UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al., *Plaintiffs* v. AMERICAN EXPRESS CO., et al., *Defendants*	No. 10-CV-04496 (NGG) (RER) **JOINT PRETRIAL ORDER**

Pursuant to the Court's January 24, 2014 Pre-Trial Scheduling Order, ECF No. 312, as modified by the Court's May 16, 2014 order, the parties respectfully submit this Pretrial Order for the Court's consideration.

1. TRIAL COUNSEL

Lead trial counsel for each party is identified below.

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2. SUBJECT MATTER JURISDICTION

Plaintiff United States of America

Plaintiff United States of America brought this action pursuant to Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has subject-matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4.

Plaintiff States

Plaintiffs Arizona, Connecticut, Idaho, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, Tennessee, Texas, Utah, and Vermont, by and through their respective Attorneys General, brought this action in their respective sovereign capacities and as parens patriae on behalf of the citizens, general welfare, and economy of their respective States under their statutory, equitable and/or common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent Defendants from violating Section 1 of the Sherman Act. This Court has subject-matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4.

Defendants American Express Company and American Express Travel Related Services Company, Inc.

This Court has subject matter jurisdiction pursuant to Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4.

3. CLAIMS AND DEFENSES

Plaintiffs' Claim

At trial Plaintiffs will prove that American Express's Anti-Steering rules violate of Section 1 of the Sherman Act, 15 U.S.C. § 1, because they unreasonably restrict competition between credit card networks and unlawfully insulate American Express from competition.

Defendants' Defenses

Plaintiffs will be unable to carry their burden of proving that American Express's Non-Discrimination Provisions violate Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs' alleged relevant antitrust markets are unsustainable, it cannot be shown that American Express has antitrust market power in any relevant antitrust market and Plaintiffs cannot show that the Non-Discrimination Provisions are anticompetitive. In fact, the Non-Discrimination Provisions are procompetitive, and their removal would reduce competition, not strengthen it.

4. BENCH TRIAL

The parties agree that this case should be tried without a jury, and the parties have agreed to use a chess clock at trial. Consistent with the Court's direction, closing arguments and time used to resolve disputes regarding the admissibility of exhibits will not count against either side's allotted time. The parties, however, do not agree regarding the appropriate time limit.

Plaintiffs estimate that they will need approximately 100 hours of live court time to present their case to the Court. Plaintiffs believe that the 100-hour limit will force both sides to efficiently present their respective cases and make considered decisions as trial progresses regarding the witnesses they will call to testify. Plaintiffs respectfully request that each side receive the same amount of time to present its case.

In light of the number of witnesses the Plaintiffs have listed, American Express believes it needs at least 125 hours to cross-examine those witnesses and leave enough time for American Express to fairly present the testimony of its own witnesses. American Express agrees that it would be appropriate for each side to receive the same amount of time to present its case.

5. DECLINATION TO PROCEED BEFORE MAGISTRATE

The parties have not consented to trial of the case by a magistrate judge.

6. STIPULATED FACTS

The parties' stipulated statements of fact are attached to the Pretrial Order as Exhibit A.

7. WITNESS LISTS

The parties' respective witness lists are attached to the Pretrial Order as Exhibit B.

8. TRIAL EXHIBITS

The exhibits for which the parties have stipulated to their admissibility are identified in Exhibit C, which is attached to the Pretrial Order. Plaintiffs' exhibits that remain subject to an outstanding objection are identified in Exhibit D, which is attached to the Pretrial Order. Defendants' exhibits that remain subject to an outstanding objection are identified in Exhibit E, which is attached to the Pretrial Order.

9. ELEMENTS OF EACH CLAIM OR DEFENSE

The parties will fully address each side's claims and defenses in their respective pretrial briefs, which will be submitted to the Court on June 20, 2014, pursuant to the Court's May 16 order.

Dated: June 6, 2014

Respectfully submitted by:

FOR PLAINTIFF THE UNITED STATES OF AMERICA

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So ordered.

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7/3/14