IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN AIRLINES, INC., and ROBERT L. CRANDALL, Defendants.	CA3-83-0325-D

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

On February 23, 1983, the United States filed a civil antitrust Complaint in the United States District Court for the Northern District of Texas under Section 4 of the Sherman Act (15 U.S.C. §4) to enjoin defendants, American Airlines, Inc. and Robert L. Crandall from continuing or renewing violations of §2 of the Sherman Act as amended (15 U.S.C. §2).

The defendant American Airlines, Inc. (hereinafter "American") is a wholly-owned subsidiary of AMR Corporation and is in the principal business of providing scheduled airline passenger and freight services. American's principal business office is located in Fort Worth, Texas. The defendant Robert L. Crandall at the time of the Complaint was president of American. Defendant Crandall is currently Chairman of American's Board of Directors and is American's chief executive. His office is located at American's headquarters in Fort Worth.

The Complaint alleges that on or about February 1, 1982, the defendants, American and Robert L. Crandall, unlawfully attempted joint and collusive monopolization between American and Braniff Airways, Inc. (hereinafter "Braniff") of scheduled airline passenger service in a number of the city pairs served by both carriers at the Dallas-Fort Worth International Airport (DFW). The Complaint alleges that the unlawful attempt to monopolize consisted of an attempt by defendant Robert L. Crandall, acting in his capacity as the president of American, to cause Howard Putnam, who at the time of the Complaint was president and chief executive officer of Braniff, to raise the prices charged by Braniff by means of a direct oral request to Mr. Putnam that Braniff do so coupled with Mr. Crandall's assurance that American would follow.

The instant case was filed to achieve the following purposes: 1) to terminate defendants' unlawful attempts to monopolize airline passenger services, and 2) to prevent any further attempts at monopolization of airline passenger services. Consistent with these objectives, the Complaint sought a judgment by the Court that the defendants had attempted to monopolize trade and commerce in violation of §2 of the Sherman Act. The Complaint sought an order to enjoin defendant American from discussing or communicating with any other company that provides scheduled airline passenger service any matter related to the pricing of such service and to enjoin defendant Robert L. Crandall for a period of two years from serving as president, chief executive officer or in any other position having pricing responsibility or authority with any company providing scheduled airline passenger service. Similarly, the Complaint sought an order enjoining American for a period of two years from employing Robert L. Crandall as the president, chief executive officer or in any other position having pricing responsibility.

II.

Description of Practices Giving Rise to the Alleged Violations

The following describes the practices or events giving rise to the alleged violation of the Sherman Act. This description is made in sufficient detail to permit understanding of the

relief provided in the proposed Final Judgment. At the same time, this description refrains from revealing matters that occurred before a grand jury that investigated possible violations of the Sherman Act in the provision of airline passenger services in the Dallas-Fort Worth area. Disclosure of such matters without a showing of particularized need would violate Rule 6(e) of the Federal Rules of Criminal Procedure.

A. Trade and Commerce

The trade and commerce alleged in the Complaint as the subject of defendants' attempt to monopolize is the provision at regular times and over regular routes of air transportation to individuals traveling between an origin city and a destination city when that travel involved DFW as the traveler's beginning, ending or connecting point on a city-pair route. The city pair means the origin city and the destination city between which scheduled airline passenger service is provided.

In February of 1982, American and Braniff were engaged in the provision of scheduled airline passenger service in competition with one another in numerous city pairs. In 1981 and 1982, American and Braniff served many of the same city pairs to and from DFW on a nonstop basis. In addition, both served many of the same city pairs for which a connection at DFW was necessary.

DFW is one of the largest airports in the United States. By February of 1982, both American and Braniff had established and maintained extensive hubbing operations centered at DFW. Many major airline passenger carriers structure the supply of their services around airports in network configurations or complexes called hubs. The term derives from the fact that routes of an airline maintaining a hub operation resemble the hub and spokes of a wheel with the airport, such as DFW, as the hub and the routes to other cities radiating outward like spokes. By hubbing the carrier can gather passengers from many points and concentrate them at the hub location at a number of times during the day. The carrier can then arrange connections for those passengers to many other locations. Thus, hubbing allows a carrier to serve many city pairs that might not independently support nonstop service, e.g., from a small city in Texas to New York City.

In 1981 and early 1982, the hubs of both Braniff and American at DFW consisted of "feeder" routes and "trunk" routes. Many of the feeder routes originated at cities in Texas, Oklahoma or Louisiana. Many of Braniff's and American's passengers then connected at DFW to the respective carrier's "trunk" routes en route to cities generally located a further distance from DFW. Generally, "feeder" routes are shorter haul, thin routes, with few passengers destined to or coming from any one city. By offering connections at the hub airport

to many destinations at approximately the same time, hubbing carriers can carry on one "feeder" flight many passengers with different destinations. Thus, these routes provide feed traffic to long haul "trunk" routes and vice versa.

This feed traffic permitted American and Braniff to offer more long haul destinations and to operate their long haul trunk routes with more passengers per flight than either carrier could have by providing only service originating or terminating at DFW without the benefit of feed traffic. For another carrier to have entered the DFW nonstop and connecting city-pair markets and compete successfully with either American or Braniff, entry would have been required on a number of routes to replicate the feed advantages available to Braniff and American because of their DFW hub systems.

The extent to which an entering or expanding carrier needed a similar hubbing operation to compete effectively with Braniff and American magnified the effect of other entry barriers at DFW. For example, at the time of the alleged attempt to monopolize and continuing until at least September 1983, air traffic control capacity at many airports was limited as a result of the August 3, 1981 strike by the Professional Air Traffic Controllers Organization. The Federal Aviation Administration (FAA), through a series of regulations known generally as Special Federal Aviation Regulations (SFARs) No. 44. et seq., formalized the imposition of restrictions on

the number of allowable carrier landings per hour, i.e., slots, at approximately 22 of the nation's larger airports, including DFW. The Complaint alleges that the limited availability of slots acted as a significant barrier to entry for any carrier seeking to enter or expand service in any significant number of city pairs where the origin, destination or connecting airport is slot-constrained. In particular, the Complaint alleges the slot-constraints at DFW prevented any carrier from adding or expanding service at DFW by more than several city pairs or frequencies, making it difficult for the other carrier to capture the efficiencies afforded American and Braniff by their DFW hubs.

There were potentially other barriers to a carrier's successful entry or expansion at DFW. The unavailability of gate or terminal space may act as an entry barrier. This is particularly so when the entering carrier needs enough gate space to develop its own feed traffic to compete successfully with the airport's hub carriers. At the time of the conduct alleged in the Complaint, all constructed terminal and gate space at DFW was in use. While DFW had space for additional construction, there is significant lagtime between the approval of construction and utilization of a gate facility.

Another potential entry barrier at DFW related to American's SABRE system. American developed a computer reservations system called SABRE in the late 1970's. SABRE is

in use in approximately 90 percent of the travel agencies in the Dallas-Fort Worth area and about 40 percent of the nation's travel agencies. At the time of the conduct alleged in the complaint, SABRE's display of carriers' flights for sale by the travel agent was biased in favor of the host American and to a lesser extent for cohosts. Braniff was a cohost. Entering and expanding carriers needed access to SABRE and visibility on SABRE to compete effectively in city pairs with DFW as one point on the flight. SABRE thus acted as an impediment to a carrier entering or expanding at DFW if the carrier could not acquire sufficient visibility on the SABRE system.

A. The Alleged Conduct

The Complaint alleges that on or about February 1, 1982, the defendants, acting through American's chief executive officer, Robert L. Crandall, with specific intent, unlawfully attempted to join in collusive monopolization with Braniff of scheduled airline passenger service in a number of the city pairs served by the DFW hub. Defendants effectuated this attempt to monopolize during a telephone conversation with Braniff's Chief Executive Officer, Howard Putnam, during which conversation, defendant Crandall proposed that both carriers raise their fares by 20%.

In the fall of 1981, Braniff, faced with continuing heavy losses, attempted to create a market niche for itself by becoming a low fare carrier. Accordingly, in November 1981

Braniff lowered its fares significantly. American matched Braniff's fares to prevent losing great numbers of passengers to Braniff. According to the company's own reports, by matching Braniff's low fares, American lost approximately $12 million per month in December 1981 and January 1982. In that context, defendant Crandall, the Complaint alleges, told his rival at Braniff that both carriers could exist at DFW and "there ain't no room for Delta." He also reminded Braniff's president that Eastern and Delta co-existed in Altanta for many years. Then defendant Crandall suggested that his rival raise fares by 20% and assured Putnam that American would follow and raise its prices. Putnam refused defendant Crandall's offer.

The Complaint alleges that defendant Crandall's conversation with his rival illustrates his specific intent to control the pricing of airline passenger services in DFW city-pair markets and that, had Braniff's chief executive accepted the offer, there would have been an immediate creation of market power, i.e., the power to control prices by American and Braniff in numerous city-pair routes involving DFW.

Because American and Braniff had dominant market shares and over a ninety percent share on many city-pair routes involving DFW and because entry was difficult due to American's and Braniff's hubs coupled with DFW slot-constraints, scarce DFW gate facilities, and SABRE bias, any price-fixing agreement between Braniff and American would have created sustainable

market power without threat of entry by carriers offering lower fares on any significant number of city pairs.

C. Market Changes Since The Complaint was Filed

Since the filing of the Complaint in February 1983, the market structure for travelers enplaning, deplaning or stopping at DFW has changed. Braniff has substantially reduced its service and presence at DFW. On May 13, 1982, Braniff filed for protection from creditors under Chapter 11 of the Bankruptcy Code. A reorganized Braniff began service to nineteen destinations from DFW in March 1984. Late in 1984, however, Braniff dropped service to ten of those destinations.

On the other hand, American has substantially increased its presence at DFW following Braniff's bankruptcy in May 1982. In February 1982, American's share of enplanements at DFW was approximately 46 percent, followed by Braniff with 30 percent and Delta with 14 percent of DFW enplanements. Data for the first quarter of 1985 show that American accounted for 59 percent of all DFW enplanements during the period compared with Delta's 21.8 percent and Braniff's four percent of DFW enplanements.

American continues to enlarge its DFW hub and spoke operations, enabling it to serve more routes and to offer greater frequencies than competitors lacking such an extensive hub. Currently, American flies to approximately 85 cities nonstop from DFW with about 300 departures per day during peak

seasons while its most significant DFW challenger, Delta, flies to only about 40 cities with about 125 departures per day. Additionally, the American Eagle program, in which American provides connecting service with local commuter carriers, has increased American's feed potential at DFW.

Formalized FAA slot-constraints are no longer an entry barrier at DFW. In the fall of 1983, the FAA removed DFW from the list of slot-constrained airports. This does not mean, however, that air traffic control capacity at DFW is necessarily sufficient to accomodate unlimited entry during the most popular landing times.

The Civil Aeronautics Board recently enacted industry-wide rules to eliminate bias in computer reservations systems, including American's SABRE. The rules went into effect in November 1984 and are overseen by the Department of Transportation. The Antitrust Division will continue to monitor the rules' ability to restore airline competition displaced by biased computer reservations systems. It is too soon after the rules' implementation, however, to determine the extent to which SABRE continues to be an impediment to entry in airline passenger services at DFW.

As noted above, the unavailability of airport gate and terminal space to accomodate expanding or entering carriers can be a barrier to entry in much the same way that slot-constraints are; that is, it may be difficult to obtain

sufficient space at an airport to develop a hub operation that can challenge the airport's major hub carriers who possess the advantages of feed traffic. In 1982, at the time of the conduct alleged in the Complaint, American held slightly more than one-third of the total DFW gate space. American has since constructed additional DFW gates and, at the end of 1984, American acquired nine additional DFW gates from Braniff. American now controls nearly one-half of the total gates available at DFW.

D. Defendants

The Complaint names two defendants, American Airlines, Inc., a wholly-owned subsidiary of AMR, Inc., organized and existing under the laws of the state of Delaware and Robert L. Crandall, American's current Chairman of its Board of Directors. Both American's and Crandall's principal business office is at 4200 American Boulevard, Fort Worth, Texas.

III.

Explanation of the Proposed Judgment

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h). The proposed Final Judgment provides that the entry of the Final Judgment does not constitute any evidence against or an admission by any party with respect to

any issue of fact under the provisions of §2(e) of the Antitrust Procedures and Penalties Act. The proposed Final Judgment may not be entered until the Court determines that entry is in the public interest.

A. Prohibited Conduct

1. Overview

The proposed Final Judgment addresses the dangerous probability of joint monopolization presented by the conduct allegedly engaged in by defendants and the subject of this Complaint. There is a dangerous probability that an attempt jointly to monopolize air transportation might be successful when airline executives meet or otherwise engage in communications about fares or fare structures in the airline industry and when the carriers together would have substantial market power in one or a number of city pairs. In those situations the continuation of competition in air transportation may be dependent upon one executive's refusal to a suggestion made by another carrier's executive. The Final Judgment, therefore, focuses on the discussions which defendants engage in with executives of other airline carriers.

2. Specific Sections of the Proposed Final Judgment

a. Section VII

Section VII prohibits American from discussing the pricing of airline services with other scheduled airline passenger carriers except in particular situations specified in the Final

Judgment. The exceptions are designed for those occasions when, as part of its legitimate airline business, American must discuss fares with employees of other airline carriers and the discussions are unlikely to have anticompetitive potential.

The proposed Final Judgment sets forth with particularity those situations where discussions about fares between American and other airline carrier representatives may take place. They are as follows. First, fare discussions are allowed when required to implement joint fares with other carriers. Joint fares are fares for interline connecting service where the separate segments of a city pair are provided by different carriers. Joint fares allow two carriers to provide one fare and ticket for the passenger who desires or needs to take one carrier to a connecting point and switch to another carrier before reaching the final destination. By developing joint fares, carriers can offer additional service that may compete with nonstop and online connecting service. Joint fares, thus, may enhance consumer welfare. At the same time, discussions on joint fares are unlikely to be anticompetitive because they do not require discussing fares for competitive service on any one city pair.

Second, American is allowed to discuss fares with other carriers when the discussion is necessary to implement fares in foreign air transportation. Discussions about foreign fares are allowed by statute and also by this Final Judgment if the

discussions are in accord with procedures established by the United States Department of Transportation, pursuant to 49 U.S.C. §§412 and 414.

Third, American is allowed to discuss fares with other carriers to the extent such discussion is necessary to implement another scheduled airline passenger carrier's participation in American's frequent flyer program or American's participation in another carrier's frequent flyer program. Such discussions may be necessary to determine the percentage of a bonus fare that will be repaid to the host carrier for participation in that carrier's frequent flyer program. Such discussions are unlikely to lead to competitive problems because the discussion must be limited to that which is necessary to implement participation in the frequent flyer programs.

Fourth, Section VII(D) provides an exception for those occasions when it may be necessary for American to relay and receive correct fare information from other carriers for purposes of maintaining the integrity of the airlines' computer reservations systems. 1/ There may be situations when, for example, one carrier's submission of data for display on the

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1/ Most airlines list flights and fares of other carriers in their own internal reservations systems and airline vendors of computer reservations systems, such as American, include the flights and fares of most other carriers in the systems they sell to travel agents.

system is unclear and the carriers must discuss the discrepancy to assure a correct listing. Therefore, an exception to the prohibited conduct is made for those discussions which are necessary for the accuracy of the data base systems.

Fifth, Section VII(E) provides that the general injunction against discussing fares will not apply on those rare occasions when a carrier must cancel a flight due to an operational emergency and must arrange for the transportation of its ticketed passengers on another carrier. These inter-airline discussions about fares are permitted when necessary to determine the fares at which the other carrier's passengers will be carried.

Sixth, Section VII(F) allows American to discuss with other airlines special, one-time discounted fare packages for convention, tour or special event proposals if American and the other carrier are not discussing fares for city pair service both carriers provide. Such special event fare discounting is likely to benefit consumers.

Finally, Section VII(G) provides that if other situations arise when American must discuss fares or fare structures with other airline carriers, American may notify the Antitrust Division and request a written assurance from the Assistant Attorney General in charge of the Antitrust Division that the Division would not prosecute the specific discussions and conduct at issue. If it appears that the benefits of the

proposed conduct would more likely outweigh consumer welfare losses and American, accordingly, has received written approval from the Antitrust Division, the proposed discussions may take place.

b. Section IX

Section IX prohibits defendant Crandall from directly or indirectly discussing, referring to, or mentioning airline fares or fare structures with board members or management employees of other scheduled airline passenger carriers. Defendant Crandall is strictly enjoined from such discussions and may not participate as can other American employees in discussions permitted specifically by the exceptions in Section VII(A)-(F).

The term management employee, as defined by the Judgment, includes the officers of the company at the level of chief executive or chief operating officer, president, senior vice president, vice president, and assistant vice president. Management employee, as defined in the proposed Judgment, also includes all employees who have a decision-making role in pricing the airline's services. See Section II, Definitions. 2/

2/ The injunction in Section IX and the requirements set forth in Sections X and XI relating to defendant Crandall's communications with employees of other airline carriers are limited to the other carrier's management employees rather than all employees. This limitation is not intended to condone

Footnote Continued

Section IX seeks to eliminate the opportunity for defendant Crandall to attempt to monopolize jointly or to monopolize jointly with any other scheduled airline passenger carrier by obtaining joint control over airline prices.

c. Section X

Section X requires defendant Crandall to discuss with an American Airline's attorney the subject matter of any proposed communication about the airline industry that Crandall has scheduled with a management employee of another airline carrier. This provision is designed to assure that in those circumstances with a high potential for anticompetitive discussions or communications violative of this proposed Final Judgment, Crandall will have previously spoken with counsel and may have counsel present during the communication.

d. Section XI

Section XI requires Crandall to maintain for two years a written record of all his communications with other airline industry executives. These written notes must contain a separate entry for each such communication and the

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2/ Footnote Continued

conversations about prices between defendant Crandall and lower-level employees of other airlines. Rather, the limitation acknowledges that airline carriers are corporations with many employees whose responsibilities are unrelated to the setting of airline prices and that only those employees with management responsibilities could actually implement anticompetitive proposals.

identification of the communicant. Moreover, the written record must indicate the date, location and time of the communication, the form of the communication and must contain a brief description of the subject matters relating to the airline industry that were discussed. In addition, if there is a discussion about airline fares or fare structures, Crandall's written notes must contain a detailed description of that part of the conversation and must indicate which participants made which comments. The record must be made within 48 hours following the communication and must be reviewed with an attorney from American no later than one week following the communication. Furthermore, defendant Crandall must submit an affidavit to the Assistant Attorney General in charge of the Antitrust Division every three months attesting that he has complied with the terms of the Judgment and that his written record is accurate and complete.

There may be occasions when Crandall must attend an industry speech or presentation or is involved in group discussions before or after the speech when matters relating to the airline industry are discussed and when it would be extremely difficult to follow the reporting requirements of Section XI(A)-(D). In those situations, Section XI(E) provides that Crandall need only record the date, location, time and duration of the speech, a brief description of the subject matter of the speech or presentation, and the entity or

organization that provided the forum for the speech or presentation. Even at a speech or presentation, however, Section XI provides that if defendant Crandall has a conversation with a president or chief executive officer of another airline carrier, the conversation must be separately recorded as required by Section XI(A)-(D).

Section XI is designed to discourage conversations with other airline executives that may have a high potential for anticompetitive results. This section is not designed to prevent defendant Crandall from communicating with other airline executives on matters related to the airline industry when those conversations are unlikely to have anticompetitive potential. Section XI is also designed to allow the Department of Justice to review defendant Crandall's communications with other airline executives to deter anticompetitive communications and to take appropriate action, if necessary, to eliminate any anticompetitive effects in their incipiency.

e. Section XII

Section XII requires defendant Crandall to include in his written record of communications with other airline executives a written record of his communications with American's vendors or suppliers, creditors or lenders if there has been any discussion with those parties about the fares or fare structures of any other scheduled airline passenger carrier. This section is designed to discourage discussions about the

fares of competitors with suppliers and lenders used by both American and the competitor. That is, Section XII seeks to deter defendant Crandall from attempting to control prices jointly with other carriers indirectly through discussions with vendors or lenders of both carriers. The provision seeks to prevent, for example, a situation where Crandall could suggest to one of American's lenders that the competitive, low fares of another carrier were preventing American from business success, and that it would be, therefore, in the supplier's or lender's interest to encourage the other carrier to raise prices. To deter such anticompetitive discussions, this provision requires that should Crandall participate in any of these discussions, written notes must be made. Section XII also seeks to provide the Antitrust Division with information to eliminate the anticompetitive effects of such discussions in their incipiency.

g. Section XIII

Section XIII enjoins American and Robert Crandall from soliciting, requesting, or authorizing other persons to engage in conduct that, if done by defendants, would violate any provision of this Judgment. This section is designed to prevent defendants American and Robert Crandall from indirectly engaging in conduct that they are prohibited from doing directly.

h. Section XIV

Section XIV provides that those sections of the proposed Final Judgment that apply solely to Crandall stay with defendant Crandall should he later assume employment with another airline carrier during the two-year duration of those terms of the decree. Thus, the obligations of defendant Crandall specified in sections IX, X, XI, and XII of the Final Judgment will remain his obligations with the modification that those aspects of his obligations relating to his employer will be his new employer instead of American. Even if defendant Crandall leaves the employ of American, defendant American will continue to be bound by all applicable provisions of the Final Judgment.

3. Affirmative Obligations

Sections IV, V, VIII, and XV of the proposed Final Judgment impose a number of affirmative obligations upon the defendants. Section IV requires American, as a condition of the sale or other disposition of all, or substantially all of its airline passenger services assets, that the acquiring party agree to be bound by the provisions of this proposed Final Judgment and that the agreement be filed with the Court. Section IV seeks to assure that the terms of the proposed Final Judgment will not be circumvented by a sale of the company.

Section V requires that defendant American provide written notice to the Antitrust Division no later than thirty (30) days

before American changes its name, liquidates or ceases operations, or becomes acquired by or becomes a subsidiary of another firm. American must also give the Antitrust Division notice within fifteen (15) days after it declares bankruptcy, or establishes or acquires a subsidiary whose business activities are among those covered by the Judgment. The purpose of this section is to ensure that the plaintiff will have notice of any such transactions so that the government can take appropriate action to protect its interests in securing compliance with this Judgment.

Section VIII requires defendant American to inform its employees about the substance of the Final Judgment, within 30 days of its entry. Section VIII additionally requires defendant American to furnish a copy of the Judgment within 30 days of its entry to American's Board of Directors, its management employees as defined in the Judgment and other employees with responsibilities affected by the decree and to provide them a written explanation of the Judgment's terms and conditions and instructions to abide by its terms and conditions. New board members, management employees and other employees affected by the decree must be given a copy of the Final Judgment and a written explanation and instructions concerning the decree. Section VIII also requires defendant American to submit an affidavit to the Antitrust Division attesting that it has initially complied with Section VIII and

in what manner it has complied. Defendant American must annually thereafter attest that it has complied with Section VIII with respect to new board members and employees.

Section XV places an obligation on American to cooperate with the plaintiff's efforts to monitor compliance with the proposed Judgment. Defendant American must permit duly authorized representatives of the Department of Justice access to inspect and copy documents at its principal office.

Under Section XV(B), defendant American must provide written reports, under oath, if requested, with respect to compliance matters. Section XV(A)(2) requires that American permit the Department of Justice to interview its officers, employees, and agents regarding subjects covered by the Judgment.

4. Obligations of the United States

a. Section XV(C)

Under Section XV(C) the Department of Justice is barred from divulging information obtained under Section XV to anyone except a duly authorized representative of the Executive Branch of the United States government. Such disclosure is not barred, however, in any legal proceedings to which the plaintiff is a party or for the purpose of securing compliance with the Final Judgment or as otherwise provided by law.

b. Section XV(D)

Under Section XV(D) each defendant may assert a claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure when such defendant provides to the Justice Department information or documents required under the compliance provisions of the Final Judgment. If any defendant asserts such a claim, the plaintiff will provide the defendant with 10 days notice prior to disclosing such material.

B. Scope of the Proposed Judgment

1. Duration of the Judgment - Section XVI

Except as otherwise provided, the proposed Final Judgment will remain in effect for a period of five (5) years from the date of entry. Time durations of less than the five year period, i.e., a two year period, are provided for in those provisions specifically addressed to defendant Crandall. This is because the Complaint sought injunctive provisions of only two-years duration for defendant Crandall and because affirmative obligations are imposed on Crandall which require him to keep a written record of certain of his communications. The specific provisions that have time limitations of two years are the following: Sections IX, X, XI, and XII.

2. Persons Bound by the Judgment - Section III

Section III of the proposed Final Judgment provides that its terms shall apply to the defendants and to American's subsidiaries, successors, assigns, officers, directors,

employees, and agents, and to all other persons in active concert or participation with either of the defendants and who received actual notice of this Final Judgment by personal service or otherwise.

3. Effect of the Proposed Judgment on Competition

The proposed Judgment is intended to prevent the defendants from continuing any attempts jointly to monopolize or jointly monopolizing airline passenger service with other airline carriers on any one city pair or collection of city pairs. The Judgment is intended to ensure that defendants will comply with the provisions of the antitrust laws. The proposed Judgment seeks to ensure that opportunities for attempts at joint monopolization of the type alleged in the Complaint be eliminated. That is, the proposed Judgment seeks to ensure that opportunities for competition in the provision of airline passenger services not be hindered because of communications about fares between defendants and other carriers. The affirmative obligations of the decree are designed to assure that American's management is aware of the obligations under the decree in order to avoid a repetition of the behavior that allegedly occurred.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations by the defendants of the type upon which the Complaint is based. The Department believes that disposition

of the lawsuit without further litigation is appropriate because the proposed Judgment should be as effective in eliminating opportunities for a recurring violation of the type alleged in the Complaint as would the relief originally requested. Given the relief proposed in this Judgment, the additional expense of litigation would not result in additional public benefit.

IV.

Remedies Available To Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. §15) provides that any person who has been injured in his or her business or property as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. §16(a), this Final Judgment has no prima facie effect in any subsequent private lawsuits that may be brought against these defendants.

V.

Procedures Available For Modification
Of The Proposed Consent Judgment

As provided by the Antitrust Procedures and Penalties Act, any person who wishes to comment upon the proposed Final Judgment may submit written comments to Elliott M. Seiden, Chief, Transportation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530, within the 60-day period provided by the Act. These comments and the responses to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice which remains free to withdraw its consent to the proposed Judgment at any time prior to entry of the Judgment if it should determine that some modification is necessary.

VI.

Alternatives To The Proposed Consent Judgment

The proposed Final Judgment differs from the relief sought in the Complaint. The government initially sought to have defendant Crandall barred for two years from employment with an airline in a position of authority over the airline's pricing. Defendant Crandall exhibited a disregard for the antitrust laws if, as alleged in the Complaint, during his conversation with Braniff's Putnam, Crandall ignored Putnam's warning that they should not be talking about prices and responded that he and Putnam could talk about anything they wanted to talk about. Defendant Crandall's alleged disregard of the antitrust laws

led the Antitrust Division to seek his debarment from the leadership of any company in the airline industry. The airline industry, because each separate city-pair market is likely to have few participants, is readily susceptible to monopolistic or joint monopolistic behavior if there are barriers to entry in the markets.

This proposed Final Judgment does not restrict defendant Crandall's employment with an airline, as sought in the Complaint, but is designed to remove opportunities for defendant Crandall to repeat the alleged conduct or to attempt, in some other way, to jointly control airline markets with other carriers. The plaintiff believes that the proposed Judgment provides sufficient protection from repetition of the alleged or similar conduct that it is unnecessary, in this instance, to expend the substantial additional resources of trial to seek to prohibit Crandall's employment in the airline industry.

The Department considered prohibiting American from soliciting or consummating agreements with other carriers not to compete in the context of negotiating sales, transfers or leases of properties and facilities of American Airlines, such as gates at congested airports. It was determined that such relief should not be included. First, it was not closely related to the behavior that was the essence of the violation charged in the Complaint. Second, limited non-competition

agreements are not necessarily anticompetitive. For these reasons, the considered relief was rejected.

VII.

Determinative Materials

There are no materials or documents which the Government regards as determinative in formulating this proposed Judgment. Therefore, none are being filed with this Competitive Impact Statement pursuant to Section B of the Antitrust Procedures and Penalties Act, 15 U.S. §16(b).

Respectfully submitted,

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