

FEDERAL TRADE COMMISSION DECISIONS
Findings, Opinions and Orders

IN THE MATTER OF
THE REUBEN H. DONNELLEY CORPORATION
FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT
Docket 9079. *Complaint, April 13, 1976—Final Order, Jan. 10, 1980*

This order requires, among other things, a New York City firm to cease, in connection with the publication of the Official Airline Guide—North American Edition, or any successor publication, from failing to publish connecting flight listings for commuter air carriers in the same manner as those published for certificated air carriers; or otherwise arbitrarily discriminating against any air carrier or class of air carrier in the publication of such listings.

Appearances

For the Commission: James C. Egan, Jr., Steven A. Newborn,
Elizabeth J. Keefer and W. Risque Harper.
For the respondent: William H. Buchanan, New York City and
Elroy H. Wolff, Thomas J. Hearity and George W. McBurney, Sidley &
Austin, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating Section 5 of the Federal Trade Commission Act, (15 U.S.C. 45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint charging as follows:

I. Definitions

1. For purposes of this complaint, the following definitions shall apply:
"Direct flight" means scheduled passenger air transportation service which, regardless of the number of stops between cities of origin and destination, does not require a change in aircraft;

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“Connecting flight” means scheduled passenger air transportation service which requires a change in aircraft between cities of origin and destination served by separate direct flights, whether such change in aircraft involves more than one air carrier or a single air carrier.

II. Respondent

2. Respondent, The Reuben H. Donnelley Corporation, is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal [2]office and place of business at 825 Third Ave., New York, N. Y. It is a wholly-owned subsidiary of Dun & Bradstreet Companies, Inc., 299 Park Ave., New York, N. Y., which in 1974 had combined operating revenues in excess of \$504 million and total assets in excess of \$345 million. Respondent is engaged, *inter alia*, in the publication, distribution and sale of various publications relating to travel and transportation, including the “Official Airline Guide—North American Edition” (“OAG”), a bi-monthly publication which combines the flight schedules and fares of all scheduled airlines in the United States, Mexico, Canada and the Caribbean into one directory.

III. Jurisdiction

3. From offices located at 2000 Clearwater Drive, Oak Brook, Illinois, respondent distributes and sells the OAG to subscribers located throughout the United States. The policies, acts and practices of respondent as alleged herein at all times relevant hereto have been in or have affected commerce within the meaning of the Federal Trade Commission Act.

IV. Nature of Trade and Commerce

4. The OAG is now and at all times pertinent hereto has been the only publication distributed and sold in the United States that combines the passenger flight schedules of all domestic air carriers, and it is now and for many years has been the standard reference for airline ticket offices, travel agents, businesses, and the public generally in ascertaining available flight schedules between city pairs in North America. Approximately 172,000 copies of each bi-monthly OAG issue are sold to such subscribers.

5. Scheduled air passenger transportation service in the United States is advertised, sold and furnished to the public by (1) air carriers whose routes and fares are regulated by the Civil Aeronautics Board pursuant to certificates of convenience and necessity or other economic authority issued by it (“certificated air carriers”); (2) air carriers

operating pursuant to Part 298 of the Economic Regulations of the Civil Aeronautics Board without regulation of routes or fares ("commuter air carriers"); and (3) air carriers whose routes and fares are regulated in varying respects by exclusive authority of the individual State in which each such carrier's operations are limited and confined ("intra-state air carriers"). [3]

6. Certificated air carriers consist of "trunkline" air carriers whose routes include service between and among major metropolitan airport facilities in the United States and North America; "local service carriers" whose operating authority is limited to short-haul service as distinguished from service rendered by trunkline air carriers; and "foreign air carriers" which, *inter alia*, also offer short-haul service in North America pursuant to recognized certificates or equivalents issued by their sovereign governments. A substantial portion of passengers flying local service and foreign air carriers begin or end their journey on connecting flights with trunkline air carriers.

7. Commuter air carriers operate either short-haul service between major metropolitan airport facilities and surrounding smaller community airport facilities, or between such smaller communities, or both. A substantial portion of passengers flying commuter air carriers either begin or end their journey on connecting flights with trunkline air carriers.

8. Intra-state air carriers operate direct flight service over routes between major metropolitan airport facilities and smaller communities or between such smaller communities, or both, within the same state.

9. Except to the extent that competition has been restrained, lessened and eliminated by the acts and practices of respondent as alleged by this complaint, in many instances individual commuter air carriers are engaged in substantial competition with one or more certificated air carriers by offering both direct and connecting flight schedules between the same city pairs, and individual intra-state air carriers are engaged in substantial competition with one or more certificated air carriers by offering direct flight service between the same city pairs.

10. Significant elements of competition between certificated air carriers and commuter air carriers and between certificated air carriers and intra-state air carriers include flight departure times in relation to flights of each other, inclusion of these schedules in the OAG, and the sequence in which such schedules are published in the OAG.

11. At all times hereinafter referred to, publication policies of the OAG have been formulated and/or modified by respondent following consultations with certificated air carrier members of the Air Traffic

Conference of America, a division of the Air Transport Association of America, and the OAG continuously has represented itself as being the "Standard Reference of the Air Traffic Conference of America. [4]

V. Acts, Practices, and Methods of Competition

12. For many years, and at least since 1969, respondent has maintained a publication policy with respect to the content and format of the OAG pursuant to which schedules of available flights between city pairs are published in separate categories in the following sequence when and where applicable: (1) direct flights of certificated air carriers; (2) connecting flights of certificated carriers; (3) direct flights of intra-state carriers, and (4) direct flights of commuter air carriers. Within each such category, flights are listed chronologically by order of departure.

13. For many years, and at least since 1971, respondent has refused to accept for publication any schedules of connecting flights of commuter air carriers, even though commuter air carriers offer and sell such service to the public and have made requests of respondent for inclusion of said schedules in the OAG.

14. For many years, and at least since 1971, respondent has refused requests of intra-state and commuter air carriers to publish their direct flight schedules in the OAG on the same terms and conditions as apply to the publication of direct flight schedules of certificated air carriers by integrating the schedules of all air carriers serving given city pairs into single chronological listings.

15. In refusing to modify its OAG publication policies as aforesaid, respondent has solicited and relied upon the views of certificated air carrier competitors of commuter and intra-state air carriers acting under the auspices of the Airline Guides Committee of the Air Traffic Conference of America.

16. The effects of respondent's OAG publication policies as aforesaid are and have been to foreclose commuter air carriers from disseminating information as to available connecting flight schedules to the public; to suggest and/or advise the public that direct flights of certificated air carriers are to be given preference over those of intra-state and commuter air carriers; and to lessen the competitive significance of schedules of direct flight departure times of intra-state and commuter air carriers in relation to those of certificated air carriers. [5]

17. As a result of the acts, practices, and methods of competition as alleged, competition in the development, advertising, offering of sale, and sale of scheduled passenger air transportation in the United States

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has been, or may be, stabilized, controlled, hindered, lessened, foreclosed or restrained.

VI. Violation

18. The acts, practices, and methods of competition alleged herein by respondent, both individually and in combination with others, constitute unfair acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE

MARCH 6, 1979

PRELIMINARY STATEMENT

By a complaint issued on April 13, 1976, The Reuben H. Donnelley Corporation ("Donnelley") is charged with a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. [2]

Respondent Donnelley is a subsidiary of the Dun & Bradstreet Companies, Inc., which in 1974 had combined operating revenues of over \$500 million and total assets of about \$345 million. Donnelley is a publishing company which publishes the "Official Airline Guide—North American Edition" ("OAG"), a directory of flight schedules and fares for scheduled air transportation. The OAG is published twice monthly and is sold to air carriers, travel agents, businesses and the general public.

The complaint alleges that the OAG is the only publication sold in the United States that combines the passenger flight schedules of all domestic air carriers and that it is the standard reference for ascertaining flight schedules between city pairs in North America.

Scheduled air passenger transportation in the United States is provided by three categories of airlines: certificated air carriers, commuter air carriers, and intrastate air carriers. The complaint alleges that Donnelley has refused to publish flight schedules for commuter and intrastate air carriers on the same terms as apply to the publication of flight schedules of certificated air carriers. More specifically, the complaint alleges that respondent has refused: (1) to publish in the OAG schedules of connecting flights involving commuter air carriers,¹ and (2) to chronologically integrate schedules of commuter air carriers and intrastate air carriers with those of certificated air carriers.

¹ In December 1976, respondent started publishing the connecting flights of commuter air carriers.

The complaint further alleges that Donnelley violated Section 5 "individually and in combination with others," stating that Donnelley's policies have been formulated and modified by respondent "following consultations" with certain certificated air carriers, and that Donnelley has "solicited and relied upon the views of certificated air carrier competitors" in refusing to change its publication policies. [3]

By an answer filed May 28, 1976, respondent admitted some but denied many of the allegations of the complaint. Among the more important issues raised by the answer, respondent: (1) denied that significant competition exists among the three categories of air carriers; (2) stated that there are numerous sources of passenger flight schedule information other than the OAG; (3) stated that it had solicited the views of certificated air carriers concerning separate listing of certificated air carriers, commuter air carriers, and intrastate air carriers, but that it has neither relied nor acted upon those views; (4) stated that these matters are not subject to the jurisdiction of the Federal Trade Commission; and (5) stated that the relief sought, compelling Donnelley to publish flight schedule listings in a manner conflicting with Donnelley's judgment, would violate the First Amendment to the United States Constitution.

Pursuant to prehearing orders, counsel for the parties stipulated that (1) the complaint does not allege unlawful monopolization in the publication and sale of passenger flight schedules of domestic air carriers; and (2) the complaint does not allege unlawful effects on companies other than air carriers, including potential competitors of the respondent in the sale and distribution of passenger flight schedules for domestic air carriers. (Joint Statement filed September 24, 1976.)

After issue was joined, respondent filed a motion to dismiss, asserting that the Commission lacks subject matter jurisdiction over the acts of a publisher who sells and distributes information about air carriers who are themselves subject to CAB jurisdiction. The claim was based on Section 5(a)(2) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(2), which provides that carriers subject to the Federal Aviation Act of 1958 are exempt from the Commission's jurisdiction.

By an order dated September 21, 1976, I invited the CAB to file an *amicus* brief commenting on the issues presented by the complaint. On February 2, 1977, the General Counsel of the CAB filed an *amicus* brief denying, in effect; that the CAB had primary jurisdiction over this matter, or that the CAB had sanctioned the conduct alleged in the complaint. The *amicus* brief states that it is "clear that the [4]exercise of Commission jurisdiction would not cause a collision with the Board's jurisdiction over air carrier competition." After further briefing, I

