

Proposed

FILED
2010 JUN 29 P 12:04
RICHARD W. BUEKING
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

CV 10 2858
CASE NO.: 10 2858

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

Plaintiffs,

v.

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

Defendants.

1 Plaintiffs are and will be direct purchasers of airline tickets from one or both of the
2 defendants. The plaintiffs bring this action under Section 16 of the Clayton Antitrust Act, 15
3 U.S.C. §§ 18, 26, to enjoin and prohibit the merger of the defendants United and Continental.
4 Plaintiffs complain and allege as follows:

5 **INTRODUCTION**

6 1. On May 3, 2010, the defendants announced that they had agreed to combine in an
7 all stock transaction, valued at more than \$8 billion, merging United Air Lines, Inc. (“United”)
8 and Continental Airlines, Inc. (“Continental”), eliminating the substantial competition between
9 them, and merging to create the world’s largest airline. It is proposed that the unlawful combine
10 would operate under the United name.

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

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

23 4. Plaintiffs are individuals who have purchased airline tickets from one or both of
24 the defendants in the past, and expect to continue to do so in the future. They are threatened with
25 loss or damage by the defendants’ merger in violation of Section 7 in the form of higher ticket
26 prices and diminished service, and, accordingly, they bring this action for preliminary and
27 permanent injunctive relief against the merger pursuant to Section 16 of the Clayton Antitrust
28 Act, 15 U.S.C. § 26.

JURISDICTION

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5. This action is brought under Section 16 of the Clayton Antitrust Act, 15 U.S.C. §26, to prohibit the consummation and the effectuation of defendants' planned unlawful merger in violation of Section 7 of the Clayton Antitrust Act, 15 U.S.C. §18. This Court has subject matter jurisdiction of the federal antitrust claims asserted in this action under Section 16 of the Clayton Antitrust Act, 15 U.S.C. §26, and Title 28 United States Code Sections 1331 and 1337.

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

Don Freeland, 73801 White Sands Dr., Thousand Palms, CA 92276;

Ted Friedli, 8 Chelton Way, Long Branch, NJ 07740;

Donald V. Fry, 6740 Northrim Ln., Colorado Springs, CO 80919;

Gabriel Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;

1 Harry Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;
2 Yvonne Jocelyn Gardner, 10-Gold Coin Ct., Colorado Springs, CO 80919;
3 Lee M. Gentry, 7021 Forestview Dr., West Chester, OH 45069-3616;
4 Jay Glikman, 4265 Marina City Dr #809, Marina del Rey, CA 90292;
5 Donna M. Johnson, 1864 Masters Dr., DeSoto, TX 75115;
6 Valarie Ann Jolly, 2121 Dogwood Loop, Mabank, TX 75156;
7 Gail S. Kosach, 4085 Ramrod Cir., Reno, NV 89519;
8 Rozann Kunstle, 7210 Fleetwood Ct., Colorado Springs, CO 80919;
9 Steve Kunstle, 7210 Fleetwood Ct., Colorado Springs, CO 80919;
10 John Lovell, 1834 Whirlaway Ct., Kentwood, MI 49546;
11 Len Marazzo, 1260 Springer Ct., Reno, NV 89511;
12 Lee McCarthy, 35 Lancashire Place, Naples, FL 34104;
13 Lisa McCarthy, 35 Lancashire Place, Naples, FL 34104;
14 Patricia Ann Meeuwsen, 1062 Wedgewood, Plainwell, MI 49080;
15 L. West Oehmig, Jr., 1017 East Brow Road, Lookout Mountain, TN 37350;
16 Cynthia Prosterman, 527 20th Ave., San Fransisco, CA 94121;
17 Deborah M. Pulfer, 16264 E. Mason Rd., Sidney, OH 45365;
18 Sharon Holmes Reed, 622 Grandview Ave., Kingman, AZ 86401;
19 Dana L. Robinson, 127B Palm Bay Terrace, Palm Beach Gardens, FL 33418;
20 Robert A. Rosenthal, 4659 Bridle Pass Drive, Colorado Springs, CO 80923;
21 Bill Rubinsohn, 261 Old York Road, Jenkintown, PA 19046;
22 Sondra K. Russell, 1206 N. Loop 340, Waco, TX 76705;
23 Sylvia N. Sparks, 3320 Conte Drive, Carson City, NV 89701;
24 June Stansbury, 363 Smithridge Park, Reno, NV 89502;
25 Clyde D. Stensrud, 1529 10th St W., Kirkland, WA 98033;
26 Sherry Lynne Stewart, 6565 Foxdale Cir., Colorado Springs, CO 80919;
27 Wayne Taleff, 768 Farmsworth Ct., Cincinnati, OH 45255;
28 Gary Talewsky, 14 Cow Hill Rd., Sharon, MA 02067;

1 Annette M. Tippetts, 2783 East Canyon Crest Dr., Spanish Fork, Utah 84660;
2 Diana Lynn Ultican, 9039 NE Juanita Dr, #102, Kirkland, WA 98034;
3 J. Michael Walker, 11865 Heather Ln., Grass Valley, CA 95949;
4 Pamela S. Ward, 1322 Creekwood Dr., Garland, TX 75044;
5 David P. Wendell, 100 Vine St., Reno, NV 89503;
6 Christine O. Whalen, 1131 Pine St., New Orleans, L, 70118; and
7 Suraj Zutshi, 3333 Saratoga Ct., Sparks, NV 89431

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

10 8. Defendant UAL is a holding company that owns and operates defendant
11 United.

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

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

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

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

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

21 14. United serves European cities.

22 15. United serves Latin American cities.

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

24 17. United is a founding member in the so-called Star Alliance®, a global airline
25 alliance with defendant Continental as well as Adria, Air Canada, Air China, Air New
26 Zealand, ANA, Asiana Airlines, Austrian Airlines, Blue 1, bmi, Brussels Airlines, Croatia
27 Airlines, Egyptair, Polish Airlines, Lufthansa, Scandinavian Airlines, Shanghai Airlines,
28 Singapore Airlines, South Africa Airways, Spanair, Swiss International Air Lines, TAP

1 Portugal, Thai Airways International, Turkish Airlines, and US Airways. Star Alliance®
2 members have a combined 19,700 daily flights to 1,077 airports in 175 countries.

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

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

8 20. United has membership in United Express®, which includes Air Wisconsin,
9 Skywest, Mesa, Republic Airlines, Chautauqua Airlines, Shuttle America, and Trans States
10 Airlines.

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

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

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

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

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

24 26. With its regional partners, Continental carries approximately 63 million
25 passengers per year.

26 27. Continental also provides scheduled transportation of cargo throughout the
27 United States and around the world.

28 28. Continental has more than 40,000 full-time employees.

NATURE OF TRADE AND COMMERCE

1
2 29. The relevant product and geographic markets for purposes of this action are the
3 transportation of airline passengers in the United States, and the transportation of airline
4 passengers to and from the United States on international flights.

5 30. United and Continental are substantial rivals and competitors in the relevant
6 market.

7 31. United and Continental are substantial potential rivals and potential competitors
8 in the relevant market.

9 32. Not only do United and Continental provide competing passenger service
10 against each other on a number of passenger routes, but also they are potentially able to
11 provide competing passenger service against each other on any route anywhere in the United
12 States if they believe it would be profitable to do so.

13 33. United has the capability to serve every major market in the United States
14 above 5,000 population.

15 34. Continental has the capability to serve every major market in the United States
16 above 5,000 population.

17 35. The behavior of United is constrained by the actual and potential competition
18 from Continental throughout the entire relevant market and submarkets.

19 36. The behavior of Continental is constrained by the actual and potential
20 competition from United throughout the entire relevant market and submarkets.

21 37. The market for the transportation of airline passengers in the United States is in
22 and part of interstate commerce, makes extensive use of the instrumentalities of interstate
23 commerce, and substantially affects interstate commerce. Airline passengers travel in a
24 continuous and uninterrupted flow of interstate commerce. Airline travel is a continuous and
25 uninterrupted flow of interstate commerce. Materials used in the construction of airplanes are
26 purchased and shipped in a continuous and uninterrupted flow of interstate commerce.

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

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

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

7 40. The new airline will be called United.

8 41. The chief executive officer of the combined company will be Jeff Smisek, the
9 current chairman, president, and CEO of Continental.

10 42. Glenn Tilton, chairman, president, and CEO of defendant UAL Corporation
11 (“UAL”), will serve as non-executive chairman of the combined company’s Board of
12 Directors through December 31, 2012, or the second anniversary of closing, whichever is
13 later.

14 43. Mr. Smisek will become executive chairman of the Board when Mr. Tilton
15 ceases to be non-executive chairman.

16 44. Through secret and private meetings, Mr. Smisek of Continental met on more
17 than one occasion with Mr. Tilton of UAL.

18 45. One or more the secret and private meetings of Mr. Smisek and Mr. Tilton
19 were carried on outside of their offices, including hotel rooms.

20 46. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
21 discussed the purposes and probable effects of the merger.

22 47. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
23 discussed airline fares in general and specifically.

24 48. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
25 discussed the frequency of flights.

26 49. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
27 discussed the elimination or curtailment of the use of hubs.

28

1 50. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
2 discussed the curtailment of capacity.

3 51. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
4 discussed the firing of employees.

5 52. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
6 discussed the type of aircraft to be eliminated.

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

9 54. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
10 discussed the possible combination of American Airlines and US Airways.

11 55. At one or more of the secret and private meetings, Messrs. Smisek and Tilton
12 discussed the potential fare increases in the monopoly submarkets that would be created by the
13 combine.

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

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

20 58. Combined, United and Continental will have more than 203 billion RPMs.
21 Domestically, their combined RPMs comprise 21 percent of domestic capacity, which tops the
22 current domestic leader, Delta Air Lines, Inc., which had 189 billion RPMs in 2009, which
23 comprises a market share of 20 percent.

24 59. Globally, the combined company will control 53 percent of all traffic on Pacific
25 routes.

26 60. Together, United and Continental serve 30 common international destinations,
27 representing 65% of their total international seat capacity.

28

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

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

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

9 64. J.P. Morgan estimates that, if the merger closes, defendants would reduce their
10 overall capacity by 8 percent.

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

15 66. In addition, defendants themselves are the products of mergers and
16 acquisitions.

17 67. In 1985, United bought its Pacific routes from Pan American World Airways,
18 making United a major international carrier.

19 68. For its part, Continental acquired Frontier, People Express, and New York Air
20 in 1987.

21 69. Others mergers include that between Northwest and Republic Airlines in 1986,
22 and between U.S. Airways and America West in 2005.

23 70. Attached hereto as Exhibit A and hereby incorporated herein by reference is a
24 chart depicting the history of mergers and increasing concentration in the United States airline
25 industry. Attached hereto as Exhibits B and C are the rankings of the top airlines in the United
26 States pre-merger and post-merger.

27 71. The new United will operate 8 hubs, including hubs in the four largest U.S.
28 cities.

1 72. Defendants' merger will increase market concentration in four of the 100
2 largest U.S. cities, namely, Washington, D.C., San Diego, Seattle, and New Orleans.

3 73. In addition, at the airport level, the following 17 domestic airports will
4 experience undue increases in market concentration as a result of the defendants' merger:
5 Houston Intercontinental (combined United will control 64 percent market share), Newark
6 Liberty International (55 percent market share on domestic routes; 65 percent for international
7 travel), San Francisco International (40 percent market share), Chicago O'Hare International
8 (35 percent market share), Los Angeles International, New Orleans, Cleveland Hopkins,
9 Denver, San Diego, Orange County, Honolulu (HNL), Ontario California, Las Vegas, Tampa,
10 Sacramento, Yampa Valley Colorado, and Vail.

11 74. The new combined company's dominance at the airports listed in paragraph 21
12 is substantially likely to result in higher fare prices for flights to or from those airports.

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

16 76. If the combination of United and Continental were allowed, ten airports would
17 be a monopoly. This creation of monopolies in these markets will likely result in increases in
18 fares and reduction of service.

19 77. If the combination of United and Continental were allowed, 120 airports would
20 be a duopoly. This creation of a duopoly in these markets will likely result in increases in
21 fares and reduction of service.

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

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

28

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

4 81. If the combination of United and Continental were allowed, the combine would
5 have monopoly service from San Francisco to Houston, from San Francisco to Newark, from
6 Denver to Newark, from Newark to Dulles, Washington, D.C., from Houston to Dulles,
7 Washington, D.C., from Cleveland to Denver, and from Cleveland to Dulles, Washington,
8 D.C. This creation of monopolies in these markets will likely result in increases in fares and
9 reduction of service.

10 82. Non-stop service is typically preferred by some passengers.

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

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

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

20 86. In addition, there is overlap between markets served by United out of Chicago
21 and Continental out of Cleveland. For example, 52 out of 62 domestic airports served by
22 Continental from Cleveland are also served by United from Chicago.

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

28

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

5 89. United and Continental serve 30 common international destinations,
6 representing 65 percent of their total international seat capacity.

7 90. Following deregulation in 1978, many mergers and acquisitions took place:
8 Delta Air Lines merged with Western Airlines; United Airlines acquired Pan American
9 Airlines’ Pacific routes; Northwest acquired Republic Airlines; American Airlines and Air
10 California merged; American acquired TWA; America West acquired US Airways; and in
11 October 2008 Delta acquired Northwest.

12 91. In addition, since deregulation, the legacy carriers bought or controlled the new
13 and growing feeder airlines with the specific purpose and intent of preventing them from
14 becoming major competitors.

15 92. In addition, defendants compete now on hundreds of domestic connecting
16 routes, where competition will be reduced or eliminated as a result of defendants’ merger.

17 93. Continental also competes with United on service to Europe, Canada, Asia, and
18 Latin America, where competition will be eliminated or substantially diminished by
19 defendants’ merger. For example, defendants’ merger would substantially lessen competition
20 on routes between the U.S. and Beijing, where United and Continental provide substantial
21 connecting services.

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

27 95. The potential for increased collusion among the remaining airlines is
28 significant, because the domestic passenger airlines, including, *inter alia*, these defendants,

1 have in the past colluded to fix prices with regard to airfares, surcharges, and cargo prices, and
2 to fix other terms and conditions of air transportation and travel.

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

14 97. The defendants' proposed merger will cause harm to consumers, including the
15 plaintiffs, by generating higher airfares, by reducing the number of flights on particular routes,
16 and by eliminating air service to smaller communities. Consumers, including the plaintiffs,
17 will thus pay more for less airline service than would be the case in the absence of defendants'
18 merger.

19 98. The defendants' proposed merger is also likely to lead to other mergers and
20 further concentration in the already highly concentrated relevant market. If defendants'
21 merger closes, American Airlines, which until the Delta-Northwest merger was the largest
22 domestic airline, will likely combine with another carrier, like U.S. Airways, the only
23 remaining medium-sized carrier. Both of the CEO's of American and U.S. Airways have
24 already indicated publicly of their approval of the elimination of capacity and of their desire to
25 further concentrate the industry and eliminate even more capacity, with the obvious result of
26 higher fares.

27 99. United States Representative James Oberstar (D-Minn.), chairman of the House
28 Committee on Transportation and Infrastructure, has publicly opposed defendants' merger.

1 He wrote in a May 5, 2010, letter to the Department of Justice that, if defendants' merger is
2 consummated, "carriers will concentrate their efforts on fortress hubs and on the routes they
3 dominate. There will be strong incentives to refrain from competition. There will be less
4 service and fares will rise."

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

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

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

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

21 104. The major U.S. passenger airlines, including defendants United and
22 Continental, frequently trade, sell, lease or purchase slots from other airlines in each of the
23 major 29 airports throughout the United States.

24 105. The major U.S. passenger airlines with significant market share in specific
25 regions or major airports, including defendants United and Continental, endeavor to keep
26 other major airlines from entering the market with competitive flights. However, Continenal
27 has entered the Maui market against United and Delta has entered the Chicago market against
28

1 United and American, showing that the potential competition without a merger allows new
2 entry into markets.

3 106. On information and belief, each of the major U.S. passenger airlines, including
4 defendants United and Continental, has created internal documents reflecting a financial and
5 economic cost/benefit analysis of increasing its presence in each or many of the major U.S.
6 airports.

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

11 108. Paragraph 107 is true and correct.

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

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

21 111. As the foregoing paragraphs show, the effect of the defendants’ merger, if
22 consummated, may be substantially to lessen competition, or to tend to create a monopoly in
23 the relevant markets.

24 112. By reason of the defendants’ proposed merger, the plaintiffs are threatened
25 with loss or damage in the form of higher ticket prices and diminished service. If the
26 defendants’ merger is consummated, the plaintiffs will sustain irreparable harm for which
27 damages will be unable to compensate plaintiffs, in that service once lost cannot easily be
28

1 restored. Accordingly, plaintiffs bring this action for both preliminary and permanent
2 injunctive relief against defendants' merger.

3 **VIOLATION ALLEGED**

4 **Clayton Act, Section 7**

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

16 **PRAYER FOR RELIEF**

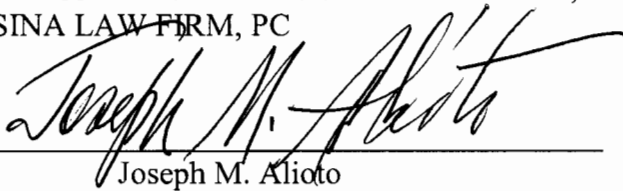
17 WHEREFORE, plaintiffs demand the following relief from this Honorable Court:

- 18 A. Declaring, finding, adjudging, and decreeing that the agreement of the
19 defendants to merge violates Section 7 of the Clayton Antitrust Act, 15 U.S.C. § 18.
- 20 B. Preliminarily enjoining the defendants from consummating their merger during
21 the pendency of this action.
- 22 C. Permanently enjoining the defendants from consummating their merger.
- 23 D. Awarding to plaintiffs their cost of suit, including a reasonable attorney's fee,
24 as provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.
- 25 E. Granting to plaintiffs such other and further relief to which they may be entitled
26 and which the Court finds to be just and appropriate.
- 27
28

1 Dated: June 29, 2010

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3 GRAY PLANT MOOTY MOOTY & BENNETT, P.A.
4 MESSINA LAW FIRM, PC

5 By: _____



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EXHIBIT A

Origins of Legacy Airlines and Southwest

History of Mergers and Acquisitions

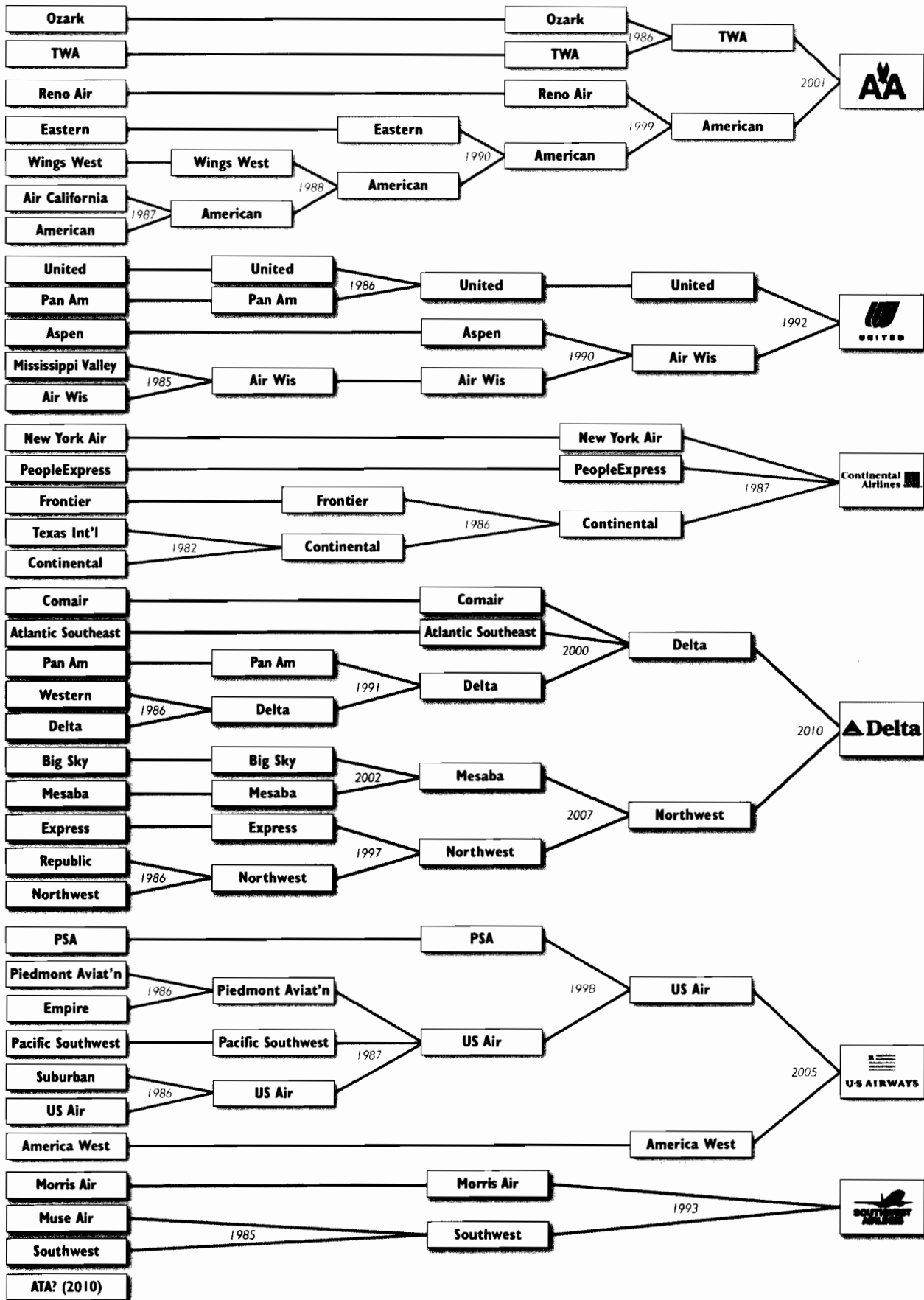
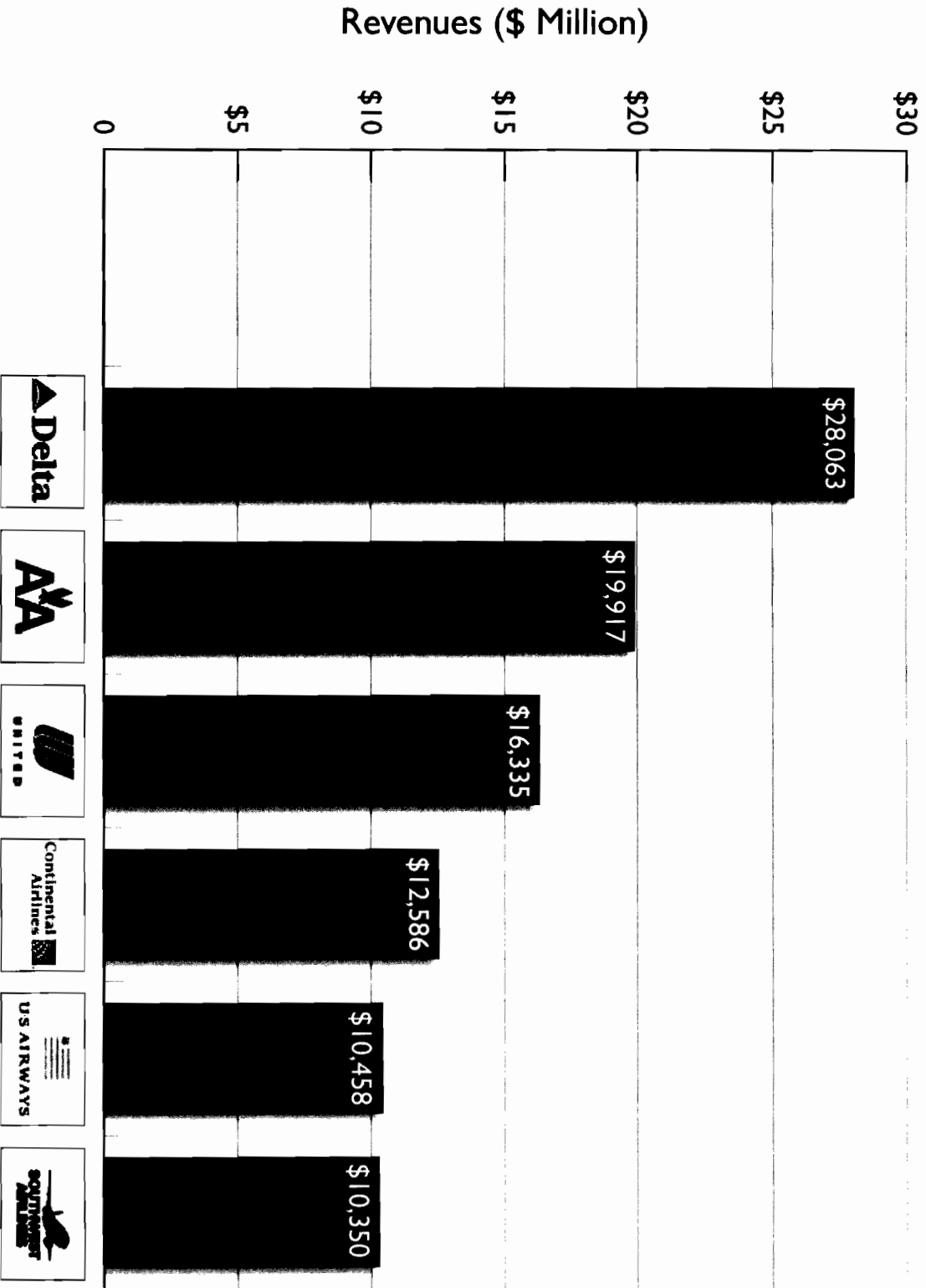


EXHIBIT B

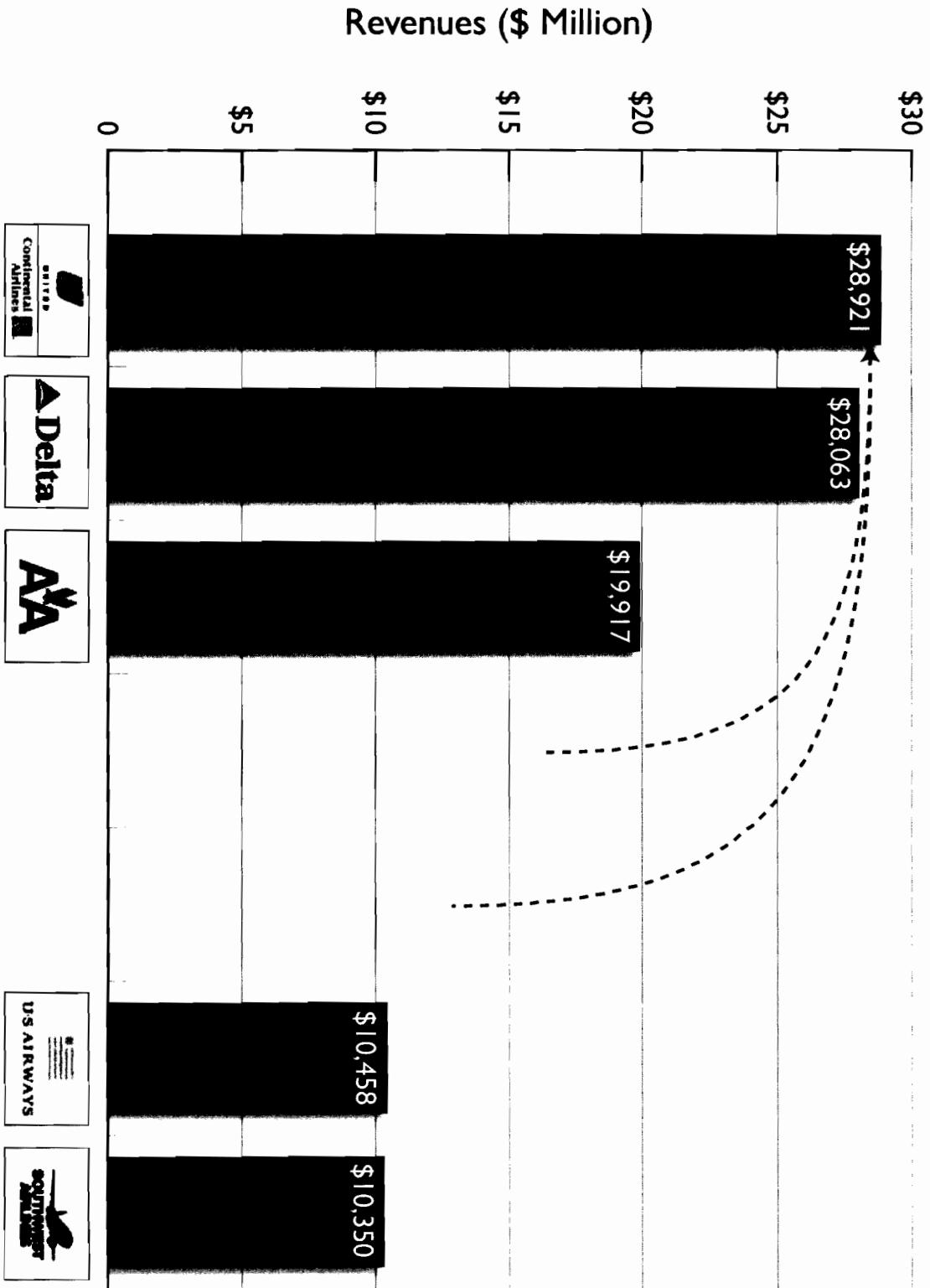
Rankings of Top Airlines in U.S. Revenues (Pre-Merger - 2010)*

FORTUNE
500



* Source: Fortune magazine, May 3, 2010

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



* Source: Fortune magazine, May 3, 2010