

## ANTITRUST

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1. You should read the instructions, the entire exam and all of the questions before answering any of the questions.
2. Place your examination number on each page.
3. This is an open-book (but not open network), three-hour in-class examination. You may consult any materials you wish, except that (i) you may not consult anyone else and (ii) you may not search during the exam on the Internet or on any database service (such as Westlaw or Lexis/Nexis). Please do not discuss the exam with anyone until the examination period is over.
4. This examination consists of four pages. Please make sure that you have all of the pages.
5. There are three questions, with a total of 9 units for weighting purposes for grading. Each question consists of 1 to 5 units, and the weight for the question is set forth next to the question.
6. **Exam answers are to be word processed or typed and MUST be double-spaced. Please begin your answer to each question on a new page.**
7. **Your answer should be no more than 3000 words (approx. 333 words per unit).** Please provide a word count at the end of the exam.
8. Answers should be written in full English sentences and should refer to specific statute sections and cases where relevant. If an exam question is unclear, point out the ambiguity and then answer the question to the best of your ability. If you believe that there is a mistake in the exam, please see the proctor, who will contact me.
9. In answering the questions, you should assume, except as otherwise provided in the exam itself, that the applicable version of any relevant statute is that set forth in the class materials. The law is the law of today, even if the exam is set at a different time.
10. Good luck.

**NOTE: APPLY THE LAW AS IT EXISTS TODAY,  
NOT AS IT EXISTED IN 1975-76**

The year is 1975 and we are situated in the airline industry. We had five major carriers with the following U.S. national market shares: (1) United, 25%; (2) American, 20%; (3) Delta, 20%; (4) TWA, 15%; and (5) Eastern, 15%. The remaining 5% of the market was served by much smaller carriers and of course the national figures don't necessarily indicate market shares in particular locations or routes.

Computers have not yet reached airline ticket sales. Tickets are sold using massive amounts of paper through travel agents and in-person at airports. Each airline provided a travel agent with a book of prices and routes. To sell a ticket, an agent would then call a centralized number for each airline to confirm price and availability. The travel agent market was dominated by two firms, Thomas Cook with 50% of the market and WorldTours with 20%. Otherwise the travel agent business was highly fragmented. Travel agents sold 90% of the plane tickets sold in the United States; the remaining 10% were sold directly by the airlines. The airlines paid a commission to travel agents for each ticket sold.

**Question 1 (3 units)**

But with the rise of computers, change was coming to airplane tickets and American Airlines was an early mover with its Sabre computerized reservation system (CRS). The idea behind Sabre was to put a computer terminal in each travel agency. Participating airlines could update ticket prices and offerings immediately. Travel agents would then print the tickets locally from a printer attached to the terminal.

To get the new system off the ground successfully, at the annual industry association show in January, 1976, the CEO of American met with his counterparts from Delta and TWA. American suggested that American, Delta and TWA switch from the paper-based system and instead join Sabre and do so exclusively. Sabre promised substantial savings in transactions costs but change in any industry is hard. American believed that with offerings from three airlines in Sabre, the new system was likely to get off of the ground. Each airline would continue to set its own price for flights but each airline would also have access to the Sabre system to see flight prices by their competitors.

American then approached Thomas Cook. American explained the virtues of a single-terminal system for ticket sales. American of-

ferred to install the terminals at Thomas Cook for free and guaranteed to Cook that American, Delta and TWA would never pay a higher commission rate to a competitive travel agency. In exchange, Thomas Cook agreed that it would not install another brand of CRS in its agencies.

Unbeknownst to Delta and TWA, American had designed the Sabre CRS software to ensure that American flights always appeared ahead of flights from Delta and TWA. Dry-runs of the system made clear to American that screen position mattered enormously as to which flights travel agents would recommend to their customers.

**Question:** Evaluate.



### **Question 2 (3 units)**

The Sabre CRS took off and clearly disrupted the industry, both the airline industry directly and the travel agent industry. On ticket prices, there was some evidence to suggest that on routes on which American, Delta and TWA competed, their prices were more frequently the same than had been the case in the prior paper-based sales system. United and Eastern continued to exhibit their prior pricing patterns, both on routes on which they competed with each other and on routes where they were competitive with airlines using the Sabre system.

United was in the process of developing its own CRS, which it had named Apollo. United approached Eastern to suggest that Eastern switch from paper-based sales to CRS sales via Apollo. Eastern believed that control over a CRS was quickly becoming essential to competing in the airlines industry and felt that its market share was too small to justify building its own system. Eastern suggested that United simply buy Eastern instead and United and Eastern quickly agreed on the terms of a sale of Eastern to United.

The now-larger United then approached Thomas Cook and WorldTours to try to get Apollo terminals installed with each of their travel agents. Cook declined, citing its deal with Sabre, and United was forced to continue providing paper-based materials to continue to sell tickets through Cook. WorldTours saw a chance to gain an advantage. It accepted Apollo terminals from United but also struck a deal to get free Sabre terminals from American.

**Question:** Evaluate.



**Question 3 (3 units)**

The emergence of CRSs and computers more generally changed the amount of information available to airlines and created new possibilities. One of these was the frequent flyer program. In that type of program, flyers would get a subsequent free ticket on an airline based upon prior flights with that airline. A flyer who flew a particular airline only once would find the frequent flyer program worthless, but a regular flyer in a particular program would benefit.

American thought that a Sabre-based frequent flyer program might be very attractive to the market. Customers who purchased through Sabre would be able to use their frequent flyer miles on any of the airlines selling through Sabre. American suggested to Delta and TWA that every 25,000 miles of flights through Sabre should result in a free round-trip coach ticket for use on a Sabre airline. A deal was reached and the new Sabre Frequent Flyer (SFF) program was announced. The SFF was not extended to anyone purchasing tickets outside of the Sabre system, which meant to customers buying tickets in-person at the airports or from the small travel agents who had not installed the Sabre system. For the 30% of the travel-agent market not currently in Sabre, American was willing to provide them Sabre terminals but for a monthly rental fee. Any travel agent who rented a Sabre terminal would then have access to the SFF.

Meanwhile, United was delighted with the benefits that it was seeing from the use of Apollo at WorldTours but was stuck with paper in its dealings with Thomas Cook. Although United was loathe to do so, it approached American to see if American would agree to carry United flights in its Sabre service. Cook got wind of United's inquiry to American and urged American to include United in Sabre, so long as the existing commission deal was extended to include United.

**Question:** Evaluate. American could say yes or no to United's request and could consider or ignore Cook's suggestion, so be sure to evaluate all of the possible outcomes.

