

**Both Sides Explain Two Sides: Analyzing the Economic Trial  
Testimony in *US Airways v. Sabre***

Robert McNary and Eric Fanchiang<sup>1</sup>

In the recent *US Airways v. Sabre Holdings* trial, a Southern District of New York jury heard over five days of testimony from economists Dr. Joseph Stiglitz, Columbia professor and Nobel Prize winner, and Dr. Kevin Murphy, Chicago professor and John Bates Clark Medal winner. Following the jury's verdict for US Airways, this article reviews both sides' expert testimony, particularly on the economics of two-sided platform markets.

Sabre's computerized booking system allows participating airlines to distribute flight schedule, fare, and booking information to travel agents. The largest of three such "global distribution systems" in the United States, Sabre charges airlines a booking fee and pays incentive payments to travel agents. As a condition of participation, Sabre requires airlines to agree to "full content" contract provisions, restricting airlines from offering lower fares through non-Sabre channels. US Airways claimed that the provisions violated Section 1 of the Sherman Act, and, after a lengthy trial, the jury agreed.

During the trial, Prof. Stiglitz testified for US Airways that the global distribution systems market was not competitive, because Sabre used its market power to impose anticompetitive contract provisions on participating airlines.<sup>2</sup> As part of his analysis, Prof. Stiglitz testified that global distribution systems were no longer a true two-sided market; instead, the market had matured into a one-sided market. Prof. Stiglitz offered telephones as an analogous example. Before telephones became popular, businesses with telephones would benefit from additional customers signing up for the telephone platform, because the businesses would have access to more potential customers. They would even pay people to sign up for telephone services. But after some time, once a sufficient number of potential customers were on the platform, the payments were not necessary because customers would not leave the platform even if they were no longer paid. Prof. Stiglitz testified that the same was now true for US Airways and Sabre: corporate travel agents already on some type of platform were unlikely to leave platforms altogether. In his opinion, the distribution system market was

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<sup>1</sup> Robert McNary is Counsel and Eric Fanchiang is an Associate at Crowell & Moring LLP. The views expressed in this article are solely the authors and do not necessarily reflect the views of Crowell & Moring or its clients.

<sup>2</sup> Trial Transcript for Nov. 1, 2016, *US Airways, Inc. v. Sabre Holdings Corp.*, No. 1:11-cv-02725-LGS, 37-38, 178-89 (S.D.N.Y. 2016)(ECF No. 753).

therefore no longer two-sided, and the only active competitive dynamic would be based on travel agents switching between systems.

Prof. Stiglitz further testified that even if the market were truly two-sided, Sabre's high incentive fees to travel agents gave Sabre the market power to impose unfair contractual restraints on US Airways. Further, the high booking fees US Airways was paying Sabre were consistent with a non-competitive market.

In response, Prof. Murphy testified that a two-sided market does not necessarily require both sides promoting the other side's growth.<sup>3</sup> He offered the example of newspapers: even though newspaper readers prefer fewer advertisements, the newspaper market is two-sided so long as advertisers want more readers. In Prof. Murphy's opinion, distribution systems exhibited this same feedback effect. If fewer travel agents used Sabre, fewer airlines would use Sabre. Similarly, if Sabre increased the price of its booking fees on airlines, and airlines decided not to use Sabre, fewer travel agents would use Sabre.

Prof. Murphy defended the competitive nature of global distribution systems by highlighting the overall competition between distribution systems for travel agents. When one competitor pays for something that is beneficial, such as advertising, the other competitors must follow suit. Even with a maturing market, competitors would lose those benefits by stopping that beneficial activity. Accordingly, if other airlines are paying Sabre while US Airways is not, those other airlines might take away customers from US Airways. In Prof. Murphy's opinion, this competition explained and justified the full content provisions, from an economic perspective.

Ultimately, the jury found that the market was one-sided, and that Sabre had unreasonably restrained trade with its full content provisions.

The verdict suggests US Airways had a significant advantage by presenting its expert first. Prof. Stiglitz was able to set out his definitions of what a two-sided market was, while Prof. Murphy spent quite a bit of his testimony trying to fight back against those definitions. Defendants in two-sided market cases would be well-advised to not wait until direct testimony to try to reset these key terms in the minds of jurors.

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<sup>3</sup> Trial Transcript for Dec. 7, 2016, *US Airways, Inc. v. Sabre Holdings Corp.*, No. 1:11-cv-02725-LGS, 230-38 (S.D.N.Y. 2016)(ECF No. 785).

The verdict also means that more conceptual arguments can win out over data-driven presentations. Overall, Prof. Stiglitz presented relatively easier to understand definitions and examples, while Prof. Murphy presented more data. Accordingly, the defendants' economic case was more complicated to present—and understand.

It is possible that neither economist really won the one-sided versus two-sided market issue. The jury ultimately found that the damages would have been the same regardless of whether the market was one-sided or two-sided, even though neither economic expert offered this opinion. Indeed, both economic experts testified that if the market were two-sided, the incentives paid to the travel agents would need to be considered as costs to Sabre.

Ultimately, defining the relevant market is rarely easy for an antitrust jury trial, and as shown in *Sabre*, adding the dimension of two-sided markets makes the task even more difficult. Even with experienced expert witnesses, trial juries will almost certainly continue to struggle with this difficult economic concept.

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