

September 7, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

CC:

The Honorable Ronald Klain
Chief of Staff
White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Secretary Buttigieg,

The Biden Administration's comprehensive competition agenda has made significant progress combating concentrated corporate power in our economy and helped to tame consumer prices against the backdrop of corporate greed. In the words of President Biden himself, earlier this year: "Competition results in lower prices for families. Competition results in fair wages for workers. And as you know, competition encourages companies to innovate."¹ The President's strong pro-competition stance, laid out in his executive order promoting competition in the American economy, mobilized an exemplary whole-of-government approach to corporate consolidation. The Biden Administration has fought the supply chain crisis by curbing the concentrated power of ocean carrier cartels, encouraged equity and economic productivity through expanded access to affordable high-speed broadband internet, and delivered the American people more affordable and accessible hearing aids, among other victories.

Considering the impact of President Biden's competition agenda across the economy, we write to express concern about the administration's lagging response to a particularly challenging area. Today, the nation's air travel industry is in crisis. The American public is enduring what is being called the worst summer for customer service in industry history. Massive consolidation in the sector has led to unaccountable airlines that offer passengers poor quality and an unreliable product. Airline consolidation has left passengers no real choices, no bargaining power, and no recompense in the face of historic delays, mass cancellations, unpaid refunds, and untenable airfares in much of the country.

Despite receiving a \$54 billion taxpayer bailout with a no-layoff condition meant to keep capacity ready for a predictable travel rebound, airlines chose to instead shirk their responsibility, evading promises by pushing early retirements to protect their profits

¹ Betsy Klein, "Biden highlights efforts to fight inflation: 'Competition results in lower prices,'" CNN, Jan 24, 2022, <https://www.cnn.com/2022/01/24/politics/white-house-competition-council/index.html>

and resulting in weakened flight schedules and depleted pilot numbers.² The consequences are today's historic flight cancellations: more flights were cancelled in the first six months of this year (121,918) than in the entirety of 2021 (121,552), leaving record numbers of Americans stranded and at times illegally uncompensated.³ This June alone, more flights were canceled than any other previous June on record – and the cancellations have only mounted since.⁴

Despite historically poor service levels and abysmal product quality, airfares have skyrocketed (particularly in rural and smaller communities), hurting not just Americans' wallets but also the economy at large. The same airline executives who engineered stock buybacks prior to the taxpayer bailouts are now crowing about record profits, even as passengers are sleeping on airport terminal floors. Charging nearly 45% more than pre-pandemic levels, airlines have driven inflation and made the industry one of the largest contributors to core CPI.⁵ And even while travel demand surges, airlines continue to reduce seat capacity, which is still down 6% compared to pre-covid levels.⁶ Subsequently, this has led to passenger load factors not seen since the Korean War, as cabins filled to capacity strain the system when flights are canceled.⁷

The crisis is clear, but the response has been lacking. As a result of the federal preemption clause in the Airline Deregulation Act of 1978, the U.S. Department of Transportation is solely responsible for holding airlines accountable. The executive order's lengthy, multi-point directives for you as Secretary of Transportation "to better protect consumers and improve competition" in the airline industry⁸ have not been sufficiently addressed, including but not limited to 1) "enhancing consumer access to airline flight information"; 2) "charging of ancillary fees that may constitute an unfair or deceptive practice"; 3) addressing "the failure of airlines to provide timely refunds"; and 4) "provide consumers with more flight options at better prices and with improved service."

Unfortunately, the agency's lax regulatory approach has allowed and encouraged airlines to continue destabilizing the air travel industry. The DOT has stood by as airlines excessively cancel flights, sell tickets for phantom flights, and cheat passengers out of required cash refunds. So far, despite more than two years of investigations, the DOT has refused to bring even a single

² Robert Kuttner, "Pete Buttigieg's Feeble Policy on Flight Cancellations," *The American Prospect*, Aug 23, 2022, <https://prospect.org/infrastructure/transportation/pete-buttigieg-feeble-policy-on-flight-cancellations/>

³ Matt Clark and Rob Minto, "Flight Cancellations in 2022 Have Already Soared Past Last Year's Total," *Newsweek*, Jul 1, 2022, <https://www.newsweek.com/flight-cancellations-soared-past-last-years-total-1720888>

⁴ *Ibid.*

⁵ Alexandra Semenova, "Inflation: Airline fares surge 18.6% in April as travel demand picks up," *Yahoo! Finance*, May 11, 2022, <https://finance.yahoo.com/news/inflation-airline-fares-surge-as-travel-demand-picks-up-165945155.html>; Hannah Sampson and James Bikales, "Welcome to summer travel. It's hell." *The Washington Post*, June 29, 2022, <https://www.washingtonpost.com/travel/2022/06/29/summer-flight-cancellations-gas-prices/>

⁶ Brett Holzhauser, "Airline ticket prices are up 25%, outpacing inflation," *CNBC*, Jun 2, 2022, <https://www.cnbc.com/select/airline-ticket-prices-are-up-25-percent-why-and-how-to-save/>

⁷ "U.S. Airline Traffic and Capacity," *Airlines for America*, Mar 10, 2022, <https://www.airlines.org/dataset/annual-results-u-s-airlines-2/>; "U.S Air Carrier Traffic Statistics through May 2022," *US Department of Transportation, Bureau of Transportation Statistics*, April 2022, <https://www.transtats.bts.gov/traffic/>

⁸ The White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

dollar of fines against *any* U.S. airlines for these offenses and has not swiftly enforced consumer refunds or made airlines adjust their schedules.

The results of the DOT's inaction have made your record on airlines look far too similar to that of President Trump's appointee Elaine Chao, whose regrettable legacy is defined by her failure to properly protect American passengers during a pandemic.⁹ Instead of taking immediate action to address today's airline crisis, the DOT has kicked the can down the road, proposing lengthy rulemakings, issuing press releases, sending letters, and making TV appearances.¹⁰ Even the DOT's newly proposed draft refund rule is too little, too late. The rule will not be retroactive and therefore ignores the \$10 billion that Senator Ed Markey estimates consumers are already owed, is noticeably softer than new legislation aimed at enforcing airfare refunds, and would allow airlines at least two more years of the same.¹¹

Not responding to the airline crisis is not a choice. We hope you and the DOT will take swift and decisive action to protect American travelers and the U.S. economy from the devastating consequences of airline deregulation and consolidation. Before the holiday travel season kicks off in less than three months, the DOT should immediately act to issue robust fines punishing chronic flight cancellations, force airlines to maintain accurate and not deceptive schedules, and penalize airlines that illegally deny consumers cash refunds.

The conditions that have allowed this crisis to unfold also must be addressed and corrected. The DOT must establish structural solutions to the airline industry's excessive market power. The Department can start immediately by using its authority to deny further anticompetitive mergers, such as the proposed deal between JetBlue Airways and Spirit Airlines, to preserve what little competition remains in this highly concentrated sector. Economic Liberties has previously called for a desperately needed moratorium on all airline mergers until a thorough review is conducted on how more than a decade of consolidation has harmed consumers, labor, cities, and entire regions of the country.¹²

As the airline crisis rages, we ask that you bring your agency in line with the rest of President Biden's robust competition policy agenda and exercise your full authority to deliver much-needed relief to air travelers and the American public. The horrific summer of 2022 has amply

⁹ Anna Laitin and William J. McGee, "Secretary Chao has authority to require airline refunds, COVID safety. She should use it.," USA Today, Jun 17, 2020, <https://www.usatoday.com/story/opinion/2020/06/17/transportation-secretary-require-airline-refunds-safety-column/3188197001/>

¹⁰ "Notice Encouraging U.S. Airlines to Have Policies that Enable Children To Be Seated Adjacent to an Accompanying Adult to the Maximum Extent Practicable and at No Additional Cost" U.S. Department of Transportation, Jul 8 2022, <https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice>

¹¹ "Amid Sky-High Rate Of Flight Cancellations, Senator Markey Leads Bicameral Colleagues In Introducing Cash Refunds For Flight Cancellations Act To Protect Air Travelers' Rights," Office of Senator Ed Markey, Aug 1, 2022 <https://www.markey.senate.gov/news/press-releases/amid-sky-high-rate-of-flight-cancellations-senator-markey-leads-bicameral-colleagues-in-introducing-cash-refunds-for-flight-cancellations-act-to-protect-air-travelers-rights>

¹²William J. McGee, "COMMENTS CONCERNING THE U.S. AIRLINE INDUSTRY RESPONSE TO "REQUEST FOR INFORMATION ON MERGER ENFORCEMENT," Federal Trade Commission Docket ID FTC-2022-0003, April 2022 <https://www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf>

demonstrated that U.S. airlines are mistreating consumers with impunity, and without fear of reprisal.

Sincerely,

American Economic Liberties Project