Unclassified DAF/COMP/WD(2014)48

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development 16-Jun-2014

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Cancels & replaces the same document of 05 June 2014

AIRLINE COMPETITION

-- Note by the United States (Department of Justice) --

18-19 June 2014

This document reproduces a written contribution from the United States (Department of Justice) submitted for Item IX of the 121st meeting of OECD Competition Committee on 18-19 June 2014.

More documents related to this discussion can be found at http://www.oecd.org/daf/competition/airlinecompetition.htm.

JT03359426

DAF/COMP/WD(2014)48
Unclassified
English - Or. English

RELIEF IN AIRLINE MERGER CASES: THE AMERICAN/US AIRWAYS SETTLEMENT

1. Introduction

1. In August 2013, the U.S. Department of Justice filed an antitrust suit seeking to enjoin the merger of AMR Corporation, the parent of American Airlines, and US Airways Holdings, Inc.[1] The complaint alleged that the merger would exacerbate the problem of coordination among legacy carriers on fares, fees and capacity, eliminate competition in over a thousand city pair markets where American and US Airways competed, and entrench the merged carrier as the dominant airline at Washington National Airport with about 70% of the takeoff and landing slots.[2] In November 2013, shortly before trial was scheduled to begin, the United States and the defendants reached a settlement that required divestiture of slots and gates at seven strategic airports. The United States has approved divestiture of these scarce assets to low cost carriers (LCCs). The Final Judgment was found by the U.S. District Court to be in the public interest and entered on April 25, 2014.[3]

2. Fashioning relief in mergers in the airline industry is inherently difficult. Airline deregulation in the United States eliminated entry restrictions on domestic routes, so it is not possible to "divest a route" to another carrier. In some cases slots or gates may be necessary for entry, although only four airports in the United States are slot controlled and most airports have sufficient gates available to accommodate new service. Even in those cases where divestiture of slots or gates might facilitate entry on routes affected by a merger, it is often the case that there is no other airline likely to use those assets to serve those routes. For example, most nonstop overlaps between network carriers are on hub-to-hub routes where entry by other airlines without a hub at one of the end points is highly unlikely. It is thus impossible to construct a remedy that replaces the competition lost through a merger on a route-by-route basis.

3. System-wide harms, such as the increased legacy coordination alleged in the American/US Airways case, might in theory be remedied or at least ameliorated by behavioral rules. For example, the merging parties could be required to commit to maintaining premerger capacity plans or pricing practices. Such a remedy would be highly regulatory, however, and require considerable resources to monitor and

---

1 United States et al. v. US Airways Group, Inc. and AMR Corporation, Docket No. 1:13-cv-01236-CKK (D.D.C.). Several states and the District of Columbia joined the United States as plaintiffs. The Complaint was amended on September 5 to add another plaintiff state and correct some minor errors in an appendix. The Amended Complaint is available at http://www.justice.gov/atr/cases/f300400/300479.pdf.

2 A slot is the right to takeoff or land an aircraft at a particular time. Four of the busiest airports in the United States – including Reagan National and LaGuardia – are subject to slot limitations governed by the FAA. The lack of availability of slots is a substantial barrier to entry at those airports, especially for LCCs. *See* Am. Compl. ¶¶ 84-86.

3 Consent decrees in antitrust cases in the United States are subject to the Antitrust Procedures and Penalties Act (Tunney Act), 15 U.S.C. § 16(b)-(h), which requires that the decree be published and subject to public comments. The United States files a response to any comments with the court, which then makes a determination on whether the settlement is in the public interest. The United States' response to comments in this case is available at http://www.justice.gov/atr/cases/f304200/304233.pdf. The court's opinion finding the decree is in the public interest is available at http://www.justice.gov/atr/cases/f305400/305485.pdf.

enforce. Moreover, such a remedy would undermine the benefits of pricing and service flexibility provided by deregulation.

4. The structural remedy adopted in the American/US Airways case is aimed at strengthening the networks of LCCs by providing access to slots and gates at important airports where such carriers have had great difficulty obtaining facilities. This will enhance the ability of LCCs to disrupt coordination among the legacy airlines on fares, fees, and capacity. It will also provide new competition on many of the specific routes where the AA/US merger results in competitive harm.

2. Background

2.1 U.S. Regulatory Framework for Review of Airline Mergers

5. Airline mergers in the United States are subject to Section 7 of the Clayton Act, 15 U.S.C. § 18, and are reviewed by the Department of Justice using the same standards applied to every other industry. The analysis used in reviewing mergers is explained in the joint Department of Justice/Federal Trade Commission Merger Guidelines.[4] If the Government determines that a proposed transaction violates Section 7, it must seek an injunction in federal district court. DOJ has the lead role in reviewing airline mergers but closely coordinates and confers with the United States Department of Transportation ("DOT") as part of each merger review process.

2.2 Transaction

6. US Airways and American agreed to merge on February 13, 2013. The merger created the largest airline in the world. US Airways shareholders own 28 percent of the combined airline, while American shareholders, creditors, labor unions, and employees own 72 percent. After a transition period, the merged airline will operate under the American brand name, but the new American will be run by US Airways management.

7. US Airways is headquartered in Tempe, Arizona. Last year, it flew over fifty million passengers to approximately 200 locations worldwide, taking in more than $13 billion in revenue. US Airways operates hubs in Phoenix, Charlotte, Philadelphia, and Washington, D.C.

8. American is headquartered in Fort Worth, Texas. AMR Corporation is the parent company of American Airlines. Last year, American flew over eighty million passengers to approximately 250 locations worldwide, taking in more than $24 billion in revenue. American operates hubs in New York, Los Angeles, Chicago, Dallas, and Miami. In November 2011, American filed for bankruptcy reorganization and at the time of the merger agreement was under the supervision of the Bankruptcy Court for the Southern District of New York.

2.3 Harms Alleged in Complaint

9. On August 13, 2013, the United States filed an antitrust case in federal district court in Washington, DC, seeking to block the proposed AA/US merger. The Complaint alleged that the likely effect of the merger of US Airways and American, which would reduce the number of major domestic airlines from five to four and the number of "legacy airlines"[5] from four to three, would be to lessen

[4] U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES (Aug. 19, 2010), *available at* http://www.justice.gov/atr/public/guidelines/hmg-2010.html.

[5] "Legacy airlines," refers to the carriers that have operated interstate service since before deregulation and rely on nationwide hub-and-spoke networks. The legacy carriers are American, US Airways, Delta and United.

competition substantially in the sale of scheduled air passenger service in city pair markets throughout the United States, and in the market for takeoff and landing authorizations ("slots") at Reagan National.

10. One of the United States's concerns was that the merger would make it easier for the remaining legacy carriers – New American, United and Delta – to cooperate, rather than compete, on price and service. Amended Complaint ¶¶ 41-81. Such coordinated conduct deprives consumers of the benefits of full and vigorous competition.[6]

11. As explained in the Complaint, the structure of the airline industry was already conducive to coordinated behavior among the legacy carriers. *Id.*, ¶¶ 41-47. For example, on routes where one legacy carrier offers nonstop service, the other legacies generally "respect" (a term used by American) the nonstop carrier's pricing by pricing their connecting service at the same level as the nonstop carrier – notwithstanding the service disadvantages associated with connecting service. US Airways, however, differed from the other legacy carriers in that on some routes it offered its "Advantage Fares" program under which it provided discounts for connecting service compared to other carriers' nonstop fares, particularly for last-minute travelers. The structure of the New American network reduced its incentives to continue the Advantage Fare program. *Id.*, ¶¶ 48-58.

12. In addition to the risk of harm from the likely elimination of the Advantage Fares program, the Complaint alleged that the merger would likely enhance coordinated interaction among the legacy carriers with respect to capacity reductions, *id.*, ¶¶ 59-70, and ancillary fees, *id.*, ¶¶ 71-81. It also alleged potential anticompetitive effects resulting from the dominance of the merged airline at Reagan National, where it would control 70 percent of the take-off and landing slots, *id.*, ¶¶ 83-90, and from the elimination of head-to-head competition between US Airways and American on numerous nonstop and connecting routes, *id.*, ¶¶ 38 & 82.

13. The Complaint also alleged that if the merger went through, the other established legacy carriers – Delta and United – would be unlikely to undercut anticompetitive price increases or expand in response to capacity reductions by the merged airline, as "those carriers are likely to benefit from and participate in such conduct by coordinating with the merged firm." *Id.*, ¶ 92. LCCs, such as Southwest, JetBlue, Virgin America, and Spirit Airlines, on the other hand, offer "important competition on routes they fly," but have less extensive networks and face barriers to expansion such as a lack of access to slots and gate facilities necessary to serve constrained airports. *Id.*, ¶¶ 3 & 91, 93. For example, although Southwest carries the most domestic passengers of any airline, its network is limited compared to the legacy carriers with respect to the significant business-oriented routes served from Reagan National and LaGuardia.[7]

---

6 The potential for mergers to increase the likelihood of such coordinated interaction among competitors is a central focus of the DOJ's merger review. *See* U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 7 (Aug. 19, 2010), *available at* http://www.justice.gov/atr/public/guidelines/hmg-2010.html.

7 *See, e.g.*, Motion for Leave to File *Amicus Curiae* Brief by Southwest Airlines Co. (Nov. 7, 2013, Docket No. 142) at 3 ("The pro-competitive effect of Southwest's entry and service is effective, however, only when Southwest has the ability to enter a particular market. While Southwest serves over 90 destinations in the United States, it has extremely limited access to Reagan National . . . and LaGuardia . . . due to severe entry restrictions. Service to those airports is significantly limited by the allocation of take-off and landing slots, and Southwest has been able to obtain only a very small number of slots at those two airports.").

2.4 Description of the Divestiture

14. Two weeks before trial was scheduled to begin, the United States and the Defendants reached a settlement agreement pursuant to which the Defendants are required to divest or transfer to purchasers approved by the United States, in consultation with the Plaintiff States:

- 104 air carrier slots[8] at Washington Reagan National Airport ("DCA") and rights and interests in any associated gates or other ground facilities, up to the extent such gates and ground facilities were used by Defendants to support the use of the divested slots;
- 34 slots at New York LaGuardia International Airport ("LGA") and rights and interests in any associated gates or other ground facilities, up to the extent such gates and ground facilities were used by Defendants to support the use of the divested slots; and
- rights and interests to two airport gates and associated ground facilities at each of the following airports: Chicago O'Hare International Airport ("ORD"), Los Angeles International Airport ("LAX"), Boston Logan International Airport ("BOS"), Miami International Airport ("MIA"), and Dallas Love Field ("DAL").

2.4.1 DCA Slots

15. The 104 slots divested at DCA represent all of the air carrier slots held by American prior to the merger. The divested slots include 16 slots American was currently leasing to JetBlue in exchange for slots at John F. Kennedy International Airport.[9] That slot exchange with JetBlue has been made permanent. The remaining 88 slots were divided into four bundles approved by the United States, taking into account specific slot times to ensure commercially viable and competitive patterns of service for the recipients of the divested slots. New American was required to divest these slot bundles to at least two different carriers approved by the United States in its sole discretion, in consultation with the Plaintiff States.

16. In addition, the settlement required New American to either sublease or transfer to the purchaser of any DCA slots the gates and other ground facilities (*e.g.*, ticket counters, hold-rooms, leased jet bridges, and operations space) necessary to support the use of the divested slots, on the same terms and conditions pursuant to which New American currently leased those facilities. Moreover, although not formally part of the DOJ remedy, the US DOT reached an agreement with American and US Airways that the merged company would use all of its commuter slots at DCA to serve airports designated as medium, small and non-hub airports (*i.e.*, airports accounting for less than one percent of annual passenger boardings) for a period of at least five years, thereby fulfilling a public interest goal of "preserving nonstop service to a range of destinations from DCA.[10]

---

8 Slots at Reagan National are designated as either "air carrier," which may be operated with any size aircraft, or "commuter," which must be operated using aircraft with 76 seats or less.

9 The remedy thus ensures that JetBlue will retain permanent access to the sixteen slots it formerly leased from American. JetBlue uses these slots to serve routes on which it competes directly with US Airways (and now New American). One of the harms alleged from the merger was the likelihood that New American would have cancelled the lease to eliminate that competition. *See* Am. Compl. ¶¶ 87-88.

10 United States Department of Transportation, "Agreement Regarding Merger Between US Airways Group, Inc. and AMR Corporation," (Nov. 12, 2013) at 1, *available at* http://www.dot.gov/airconsumer/merger-usairways-amrcorp.

2.4.2 LGA Slots

17. The 34 air carrier slots at LGA included 10 slots that Southwest currently leased from American at LGA. The settlement required the merged carrier to offer to sell those slots to Southwest and Southwest has now acquired the slots. The remaining 24 slots were divided into two bundles of 12 slots each, which the United States directed to be sold to two separate acquirers. The slot bundles were constructed taking into account specific slot times to ensure commercially viable and competitive patterns of service for the recipients of the divested slots.

18. As at DCA, New American was required to either sublease or transfer to the purchaser of any LaGuardia slots the gates and other ground facilities (*e.g.*, ticket counters, hold-rooms, leased jet bridges, and operations space) necessary to support the use of the divested slots, on the same terms and conditions pursuant to which the New American currently leases those facilities. With respect to gates, New American was required to make reasonable best efforts to facilitate any gate moves necessary to ensure that the purchasing carrier can operate contiguous gates.

2.4.3 Key Airport Gates

19. The Final Judgment required that New American transfer, consistent with the practices of the relevant airport authority, to another carrier or carriers approved by DOJ in its sole discretion, in consultation with the Plaintiff States, all rights and interests in two gates, and provide reasonable access to ground facilities (e.g., ticket counters, baggage handling facilities, office space, loading bridges) necessary to operate those gates, at each of: ORD, LAX, BOS, MIA, and DAL. The gates will either be subleased to the acquirer on commercial terms and conditions identical to those pursuant to which the gates and facilities are leased to New American or New American will return the gates to the airport in order to allow the acquirer to obtain the gates directly from the airport operator. New American was required to make reasonable best efforts to facilitate any gate moves necessary to ensure that the transferee can operate contiguous gates.

3. Rationale for the Relief

3.1 Effects of LCC Competition

20. The consumer benefits that flow from LCC entry are well established. Previous work by the Department of Justice has shown that the presence of an LCC on a nonstop route results in both significant price reductions and capacity increases.[11] An extensive body of economic research confirms that LCC entry on a route – whether by nonstop or connecting service – reduces fares three times as much as the addition of a legacy competitor.[12]

---

11 Comments of the U.S. Dep't of Justice, Notice of Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, Fed'l Aviation Admin., FAA-2010-0109, March 24, 2010 at A-2 (finding an "economically significant impact from the presence of an LCC on nonstop route-level prices, ranging from 21% to 27% average price decreases and a 68% to 118% median increase in number of passengers depending on the data examined").

12 *E.g.*, Jan K. Brueckner *et al.*, *Airline Competition and Domestic U.S. Airfares: A Comprehensive Reappraisal*, 2 ECON. TRANSP. 1-17 (2013) (finding that addition of nonstop LCC service reduces fares by 12% to 33% while entry of nonstop legacy service reduces fares by approximately 4%; similarly, the presence of LCC connecting service lowers fares by as much as 12%, while additional legacy connecting service lowers fares by typically less than 3%); Phillippe Alepin *et al.*, *Segmented Competition in Airlines: The Changing Roles of Low-Cost and Legacy Carriers in Fare Determination*, (working paper), *available*

21. The presence of LCCs on a route can disrupt coordination among the legacy airlines. LCCs have different pricing strategies from the legacies and often do not follow legacy fare increases. In addition, while the legacy airlines have adopted virtually identical fee structures for ancillary services such as checked baggage, most LCCs have not followed, in many cases continuing to offer such services for free. For example, Southwest and JetBlue do not charge a fee for the first checked bag, while all of the legacies charge $25.

22. In addition, although LCCs are often thought of as offering only basic, no-frills service, in some cases LCCs have actually been at the forefront in adding amenities designed to attract business customers. JetBlue's service has proved particularly appealing to Boston business travelers.[13] It recently introduced lie-flat seats and other amenities on certain trans-continental flights to appeal to premium customers.[14] Virgin America also caters to business passengers, billing its flights to corporate travel customers as "your corner office in the sky."[15] Virgin America was the first domestic airline to offer fleetwide WiFi, and its premium class service has been named the best among domestic airlines in an annual poll of business travelers for several years in a row.[16] Southwest and the other LCCs have also been upgrading their in-flight amenities to better attract business passengers.

23. As the legacy carriers consistently attest, the LCCs have a substantial effect on competition on the routes that they serve.[17] The impact of LCC competition has been limited on many heavily traveled routes, however, due to the inability to gain access to constrained airports.

---

at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2212860 (finding that the addition of nonstop LCC service on a route reduces fares by approximately 24% and the addition of a second nonstop LCC further reduces fares by approximately 13%); *see also* Martin Dresner *et al.*, *The Impact of Low Cost Carriers on Airport and Route Competition*, 30 J. OF TRANSP. ECON. & POL'Y 309-328 (1996); Steven A. Morrison, *Actual, Adjacent, and Potential Competition: Estimating the Full Effect of Southwest Airlines*, 35 J. OF TRANSP. ECON. & POL'Y 239-256 (2001).

13 One Boston-based business flyer told the *Wall Street Journal*: "The word spread pretty quickly around here: [JetBlue] had service and nice planes. . . . A lot of people in the business community prefer it. The fares are very competitive." Susan Carey, *How JetBlue Cracked Boston*, WALL ST. J. (Feb. 8, 2012) *available at* http://on.wsj.com/xHdvX4.

14 Press Release, JetBlue, JetBlue Introduces Mint™: The Best Coast-to-Coast Premium Service at an Unbelievably unPremium Price (Sept. 30, 2013) http://investor.jetblue.com/phoenix.zhtml?c=131045&p=irol-newsArticle&ID=1859952. JetBlue has also upgraded its standard product to include in-flight wi-fi and DirecTV. JetBlue was the first airline to offer DirecTV free of charge at every seat.

15 *See, e.g.*, Corporate Travel, VirginAmerica.com, http://www.virginamerica.com/corporate-travel.html.

16 The Best Airlines and Hotels for Business Travelers, cntraveler.com http://cntrvlr.com/1890tST (Oct. 2013).

17 *See* American Airlines Group, Inc., Annual Report (Form 10-K) 26 (Feb. 27, 2014) ("Low-cost carriers have a profound impact on industry revenues. . . . [LCCs] are expected to continue to increase their market share through growth and, potentially, consolidation, and could continue to have an impact on our overall performance."); Delta Air Lines, Inc., Annual Report (Form 10-K) 17 (Feb. 21, 2014) (LCCs "have placed significant competitive pressure on us in the United States and on other network carriers in the domestic market"); United Continental Holdings, Inc., Annual Report (Form 10-K) 19 (Feb. 25, 2013) ("The increased market presence of low-cost carriers, which engage in substantial price discounting, has diminished the ability of large network carriers to achieve sustained profitability on domestic and international routes."); US Airways Group, Inc., Annual Report (Form 10-K) 10 (Feb. 20, 2013) ("[R]ecent years have seen the growth of low-fare, low-cost competitors in many of the markets in which we operate. These competitors include Southwest, JetBlue, Allegiant, Frontier, Virgin America and Spirit. These low cost carriers generally have lower cost structures than US Airways.").

3.2 The Importance of LCC Access to Constrained Airports

24. LCCs have long had difficulty gaining access to slot and gate-constrained airports. Not only do such airports generate large volumes of overall traffic, they are also particularly important to business passengers. Access to such airports can spread the benefits of LCC competition to a large number of passengers and significantly strengthen LCCs at a network level.

25. Reagan National and LaGuardia are two of the most strategically important – and most constrained – airports in the United States. Although there are other airports serving the Washington and New York areas, DCA and LGA are closer to the downtown business districts and are highly preferred by business passengers. The legacy carriers have long dominated these airports and meaningful entry by LCCs has been notoriously difficult. At DCA, where LCCs had only about six percent of the take-offs and landings prior to the divestitures, the remedy transfers twelve percent of the slots to LCCs, nearly tripling LCC presence there. Likewise, the remedy will extend access at LaGuardia, where LCCs hold less than 10 percent of the slots. The LCCs that are acquiring the divested slots will be able to offer through their use of the divested slots over four million seats per year at Reagan National and over 1.5 million seats per year at LaGuardia.[18]

26. Similarly, gate divestitures at O'Hare, Los Angeles (LAX), Boston, Dallas Love Field, and Miami will expand the presence of LCCs at these strategically important airports located throughout the country. The acquirers will be able to offer increased competition not just on nonstop flights to and from these key airports, but also on connecting flights nationwide. O'Hare and LAX, two of New American's major hubs, are among the most highly congested airports in the country, and competitors have historically had difficulties obtaining access to gates and other facilities at those airports.[19] Dallas Love Field is much closer to downtown Dallas than American's largest hub at Dallas-Fort Worth International Airport ("DFW"). Gates at DFW are readily available, but Love Field is gate constrained. Although today's operations at Love Field are severely restricted under current law,[20] those restrictions are due to expire in October 2014, at which point Love Field will have a distinct advantage over DFW in serving business customers near downtown Dallas. The divestitures will position the acquirer to provide vigorous competition to New American's nonstop and connecting service out of DFW. And as there is limited ability to enter or expand at Boston, the divestitures will provide relief there too.[21]

27. Given the importance of the airports to business travelers, the LCCs that are acquiring the slots and gates will have a more robust product for business and corporate travel. For example, as a result of the

---

18 Annual seats calculations are based on the number of divested daily slots at each airport and the average number of seats on the aircraft that the slot acquirers typically use.

19 For example, Virgin America originally announced its intent to serve O'Hare in 2008, but its plans were delayed over three years due to a lack of gate availability. Press Release, Virgin America, "Virgin America Breezes Into O'Hare" (Feb. 17, 2011) (describing long-term efforts to obtain gate access), *available at* http://www.virginamerica.com/press-release/2011/virgin-america-breezes-into-chicago-ohare.html. The comments submitted by Allegiant Airlines demonstrate the importance to LCCs of obtaining gates at LAX.

20 Under legislation known as the Wright Amendment, airlines operating out of Love Field may not operate nonstop service on aircraft with more than 56 seats to any points beyond Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri or Alabama.

21 Although access issues at Miami are not as acute as at the other airports, the proposed Final Judgment also ensures that a carrier seeking to enter or expand at Miami will have access to two of the gates and associated ground facilities currently leased by US Airways.

divestitures, Virgin America – one of only a few airlines to start domestic service in recent years – will enter LaGuardia, expand at Reagan National, and may expand at other constrained airports as the gate divestitures progress. As such, it will supplement its West Coast presence with service to major East Coast business destinations (and potentially additional destinations around the country), thereby establishing greater scope and scale.[22]

28. Moreover, the passenger demand generated in cities where the divestitures will occur will enhance the LCCs' incentives to invest in new capacity elsewhere. For example, when Southwest adds nonstop service from Reagan National to Nashville, the new source of passengers from the major population center of Washington, D.C., could support entry or expansion on additional routes out of Nashville. At the same time, Southwest's marketing position in Nashville would be enhanced because the nation's capital is included in the service offerings available in Nashville.[23] That would in turn make it easier for Southwest to attract passengers to its other destinations and incentivize Southwest to add capacity to meet that demand.

29. Thus, taken together, the divestitures will substantially improve the LCCs' network quality and attractiveness to customers, position them to offer more meaningful competition system-wide, and enable them to grow faster than they otherwise would, both in the depth and breadth of their networks.

3.3 Effects of LCC Entry at Constrained Airports

30. As noted above, there is extensive evidence on the effects of LCC entry generally. Two recent examples of LCC entry at slot constrained airports provide compelling evidence of the substantial consumer benefits generated when LCCs are able to gain access to these strategically important airports. In 2010, Southwest acquired 36 slots at Newark Liberty International Airport pursuant to a divestiture remedy that addressed competition concerns arising from the merger of United Airlines and Continental Airlines. Southwest used those slots to enter six nonstop routes from Newark (one of which, Newark-BWI, it later exited), resulting in substantially lower fares to consumers and increased output:

Route	**Year-over-year Percentage Change in Average Fare**	**Year-over-year Percentage Change in Number of Passengers**
Newark-St. Louis	-27%	66%
Newark-Houston	-15%	53%
Newark-Phoenix	-14%	57%
Newark-Chicago	-11%	35%
Newark-Denver	-5%	49%

31. Passengers flying on these five nonstop routes after Southwest began service saved about $75 million annually compared to what they would have had to pay prior to Southwest's entry.[24] In addition,

22 Virgin America has announced its interest in beginning service from Love Field to major business destinations throughout the country. Press Release, Virgin America, "Virgin America Plans Dallas Expansion: Airline wants to bring more business-friendly, low-fare flight competition to Dallas with new flights from Love Field," *available at* http://www.virginamerica.com/press-release/2014/virgin-america-plans-dallas-expansion.html.

23 As Southwest's CEO stated, "We have a lot of customers that love Southwest Airlines . . . and a lot of them want to go to Reagan." Charisse Jones, "JetBlue, Southwest Gain Slots at Reagan Airport," USA TODAY (Jan. 30, 2014), *available at* http://usat.ly/1b9U3ah.

24 USDOT Origin & Destination Survey. Percentage changes in average fare and number of passengers are calculated using data from the first full quarter after entry by Southwest and, as a baseline, data from four quarters before that entry. To determine annual consumer savings, the number of passengers flying on

Southwest was able to incorporate Newark service into its overall domestic network, offering low fares on connections to Newark from over sixty cities.[25] In this way, the creation of only a few nonstop routes led to 60 connecting routes. A similar multiplier effect is expected with the current divestitures.

32. Likewise, JetBlue has used its limited number of slots at Reagan National to drive down fares and increase output on the routes it serves. For example, after JetBlue entered the Reagan National to Boston route in 2010, average fares dropped by 39 percent year-over-year and passengers nearly doubled. US Airways estimated that after JetBlue's entry, the last-minute fare for round-trip travel between Reagan National and Boston – a key business route – dropped by over $700. *See* Am. Compl. ¶ 88.

4. The AA/US Divestitures

4.1 Outcome of Divestiture Process

33. The slot divestitures at DCA and LGA have been completed. Following a competitive bidding process conducted by American, the slots have been transferred to LCCs approved by the United States. At LGA, Southwest and Virgin America obtained bundles of 12 slots each. In addition, Southwest purchased the 10 slots it had been leasing from American. Southwest has announced that it will use the additional slots it obtained to increase service between LGA and Nashville, Houston Hobby, Chicago Midway, and Akron-Canton.[26] Virgin America, which previously did not serve LGA at all, will use its slots to serve Dallas Love Field.

34. At DCA, the divestitures will result in additional service from three LCCs. Southwest obtained 56 additional slots, JetBlue obtained a bundle of 24 additional slots, and Virgin America obtained 8 slots. In addition, JetBlue and American agreed to make the slot swap under which JetBlue was using 16 DCA slots permanent. Southwest has announced that will use the slots it acquired to introduce new service or increase frequencies from DCA to Chicago Midway, Nashville, New Orleans, Tampa, Akron-Canton, Dallas Love Field, Houston Hobby, and Indianapolis.[27] JetBlue has announced a partial schedule for its new DCA slots, with new service to Hartford, Charleston, and Nassau Bahamas, and increased frequency to Tampa.[28] Virgin America, which previously had only one daily round-trip at DCA, will use its slots to service Dallas Love Field.

35. The divestiture process at the five other airports is underway. American has entered into a sublease agreement with Virgin America for two gates at Love Field. The sublease will take effect in October 2014, when statutory flight restrictions at Love Field are lifted. American will also give up two

---

each route for each of the four quarters following Southwest's entry is multiplied by the dollar amount of the corresponding year-to-year fare change for that quarter. The annual amount is the sum of the four quarters for all of the routes. Data is not reported for the Newark-BWI route.

25 USDOT Origin & Destination Survey, CY 2012.

26 Southwest Press Release, "Southwest Airlines Takes a Bigger Bite of the Big Apple with New LaGuardia Flights, Adds San Diego Nonstops, and Extends Schedule (Dec. 16, 2013), *available at* http://www.swamedia.com/releases/southwest-airlines-takes-bigger-bite-of-the-big-apple-with-new-laguardia-flights-adds-new-san-diego-nonstops-and-extends-schedule.

27 Southwest Press Release, "It's A Fare-a-Buster! Southwest Airlines Gives DC Travelers New Routes and Low Fares (March 24, 2014), *available at* http://www.swamedia.com/releases/its-a-fare-a-buster-southwest-airlines-gives-dc-travelers-new-routes-and-low-fares.

28 JetBlue Press Release, JetBlue Adds Three Nonstop Destinations for Customers at Ronald Reagan Washington National Airport, Offers Introductory Fares as Low as $30 (March 6, 2014), *available at* http://investor.jetblue.com/phoenix.zhtml?c=131045&p=irol-newsArticle&ID=1906649&highlight=.

gates at the other airports, which we expect will facilitate additional service from a number of low cost carriers.

4.2 Early Evidence of Effects

36. The full effects of the American/US Airways divestitures will not be felt for some time. Before starting service, the acquiring airlines must establish their schedules and begin selling tickets. In some cases the acquirers may need to arrange for additional aircraft, hire new customer service employees, and move to new gates. Likewise, American needs a transition period during which it will provide service to passengers who have already purchased tickets.[29] The new LCC flights at LGA will be phased in between May and October 2014, and the new flights at DCA will be phased in between June and November 2014. The new flights at the other key airports will also be phased in over time. Moreover, the United States expects that the divestitures will facilitate the expansion of LCC route networks and growth of capacity over the long term. These pro-competitive effects will not be fully felt for years.

37. Even though most of the new LCC service has not started, there are already indications that the divestitures will have significant consumer benefits. For example, JetBlue reported in a filing with the Department of Transportation that American has significantly reduced its advance purchase fares on two routes where American currently has a nonstop monopoly that JetBlue has announced it will begin serving with its new slots. American fares on the DCA-Hartford route declined 19-52% depending on the length of advance purchase and fares on the DCA-Charleston route fell 29-74%.[30]

38. Moreover, the consumer benefits will be felt far beyond the nonstop routes that the LCCs serve from DCA and LGA. Southwest will use its slots to provide service from DCA to some of the largest operations in its network, including Chicago Midway, Houston Hobby, Nashville and Dallas Love Field. The 56 new Southwest slots at DCA thus have the potential to generate hundreds of new connections.

39. The transfer of Reagan National slots to LCCs will also benefit consumers through increased capacity because LCCs are likely to use larger planes than US Airways had used.[31] Comparing the average aircraft size operated by US Airways on routes it has announced it will exit with the average aircraft size operated by Southwest and JetBlue at Reagan National in 2013, the number of seats at Reagan National is estimated to increase by over 2 million per year as a direct result of transferring the slots to LCCs, leading to a potential 10% increase in the number of passengers using the airport.[32]

---

29 Due to the need for a transition period, the Final Judgment provides that American may continue to operate the slots for a period of up to 180 days after the transfer. Final Judgment, Sections IV.F.4., IV.G.5. The period may be extended at the discretion of the acquirer with the consent of the United States. *Id.*

30 Application of JetBlue Airways Corporation, Docket DOT-OST-2000-1782 at 7-8 (March 25, 2014).

31 A large proportion of US Airways' Reagan National flights have in recent years been on small regional jets, even though it had sufficient flexibility with its slot portfolio to use larger aircraft. Absent the remedy, the merged airline would have had two-thirds of the flights at Reagan National but only half the airport's passengers. *Hearing on Airline Industry Consolidation Before the Subcomm. on Aviation Operations, Saftey and Security of the S Comm. on Commerce, Science and Transportation* (June 19, 2013) 113 Cong. (statement of W. Douglas Parker, Chairman and CEO, US Airways Group).

32 The average aircraft US Airways operated in 2013 on the 16 routes that it plans to exit had 57.6 seats; Southwest and JetBlue operate aircraft with an average of 123.1 seats. Official Airline Guide. (The aircraft size on US Airways's current Reagan National-San Diego service is excluded because that service will simply shift to Reagan National-LAX.)

5. Conclusion

40. The settlement in the American/US Airways case does not precisely remedy the specific harms from the merger. Such a remedy is simply not possible. Instead, the aim of the remedy is to significantly ease some of the most intractable barriers to LCC entry and expansion throughout the country. Indeed, the remedy in many ways improves the competitive structure of the industry compared to the status quo prior to the merger, when LCCs where largely locked out of key airports. Placing scarce assets in the hands of LCCs will strengthen these carriers at a network level and provide substantial benefits to passengers throughout the United States.