IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. AIRLINE TARIFF PUBLISHING COMPANY; et al., Defendants.	Filed: 12/21/92 Civil Action No.: 92-2854 Judge Revercomb

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 submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of United Air Lines, Inc., and USAir, Inc., in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On December 21, 1992, the United States filed a civil antitrust complaint alleging that Alaska Airlines, American Airlines, Continental Airlines, Delta Air Lines, Northwest

Airlines, Trans World Airlines, United Air Lines, and USAir ("airline defendants"), Airline Tariff Publishing Company ("ATP"), and co-conspirators conspired unreasonably to restrain competition among themselves in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint alleges two causes of action.

The first cause of action alleged in the Complaint is that, during the period beginning at least as early as April 1988 and continuing through at least May 1990, each of the airline defendants and co-conspirators engaged in various combinations and conspiracies with other of the airline defendants and co-conspirators, consisting of agreements, understandings, and concerted actions to fix prices by increasing fares, eliminating discounted fares, and setting fare restrictions for tickets purchased for travel between cities in the United States. These agreements, understandings, and concerted actions were reached and effectuated through each of the airline defendant's use of the computerized fare dissemination services of ATP to (1) exchange proposals and negotiate fare changes; (2) trade fare changes in certain markets in exchange for fare changes in other markets; and (3) exchange mutual assurances concerning the level, scope, and timing of fare changes. The combinations and conspiracies alleged in the first cause of action had the effect of depriving consumers of scheduled air passenger transportation services of the benefits of free and open competition in the sale of such services.

The second cause of action alleged in the Complaint is that, during the period beginning at least as early as April 1988 and continuing through to the date of the Complaint, the airline defendants, ATP, and co-conspirators engaged in a combination and conspiracy, consisting of an agreement, understanding, and concert of action to create, maintain, operate, and participate in the ATP fare dissemination system. This fare dissemination system has been formulated and operated in a manner that unnecessarily facilitates coordinated interaction among the airline defendants and co-conspirators, enabling them to: (1) communicate more effectively with one another about future increases to fares, future changes to fare restrictions, and future elimination of discounted fares; (2) establish links between proposed fare changes in one or more city-pair markets and proposed changes in other city-pair markets; (3) monitor each other's changes, including changes in fares that are not available for sale; and (4) lessen uncertainty concerning each other's pricing intentions. The combination and conspiracy alleged in the second cause of action has made coordinated interaction among the airline defendants and co-conspirators more likely, successful, and complete, and has deprived consumers of air passenger transportation services of the benefits of free and open competition in the sale of such services.

The Complaint seeks relief that will prevent the defendants from continuing or renewing the alleged conspiracies, or

engaging in any other conspiracy or adopting any other practice having a similar purpose or effect.

On December 21, 1992, the United States, United and USAir filed a Stipulation in which they consented to the entry of the proposed Final Judgment containing prohibitions on the conduct of United and USAir (the settling defendants) that provides the relief the United States seeks in the Complaint. Under the proposed Final Judgment, the settling defendants will be required to institute a compliance program to ensure that they do not continue or renew the alleged conspiracies or engage in any other conspiracy or practice having a similar purpose or effect. Additionally, the proposed Final Judgment requires that United and USAir file annual reports with the Government certifying that each has complied with Section VI of the Final Judgment.

The United States and the settling 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), provided the United States has not withdrawn its consent. The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Entry of the proposed Final Judgment will terminate the action against United and USAir, except that the Court will retain jurisdiction over the matter for further proceedings

that may be required to interpret, enforce, or modify the Final Judgment, or to punish violations of any of its provisions.

II.
DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATIONS

A. Industry Background

The domestic passenger airline industry generates annual sales in the tens of billions of dollars. Each of the airline defendants is a significant competitor, providing scheduled nonstop, one-stop, and multi-stop domestic air passenger services between a large number of origin and destination cities (city pairs).

Through hub and spoke route systems, the airlines are able to consolidate passengers from many points at a single location (the hub) and then transport them, along with passengers originating at the hub, to a common destination. The hub system generally permits an airline to serve many more city pairs than it otherwise would be able to serve with nonstop service alone.

Although each of the airline defendants operates an extensive network of city-pair routes, the networks are not identical. All airlines do not serve all city pairs, and the service offered by airlines on the same city pair may vary as to the type of service offered (nonstop versus one or more stops). In addition, the times and frequencies of service offered may vary considerably among airlines. As a consequence

of service variations and differences in passenger mixes and cost structures, airlines may have varying preferences as to the prices that should be charged passengers for travel on a particular city pair.

For each of the thousands of city pairs served by each airline, numerous fares are offered to customers. Many of these fares carry different types of restrictions that are designed to segment the market for air travel into groups with varying sensitivities to price and time of travel. For example, fares designed to appeal to leisure travelers may carry longer advance purchase requirements than fares designed for business travelers.

Airlines constantly alter fares in response to changes in costs, both industrywide and airline-specific, and to changes in consumer demand, both for travel generally and travel on particular city pairs. Moreover, the availability to consumers of a seat on a particular flight at a particular fare is controlled by each airline's continuous adjustment, based upon projected and actual demand, of the inventory of seats available at that fare.

ATP is the central source for the collection, organization, and dissemination of fare information for virtually every domestic airline. (ATP does not receive seat allocation information.) Each of the airline defendants owns and participates in the ATP fare dissemination system through which information is exchanged about fares. ATP also provides this

information to computer reservation systems ("CRSs") and other subscribers.

Each airline supplies ATP with basic information about its fares. This information includes: fare codes (which indicate the names of the fares -- e.g., "F" is first class; "Y" is full coach), fare amounts, rules, and routings. Rules contain restrictions that limit or condition the use of the fare, including advance purchase requirements and penalties for itinerary changes. Routings are used to limit fares to travelers using a particular itinerary, for example, connecting flights over a particular hub.

An airline also can attach up to two footnotes to any fare in the ATP data base. Footnotes are identified by alphanumeric codes ("footnote designators"), such as "A" or "32." Footnotes are used by airlines to identify, among other things, the relevant ticketing and travel dates.

A first ticket date indicates a future date at which a fare is currently scheduled to become available for purchase by consumers. The dissemination of a fare with a first ticket date does not mean that the fare will ever be offered for sale; the airlines often change the first ticket date to an earlier or later time than originally announced, or withdraw the fare altogether before the first ticket date arrives.

A last ticket date indicates a future date at which a fare currently offered for sale may no longer be available for sale. Again, no obligation is implied by the dissemination of

a last ticket date, and the airlines often change the last ticket date to an earlier or later time than originally announced, or withdraw the fare before its last ticket date.

The travel dates contained in footnotes indicate when a consumer can travel using a particular fare. A first travel date indicates the first date upon which travel on a particular fare may commence. A last travel date indicates the last date upon which travel may commence.

At least once every weekday, each airline defendant submits its fare changes to ATP. Fare changes include changes in existing fares, both those available and unavailable for sale, as well as the addition of new fares, which may be either available or unavailable for sale. Many of the airline defendants' changes to existing fares involve changes in footnotes that add, change or remove the first or last ticket dates. To indicate that fare changes in different markets are connected, airlines can use a common footnote designator for each set of changes.

Once ATP receives the fare changes, it processes the changes and then disseminates those fare changes at least once each weekday to the airline defendants and other ATP subscribers, including CRSs. The information disseminated by ATP includes, among other things, the fare codes, dollar amounts, and rules involved in each airline defendant's pricing actions. ATP also disseminates the footnotes used by each airline defendant on each fare, including the footnote

designators and the ticketing and travel dates contained in the footnotes.

The information disseminated by ATP is used differently by the CRSs and the airline defendants. The airline defendants, either directly or by contract with third parties, employ sophisticated computer programs that process and sort the fare and fare change information received from ATP to produce detailed daily reports. These reports display the fare changes in a variety of ways that allow the airline defendants to monitor and analyze all of each other's fares and contemplated changes to fares and to discern patterns or links among fare changes in various markets.

In contrast, CRSs load the information into their data bases, which travel agents use to make reservations and price tickets on fares that are available for sale. Travel agents using a CRS can obtain fare information for only one market at a time, most often for a specific flight on a given day, and they do not have access to any airline's footnote designators. Thus, travel agents cannot readily determine all of the airlines' contemplated changes to fares. Nor can they easily determine relationships between fares (including proposed fare increases and proposed elimination of discounted fares) in one or more city pairs and fares in other city pairs.

B. Illegal Agreements to Fix Prices by Increasing Fares, Eliminating Discounted Fares, and Setting Fare Restrictions in Various City-Pair Markets

The first cause of action is based on an alleged series of Sherman Act Section 1 per se illegal price fixing agreements

that were reached beginning as early as April 1988 and continuing through at least May 1990. Using the ATP fare dissemination system, the airline defendants participated in a complex, iterative, and essentially private exchange of future fare information with the purpose and effect of reaching agreements on price. Using, among other things, first and last ticket dates and footnote designators, they exchanged clear and concise messages setting forth the fare changes that each preferred, and they engaged in an electronic dialogue to work out their differences. The airline defendants conducted complex negotiations, offered explanations, traded concessions with one another, took actions against their independent self-interests, punished recalcitrant airlines that discounted fares, and exchanged commitments and assurances -- all to the end of reaching agreements to increase fares, eliminate discounts, and set fare restrictions.

There is evidence of two types of price fixing agreements and each of the airline defendants was a party to such agreements. These price fixing agreements occurred frequently, were of significant duration, and involved many city-pair markets, including some of the most heavily traveled in the United States.

In the first type of agreement, the airline defendants rely primarily on fares with first ticket dates in the future, (that is, fares that are not available for purchase by consumers), in

conjunction with footnote designators and other devices, to communicate proposals, counterproposals, and commitments to increase fares. For example, Carrier A initially proposes to increase a set of fares in a number of markets by filing these changes in ATP with a first ticket date two weeks in the future (and attaching a last ticket date to the corresponding existing fares that are to be replaced). The increase may involve raising the level of a particular fare or making the rules for a particular fare more restrictive. Other airlines then respond to Carrier A's proposal by filing similar fares with future first ticket dates, filing different fares with future first ticket dates, or expanding the set of fares with future first ticket dates to include different markets or fare types. Fares in thousands of markets may be involved. Typically, each airline links the markets and fare types involved by using the same footnote designator on all of the fares that it proposes to increase.

The process of negotiation through fare proposals may go through several iterations during which the fare level originally proposed may be modified and different types of fares or sets of markets may be added or subtracted from the proposal, as the airlines bargain and make trades with each other. (Airline A, for instance, may go along with increases that it did not prefer in markets X and Y in exchange for Airline B going along with increases that it did not prefer in markets R and S.) The first ticket date (and corresponding

last ticket dates) may be repeatedly postponed into the future to ensure that the fares do not go into effect until all significant competitors have committed to them. This complex negotiation ends when all airlines have indicated their commitment to the fare increases by filing the same fares in the same markets with the same first ticket date. The increases take effect on that future date and then, and only then, are the lower fares withdrawn and the new and higher fares sold in their place.

In the second type of agreement, the airlines rely primarily on last ticket dates, in conjunction with footnotes designators and other devices, to communicate proposals, counterproposals and commitments to eliminate discounted fares which are currently being sold to consumers. The negotiation process may mirror that described above except that the airlines communicate by placing last ticket dates on the particular fares that each proposes to eliminate. The negotiation ends when all of the airlines have placed the same last ticket date on the same fares. On that date, the particular discounted fares expire.

In certain instances, an airline may create a basis for an agreement to eliminate particular discounted fares at a particular time. For example, Airline A independently concludes that it is in its best interest to file a discounted fare in a market important to Airline B. Airline B, however, finds the discounted fare objectionable. Airline B may create

a basis for a trade by placing a low fare in one of Airline A's more profitable markets. It then attaches to that fare a last ticket date that is only a few days in the future. Airline B may use a unique footnote designator for the fare, that is, a designator that is different from that used for any other fare with the same last ticket date, thus highlighting its action. To ensure that Airline A understands the link between the new "tradeable" discount fare and the targeted discount fare, Airline B may also use a fare basis code and dollar amount for the new fare similar to that of the targeted fare. In some cases, Airline B may also file in its own market a fare that matches Airline A's original discount fare but that has the same last ticket date and footnote designator as its new tradeable discount fare in Airline A's market, thus linking Airline A's original discount fare and Airline B's new fare even more clearly.

In these ways, Airline B conveys an offer to Airline A: "I'll remove my discount from your market on the indicated last ticket date if you remove your discount from my market on that date." Airline A then accepts the offer by placing a short last ticket date on its original discount fare, often matching Airline B's last ticket date. Airlines A and B then allow the original discounted fare and the new discounted fare to expire on the agreed upon last ticket date, and higher prices are re-established and maintained in both markets.

C. Illegal Agreement to Operate A Fare Dissemination System that Unreasonably Facilitates Fare Coordination

The second cause of action is based on alleged joint activities that began as early as April 1988 and continued until the date of the Complaint and that are illegal under a Sherman Act Section 1 "rule of reason" analysis. The core of the second cause of action is that the airline defendants agreed to exchange fare information (including information on fares that were not available for sale to consumers) with one another through ATP in a manner that unnecessarily and unreasonably allowed them to coordinate fares.

ATP is a joint venture in which all of the airline defendants are co-owners. Airlines, including a number of the airline defendants, serve on its board of directors. ATP maintains its fare data base on behalf of the airline defendants.

ATP provides the airlines with a number of communication devices that allow them to coordinate better across markets and within each market on fares and fare changes. The principal ATP communication devices are first ticket dates, last ticket dates, and footnote designators. They enabled the defendants on many occasions to reach overt price-fixing agreements of the type described in the first cause of action. These same devices also facilitate pervasive coordination of airline fares short of price fixing -- coordination that would not occur simply by virtue of the structure of the airline industry.

The likelihood of successful coordination among horizontal competitors is substantially enhanced when firms are able to identify mutually beneficial terms of coordination, detect deviations (or "cheating") from the coordinated outcome, and punish or credibly threaten to punish those deviations (that is, make the deviation less profitable than adhering to the coordinated price).

The airline industry has a number of characteristics that make it susceptible to successful coordination among firms. Many airline city-pair markets are highly concentrated. All current fares (those available for sale to consumers) and fare restrictions are necessarily widely distributed and easily monitored by the competing airlines. In addition, using CRSs, the airlines can monitor whether a competitor is making seats available at a discount fare at any given time. (The ability to cheat by increasing the amount of discount seats sold is also limited by restrictions that make discount fares unattractive or unavailable to large numbers of customers.) Each of these factors tends to make coordination among competitors easier and more likely to occur, even in the absence of communication through ATP.

On the other hand, other inherent characteristics of the airline industry tend to make anticompetitive coordination more difficult. Airlines' costs of serving particular city-pair markets vary widely, as do consumers' preferences or demand for different airlines' services in different city-pair markets.

This is particularly true when one airline offers nonstop service in a city pair where it has a hub at one endpoint, while its competitors offer one-stop or connecting service. These differences result in the various airlines serving a city-pair market often having quite different preferred prices, making it difficult for them to identify a mutually beneficial coordinated price. The large number of city-pair markets and fare changes also makes coordination a difficult task. Finally, coordination is discouraged by the difficulty of distinguishing fare changes that are intended to punish a competitor for cheating from fare changes that are themselves deviations from the coordinated price; misconstruing a competitor's intentions could precipitate additional fare cutting.

The ATP communication devices enable the airlines to substantially overcome many of these impediments to better coordination. Without these tools (or some other substitute mechanism), each airline is more likely to act independently, charging low prices in certain city pairs, such as those in which it is the low cost carrier, or matching low prices in other markets where it would have preferred a higher price. With these devices, the airlines can coordinate and achieve fare levels above those that otherwise would have prevailed.

1. ATP Facilitates the Identification of Mutually Beneficial Terms for Coordination

By filing fares with a first ticket date in the future, or extending a first ticket date further into the future as the

original first ticket date approaches, the airlines are able to exchange information about fares that are in essence mere proposals rather than offers to sell tickets to consumers. The airlines can then change and modify these unavailable fares through an iterative process of multiple proposals, counterproposals, and other messages. The airlines can also use footnote designators to indicate which markets are involved in their proposals. The use of such fare proposals allows airlines to see how competitors will react to a proposed increase, consider alternative proposals, and identify a mutually acceptable fare increase, without the risk of losing sales during the process to a competitor with lower fares. Ultimately, each airline can increase its fares with greater certainty of its competitors' likely fare actions.

Similarly, by placing a last ticket date on discounted fares, airlines can communicate their desires to eliminate those fares and determine their competitors' willingness to do likewise, without risking any loss of traffic. Through a process of repeated filing and changing last ticket dates, often in conjunction with the use of footnote designators to link markets, the airlines can develop at virtually no cost a consensus on whether and when a discounted fare should be removed. Consequently, airlines can remove discount fares with greater certainty of their competitors' likely actions.

Last ticket dates, first ticket dates, and footnote designators also facilitate trades among the airlines during the negotiation process. Increased prices desired by some airlines are exchanged for increases desired by others in different markets. Often such trades involve hubs. Each airline tends to prefer higher fares on routes to or from its hub cities, where it tends to have high market shares and generate the highest profits. Thus, an airline may be willing to raise fares above its most preferred fare on others' hub routes in order to ensure that those airlines charge the higher fares it desires on its own hub routes. By using first and last ticket dates and footnote designators to link the markets involved in the trade, the airlines can more precisely communicate the terms of such multimarket trades at very low cost.

2. ATP Makes Punishing Deviations More Effective and Less Costly

When coordinated prices are above the competitive level, an airline will have an incentive to deviate from the coordinated price, that is, to lower its price. The greater the incentive to deviate, the less likely it is that firms will attempt to coordinate prices in the first place, and the less effective will be any coordination. However, if deviations from coordinated fare levels can be detected quickly and made unprofitable ("punished") by other airlines, effective coordination becomes more likely.

The broad and rapid dissemination of fares in the airline industry ensures that any airline's fare changes can be detected easily and rapidly by other airlines. Because of the large number of markets and the frequency of fare changes, however, determining whether fare changes are deviations from coordinated fare levels is more difficult. Punishment is unlikely to be effective if a deviating airline cannot determine which fare changes are intended as punishment, or which of its fare actions elicited the punishment. Moreover, the risk of other airlines misinterpreting fare changes intended to be punishment as deviations, which themselves should be punished, raises the cost of punishment.

ATP makes punishment easier and less costly. The airlines use footnote designators or last ticket dates to link city-pair markets together, communicating to both the cheater and its other competitors that a fare action is intended as punishment for another airline's fare action, not itself a deviation that should be punished. In this way, ATP facilitates the successful elimination of many discounts and discourages competitive pricing in the first place.

While first and last ticket dates and footnote designators are of immeasurable value to the airlines in facilitating pricing coordination, they provide little benefit to consumers. Because the airlines change the ticket dates often as they react to each other's messages and attempt to reach a consensus, the ticket dates for a particular fare do not

provide travel agents or consumers with reliable information on when the fare will be increased or discontinued. Consumers cannot rely on the presence or absence of a last ticket date on a fare as assurance that the fare will be available for a certain period of time -- the airlines may withdraw the fare or may stop making seats available at the fare without prior notice. Determining whether fare changes will actually be implemented requires the ability to sort fare change data to reveal patterns and connections between fares. This requires information and analytical tools not readily available to travel agents through CRSs. The airlines, on the other hand, have the incentive and ability to sort the fare change data to make maximum use of the communicative value of first and last ticket dates and footnote designators and to predict, with some certainty, each other's fare actions.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is intended to ensure that the United and USAir do not continue to use the ATP fare dissemination system or any similar mechanism in a manner that unnecessarily facilitates fare coordination or that enables them to reach specific price-fixing agreements. It prohibits the settling defendants from disseminating first ticket dates or using designating mechanisms, and substantially restricts their use of last ticket dates. It does not, however, prevent

United and USAir from instituting programs to protect passengers from unanticipated fare changes, such as guaranteeing fares at the time a reservation is made. The proposed Final Judgment also prohibits other conduct that would allow the settling defendants to communicate costlessly their pricing intentions or signal competitors that fare actions in different markets are linked. The proposed Final Judgment, however, does not prevent the settling defendants from disseminating their currently available fares through ATP to CRSs for consumer booking and ticketing, from advertising current fare information to consumers, or from offering for sale fares for which travel can only begin in the future, for example, offering fares in the summer that apply to winter travel to Florida. Finally, nothing in the Final Judgment regulates the independent pricing decisions of United and USAir, whether or not their prices respond to or evoke a response from other airlines.

A. Prohibited Conduct

Section IV of the proposed Final Judgment contains six categories of prohibited conduct. Certain exceptions to these prohibitions are contained in the limiting conditions in Section V.

Section IV(A) contains general prohibitions on agreements between airlines "to fix, establish, raise, stabilize, or maintain any fare." This provision prohibits the settling defendants from any further price fixing whether by the means

alleged in the Complaint or by other means violative of the Sherman Act.

Section IV(B) contains one of the key provisions of the proposed Final Judgment. It prohibits the settling defendants from "disseminating any first ticket dates, last ticket dates, or any other information concerning the defendant airline's planned or contemplated fares or changes to fares." This provision bars, with limited exceptions discussed below, the settling defendants' use of first and last ticket dates, as well as any alternative means of communicating their future pricing intentions. For example, it prevents the settling defendants from, with any precision, negotiating fare increases through press releases. Similarly, it prevents the settling defendants from beginning to use travel dates to coordinate fare changes rather than to communicate meaningful information to consumers on the relevant travel periods for particular fares. This provision will prevent United and USAir from participating in the extensive and costless negotiation over the amount, scope and timing of fare changes.

The ban on the settling defendants' use of first ticket dates is absolute. All of the settling defendants' fares, whether in ATP, a CRS or elsewhere, must be currently available for sale to consumers.

The settling defendants may continue to use last ticket dates, but only in very limited circumstances. Section V(C) of the Final Judgment permits the settling defendants, through

advertising in media of general circulation or through mass mailings, and in a manner designed to directly reach a meaningful number of likely potential consumers, to state that a promotional fare (a new fare) will end on a particular date. Once having included the last ticket date in such advertising, the settling defendants may indicate the promotional fares' last ticket dates in a CRS and elsewhere. Once another airline has disseminated a last ticket date for a promotional fare in accordance with this section, the settling defendants may disseminate a last ticket date in a CRS or elsewhere on an identical new fare in one or more of the same city pairs without advertising. These restrictions apply only when a settling defendant chooses to use a last ticket date. The settling defendants remain free to advertise and market their services and fares in any other manner they choose, including any marketing or advertising that a fare will be available only for a short period of time.

The restrictions on the dissemination of last ticket dates contained in Section V(C) increase the likelihood that last ticket dates will not be used by the settling defendants to coordinate fare changes but rather to generate whatever additional consumer demand may be created by advertising that a fare ends on a precisely defined date. The requirement that the fare be a new fare, and that the last ticket date be disseminated at the time the fare is first offered for sale, will help to ensure that last ticket dates are not used to

engage in an iterative negotiation process to eliminate existing discount fares or to facilitate trades across markets. However, the restrictions are flexible enough to allow the settling defendants to tailor their advertising programs that employ last ticket dates to particular promotions and to allow the settling defendants to take advantage of changes in the nature of mass communication. The restrictions do not require that advertising that uses last ticket dates be national in scope, nor do they prescribe the advertising medium that must be used to justify use of a last ticket date. Thus, for a nationwide promotion, the settling defendants might need to broadly advertise to reach a meaningful number of potential consumers, while for a local or regional promotion, local or regional advertising would be sufficient. Similarly, as new methods of advertising become more prevalent and widely used by consumers, those methods may satisfy the requirement that the last ticket date be advertised in media of general circulation.

Section V(D) provides a limited exception to the prohibition on disseminating information relating to planned or contemplated fare changes. It will allow the settling defendants to continue to give consumers general information on impending fare changes. For example, the settling defendants may make general public statements that because of increases in costs they expect fares to increase, or may advertise that certain low fares are for a limited time only. Because the

information is general, it is unlikely that the settling defendants could use it to coordinate fares.

Section IV(C) prohibits the settling defendants from "making visible or disseminating its own tags or any other similar designating mechanism to any other airline." This provision prohibits the settling defendants from using any device to link markets and coordinate fare changes in the way that they currently use footnote designators. It would, for example, prevent the settling defendants from attaching arbitrary but unique travel complete dates to fares in different markets in order to communicate a connection or link between those fares.

Section IV(D) prohibits the settling defendants from "making visible or disseminating to any other airline any fare that is intended solely to communicate a defendant airline's planned or contemplated fare or contemplated changes to fares." This provision would proscribe fares that, although technically available currently for sale, will not, as a practical matter, be considered by consumers. For example, Section IV(D) would preclude a settling defendant from communicating its intention to increase fares by filing fares that are higher but otherwise identical to existing fares, and then waiting for other airlines to file identical higher fares before withdrawing its lower fares. Because no rational consumer would purchase the higher fares as long as the lower existing were available, the higher fares would be "intended

solely to communicate" a settling defendant's contemplated changes to fares.

Section IV(E) prohibits the settling defendants from "disseminating two or more footnote designators that identify footnotes that contain identical information." This provision will prevent the settling defendants from continuing to use multiple footnotes, each with different designators, that contain the same ticketing and travel date information. In addition, Section IV(E) prohibits the settling defendants from disseminating any footnote designator that identifies an "empty" footnote, that is, one that has no travel dates, last ticket date or other information. In both cases, the footnote designator serves no purpose other than to communicate connections between fares or to call competitors' attention to particular fares.

Section IV(F) prohibits the settling defendants from "using fare codes that convey information other than fare class or terms and conditions of sale or travel." Certain standard fare codes are used throughout the industry to identify the class, as well as the restrictions associated with a fare, such as advance purchase requirements. This provision is intended to prevent the settling defendants from using codes not related to either the fare class or the terms and conditions of sale or travel to send messages and link markets. For example, Section IV(F) prevents a settling defendant from sending a message to

another airline by placing letters that identify that airline in the settling defendant's fare code.

B. Compliance Program and Certification

In addition to the prohibitions contained in Sections IV and V, each settling defendant would be obligated to implement an antitrust compliance program. This program would require each settling defendant to designate an Antitrust Compliance Officer within 30 days of entry of the Final Judgment. The Antitrust Compliance Officer for each settling defendant would be responsible for distributing copies of the Final Judgment to all officers of that defendant and to employees of that defendant who have any responsibility for fares. These persons would be required annually to certify that they understand and agree to abide by the terms of the Final Judgment. Each settling defendant must, within 45 days after the Antitrust Compliance Officer learns of any violations of the Final Judgment, take appropriate action to terminate or modify the activity so as to comply with the Final Judgment. Finally, the settling defendants must maintain records relating to their use of last ticket dates under the limited exception provided in Section V(C).

C. Effect of the Proposed Final Judgment on Competition

The relief in the proposed Final Judgment is designed to remove, as to United and USAir, the artificial restraints that have been imposed by all defendants on competition. The proposed Final Judgment effectively will remove United and

USAir as participants in the coordination of fares through ATP. The Department of Justice believes that the proposed Final Judgment contains sufficient provisions to prevent further violations by United and USAir of the type alleged in the Complaint and remedy the effects of the alleged conspiracy as to these defendants.

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 as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no prima facie effect in any subsequent lawsuits that may be brought against any defendant in this matter.

V.
PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Mark C. Schechter, Chief, Transportation, Energy and Agriculture Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street,

N.W., Room 9104, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, 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.

VI.

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case against United and USAir. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides relief that will remedy the violations of the Sherman Act alleged in the United States' Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were used in formulating the proposed Final Judgment.

Respectfully submitted,

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