

**Question 1: Key Missing Issues**

Issues and Points: 31 point baseline (of 33 max)

**31**

<p>1. Failure to address (FTA) questions of market definition (we will see a number of markets in the exam but for this question the key markets are (1) the ticket selling market; and (2) the market for ticket selling tools (paper and the new CRSs)): -3</p>	
<p>2. FTA organization of Sabre (most of the joint ventures we saw involved firms that competed horizontally in the market in which the joint venture is taking place (<i>FOGA, Dagher</i>); here Sabre acts in an adjacent market; this is much less a joint venture and much more the initiative of a single firm providing services to competitors in a second market): -3</p>	
<p>3. FTA consequences of exclusive agreement by American, Delta and TWA re Sabre (what does exclusively mean here? Sole means of ticket sales or just that Delta and TWA will not participate in a competing CRS system; not a naked group refusal to deal; the more we characterize this as a joint venture the less that is troubling; the more we think of it as just a vertical arrangement with Sabre/ American the more we have <i>Standard Fashion/CA3</i> type issues): -4</p>	
<p>4. FTA deal with Thomas Cook that Sabre would be the exclusive provider of CRS to Cook (we don't have a monopolist using its monopoly position to gain exclusivity; this is a vertical arrangement and thus should be evaluated under the rule of reason; akin to <i>Standard Fashion</i> where the Court condemned the market foreclosure; we were critical of that (competition for the market vs. competition in the market)): -2</p>	
<p>5. FTA Sabre deal with Thomas Cook under CA3 (a number of questions arise here; Sabre is providing the terminals for free, does that alter the application of CA3; shouldn't do so in that potential to block competition remains the same; is Sabre providing goods? CRS is a terminal-based service, so may not qualify; exclusive deal with 50% share Cook almost certainly reduces ongoing competition in the CRS business): -2</p>	
<p>6. FTA provision of free terminals to Cook (this is just a way of giving pricing information to travel agents; the airlines were undoubtedly giving free paper schedules to travel agents before and we are just substituting one for the other; shouldn't raise predation issues): -1</p>	
<p>7. FTA commission pricing aspect of Sabre deal with Cook (American, Delta and TWA are not agreeing on a fixed commission price but they are agreeing jointly to a most favored nations clause with Cook; any joint agreement on price is likely to run afoul of the per se illegality rule under SA1 for price fixing and there the three firms have 55% of the market; this assumes agreement, of course, as the question just specifies that American made this offer to Cook): -4</p>	
<p>8. FTA discrimination in CRS position listing (when a monopolist engages in this sort of manipulation, it can give rise to a monopoly maintenance claim under SA2 as we saw in <i>Microsoft</i> regarding MS's embedding of the Internet Explorer icon on the desktop, but the CRS market has just started so the monopoly claim seems far-fetched; other law (contract or tort) might provide a remedy): -3</p>	
<p>X1:</p>	
<p><b>Total Deductions</b></p>	

**Question 1: Additional Points**

1:	
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**Question 1: Final Score**

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**Question 2: Key Missing Issues**

Issues and Points: 31 point baseline (of 33 max)

**31**

1. FTA inferences to be drawn from ticket pricing information (we know that the CRS system makes it easier for prices to be coordinated; that arises from easier visibility to each firm in the CRS and the fact that prices can be changed frequently; nonetheless, like the gas station example in class, it is hard to make inferences of collusion just from prices): -4	
2. FTA evidence re price-fixing agreement (there is no additional info here; we know that they met to set up Sabre in the first place but otherwise we have no direct evidence of a price-fixing agreement): -1	
3. FTA United's initial offer to Eastern re Apollo (United is just trying to add a second firm to its system; there is no real suggestion of a joint venture here and nothing which should give rise to an antitrust concern): -1	
4. FTA issue of market for merger (even though Eastern will add bulk to Apollo, Eastern doesn't have its own CRS, so no reduction in CRS competition from merger): -1	
5. FTA merger analysis for airlines (Pre-merger HHI for industry is 1900 (overstates slightly as attributes 5% other to one firm); increase in HHI is $2 * \text{United share} * \text{Eastern share} = 2 * 25 * 15 = 750$ , with post-merger HHI of 2650; this means the industry would move from moderately concentrated to highly concentrated with a big bump; the merger will be presumed to raise market power): -6	
6. FTA Cook refusal of United's Apollo offer (Cook has the right to decline to deal with anyone though this seems to be done pursuant to its exclusivity deal with Sabre; if the exclusivity is problematic (Q1), this would create a causal connection for harm to United; under <i>Brunswick</i> , we should probably think of this as the sort of injury antitrust is designed to protect against): -1	
7. FTA WorldTour's deals with United re Apollo and with American re Sabre (WT is just acquiring inputs into its business; from its perspective, no different than buying bottled water; WT hasn't agreed to exclusivity ala Cook): -2	
X1:	
<b>Total Deductions</b>	

**Question 2: Additional Points**

1:	
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**Question 2: Final Score**

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**Question 3: Key Missing Issues**

Issues and Points: 31 point baseline (of 33 max)

31

<p>1. FTA Sabre frequent flyer program as a form of price fixing (a frequent flyer program is a form of volume discount; American, Delta and TWA have agreed on the size of the discount being offered and are therefore not competing over that discount; we should think of that as a form of price fixing esp. as to high-volume customers; price-fixing is per se illegal): -4</p>	
<p>2. FTA Sabre frequent flyer program as a form of joint venture (with airlines flying different routes, joint program means that passengers can get free flights on a larger number of routes than would occur in a single company program; that is a procompetitive benefit of the program): -2</p>	
<p>3. FTA Sabre terminal rental strategy as possible second-degree Robinson-Patman violation (more complicated vis-à-vis Cook given the number of terms of the deal, more straightforward as to WT, given the free terminals; RP limited to commodities and not services; Sabre really is info service): -2</p>	
<p>4. FTA integrated or separate product analysis for tying question re Sabre and SFF (we have to start with the question of whether we have one integrated product or two separate products; certainly Sabre existed on its own without the SFF; Sabre and the SFF actually target different markets (travel agents care about Sabre directly while flying consumers care about SFF; travel agents will want to be able to sell tickets that qualify for the SFF); <i>Jefferson Parish</i> tells us to focus on separate consumer demand and here the agents and the flying public will have different demands for Sabre and the SFF): -3</p>	
<p>5. FTA rest of tying analysis assuming Sabre and SFF are separate products (American is trying to force the remaining travel agents to rent Sabre terminals to get access to the SFF; that makes the SFF the tying good (service) and the Sabre terminals the tied good; the question of whether this violates SA1 or 2 or CA3 turns, under <i>Jefferson Parish</i>, on the existence of market power in the tying good market; the SFF program represents firms with 55% of the market competing with a firm with 40% of the market; should think that American has market power as to CRS market and hence tying is treated as per se illegal): -3</p>	
<p>6. FTA possible United/American deal (United isn't suggesting a merger of Sabre and Apollo or a Sabre/Apollo cartel; it still plans to compete with Apollo but faces an entry barrier to Cook because of the prior exclusive deal between Cook and Sabre; situation is very similar to <i>Aspen Skiing</i>; on the one hand, doing a deal with United risks bringing all of the firms together on single CRS at Thomas Cook; Colorado AG feared collusion on that structure in <i>Aspen</i>; on the other hand, refusing United might trigger the sort of liability found in <i>Aspen</i>, though absence of history of prior dealing may distinguish this situation from <i>Aspen</i>; parallels also to <i>Associated Press</i>): -5</p>	
<p>7. FTA Cook suggestion (Cook is attempting to extend the commission deal to 95% of the market; we should think of Cook as attempting to organize a conspiracy regarding commissions): -3</p>	
<p>X1:</p>	
<p><b>Total Deductions</b></p>	

**Question 3: Additional Points**

1:	
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**Question 3: Final Score**

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