

The Honorable Peter Buttigieg  
Secretary  
Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

The Honorable Jonathan S. Kanter  
Assistant Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

March 10, 2022

Dear Secretary Buttigieg and Assistant Attorney General Kanter,

We write to ask to you block the proposed merger between Spirit Airlines and Frontier Airlines. This merger will likely lessen competition in the airline industry, and thus violates the Clayton Act. In addition, such a merger undermines the public interest, and thus compels the Secretary of Transportation to deny the carriers' proposed international route transfers. By statute (49 U.S.C. 41105), DOT may approve such transfers only if it determines that the transfer's impact on domestic competition in the airline industry is consistent with the public interest. In the case of this merger, it is not.<sup>1</sup>

As affirmed by President Biden's Executive Order on Competition, today's excessive market concentration threatens Americans' basic economic liberties, government's democratic accountability, and the welfare of workers, small businesses, and consumers. We are pleased that policymakers across the board not only recognize the severity of America's concentration crisis but have shown the courage to learn from past mistakes. President Biden himself recognized the failures of past antitrust enforcement approaches, lamenting decades spent by regulators following – in his words – the “misguided philosophy of people like Robert Bork.”<sup>2</sup>

It is with the Biden administration's firm antitrust mandate in mind that we urge you to block this transaction. A merger between Spirit and Frontier Airlines, both ultra-low-cost carriers (ULCCs) and head-to-head competitors, would destroy competition in the only competitive market segment of the highly consolidated airline industry. The deal would hand the merged

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<sup>1</sup> Senate Subcommittee on Aviation Operations, Safety, and Security, 113<sup>th</sup> Cong. “The American Airlines/US Airways Merger: Consolidation, Competition, And Consumers,” Testimony of Susan L. Kurland, March 19, 2013, <https://www.commerce.senate.gov/services/files/2E59BE46-73BD-4EE8-8173-0D0EA487AB7A>; Letter from Department of Transportation Office of General Counsel to Minnesota Finance Commissioner John Gunyou, March 20, 1992, <https://www.transportation.gov/sites/dot.gov/files/docs/Use%20of%20International%20Air%20Service%20Route%20Rights%20as%20Collateral%20for%20Long-Term%20Financing%203.20.1992.pdf>

<sup>2</sup> President Joseph R. Biden Jr, “Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy,” (Speech) Washington DC, July 9, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/>

airline a dominant position in a competitive low-cost air travel market, further strengthening barriers to entry, incentivizing market power abuse, and threatening new market entrants.

In the past year, regulators have displayed a renewed and reinvigorated approach to protecting the American people and the U.S. economy from the ravages of anticompetitive mergers such as Lockheed-Aerjet, Kern River Gas-Questar Pipeline, Bass Pro-Sportsman's Warehouse and Nvidia-ARM. The proposed Frontier-Spirit merger is no exception and should meet the same fate.

### **Industry Consolidation**

The story of the US airline industry, once a tale of innovation and progress in knitting together a nation, has become a story of consolidation. Between 1940 and 1978, air travel was regulated as a public utility, ushering in the air travel era. More than 400 carriers served millions of travelers, connecting the country and bringing new mobility and access to everyday Americans.<sup>3</sup> However, after 1978, airline deregulation ushered in waves of consolidation, with hundreds of thousands of jobs cut along the way.<sup>4</sup> Today, there are fewer than 60 airlines left. The four remaining major airlines – American, Delta Air Lines, United Airlines, and Southwest Airlines – form an oligopoly, controlling more than 80 percent of the country's domestic flights. In many routes and airports, just one or two carriers are dominant.<sup>5</sup> In the past fifteen years, a number of high-profile mergers, including Delta-Northwest in 2008, United-Continental in 2010, and American-US Airways in 2013, have been allowed to consummate, supercharging concentration and leading to higher prices and reduced service.<sup>6</sup>

In such this competition-starved market, the proposed merger between Frontier Airlines and Spirit Airlines is clearly anticompetitive and illegal. The merger's consequences would kneecap competition within the airline industry, hurt consumers, degrade domestic and international travel access, and damage the economy.

### **Ultra-Low-Cost-Carrier (ULCC) Consolidation**

Compared to the "Big Four" airlines – American, Delta, Southwest, and United – which each control between twelve and eighteen percent of US consumer air travel, neither Frontier nor Spirit, at three and five percent respectively of overall air travel, are considered major carriers.<sup>7</sup> However, Spirit and Frontier are the two largest players in the growing ultra-low-cost carrier (ULCC) segment of the industry, which acts as a disciplinary check against the dominance of larger full-service airlines. While the merging firms claim the deal creates a viable fifth

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<sup>3</sup> Bill Hethcock, "How Mergers Have Driven Consolidation of The Airline Industry," *Dallas Business Journal*, April 6, 2017, <https://www.bizjournals.com/dallas/news/2017/04/06/how-mergers-have-driven-consolidation-of-the.html>

<sup>4</sup> Dietz et. al, "Course Correction Reversing Wage Erosion to Restore Good Jobs at American Airports," Berkeley Center for Labor Research and Education, October 2013, [https://laborcenter.berkeley.edu/pdf/2013/restore\\_good\\_jobs\\_american\\_airports.pdf](https://laborcenter.berkeley.edu/pdf/2013/restore_good_jobs_american_airports.pdf)

<sup>5</sup> Elena Mazareanu, "Passenger Airlines in the U.S. - Statistics & Facts," Statista, July 8, 2021, <https://www.statista.com/topics/5575/passenger-airlines-in-the-us/>

<sup>6</sup> Scott McCartney, "Past Airline Mergers Haven't Lived Up to Promises," *Wall Street Journal*, August 13, 2013, <https://www.wsj.com/articles/SB10001424127887324769704579010832802658974>

<sup>7</sup> Niraj Chokshi, "Frontier and Spirit Airlines Plan to Merge," *New York Times*, February 7, 2022, <https://www.nytimes.com/2022/02/07/business/frontier-spirit-airlines-merger.html>

competitor against the Big Four carriers, this merger simply allows Frontier-Spirit to monopolize the ULCC segment of the airline industry.

The ULCC segment of the airline industry operates on a different business model than both legacy carriers (such as American and Delta) and low-cost carriers (such as JetBlue and Southwest Airlines). ULCCs prioritize rock-bottom operating costs, often operating fleets composed of a single type of aircraft and shifting risk of flight delays onto customers.<sup>8</sup> While slashing amenities and offering flights at low prices, ULCCs recoup revenue by aggressively imposing “Junk Fees” – charging passengers numerous ancillary fees for everything from food and carry-on baggage to leg room, seat selection, and even printing their own boarding passes.<sup>9</sup> For ULCCs, it’s a profitable business model – per passenger in 2021, Spirit made more money from ancillary fees than it did from plane tickets. Passengers appear willing to accept higher fees, reduced comfort, and heightened risk of having their travel plans disrupted simply in pursuit of cheaper base fares for point-to-point travel.<sup>10</sup> ULCCs have found particular success during the Covid-19 pandemic, with multiple ULCCs outgrowing their major network airline counterparts in the past two years.<sup>11</sup>

Allowing a merger between the two largest ULCCs would cement Frontier-Spirit’s overwhelming dominance in a competitive segment of the domestic airline industry. A Frontier-Spirit merger would hand market dominance of the segment to the merged carrier, with the next largest ULCC, Allegiant, almost four times smaller.<sup>12</sup> A Deutsche Bank analyst laid out the anticompetitive outcome of Frontier-Spirit clearly: “With much of the industry’s new capacity from both incumbents and new entrants targeting the most price-sensitive customers in domestic discretionary markets, we were concerned that long-term profitability in that segment would be greatly diminished. This transaction will help mitigate that concern.” In other words, competition in the ULCC segment is threatening monopoly profits – and Frontier-Spirit looks like the perfect anticompetitive remedy.<sup>13</sup>

## Prices

The deal won’t just reduce competition in the ULCC segment. Since competition in the ULCC segment provides a check on major domestic carriers, the entire airline industry would be affected, with consumers paying the price in choice and price. An MIT study showed that ULCC

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<sup>8</sup> Unlike larger network airlines, Spirit and Frontier lack “interline agreements” with other airlines, which enable carriers to book passengers on competitors’ flights during disruptions. See Leslie Josephs, “‘We Couldn’t Get In Front Of It’ – Spirit Airlines CEO Explains What Caused The Carrier’s Meltdown,” CNBC, August 5, 2021, <https://www.cnbc.com/2021/08/06/spirit-airlines-ceo-on-what-caused-the-carriers-meltdown.html>

<sup>9</sup> “How Can I Check In And Get My Boarding Pass?” Spirit Airlines Customer Support, <https://customersupport.spirit.com/en-US/category/article/KA-01236>

<sup>10</sup> Dawn Gilbertson, “Frontier and Spirit Airlines Are Merging: What It All Means for Travelers’ Fares And Fees,” USA Today, February 7, 2022, <https://www.usatoday.com/story/travel/airline-news/2022/02/07/spirit-airlines-frontier-airlines-merger/6689637001/>

<sup>11</sup> Jason Notte, “Low-Cost Carriers Fly Above Covid-19 Turbulence Domestic,” Adweek, November 24, 2021, <https://www.adweek.com/brand-marketing/low-cost-carriers-covid/amp/>

<sup>12</sup> James Pearson, “What Does the Frontier Spirit Merger Mean for US Connectivity?” Simple Flying, February 7, 2022, <https://simpleflying.com/Frontier-Spirit-network-analysis/>

<sup>13</sup> Pilar Wolfsteller, “Frontier-Spirit Deal Solves Several Issues in Hotly Contested ULCC Market: Analysts,” FlightGlobal, 7 February 2022, <https://www.flightglobal.com/strategy/Frontier-Spirit-deal-solves-several-issues-in-hotly-contested-ulcc-market-analysts/147407.article>

presence in a route has been associated with a reduction in the route's base fares by an average of 21 percent across carriers.<sup>14</sup> Airlines and regulators are also both aware of the ULCC effect. In a September 2021 complaint, the Justice Department described the anticompetitive nature of the JetBlue-American Northwest Alliance, highlighting JetBlue's CEO own words describing the role that small low-cost carriers play in keeping the commercial aviation industry competitive: "the presence of smaller competitive carriers like JetBlue helps push fares down across the board."<sup>15</sup> In 2015, American Airlines President Scott Kirby quantified the phenomenon in an investor call, saying, "The vast majority of pricing, probably north of 85% of domestic pricing, is really either directly or indirectly influenced by low-cost carrier pricing... it's affecting not just the 2% or 3% of revenue in markets that they're in, but it's affecting a much bigger piece of the pie." In addition, workers and suppliers will lose out, as they will have fewer airlines with which to bargain.

Evidence shows that airline mergers cause prices to rise. The 2008 Delta-Northwest merger saw airfares rise at least 15%, while the 2013 United-Continental merger led to price hikes of up to 57%.<sup>16</sup> The so-called "efficiency gains" that merging airlines touted to regulators and the public were meaningless; instead, the newly-merged firms' flexed their market power to raise prices.<sup>17</sup> Even investment banks admit it: JPMorgan analysts cheered the Frontier-Spirit deal, welcoming the opportunity for more revenue and noting that the elimination of pricing competition between the airlines would lead to "firmer ticket prices."<sup>18</sup> The Justice Department has gone on the record as well, consistently stating that airline mergers result in higher prices for consumers – and that greenlighting mergers between major carriers simply incentivizes further consolidation.<sup>19</sup>

### **Regional Markets and Head-to-Head Dominance**

Frontier-Spirit wouldn't create a fifth major airline to compete with network airlines as the firms claim. It would, however, hand regional monopolies to the merged airline. Frontier-Spirit would rank #1 or #2 in passenger share at eight of its ten most flown airports. In Orlando and Fort Lauderdale, Frontier-Spirit would gain dominance in flight capacity, while in Philadelphia, Miami, Las Vegas, and Dallas, it would rank second.<sup>20</sup> The state of Florida would be especially impacted: with over half of the merged carrier's capacity based in the state, Frontier-Spirit would dominate the Sunshine State's airports.

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<sup>14</sup> Alexander R. Bachwich, Michael D. Wittman, "The Emergence and Effects of the Ultra-Low Cost Carrier (ULCC) Business Model in the U.S. Airline Industry," *Journal of Air Transport Management*, 62, (2017) 155-164, <https://dspace.mit.edu/bitstream/handle/1721.1/104869/ulcc-paper-draft-revFINAL.pdf;jsessionid=B0775022ED165FAFDF3A9F0809460539?sequence=1>

<sup>15</sup> Complaint, U.S. and Plaintiff States v. American Airlines Group Inc. and JetBlue Airways Corporation, U.S. Department of Justice, September 21, 2021, <https://www.justice.gov/atr/case-document/file/1434836/download>

<sup>16</sup> McCartney, "Past Airline Mergers Haven't Lived Up to Promises"

<sup>17</sup> Avi Grunfeld, "An Analysis of the Effect of Airline Mergers on Airfares: A Case Study of Delta-Northwest and Continental-United," *Penn Journal of Philosophy, Politics & Economics* no. 10, 40-66, <https://repository.upenn.edu/spice/vol10/iss1/3/>

<sup>18</sup> Callum Keown, "What the Frontier, Spirit Merger Might Mean for Airfares," *Barron's*, February 8, 2022, <https://www.barrons.com/articles/Frontier-Spirit-merger-airfares-51644338158>

<sup>19</sup> United States Department of Justice, "Justice Department Files Antitrust Lawsuit Challenging Proposed Merger Between US Airways and American Airlines," (Press Release) August 13, 2013, <https://www.justice.gov/opa/pr/justice-department-files-antitrust-lawsuit-challenging-proposed-merger-between-us-airways-and>

<sup>20</sup> Pearson, "What Does the Frontier Spirit Merger Mean For US Connectivity?"

Since ultra-low-cost carriers focus not on scaling transit networks but on lowering costs to divert consumer discretionary dollars into air travel, much of Spirit and Frontier’s head-to-head competition occurs on routes connecting major metro areas to warm-weather tourism hot spots. Of Spirit and Frontier’s overlapping routes, the top ten most traveled connect cities like Detroit, Cleveland, Newark, and Baltimore with destinations in Florida and the Caribbean.<sup>21</sup>

### **Coordinated Behavior**

In a market already infamous for anticompetitive behavior and collusion, a Frontier-Spirit merger would only further incentivize coordinated behavior. In 2013, the Justice Department acknowledged this, writing in a complaint, “The structure of the airline industry is already conducive to coordinated behavior... Coordination becomes easier as the number of major airlines dwindles and their business models converge.”<sup>22</sup> In the same complaint, the Justice Department identified significant barriers to entry for new market entrants, from fleet costs and inherent infrastructure limitations to frequent flyer programs and the risk of “aggressive responses” by dominant incumbents. The proposed merger would only strengthen barriers to entry among the ULCC segment and the larger industry.

In the years leading up to the Covid-19 pandemic, major airlines exercised their market power to extract record profits even as costs fell.<sup>23</sup> In the past five years alone, two of the “Big Four” have settled lawsuits alleging collusion to limit plane capacity and drive up airfares, practices that drew criticism from the United States Senate and were the subject of a 2015 Justice Department investigation.<sup>24</sup>

### **Customer Experience Degradation**

While the Frontier-Spirit merger may benefit shareholders and executives, it’s a raw deal for consumers. Spirit and Frontier aren’t just the two largest ULCCs – they’re the two least liked airlines in America. Both airlines have both ranked dead last in customer satisfaction since 2017. Spirit alone earned more customer complaints in 2021 than any single US airline.<sup>25</sup> During one operational meltdown in early August, Spirit cancelled more than 60% of its scheduled flights

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<sup>21</sup> Ty West, "These Routes Have the Most Overlap Between Spirit and Frontier," The Business Journals, February 8, 2022 <https://www.bizjournals.com/bizjournals/news/2022/02/08/Frontier-Spirit-airline-merger.html>

<sup>22</sup> Complaint, U.S. and Plaintiff States v. US Airways Group, Inc. and AMR Corporation, U.S. Department of Justice, August 13, 2013, <https://www.justice.gov/atr/case-document/file/514531/download>

<sup>23</sup> Chris Isidore, “Why airfares are sky-high when jet fuel is dirt cheap,” CNN Business, January 22, 2015, <https://money.cnn.com/2015/01/21/news/companies/airfares-jet-fuel-prices/index.html>

<sup>24</sup> Andrew Harris and Mary Schlangenstein, "American Airlines Agrees to Pay \$45 Million to Settle Fare Collusion Lawsuit," Bloomberg, June 15, 2018, <https://www.bloomberg.com/news/articles/2018-06-15/american-agrees-to-pay-45-million-to-settle-fare-collusion-suit?sref=q0qR8k34>; Drew Harwell et. al, "Justice Dept. Investigating Potential Airline Price Collusion," Washington Post, July 1, 2015, [https://www.washingtonpost.com/business/economy/doj-investigating-potential-airline-collusion/2015/07/01/42d99102-201c-11e5-aeb9-a411a84c9d55\\_story.html](https://www.washingtonpost.com/business/economy/doj-investigating-potential-airline-collusion/2015/07/01/42d99102-201c-11e5-aeb9-a411a84c9d55_story.html); Letter from Senator Richard Blumenthal to Assistant Attorney General William J. Baer, June 17, 2015, <https://www.blumenthal.senate.gov/imo/media/doc/20150617%20Blumenthal%20to%20DOJ%20Airline%20Coordination.pdf>

<sup>25</sup> American Customer Satisfaction Index, “Benchmarks By Company,” [https://www.theacsi.org/index.php?option=com\\_content&view=article&id=149&catid=&Itemid=214&i=Airlines](https://www.theacsi.org/index.php?option=com_content&view=article&id=149&catid=&Itemid=214&i=Airlines); Allison Pohle, "The Best and Worst U.S. Airlines of 2021," Wall Street Journal, January 28, 2022, <https://www.wsj.com/articles/the-best-and-worst-u-s-airlines-of-2021-11643374802>



over the course of a week, leaving hundreds of thousands of passengers stranded for days.<sup>26</sup> In February – the same day the proposed merger was announced – “automation issues” led Frontier to cancel 22% of its own flights, impacting thousands of Americans.<sup>27</sup> Handing the two most customer-unfriendly airlines more market would further insulate them from customer dissatisfaction – and give them carte blanche to treat passengers even worse.

### **Negative Effects on American Consumers and Workers**

Today, a record-setting merger wave is destabilizing competition in the US economy.<sup>28</sup> Executives and shareholders have enjoyed a year of record profits, even as working Americans struggle with depressed wages and inflation – both driven by consolidation and corporate greed.<sup>29</sup> In this environment, allowing two major competitors to monopolize the only cost-lowering segment of a hugely consolidated industry isn’t just foolish – it’s destructive.

Compounding the merger’s anticompetitive effects, the airline industry has already benefitted from a massive taxpayer bailout. Despite being handed billions in hard-earned taxpayer dollars, the airline industry has failed to hold up its end of a bailout deal designed to incentivize employment levels and preserve critical travel capacity. Instead, airlines have engaged in a series of cost-cutting early retirement programs, buyouts, and voluntary furloughs that have led to pilot and other workforce shortages, saddling Americans with flight cancellations, delays, and service reductions.<sup>30</sup>

While both Spirit and Frontier claim that the merger would lower prices and add thousands of new jobs, little evidence exists to support their claims. Studies show that the more consolidated the industry, the smaller the share of profits that workers receive, while economists estimate that the wide-ranging effects of market concentration have reduced employment today by nearly 13 percent – and artificially suppressed wages by an average of more than \$10,000.<sup>31</sup> In the words of Consumer Reports airline adviser William McGee: “There has never been a merger or an acquisition of an airline in the United States that has not led to layoffs... There is always, always fallout on the labor side. Always.”<sup>32</sup>

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<sup>26</sup> Josephs, “Spirit Airlines CEO Explains What Caused The Carrier’s Meltdown”

<sup>27</sup> David Shepardson, “Frontier Airlines resumes flights after tech issue halted operations,” Reuters, February 7, 2022, <https://www.reuters.com/business/aerospace-defense/frontier-airlines-temporarily-halts-all-flights-after-tech-issue-2022-02-07/>

<sup>28</sup> Sarah Miller, Krista Brown, Shahid Naem, “To Save Jobs and Slow Inequality, Stop the Merger Frenzy,” American Economic Liberties Project, January 2022, <https://www.economicliberties.us/wp-content/uploads/2022/01/Stop-the-Merger-Frenzy-Quick-Take-Final-1.10.pdf>

<sup>29</sup> Robert H. Lande, “Megacorporations Are Jacking Up Prices 'Because They Can,' Pushing Red-Hot Inflation to Historic Levels,” Insider, February 14, 2022 <https://www.businessinsider.com/inflation-monopolies-mega-corporations-inflating-high-prices-antitrust-2022-2>

<sup>30</sup> “Sen. Cantwell Calls on Airlines for Answers as Workforce Shortages Force Flight Cancellations, Delays, and Passenger Frustrations” (Press Release) Office of Senator Maria Cantwell, July 16, 2021, <https://www.cantwell.senate.gov/news/press-releases/sen-cantwell-calls-on-airlines-for-answers-as-workforce-shortages-force-flight-cancellations-delays-and-passenger-frustrations>

<sup>31</sup> Simcha Barkai, “Declining Labor and Capital Shares,” *Journal of Finance* 75, no. 5 (October 2020) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3489965](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3489965); Suresh Naidu et. al, “Antitrust Remedies for Labor Market Power,” Harvard Law Review, December 2018, <https://harvardlawreview.org/2018/12/antitrust-remedies-for-labor-market-power/>

<sup>32</sup> David Schaper and Joe Hernandez, “Frontier-Spirit Merger Promises Better Deals And Service; Critics Aren't So Sure,” NPR, February 7, 2022, <https://www.npr.org/2022/02/07/1078842162/Frontier-Spirit-spirit-airlines-merger>

Who stands to benefit from this merger? The tale is a familiar one: Executives can walk away million-dollar golden parachutes while their bankers and lawyers line their pockets. Shareholders will reap the profits of the merged carrier's increased market power, skyrocketing junk fees, and anticompetitive agenda. Already-dominant major airline carriers are already breathing easier as their stocks jump to yearlong highs on the merger news.<sup>33</sup> As one merger expert noted in Bloomberg, investors "appear to have concluded that the biggest beneficiary of this deal may be the airline industry itself."<sup>34</sup> Everyday Americans, however, will suffer. Travelers will pay higher prices for fewer and lower quality options, workers will lose their jobs, and smaller firms will be muscled out of a once-competitive market segment.

To protect essential travel, preserve the economic liberties of American consumers, and defend competition in the airline industry, blocking the Frontier-Spirit merger isn't just the right choice. It's the only choice.

Sincerely,

American Economic Liberties Project  
Blue Future  
Demand Progress Education Fund  
Fight Corporate Monopolies  
Fight for the Future  
Institute for Local Self-Reliance  
Public Citizen  
Revolving Door Project  
The Freedom BLOC

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<sup>33</sup> Clark Schultz, "Airline Stocks Extend Rally to Second Day After Big Frontier-Spirit Deal," Seeking Alpha, February 8, 2022, <https://seekingalpha.com/news/3797450-airline-stocks-extend-rally-to-second-day-after-big-Frontier-Spirit-deal>

<sup>34</sup> Brooke Sutherland, "A Frontier-Spirit Deal Won't Evade Antitrust Radar," Bloomberg, February 7, 2022, <https://www.bloomberg.com/opinion/articles/2022-02-07/a-frontier-spirit-airline-deal-won-t-evade-u-s-antitrust-radar?sref=q0qR8k34>