



U.S. Department of Justice

Antitrust Division

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April 29, 2020

**BY ECF**

Patricia S. Dodszeit, Clerk  
U.S. Court of Appeals, Third Circuit  
U.S. Courthouse  
601 Market Street, Room 21400  
Philadelphia, PA 19106-1790

**Re: *United States v. Sabre Corp.*, No. 20-1767**

Dear Ms. Dodszeit:

On April 27, 2020, the United States requested that this Court stay the issuance of a briefing schedule until the United States either (1) notifies this Court that the Solicitor General has approved this appeal or (2) moves to withdraw the appeal under Federal Rule of Appellate Procedure 42(b). Doc. 8. While defendants oppose this relief, *see* Doc. 10, it is appropriate in the circumstances here.

The district court entered its judgment in this case on April 7, 2020. Although the government had until June 5, 2020, to file a notice of appeal under Federal Rule of Appellate Procedure 4(a)(1)(B), the United States filed a protective notice of appeal the very next day, April 8, 2020, in case it needed to act quickly to move for an injunction pending appeal under Federal Rule of Appellate Procedure 8 and Federal Rule of Civil Procedure 62(d) to prevent consummation of the challenged merger. The United States is still considering the propriety of seeking an injunction pending appeal, because defendants refuse to confirm whether or not they will attempt to consummate their merger at this time. But, as of now, no injunction has been sought or entered.<sup>1</sup>

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<sup>1</sup> On April 9, 2020, the day after the United States filed its protective notice of appeal, the United Kingdom's Competition and Markets Authority issued a decision holding the transaction unlawful under UK competition statutes. It is our understanding that under UK law, defendants cannot consummate their merger unless and until this decision is overturned. Defendants may appeal this decision, but so far they have not indicated that they will do so. *See* Doc. 280, *United States v. Sabre Corp.*, No. 1:19-cv-01548-LPS, at 2 (D. Del. Apr. 14, 2020) ("The CMA issued its 385-page Final Report on April 9 that 'prohibit[ed] the merger in its entirety,' and the Defendants are evaluating options.").

Defendants assert without explanation that such a pause in the briefing schedule is “tantamount to granting the Government an indefinite stay of the proposed merger.” Doc. 10, at 1. This assertion confuses a stay in issuing a briefing schedule and an injunction pending appeal.

Defendants also assert that a pause in issuing the briefing schedule “makes little sense” and that “[o]rdinarily” in these circumstances the Court would “promptly” set a briefing schedule and the government would have to move for an extension later “if approval of the Solicitor General has not occurred by the due date for the Government’s brief.” Doc. 10, at 2 & n.1 (citing a motion for extension of time filed in a First Circuit case). It is our understanding, however, that this Court commonly stays issuance of a briefing schedule until the appeal has been authorized by the Solicitor General because it would waste the Court’s and the government’s resources in the event that the appeal is not authorized and thus withdrawn. *See, e.g.*, Doc. 11, *United States v. Raia*, No. 20-1033 (3d Cir.) (criminal case) (staying the issuance of the briefing schedule for 30 days and allowing the United States to renew the motion if additional time is necessary); Doc. 19, *United States v. Mack*, No. 19-3841 (3d Cir.) (staying issuance of the briefing schedule and ordering the United States to file a status report every 30 days). Notably, defendants do not point to any prejudice they would suffer from the relief sought.

We thank the Court for its consideration.

Very truly yours,

/s/ Nickolai G. Levin  
Nickolai G. Levin  
Attorney, Appellate Section

**CERTIFICATE OF SERVICE**

I certify that I today caused the foregoing Letter to be [1] electronically filed with the Clerk of the United States Court of Appeals for the Third Circuit through the Court's CM/ECF system, and [2] served on counsel for Appellees through the Notice of Docketing Activity generated by this Court's CM-ECF system.

Executed On: April 29, 2020

/s/ Nickolai G. Levin  
Attorney