

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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In The Matter of)	
Computer Reservations)	Docket Nos. OST-97-2881
System (CRS) Regulations;)	OST-97-3014
Statements of General Policy)	OST-98-4775
_____)	OST-99-5888

**HEARING ON
COMPUTER RESERVATIONS SYSTEM (CRS);
STATEMENTS OF GENERAL POLICY**

**STATEMENT OF DAVID A. SCHWARTE
EXECUTIVE VICE-PRESIDENT AND
GENERAL COUNSEL SABRE HOLDINGS CORPORATION**

**May 22, 2003
Marriot at Metro Center
Washington, D.C.**

**STATEMENT OF DAVID A. SCHWARTE
EXECUTIVE VICE-PRESIDENT AND GENERAL COUNSEL SABRE
HOLDINGS CORPORATION**

Good morning Mr. Chairman, I'm Dave Schwarte, Executive Vice President and General Counsel of Sabre Holdings Corporation. The Sabre Travel Network is the oldest, largest, and most innovative provider of air transportation information and booking capability in the world, and has served the travel industry for 27 years.

At the outset, allow me to express my thanks for holding this hearing and giving me the opportunity to express my views. My message today is simple:

- First, the CRS rules have outlived their usefulness.
- Second, the Department has no jurisdiction over independent systems.
- Third, the NPRM relies on erroneous assumptions about CRS market power, excessive booking fees, substitutability of alternative distribution channels, and travel agent lock-in.
- Fourth, the Department's NPRM is wrongly and deliberately unbalanced, and designed to give the airlines unneeded "bargaining leverage," at the expense of CRSs, travel agents, low-cost carriers, and consumers.

Therefore, we strongly urge the Department to deregulate this industry as scheduled on January 31, 2004. Regulation of this dynamic industry cannot hope

to keep up with changes in technology. Vigorous oversight by the antitrust and consumer protection authorities is fully capable of disciplining any anticompetitive conduct.

(1) **CRS Rules Are No Longer Necessary**. As shown by the first chart, in 1983, CRSs processed 88 % of ticket transactions in the United States. By 2002 that number declined to 53 %. In the beginning, CRSs were owned by major airlines that used their control of CRSs to divert traffic to themselves. Today, major CRSs soon will be largely free of airline ownership.

It was conduct by airline owners of CRSs that prompted the CAB to adopt regulations in 1984. But the change in ownership has eliminated the need for any regulation. Two of the CRSs, Sabre and Galileo, are now independent of airline control. A third, Worldspan, has said it will be sold sometime this year, although we urge the Department to closely examine any continuing links between this CRS and its parent carriers. Today as an independent CRS, we have no interest in diverting airline traffic to favor any airline. Our goal is to provide travel agents with the maximum number of airline flights and fares.

As shown by our next chart, the Internet has gone from a novelty to a powerful tool for business and consumers. 82% of air passengers now use the Internet regularly; and half of passengers use it to book flights. By year-end, Internet sales will account for 30% of all airline ticket sales. While airlines set

new web booking records every month, Sabre's bookings are down 16% in the first quarter of 2003 as compared with the first quarter of 2002.

So, given CRS bypass, airline divestiture, and the Internet explosion, there is no reason to continue any CRS rules.

(2) **The Department Has No Jurisdiction.** The Department has no authority to regulate independent systems like Sabre. Section 411 gives the Department authority only over airlines and ticket agents. The Department acknowledges that we're not an air carrier. It is equally clear that we're not a ticket agent. By statute, ticket agents are only those who offer and sell tickets for air travel as a "principal" or as an "agent" of the airlines, and Sabre is neither. DOT acknowledges that we are not principals. Our contracts expressly provide that we are not agents, but independent contractors.

Sabre has never *offered, sold or arranged to sell* a single ticket to a passenger. We're not authorized by airlines to do so. We have no public ticket offices and do not communicate with passengers.

At bottom, the Department's attempt to extend its jurisdiction to independent CRSs cannot be supported, would not withstand judicial review, and cannot succeed without Congressional action.

(3) **CRSs Do Not Have Market Power.** The NPRM relies on erroneous assumptions about CRS market power. CRSs engage in robust competition not

only among themselves, but with alternative distribution channels such as the Internet and direct airline sales. And Orbitz itself is a CRS waiting in the wings. Since there is no market failure, the Department should not be regulating the details of Sabre's contracts with airlines and travel agents. Detailed command-and-control regulation has no place in an industry with vibrant competition.

The NPRM erroneously asserts that Sabre and other CRSs impose unreasonable contract terms on airlines and set "excessive" prices. This just isn't true. In fact, Sabre has led the industry in crafting flexible contracts with airlines. For example, ten airlines, including US Airways and United, have accepted our innovative discount fee program. In exchange for an airline providing Sabre with its content and agreeing not to discriminate against Sabre subscribers, we provide discounts of 12% off 2003 rates and freeze these rates for 3 years. Such concessions are the epitome of competition and refute any claim of CRS market power.

The issue of "excessive" booking fees is a red herring. Booking fees represent a relative constant, roughly 2.5% of total airline costs.

As you can see in our next chart, Sabre booking fee increases have been moderate, especially when compared with booking fees charged by airline-owned Worldspan. Also, Sabre's booking fee increases have grown slower than the air transport Producer Price Index. The striking characteristic of the airlines'

complaints about so-called exorbitant booking fees is that they have offered no proof to support their charge of supra-competitive prices. In fact, booking fee increases have been driven by increased message volume and complexity caused by increased Internet use and look-to-book ratios, and by increased travel agency incentives.

Another obviously flawed assumption in the NPRM is the notion that travel agents are locked into CRSs. Nothing could be further from the truth. Our comments and those of ASTA and the Large Agency Coalition debunked this myth. As shown by our last chart, today 53% of CRS contracts are three years or less. Sabre's contracts are even shorter – 65% are three years or less.

(4) **The Regulations are Unfair and Imbalanced.** As the Department candidly recognized, its NPRM was designed to enhance airline bargaining power by eliminating parent carrier obligations of mandatory participation. It would remove the ban on discrimination in booking fees for the same purpose. Incredibly, it proposes to prevent full enforcement of contract clauses giving CRSs all of an airline's fares. The NPRM's criticism of these parity clauses is invalid. We've proved that we are willing to offer lower fees to get all fares. That's competition, and that's what consumers and travel agents demand. In sum, airlines today have substantial bargaining leverage.

At the same time, the NPRM proposes to micromanage our contracts with travel agents by limiting productivity payments, contract length, and compensation on termination. Intense competition exists today among CRSs for travel agent business, and thus there is no reason to use regulation to tip the market in the airlines' favor.

Finally, we urge that CRSs be deregulated now. The CAB gave us three months to go from an unregulated world to a regulated world back in 1984—and that followed its voiding all of our participating carrier contracts. If the Department will announce within a few months that the sunset scheduled for January 31, 2004 is firm, the market will prepare for full deregulation with time to spare. Avoid the pleas of anyone seeking some long or special “transition” provisions. We’re not afraid of the free market; nor should anyone else.

Thank you for this opportunity to share with you our thoughts on this important decision. I will now turn the floor over to Professor Salop.