

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.

Civil Action
No. CA 3-83-0325-D

Filed: July 12, 1985

Entered: October 31, 1985

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint in this action on February 23, 1983, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact herein and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting thereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 2 of the Sherman Act, 15 U.S.C. §2.

II.

As used herein, the term:

- (A) "communication" means a statement, comment, question, or answer, that may take place in person, in writing, or over the telephone;
- (B) "scheduled communication" means a communication that has been previously arranged for a particular time or place;
- (C) "group discussion" means a communication in which at least three (3) people are participating;

- (D) "management employee" means any employee whose corporate title is "chief executive officer," "chief operating officer," "president," "senior vice president," "vice president," "assistant vice president," or any employee whose duties are functionally equivalent to an employee with one of these titles, and any other employee who has a decision-making role, whether or not other persons must also play a role in order for a final decision to be reached, in the process by which a scheduled airline passenger carrier sets, determines, modifies, or cancels a fare for the provision of scheduled airline passenger service;
- (E) "scheduled airline passenger carrier" means a firm or business that provides scheduled airline passenger service;
- (F) "scheduled airline passenger service" means the provision, at regular times and over regular routes, of air transportation to individuals traveling between an origin city and a destination city; and

(G), "city-pair" means the set of two cities consisting of the origin city and the destination city between which scheduled airline passenger service is provided.

III.

This Final Judgment applies to each defendant. Regarding defendant American Airlines, Inc. (hereinafter "American"), this Final Judgment also applies to its Board of Directors, officers, employees, agents, subsidiaries, successors and assigns. This Final Judgment also applies to all other persons in active concert or participation with either of the defendants and who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant American shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in the provision of scheduled airline passenger service, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with this Court.

V.

Defendant American shall provide written notice to the plaintiff no later than thirty (30) days before the effective date of any action whereby defendant American: (1) changes its name; (2) liquidates or otherwise ceases operation; (3) is acquired by or becomes a subsidiary of another firm. Defendant American also shall provide written notice to plaintiff no later than fifteen (15) days after it declares bankruptcy or establishes or acquires a subsidiary whose business activities are among those covered by this Final Judgment.

VI.

Defendant Robert L. Crandall shall provide written notice to the plaintiff no later than thirty (30) days after the effective date of any action whereby defendant Crandall accepts or assumes employment in any position with any firm, other than American, that provides scheduled airline passenger service.

VII.

Defendant American is enjoined and restrained for a period of five years from discussing, referring to, or mentioning fares or fare structures of any scheduled airline passenger carrier, including American, in a communication with any scheduled airline passenger carrier other than American, except under the following conditions, exceptions, or circumstances:

- (A) when necessary to establish, implement, or modify a joint fare with another scheduled airline passenger carrier;
- (B) when necessary to establish, implement, or modify a fare for air transportation between the United States and a foreign country, between foreign countries, or within a foreign country, under the auspices of the International Air Transport Association ("IATA");
- (C) when necessary to establish, implement, or modify participation by a scheduled airline passenger carrier in American's AAdvantage frequent flyer program, or by American in another carrier's frequent flyer program;

- (D) when necessary to maintain the integrity of the data base of American's SABRE computerized reservations system or to maintain the integrity of American's information contained in the data base of a computerized reservations system used by a scheduled airline passenger carrier other than American;
- (E) when necessary, in the event of a cancelled flight, oversale, or other operational emergency, to arrange for transportation of American's passengers on another carrier, or another carrier's passengers on American;
- (F) when necessary to develop tour, convention, special event or other group travel arrangements, as long as the discussion is limited to fares for airline passenger services on routes not served by American and the discussion is otherwise consistent with applicable federal and state laws; or
- (G) after American has received an explicit written assurance from the Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice that the Antitrust Division has no present intention to prosecute the specific discussions and conduct in which American proposes to engage.

VIII.

Defendant American shall:

- (A) inform its employees about the substance of this Final Judgment no later than thirty (30) days following its entry;
- (B) provide the members of its Board of Directors, its management employees and its other employees with responsibilities affected by this decree with a copy of this Final Judgment, a written explanation of its terms and conditions, and written directions to abide by its terms and conditions, no later than thirty (30) days following entry of this Final Judgment or following appointment or employment; and
- (C) submit an affidavit to the Assistant Attorney General in charge of the Antitrust Division setting forth the fact and manner of compliance with section VIII(B) no later than sixty (60) days following the entry of this Final Judgment and annually thereafter for the five years duration of this Final Judgment.

IX.

In addition to the provisions of Section VII hereof, defendant Robert L. Crandall is enjoined and

restrained for a period of two years from directly or indirectly discussing, referring to or mentioning fares or fare structures of any scheduled airline passenger carrier, including American, in a communication with a member of the Board of Directors or management employee of any scheduled airline passenger carrier other than American.

X.

Prior to any scheduled communication relating to any aspect of the airline industry between defendant Robert L. Crandall and a member of the Board of Directors or management employee of a scheduled airline passenger carrier other than American, defendant Robert L. Crandall shall, for a period of two years, review with an attorney from the Office of the General Counsel of American the subject matter of the proposed communication and the advisability of having counsel present during the communication.

XI.

Defendant Robert L. Crandall shall, for a period of two years, maintain written notes of all communications relating to any aspect of the airline industry that he has

with any member of the Board of Directors or management employee of any scheduled airline passenger carrier other than American, in accordance with the following terms, conditions, and exceptions:

- (A) Each communication governed by this section XI shall be reflected in a separate note;
- (B) Each note must be made as contemporaneously as reasonably practicable to the communication that it describes, but in no event later than 48 hours following each communication;
- (C) Each note must contain, at a minimum, the following information:
 - (1) the names, known airline affiliations, and known positions or title of all persons participating in or present during the communication;
 - (2) the date, location, time and approximate duration of the communication;
 - (3) the form of the communication, e.g., in person, in writing, by telephone; and
 - (4) a description of all subject matters relating to the airline industry or to the business of any scheduled airline passenger carrier that were discussed, referred to, or mentioned during the communication;

- (D) If during any communication governed by this section XI, fares or fare structures were discussed by anyone participating in the communication, then the note for that communication must set forth a detailed description of the substance of that aspect of the communication and must also indicate which participants made which comments;
- (E) With respect to any communication regarding any aspect of the airline industry made or heard by defendant Robert L. Crandall at a speech or presentation, or group discussion immediately before or after such a speech or presentation, at which a member of the Board of Directors or management employee of any scheduled airline passenger carrier other than American is present who is known by Robert L. Crandall at the time of the communication to hold such a position, the requirements of paragraphs (C) and (D) of this Section XI shall not apply and instead the following terms, conditions, and exceptions shall apply:
- (1) Each such note must contain, at a minimum, the following information:
 - (a) the date, location, time and approximate duration of the speech or presentation;

- (b) a brief description of the subject matter, or subject matters, of the speech or presentation; and
 - (c) the entity or organization that provided the forum or sponsored the speech or presentation;
- (2) Notwithstanding anything contained in this paragraph (E) of this section XI, any communication (other than a speech or presentation) between defendant Robert L. Crandall and any president, chief executive officer, or chief operating officer of any scheduled airline passenger carrier other than American that is otherwise governed by any part of this section XI must be reported in full compliance with the provisions of paragraphs (C) and (D), if the position of that officer is known to defendant Robert L. Crandall at the time of the communication;
- (F) With respect to any communication regarding any aspect of the airline industry made or heard by defendant Robert L. Crandall during a meeting of the Air Transport Association, the requirements of this Section XI shall not apply only if counsel for the Association is present and minutes of the meeting are kept.

- (G) Defendant Robert L. Crandall shall review each note with an attorney from the Office of the General Counsel of American as soon as reasonably practicable following each communication, but in any event no later than one (1) week following each communication;
- (H) The notes shall be maintained by defendant Robert L. Crandall in his office at the corporate headquarters of American;
- (I) Defendant Robert L. Crandall shall permit the Department of Justice to inspect the notes upon reasonable notice, and when the Department so requests, shall make the notes available for inspection by the Department at a mutually convenient location in Washington, D.C.; and
- (J) Defendant Robert L. Crandall shall submit an affidavit to the Assistant Attorney General in charge of the Antitrust Division every three (3) months attesting to the fact that he has complied with the terms of this Final Judgment, that the notes required by this section XI are accurate and complete, and that he has reviewed each note with counsel for American.

XII.

For a period of two years, whenever defendant Robert L. Crandall has any communication with representatives of any of American's vendors, suppliers, creditors or lenders during which there is any discussion, reference, or mention of the fares or fare structures of any scheduled airline passenger carrier other than American, then Robert L. Crandall must indicate the facts surrounding that communication in the notes described in section XI above, and in accordance with the requirements set forth in subsections (A) through (D) of that section.

XIII.

Defendants American and Robert L. Crandall are enjoined and restrained from soliciting, requesting, or authorizing any person to engage in conduct that, if done by defendants, would violate any provision of this Final Judgment.

XIV.

If defendant Robert L. Crandall leaves the

employment of American and later assumes employment with another scheduled airline passenger carrier, the obligations of defendant Crandall specified in sections IX, X, XI, and XII of this Final Judgment will remain obligations that he must meet subject to the modification that, regarding defendant Crandall only, all instances of the name "American" contained in this Final Judgment will be changed to the name of the new scheduled airline passenger carrier with which defendant Crandall assumes employment. Defendant American will continue to be bound by all applicable provisions of this Final Judgment.

XV.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

- (A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:
 - (1) Access during office hours of such defendant

to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters;

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

(C) No information or documents obtained by the means provided in this section XV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the

United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law; and

- (D) If at the time information or documents are furnished by a defendant to the plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by the plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XVI.

The Final Judgment will expire on the fifth (5th) anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XVII.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XVIII.

Entry of this Final Judgment is in the public interest. Entered on this 31st day of October, 1985.

/s/ Robert M. Hill
UNITED STATES DISTRICT JUDGE