA00A0UA	NO	\$390	DL	OC07A0NA	NO	NO
HNL	LAX	YES	\$313	HA	HX0XW	YES	\$389	HA	LXRQN	YES	NO
HNL	LAX	YES	\$228	AA	QJ00N	YES	\$359	AA	QJ00N	YES	NO
HNL	LAX	YES	\$228	UA	TADNR6	YES	\$359	UA	LEONZA	YES	NO
HNL	LAX	YES	\$228	DL	LAD0ADSC	YES	\$359	DL	UORQNI	YES	NO
HNL	BUR	NO	\$885	UA	ELOA7JN	NO	\$725	UA	TRAD0N3	NO	NO
HNL	SNA	YES	\$906	UA	ELOA7JN	YES	\$1,632	CO	ELPA7LJN	YES	NO
HNL	SNA	YES	\$868	CO	BA7EMN	YES	\$848	CO	SRO8JN	YES	NO
HNL	ONT	NO	\$888	CO	BLOA7JN	NO	\$1,859	CO	BLOA7JN/BSPA3HN	NO	NO
IAH	DCA	YES	\$721	CO	B1	YES	\$1,443	CO	B1	YES	NO
IAH	IAD	YES	\$633	CO	MA0INN	YES	\$1,127	CO	MA0INN	YES	NO
IAH	IAD	YES	\$633	UA	EADMN	YES	\$1,127	UA	EADMN	YES	NO
IAH	BWI	YES	\$446	CO	BADLY	YES	\$893	CO	BADLY	YES	NO
IAH	BWI	YES	\$446	UA	BL	YES	\$893	UA	BL	YES	NO
HOU	DCA	NO	\$553	DL	H407ZDNJ	NO	\$786	DL	H407ZDNJ	NO	NO
HOU	IAD	NO	\$557	AA	VA07ERD1	NO	\$842	AA	VA07ERD1	NO	NO
HOU	BWI	YES	\$269	WN	WYA7PNR	YES	\$596	WN	WYA7PNR/QYA7PNR	YES	NO
DEN	IAH	YES	\$168	CO	VA7ZN	YES	\$335	CO	VA7ZN	YES	NO
DEN	IAH	YES	\$168	UA	SA7KN	YES	\$335	UA	SA7KN	YES	NO
DEN	IAH	YES	\$168	F9	UO7PKC5	YES	\$335	F9	UO7PKC5	YES	NO
DEN	IAH	YES	\$165	YX	MB07FY	YES	\$328	YX	MB07FY	YES	NO
DEN	HOU	YES	\$169	WN	WYA7PNR	YES	\$361	WN	WYA7PNR/RYA7PNR	YES	NO
DEN	EWR	YES	\$593	CO	MA0BN	YES	\$767	CO	HRT1BN	YES	NO
DEN	EWR	YES	\$593	UA	UA0HN	YES	\$767	US	QET1HN	YES	NO
DEN	JFK	YES	\$189	DL	UA07ADNP	YES	\$339	DL	UA07ADNP	YES	NO
DEN	JFK	YES	\$119	Jet Blue	UH7D23	YES	\$289	Jet Blue	YD7D23/MI7	YES	NO
DEN	LGA	YES	\$223	UA	SATCN	YES	\$408	UA	SATCN/SA10FU	YES	NO
DEN	LGA	YES	\$209	YX	RB00FY	YES	\$394	YX	RB00FY/0B10FU	YES	NO
DEN	LGA	YES	\$239	F9	Y0E8X1	YES	\$394	F9	MO0PKG/0H0P8X96	YES	NO

SOURCE: Worldspan-Travelport GDS system in Plaintiff Michael Malaney's office. The source for Southwest fare information was obtained from Plaintiff David Wendell's GDS system Sabre.
 NOTE: September 1 departure date with September 3 return date, 8:00 a.m. flight both directions. Only lowest fares are listed.