

The Honorable Jonathan Kanter
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The Honorable Pete Buttigieg
Secretary
Department of Transportation
1200 New Jersey Avenue, S.E.
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December 18, 2023

Dear Assistant Attorney General Kanter and Secretary Buttigieg,

We write regarding our concerns about Alaska Airlines' proposed \$1.9bn acquisition of Hawaiian Airlines. This transaction, a bid to entrench the market power of the fifth-largest U.S. airline with that of another top-ten U.S. airline, threatens to lessen competition in the airline industry in violation of the Clayton Act. Additionally, since the merger is against the public interest, the Department of Transportation (DOT) should utilize its substantial Title 49 authority over route transfers to stop the transaction, a potent authority it has already proven willing to use to protect competition in the industry.¹

The Biden Administration's economy-wide focus on antitrust enforcement has made airline competition a key priority. This year, the Department of Justice (DOJ) successfully broke up the Northeast Alliance, a de facto merger between JetBlue Airways and American Airlines, and went to court to block JetBlue's acquisition of ultra low-cost carrier (ULCC) Spirit Airlines. Alaska's purchase of Hawaiian Airlines must face the same scrutiny, and if found to be illegal, should be blocked. We urge the DOJ and the DOT to work together to carry out the Biden administration's competition agenda and oppose this anticompetitive merger.

Today's robust antitrust enforcement regime in air travel is a welcome reversal from the lax approach of recent decades, when regulators passively rubber-stamped successive rounds of industry consolidation. As a result, today four major airlines (American, Delta Air Lines, Southwest Airlines, and United Airlines) control more than 80 percent of the nation's domestic flights, while in many airports across the U.S. just one or two carriers are dominant.² Neither the airline industry nor American consumers can afford the further loss of airline competition that Alaska's purchase of Hawaiian Airlines represents.

¹ Dan Papsun, "JetBlue-Spirit Public Interest Review at DOT Muddies Deal Outlook," Bloomberg Law, Mar 8, 2023, <https://news.bloomberglaw.com/antitrust/jetblue-spirit-public-interest-review-at-dot-muddies-deal-outlook>.

² 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/>, Niraj Chokshi, "Frontier and Spirit Airlines Plan to Merge," The New York Times, Feb 7, 2022, <https://www.nytimes.com/2022/02/07/business/frontier-spirit-airlines-merger.html>.

A wide array of evidence clearly demonstrates that airline mergers are generally bad for American travelers, as well as workers, cities, and entire regions of the country. Merging airlines hike prices, and the industry’s track record is rife with examples. For example, the 2008 Delta-Northwest merger saw airfares rise by 15 percent, while the United-Continental merger of 2010 led to price hikes of nearly 60 percent.³ In its successful challenge to the de facto merger between JetBlue and American, the DOJ found the Northeast Alliance deal cost consumers \$700 million annually in higher fares.⁴ Meanwhile, financial analysts continually highlight the profitability of eliminating pricing competition between airlines and the impact on consumers via “firmer ticket prices.”⁵

Airline mergers also cause a number of non-price harms to consumers. Merging airlines reduce service – including eliminating all flights to certain cities, shutting down airport hubs (which forces corporations in other industries to relocate headquarters), cutting nonstop service, and reducing daily flight frequencies. These harms stand in stark contrast to frequent claims from merging airlines of “efficiency gains” – gains which have been shown to rarely materialize.⁶

Protecting competition in air travel is important for the stability and health of the industry, particularly because new airlines face substantial barriers to entry, ranging from fleet costs and frequent flyer programs to airport slot limitations, as encapsulated by the recent fourteen-year period (2007-2021) without a new scheduled passenger airline – the nation’s longest ever recorded. As the DOJ stated in a 2013 lawsuit, airline consolidation also breeds other harmful anticompetitive behaviors like price coordination, because “coordination becomes easier as the number of major airlines dwindles and their business models converge.”⁷ In recent years, most major airlines have faced allegations of colluding to reduce aircraft capacity and hike ticket prices, drawing Congressional scrutiny and DOJ probes.⁸

³ McCartney, “Past Airline Mergers.”

⁴ Leah Nylen, “American-JetBlue Alliance to Cost Consumers \$700 Million, US Says,” Bloomberg, Sep 27, 2022, <https://www.bloomberg.com/news/articles/2022-09-27/american-jetblue-tie-up-to-cost-consumers-700-million-us-says>.

⁵ 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>.

⁶ Scott McCartney, “Past Airline Mergers Haven’t Lived Up to Promises,” The Wall Street Journal, Aug 13, 2013, <https://www.wsj.com/articles/SB10001424127887324769704579010832802658974>; 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>.

⁷ Amended Complaint: U.S. and Plaintiff States v. US Airways Group, Inc. and AMR Corporation, <https://www.justice.gov/atr/case-document/file/514521/download>.

⁸ 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>; 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; 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>.

Consolidation also breeds more consolidation. This deal is Alaska Airlines' second multibillion-dollar acquisition in the past five years, as Alaska purchased Virgin America in 2017 for \$2.6bn. This comes on the heels of JetBlue's attempted acquisition of Spirit Airlines, which in turn was itself a reaction to a proposed merger of Frontier Airlines and Spirit. Despite what airline executives claim, these mergers are about a game of jockeying for position in national market share rankings, providing little benefit to most air travelers and workers. Instead, the benefits flow to a handful of senior executives, investors, attorneys, and consultants.

This merger is no different. The Alaska-Hawaiian Airlines deal would greatly reduce airline competition in three distinct markets. The first is within the state of Hawaii itself. Executives of the merging airlines have described controlling the Hawaiian air travel market as a large part of the deal's attraction.⁹ The transaction would add Hawaiian Airlines' market share in the state, already larger than any other airline, to Alaska's, giving the merged airline a more than 50 percent market share statewide.¹⁰

This is particularly concerning since Hawaiian Airlines already has a clear track record of abusing its dominant market position in the state: from 2008 to 2019, Hawaiian Airlines wielded its dominance to drastically hike airfares, a particularly impactful change given the reliance of the island state's residents on air travel to meet work, health, and family needs.¹¹ As a result, state officials had to ask a rival carrier to enter the market and break Hawaiian Airlines' monopoly.¹² While Hawaiian Airlines faces more competition today as the result of a new market entrant in 2019, it is fair to say that concerns about the airline's intra-state dominance will only be enhanced if it is acquired by larger carrier with more resources and capital to fight off competition.

Second, Hawaiian Airlines also operates longer haul service with larger aircraft between Hawaii and the mainland U.S., particularly to numerous West Coast cities from Seattle to San Diego.¹³ Alaska also dominates this same West Coast corridor, serving these same cities to Hawaii on one-stop flights from its Seattle hub.¹⁴ There is little doubt that post-merger airfares would rise between the West Coast and the Hawaiian islands.

Third, this merger would create far-reaching negative effects throughout the entire Pacific Rim. Alaska is a member of "oneworld," which along with SkyTeam and Star are the three global "mega-alliances" granted antitrust immunity to permit cross-border marketing and code sharing agreements. A 2011 DOJ study found these three groups reduce competition and raise fares.¹⁵ oneworld's 15 members include American Airlines, Cathay Pacific, Japan Airlines, Malaysia,

⁹ Alison Sider, "Alaska Air Reaches Deal to Buy Hawaiian Airlines," The Wall Street Journal, Dec 3, 2023, <https://www.wsj.com/business/airlines/alaska-air-nears-deal-to-buy-hawaiian-airlines-07ce881b>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Jason Whitely, "'Stay the course': 4 years in, how is Southwest Airlines making its mark in Hawaii?" WFAA, May 15, 2023, <https://www.wfaa.com/article/money/business/southwest-airlines-hawaii-flights-four-years-in-it-governor-aloha-hawaii-airlines/287-124a330e-c02a-41ba-a876-4d5904170691>.

¹³ "Where We Fly," Hawaiian Airlines, December 7, 2023, <https://www.hawaiianairlines.com/destinations>.

¹⁴ "Where We Fly," Alaska Airlines, December 7, 2023, <https://www.alaskaair.com/content/route-map>.

¹⁵ "Antitrust Immunity and International Airline Alliances," Economic Analysis Group, Antitrust Division, U.S. Department of Justice, February 2011, <https://www.econstor.eu/bitstream/10419/202391/1/eag-dp201101.pdf>.

and Qantas.¹⁶ Thus, the Alaska-Hawaiian Airlines merger can be expected to impact air travelers from Australia to Japan, as Alaska, American, and their oneworld partners would gain a significant toehold in the critical Hawaii market.

Whether on the state, regional, or national scale, airline mergers carry considerable harms. This transaction is no exception and is particularly troubling. Both the DOJ and DOT maintain powerful authority to protect consumers and competition in the airline industry. The DOJ must conduct a thorough investigation into the competitive harms of this transaction – and if the deal violates our antitrust laws, DOJ must file to block it.

Similarly, the DOT must probe this deal’s competitive impacts and determine whether it is in the public interest – and use its Title 49 authority to block the deal if it is found not to be so. “The Department of Transportation typically has not gotten involved in these merger cases, but that’s changing today,” said Secretary Buttigieg in March 2023, announcing his agency’s opposition to JetBlue-Spirit merger. We welcome that change, applaud the DOT’s new approach to protecting airline competition, and urge that this deal meet the same scrutiny.

Signed,

Accountable.US
American Economic Liberties Project
Demand Progress Education Fund
Institute for Local Self-Reliance
National Consumers League
Open Markets Institute
Revolving Door Project

¹⁶ “Members” oneworld, December 7, 2023, <https://www.oneworld.com/members>.