

THE 30,000 FOOT VIEW: COMPETITION AND REGULATION IN THE U.S. AIRLINE INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

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THE 30,000 FOOT VIEW: COMPETITION AND REGULATION IN THE U.S. AIRLINE INDUSTRY

Wednesday, June 24, 2026

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

Present: Representatives Fitzgerald, Issa, Cline, Hageman, Harris, Schmidt, Baumgartner, Balint, Garcia, and Johnson.

Also present: Representatives Jordan and Raskin.

Mr. FITZGERALD. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everybody to today's hearing on regulation and competition in the airline industry.

Without objection, Mr. Nehls of Texas will be permitted to participate in today's hearing for the purpose of questioning the witnesses if a Member yields them time for that purpose.

I will now recognize myself for an opening statement.

Today's hearing will examine competition in the U.S. airline industry and the government regulations that limit such competition. As well, we will hear from witnesses. Consumers have more choice than ever before when it comes to both domestic and international air travel. Annual passenger traffic has nearly quadrupled since the 1970s, and consumers now benefit from a range of choices, from the legacy airlines to the low-cost and ultra-low-cost carriers.

That is all thanks to the Airline Deregulation Act of 1978. Prior to passage of this law, the U.S. airline industry was regulated by a government-created body known as the Civil Aeronautics Board (CAB). The CAB heavily regulated the industry, setting restrictions on fares, routes, and entry into the market. In other words, the government played a significant role in choosing which airlines could fly, where they could fly, and what prices they could charge. This system was severely flawed, highly ineffective, and protected the existing carriers at the expense of promoting competition.

Recognizing these flaws, Congress passed the Airline Deregulation Act, which phased out the old system and allowed airlines to freely compete. This deregulation transformed the market into what we see today. Unshackled by government regulation, what we saw over time was intense competitive pressure that pushed prices down and consumer choice up.

That pressure also led to a significant number of mergers, acquisitions, and bankruptcies. Between 1978–2005, for example, 162 airlines filed for bankruptcy. Today’s airline industry, while certainly more accessible and more competitive, is also more concentrated than ever before. The Big Four air carriers, American, United, Delta, and Southwest, control nearly 80 percent of domestic airline travel. While the Airline Deregulation Act freed the airlines from the decrees of government boards, the government still occupies a major role in commercial aviation that often benefits the incumbents at the expense of new entrants.

For example, at seven of the Nation’s busiest airports, the Federal Aviation Administration, or the FAA, controls or distributes access to takeoffs and landings through what’s known as a slot system.

Slot allocations are highly sought after, particularly for new entrants. An example—at London’s Heathrow, for example, a single slot allocated sold for tens of millions of dollars. The FAA cannot auction these slots, instead distributing them largely to incumbent carriers who own them in perpetuity through what’s known as the grandfather rights.

Many of these slots’ allocations also tend to be awarded to air carriers with existing infrastructure, such as gate access. At DCA and Chicago O’Hare, for example, slot allocations heavily favor American and United, who operate main hubs. At other major airports, such as Atlanta and Dallas-Fort Worth, legacy carriers control over 70 percent of the existing gates.

Lease agreements for these gates are often long-term and can last for decades. For example, in 2016, Delta signed a 20-year lease agreement with the city of Atlanta for its airport. That lease agreement also stipulated that the city of Atlanta could not operate a second airport. These agreements create a significant barrier to entry for competitors seeking to gain a foothold at major airports. If a competitor can’t access a gate, it can’t compete for a slot.

Airports are also limited by government regulations that make expanding difficult. To build new runways or terminals, airports must submit environmental reviews to the FAA. This process can easily be weaponized to delay airport construction. Across the country, environmental activists file lawsuits using the National Environmental Policy Act to delay these new projects. These regulations act as a constraint, which in turn limits the airline’s ability to expand and compete.

Finally, like domestic ocean shipping, the United States reserved domestic air transportation only to its U.S. air carriers. This practice, known as cabotage, creates significant tension between protecting our domestic airlines and promoting competition.

As these examples show, the government is still heavily involved in the airline industry.

Consumers deserve a system where airlines compete freely and can innovate and grow, not a system where the government consistently puts its thumb on the scale to foreclose competition.

The government-imposed barriers destroy competition, leaving consumers worse off. The most recent example of this was the proposed Spirit–JetBlue merger. In 2023, the Biden–Harris DOJ sued to block the proposed \$3.8 billion merger. The DOJ claimed the merger would remove Spirit from the market and reduce competition. At the time, the proposed merger would have created the fifth largest airline domestically with 10 percent market share and increased competition against the Big Four. However, one year later, a Federal judge in Massachusetts sided with the DOJ and blocked the deal.

Spirit later filed for bankruptcy twice and ultimately shutdown operations in May of this year. The blocked merger of Spirit–JetBlue offers a cautionary tale about government overregulation. By blocking the transaction, regulators prevented the market from testing whether a strong competitor could emerge to challenge the industry's largest incumbents.

At a minimum, the case demonstrates the importance of ensuring that antitrust enforcement promotes competition rather than merely preserving the status quo. As Congress evaluates the future of the airline industry, we should remain mindful of the lessons of deregulation. Competition, not heavy-handed regulation, has been the primary driver of lower fares, greater consumer choice, and increased innovation.

In the words of the Airline Deregulation Act, the airline industry needs a maximum reliance on competitive market forces. Our goal should be to remove unnecessary barriers to entry, encourage robust competition, and ensure that consumers, not regulators, are the ultimate beneficiaries of airline policy. I look forward to today's discussion.

I now recognize Ms. Balint for an opening statement.

Ms. BALINT. Thank you, Mr. Chair. Good morning.

Clearly, we could not see things more differently. It's no secret that flying has gotten worse over the years. Tickets cost more, more flights are canceled, and everything from seat selection to carry-ons are now perks that you get to pay for. This is the predictable result of a market that has been allowed to consolidate for over 60 years, and an administration that continues to prioritize the demands of huge corporations at the cost of everyday Americans.

Americans were promised that consolidation would produce a more reliable, efficient, and affordable aviation system. It has done the opposite. Flyers face new and rising fees, fewer alternatives, no bargaining power, and increasing barriers to affordable travel.

In 1960, before deregulation, Americans had 40 major airline carriers to choose from. Today, just four airlines control over two-thirds of the domestic passenger market. We went from 40 to four. That is not competition.

At the same time, airline executives argue that further consolidation is necessary to address the industry's challenges. It was shocking to hear United Airlines, the fourth largest airline in the U.S., float a merger with American Airlines, the second largest carrier.

The combined United American Airline would control 34 percent of the domestic market. Transportation Secretary Sean Duffy called the proposal, quote, “interesting.”

This is alarming. We need to get back to antitrust enforcement on the merits. For instance, in 2024, Democrats blocked the Spirit–JetBlue merger because evidence showed it would raise fares by up to 40 percent on dozens of routes. We knew it would cause harm to consumers who could at least afford it. Even a Reagan-appointed Federal judge agreed. Spirit is gone now, not because of antitrust enforcement. Spirit is gone because of the massive spike in jet fuel costs that are a direct result of President Trump’s unconstitutional war with Iran. Even the Spirit CEO said that fuel prices were the biggest factor in closing the airline.

President Trump’s war of choice has made it all worse. Jet fuel prices have roughly doubled since the beginning of this war. Airlines are passing that burden directly down to passengers through higher fares, more fees, and new fuel surcharges. Americans never agreed to this war, and that’s why I introduced a war powers resolution to end it, because Congress, not the President, has the constitutional authority to take this country into a military conflict. This unauthorized, uncalled-for war is causing a rolling series of financial blows to Americans across this country.

Americans have spent nearly \$450 more on fuel-related expenses just since February. At the grocery store, food prices have gone up more than three percent since last year. At the airport, fares are up more than 20 percent in just four months. It’s the same shock to the system over and over, coming from every direction.

For a country our size, flying is not a perk. It is how families see each other. It’s how small business owners reach their customers. It’s how a Vermont student gets home from college. When the cost of flying goes up, it does not just inconvenience people; it cuts them off from what has become a necessity in this country.

Instead of addressing this rapidly consolidating industry that is squeezing consumers, this administration has spent the last year pandering to the interests of their wealthy friends. The Biden Department of Transportation required airlines to provide cash refunds when customers were owed. Airlines had to disclose all fees upfront. Those policies were rolled back by the Trump DOT. These rules were estimated to save consumers more than half a billion dollars a year. Major airlines and their trade associations spent millions lobbying this administration the first nine years—excuse me—the first nine months of 2025 to get these key consumer protections cut. It’s no surprise that the current Transportation Secretary, Sean Duffy, was an airline lobbyist before he took his current job. Members of Congress have pushed for an investigation into whether Duffy continues to improperly favor the interests of the industry that he used to represent.

Working families across this country deserve so much better than this. Antitrust laws are supposed to make sure the markets work for us. Americans need to know that antitrust enforcement decisions will be based on law, evidence, and the interests of regular people, not political access, backroom discussions, or the preferences of powerful corporations. Americans simply want choices. We don’t want a handful of companies to control and limit our free-

dom of choice, and we don't want a Federal Government that approves consolidation because its corporate and political allies want it to.

They are the reasons why I will not stop stressing the importance of good rule of law antitrust enforcement, and I will keep pressing the current administration on their perversion of this critical tool for consumer protection.

Thank you, and I yield back.

Mr. FITZGERALD. The gentlelady yields back. While we wait for Chair Jordan to arrive, I will now recognize the Ranking Member of the Full Committee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Thank you, Mr. Chair, and thanks to all our witnesses for joining us today.

Spirit Airlines was once the Nation's leading ultra low-cost carrier and one of the strongest forces in the economy, holding down ticket prices for consumers. It's now collapsed. We cannot have a serious conversation about the demise of Spirit without talking about the obvious main culprit: The President's disastrous and illegal war in Iran. The Iran war has not only cost the lives of 13 American service members and thousands of Iranian civilians, including hundreds of children, it has cost American taxpayers more than \$100 billion, and it's cost American consumers more than \$60 billion in increased fuel costs alone, which averages to more than \$470 per American household.

It also caused the cost of jet fuel to double overnight, forcing Spirit to take on an extra \$100 million in unexpected costs in just a couple of months. For an ultra-low-cost carrier like Spirit which operates on thin margins to deliver the best value to customers, that was a corporate death sentence. As Spirit Airlines explained in its legal filings, the company went under because, quote, "recent geopolitical events have resulted in a massive and sustained increase in fuel prices."

Desperate to avoid any mention of Donald Trump's calamitous and historic blunder in Iran, which has split the Republican party, my colleagues today have decided instead, somewhat comically, to blame overzealous antitrust enforcement.

Americans are paying more today for groceries, gasoline, healthcare, housing, utilities, and, yes, airfare. At the same time, a vanishingly small number of companies is thriving. Consider the S&P 500, a stock market index of 500 publicly traded U.S. companies. Last month, *The Financial Times* published an analysis showing that just five of those 500 companies, or one percent, accounted for 50 percent of the growth of the index.

In the airline industry, the story of lopsided growth and economic concentration is the same. In 2000, the four largest carriers controlled roughly 60 percent of domestic traffic. Today they control about 80 percent.

One merger after another has consolidated the market power of the four major airlines: American, Delta, Southwest, and United.

The result: Higher prices, lower wages, and growing profits. Protecting competition requires regulators willing to say "no" to corporate consolidation.

In 2023, the DOJ blocked JetBlue's attempted acquisition of Spirit.

The result: Spirit continued to operate as an ultra-low-cost airline, offering consumers lower prices than competitor airlines, and driving down the price of tickets on competitors.

The *Economists* called this, quote, “the Spirit effect.” When an ultra-low-cost airline like Spirit operates a route, the price of tickets on legacy carriers, like American, drops by an average of 21 percent. As Judge Young, the Reagan-appointed judge who upheld the DOJ decision to block the Spirit–JetBlue merger, explained, quote,

If JetBlue were permitted to gobble up Spirit, at least as proposed, it would eliminate one of the airline industry’s few primary competitors that provides unique innovation and price discipline. It would further consolidate an oligopoly by immediately doubling JetBlue’s stakeholder size in the industry. Worse yet, the merger would likely incentivize JetBlue further to abandon its routes as a maverick, low-cost carrier.

The DOJ’s actions in 2023 protected consumers from increased costs by focusing airlines to continue competing with Spirit and its ultra-low airfares until skyrocketing prices caused by Trump’s disastrous war in Iran caused the airline to collapse. Yet, our colleagues have taken the wrong lesson from this story, claiming we need less antitrust enforcement rather than more.

This is alarming because under the Trump Administration, antitrust enforcement has already been twisted and corrupted beyond recognition. Instead of being a tool to protect competition and innovation and to prevent companies from abusing their market power over consumers and workers, it’s become just one more gift perpetrated by the President and his enablers for their own purposes of wealth maximization. Antitrust practitioners talk about the Trump transaction tax, the recognition that merger approval depends less on objective considerations and competition factors and more on a company’s willingness to curry subjective political and financial favor with the President and the money-making operation being conducted at the White House.

The warning signs of gangster State crony capitalism are everywhere. In the last 12 months, this administration has cleared the Nexstar–Tegna local broadcast merger which will undermine the diversity of independently owned news operations and which a coalition of State AGs has already obtained a preliminary injunction to halt.

It has settled the Live Nation Ticketmaster case with terms so favorable to Live Nation that the basic sweeping harms to artists, venues, and millions of fans remain largely unaddressed. It cleared the Paramount Skydance Warner Brothers discovery deal before career investigators had even completed their antitrust analysis. Every senior antitrust official who has cried foul over this pattern of concentration, including Assistant Attorney General Gail Slater at Department of Justice, and her principal Deputy Attorney General, Roger Alford, has been pushed out or fired for the offense of simply doing their jobs, the jobs they signed up to do and which the law requires of them.

The consequences of this anti-antitrust corruption and promonopoly favoritism are simple: Corporations pass the Trump tax onto consumers. We pay higher prices for fewer choices, less competition, less innovation, and more instability. Instead of concocting a

cover story for the President, which blames Biden for the disastrous consequences of the Trump tariff and the Trump war in Iran, we should be doing serious oversight of an antitrust enforcement system that has been thoroughly smashed up in this administration.

Thank you, Mr. Chair. I yield back.

Mr. FITZGERALD. The gentleman yields back. Without objection, all other opening statements will be included in the record.

We will now introduce today's witnesses.

The Honorable Chris Sununu. Mr. Sununu is the President and CEO of Airlines for America, a trade association of U.S.-based passenger and cargo airlines. He previously served as the Governor of New Hampshire and as a member of the Executive Council of New Hampshire, and worked as an environmental engineer.

Mr. Timothy Ravich. Mr. Ravich is a Senior Counsel at Tressler where his practice focuses on aviation, aerospace, airport, and commercial litigation. He previously was the General Counsel of an unmanned aerial systems company, has led research on matters affecting air space operations and safety for the National Science Foundation, and the National Academies of Science, Engineering, and Medicine, and is an author of an aviation law textbook.

Mr. Christian Stout. Mr. Stout is Director of Innovation Policy at the International Center for Law and Economics, where his work focuses on competition, telecommunications, and artificial intelligence policy. He previously worked as an attorney, taught computer science at Rutgers University, and held various roles at technology companies.

Professor Nancy Rose. Ms. Rose is the Charles P. Kindleberger Professor of Applied Economics at the Massachusetts Institute of Technology. She previously served as the Deputy Assistant Attorney General for economic analysis in the DOJ's antitrust division from 2014–2016.

We welcome our witnesses and thank them for appearing today. We will be swearing you in at this point. Would you please rise and raise your right hand.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative. Thank you. Please be seated.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Governor Sununu, you may begin.

STATEMENT OF THE HON. CHRISTOPHER T. SUNUNU

Mr. SUNUNU. Well, good morning. Thank you very much. Great to see everybody. Chair Fitzgerald, Ranking Member Balint, and the Members of the Subcommittee. I see Chair Jordan has joined us as well.

My name is Chris Sununu. I am currently the President and CEO of Airlines for America. Thank you for inviting me today to testify on behalf of the airline industry, a sector that does support millions of U.S. jobs and drives five percent of our country's GDP.

When examining the State of the airline industry, the defining story over the past two decades is the extensive expansion of consumer choice and travel options that continues despite significant headwinds that industry has faced, particularly over the last eight months.

First, we were hit hard by two record-long government-driven shutdowns, which cost the airlines billions and the broader economy billions more, forced flight delays and cancellations, all over political fights that have absolutely nothing to do with our industry and hurt the American traveler. Also, the increase in jet fuel prices due to the closure of the Strait of Hormuz means that airlines will take an additional financial hit of more than \$8 billion this year. It is aggressive competition that prevents airlines from passing all those costs onto the consumers.

Despite these hurdles, the airline industry remains a highly dynamic marketplace where travelers enjoy a suite of fare options and unprecedented flexibility in how they choose to fly.

A major catalyst for this variety has been the dramatic expansion of airline business models. Twenty-five years ago, 60 percent of domestic passengers had access to low- and lower-cost carriers. These days that has soared to 90 percent. Today, the average number of competitors on domestic routes, it sits at an all-time high with nearly half of all passengers traveling in markets with four or more airline choices. That range of options has never before existed for the American traveler. It does today. At a time when Americans have spent the last several years facing runaway inflation on basic household goods, competitive airline pricing has bucked that trend. Between 2019–2025, everyday consumer products rose by 26 percent, domestic airfares fell 3½ percent.

Travelers are no longer forced into a one-size-fits-all ticket. They have the freedom to customize their journey and pay only for the services that they value. The number of Americans flying is greater than ever before. In the 1970s, about one in five Americans took a flight on any given year. Today it's about one in two. Airlines continue to prove themselves as an affordability success story for the American public.

The best part is that according to the April 2026 ASCI survey, airlines are doing all of this with all-time high in customer satisfaction. The recent Spirit Airlines bankruptcy, as unfortunate as that was, was just the first airline bankruptcy in the past 13 years, indicating stability for both our workforce and networks. Airlines have actively used that stability to reinvest over \$24 billion annually every year back into that customer experience. The people, the product, and the planes.

The upgraded products we invest in include everything from upgraded WiFi and apps that give more control to the customer to better airports, better food, and faster TSA screening. The list goes on and on in terms of customer experience.

Most importantly, airlines have invested in their people, doubling the average wages and benefits since 2025, far outpacing most any other industry in this country.

Now, given this robust State of competition, it's clear that the biggest threat to healthy and competitive airline industry is our short-staffed and woefully antiquated air traffic control system.

Policymakers can enhance competition not by overregulating an already very competitive industry, but by focusing on building a new air traffic control system that will be safer, allow for more flights, and increase choice for the consumer. Congress must build on its \$12.5 billion down payment toward air traffic control modernization with the next round of funding to ensure that technology gaps that have been completely ignored for the last 30 years that they are finally get addressed.

Air traffic modernization is one of the few policies that enjoys bipartisan, bicameral support as well as the support of the nearly 60-member Modern Skies Coalition, consisting of stakeholder organizations across the entire country. The American traveler needs Congress to support policies that allow this competitive marketplace to thrive, prevents additional cost to the consumers, and ensures we continue to invest in the safest airspace in the world. Thank you very much. I look forward to the questions.

[The prepared statement of Mr. Sununu follows:]



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Testimony

**THE 30,000 FOOT VIEW: COMPETITION AND REGULATION IN THE U.S. AIRLINE INDUSTRY
STATEMENT OF CHRISTOPHER T. SUNUNU, PRESIDENT AND CHIEF EXECUTIVE OFFICER (CEO),
AIRLINES FOR AMERICA
BEFORE THE
U.S. HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST**

June 24, 2026

Good afternoon, Chairman Fitzgerald, Ranking Member Nadler and members of the Subcommittee. My name is Chris Sununu, and I am the President and CEO of Airlines for America (A4A). Thank you for inviting me here today, and on behalf of all our A4A members¹, I appreciate the opportunity to participate in the Subcommittee's examination of "The 30,000 Foot View: Competition and Regulation in the U.S. Airline Industry".

Commercial aviation drives 5% of U.S. GDP and helps support more than 10 million U.S. jobs. We operate the safest mode of transportation with an average of 28,000 flights, carrying 2.7 million passengers and 61,000 tons of cargo every day across the globe.

Robust competition in the U.S. airline industry has generated unprecedented levels of affordability and accessibility, benefitting the customer at every level. There are few industries that match the airline industry's record when it comes to consumer choice, which is why air travel has transitioned from a luxury good available to the few to an indispensable freedom enjoyed by the vast majority of Americans from diverse economic, cultural, racial and geographic backgrounds.

Today—Consumers Have More Choices for both Domestic and International Travel Than Ever Before.

Choices have broadly expanded for consumers during the period since consolidation began (and new entry continued), the airlines created significant new service products, including basic economy and premium economy while upgrading business class. And despite the pandemic setback, airline capacity has increased. Further, the fact (outside the COVID-19 pandemic) that the airlines are not routinely facing a risk of bankruptcy has given the confidence and financial wherewithal to invest in the long term (especially new planes, ground equipment, airport amenities, mobile apps). In fact, the 13-year stretch from November 2011 (American Airlines) to November 2024 (Spirit Airlines) represent the longest stretch in memory without a major airline bankruptcy filing. As evidenced by the American Customer Satisfaction Index (ACSI®) and other independently conducted surveys, airline industry customer satisfaction ratings are at record levels. Unbundling has given consumers a greater choice, including very-low-fare basic economy. And including ancillary fees, real fares have continued to decline, due in large part to the low barriers to market and route entry.

The increasing role of ancillary pricing has benefited consumers by allowing carriers 1) to offer lower prices to price-sensitive passengers and 2) to tailor products to consumer demand. Contrary to common misperception, however, it was not brought about by consolidation. Unbundling is a global phenomenon that commenced in earnest in 2008 amid the Great Recession. It was pioneered by lower-cost carriers such as People Express in the 1980s and Ryanair, easyJet, Frontier, Spirit, WestJet and others. For example, Canada has seen little recent consolidation, but ancillaries are just as critical to service offerings by network carriers and LCCs relative to their U.S. counterparts.

¹ A4A is the trade association for the leading U.S. airlines, both passenger and cargo carriers. Members of the association are Alaska Airlines; American Airlines; Atlas Air; Delta Air Lines; FedEx; JetBlue Airways; Southwest Airlines; United Airlines; and UPS. Air Canada is an associate member.



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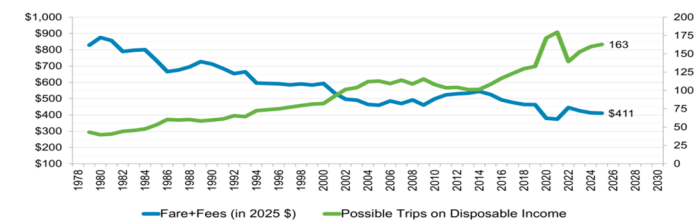
We Connect the World

Testimony

Airfares (including ancillaries) are at historic lows in real terms, a welcome relief at a time of runaway inflation for basic goods and services.

Because deregulation enabled airlines to compete aggressively on pricing instead of having the government dictate the price, inflation-adjusted **airfares (including ancillaries) reached an all-time low** (excluding the pandemic-stricken years 2020-2021) in 2025.

Government Data Show the Continued Trend of Declining Inflation-Adjusted Airfares
On Same Share of Income, Americans Can Take 3.8x More Trips Than in 1979, 2x More Than in 2000



Sources: Bureau of Economic Analysis, Bureau of Labor Statistics and Bureau of Transportation Statistics via Airline Data Inc.

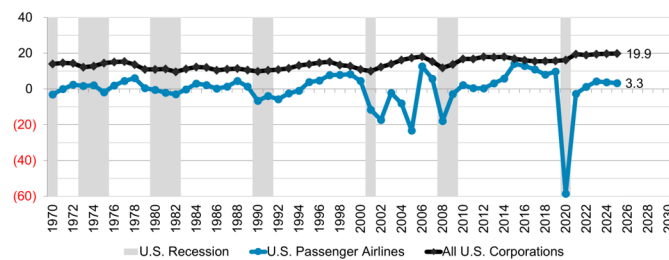


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The never-ending competition and pressure to provide low-fare options—even amid rising costs and reinvestment—keep downward pressure on airline profit margins even in the best of times.

Even in Best Years, Airline Profitability Lags the U.S. Corporate Average
Pre-Tax Profit Margin (%) Gap Was Narrowest in 2015



Sources: ATA Annual Reports (1970-1976), AAA Passenger Airline Cost Index (1977-present), U.S. Bureau of Economic Analysis

Note: Years with at least two months in recession highlighted in gray



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Data from the Bureau of Labor Statistics shows that from 2019 to 2025, overall consumer prices, as measured by the U.S.



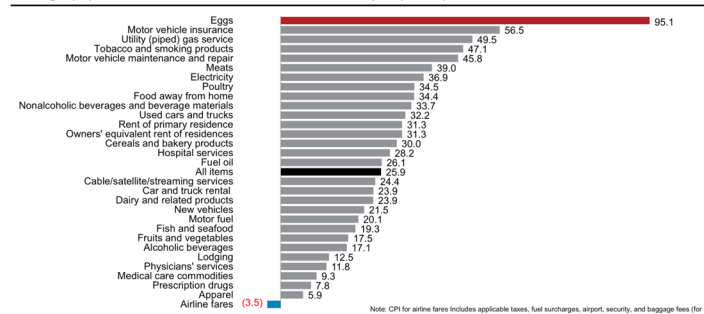
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Consumer Price Index, rose 26%; in striking contrast, the CPI's airline fares component fell 3.5%.

From 2019-2025, Airline Fares *Fell* 3.5% While Overall Consumer Prices *Rose* ~26%
Change (%) in Selected U.S. Consumer Price Index (CPI) Components — 2025 vs. 2019



Source: Bureau of Labor Statistics



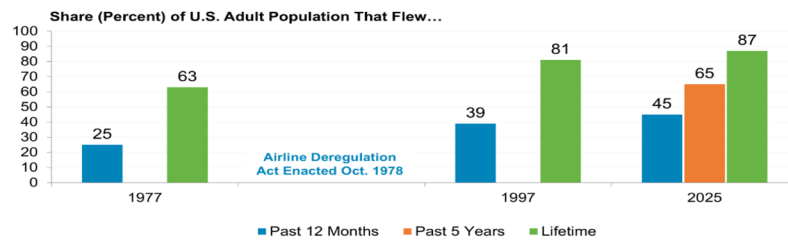
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More customers are flying than ever before and customer satisfaction is at all-time highs.

Thanks to the broad decline in the price of air travel stemming from deregulation decades ago, as well as the competitive forces and service innovation it unleashed, it is no surprise that a greater share of Americans are taking to the skies than ever before, with 45% of adults reported taking at least one airline trip in 2025 compared to just one out of four in 1977.

As Air Travel Has Become Safer and More Affordable, More Americans Have Taken to the Skies
Almost Nine in Ten Americans Have Flown Commercially; 45% Flew in 2025



Sources: Historical AAA air travel surveys conducted by Gallup (1971 through 1997) and Ipsos

Note: "Past 5 Years" category was not presented as a possible response preceding 2020.



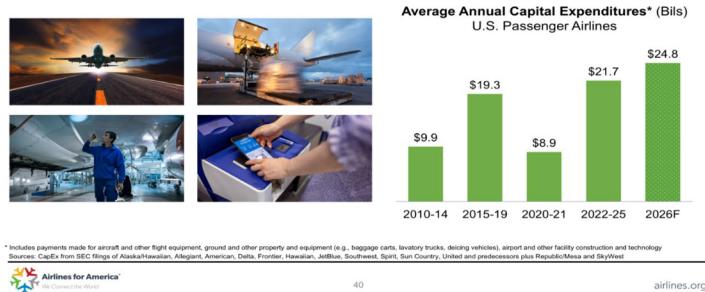
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With most airlines now on firmer financial footing, they have invested extensively in products and people, including record capital expenditures in aircraft, ground equipment, facilities and technology.

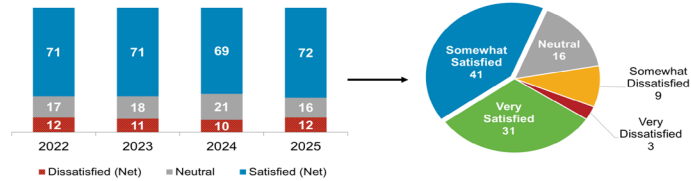
U.S. Airlines Are Investing Heavily in Aircraft, Ground Equipment, Facilities and Technology
Financial Recovery Has Enabled Record Rates of Reinvestment, Exceeding \$21B Annually



Thanks to these ongoing investments, newfound financial stability and customer-service innovations, a January 2026 survey conducted by Ipsos (and commissioned by A4A) found that 72% of American adult flyers reported being "very" or "somewhat" satisfied with their overall all-travel experience in 2025. Only 3% reported being "very dissatisfied."

72% of Flyers Reported Being Satisfied With Their Overall Air-Travel Experience in 2025
16% Were Neutral; Only 3% Reported Being "Very Dissatisfied"

Thinking about your **overall experience** with air travel, how **satisfied or dissatisfied** are you?



Source: AAA Air Travel Survey conducted by Ipsos (January 2023/2024/2025/2026)

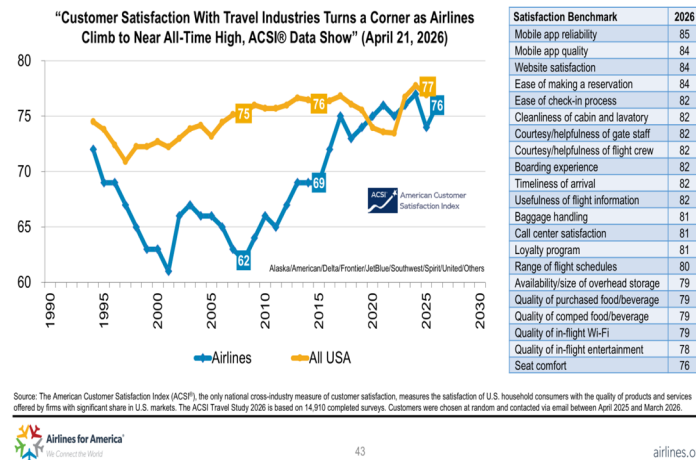




Meanwhile, independent surveys show that airline customer satisfaction has risen steadily since 2008.

One notable study is the American Customer Satisfaction Index (ACSI), whose airline satisfaction study reflects interviews with 16,771 customers, chosen at random and contacted via email over the course of 12 months. From 2003 to 2008, the ACSI score for airlines fell from 67 (out of 100) to 62. From that point forward, however, airlines made steady gains, rising to 72 (for the first time since inception in 1994) in 2016 and 74 in 2025, just below the national average for all industries. Notably, airlines scored 80 or higher on five of the 21 benchmarks (captured in the following chart) and 75 to 79 on 10 others. As noted in its April 2026 press release, "Customer Satisfaction With Travel Industries Turns a Corner as Airlines Climb to Near All-Time High."

ACSI Airline Customer Satisfaction Index Now at 76, Up From 62 in 2008 and 69 in 2015 In 2026, Airlines Scored 80+ on 15 of the 21 Benchmarks



In Multiple Respects, Airline Employees Have Reaped the Benefits of Deregulation.

The number and compensation of employees and their compensation have increased dramatically post-deregulation. According to data from the Bureau of Transportation Statistics, U.S. passenger airlines now employ the most workers since 2001, while average wages and benefits doubled from 2010 to 2025, dwarfing the 48% increase in the U.S. Consumer Price Index. Combined, these two factors have resulted in wages and benefits rising from 26% of operating revenues in 2005 to 34% in 2025.

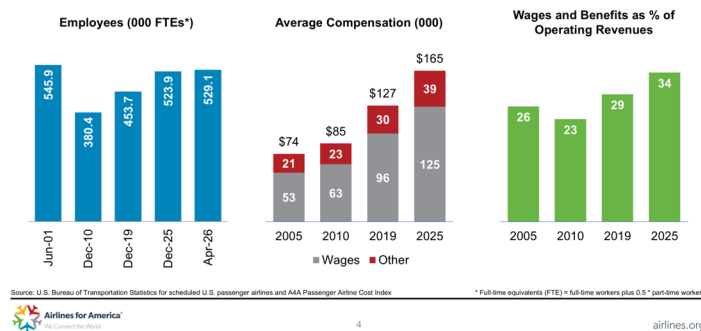


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Firmer Financial Footing Has Enabled Airlines to Reinvest in Employees, Whose Average Wage Rose 100% from 2010-2025 (vs. 48% U.S. CPI) and Who Now Garner 34% of Airline Revenues



The greater financial stability achieved through consolidation has translated to employment stability. Remarkably, the industry did not see a single large-airline bankruptcy filing during the 13-year stretch from November 2011 (American Airlines) to November 2024 (Spirit Airlines). This more than triples the previous post-deregulation record of fewer than four years between bankruptcies of a large U.S. mainline carrier (which includes carriers operating at least 20 mainline passenger aircraft in scheduled transportation). It should be noted that if not for the CARES Act grants and other financial relief afforded the airlines in 2020-2021, there likely would have been bankruptcies during the pandemic. However, previous bankruptcies (except for the tragic events following 9/11) were due to economic and industry forces, and post-consolidation these forces have not led to any bankruptcies.

Airlines have also used revenues to invest in training and to give their employees the tools and technology needed to help them accomplish their jobs more safely and efficiently. This is a virtuous circle: Financially stable airlines can ensure well compensated and trained employees who provide better customer service, driving customer satisfaction higher. Airlines' increasing ability to hire, train and retain high-quality talent and reinvest in their product is translating directly into palpable benefits for customers.

The Bipartisan Airline Deregulation Act Democratized Air Travel.

The Airline Deregulation Act of 1978 (ADA), championed by consumer advocates and economists, spawned a flurry of new entry and diversification of business models that forced airlines to compete not only on product but also on price. Prior to its enactment, U.S. regulators, via the Civil Aeronautics Board (CAB), were the primary barrier to entry. Markets were simply not contestable, because even in the face of high prices and market inefficiencies, an incumbent serving a route knew that a competitor could not enter that route overnight. Rather, that aspiring competitor needed approval from the CAB to do so. This was good for aviation attorneys working on route cases, but not for consumers who could not afford to fly.

Deregulation spawned a diversity of business models that provide consumers choice.

Fast forward to today, and travelers flying within the United States or abroad are blessed with a diverse set of business models spanning full-service global network carriers (e.g., American, Delta, United), low-cost network



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carriers (e.g., Alaska/Hawaiian), low-cost carriers (e.g., Breeze, JetBlue, Southwest) and ultra-low-cost carriers (e.g., Allegiant, Avelo, Frontier). These business models differ primarily by 1) network scope and product and 2) operational complexity. In general, as network scope (i.e., breadth of destinations served, fleet diversity required to serve those destinations) and product differentiation grow—along with the benefits that consumers derive from those attributes—so too do the complexity and associated costs of providing air service.

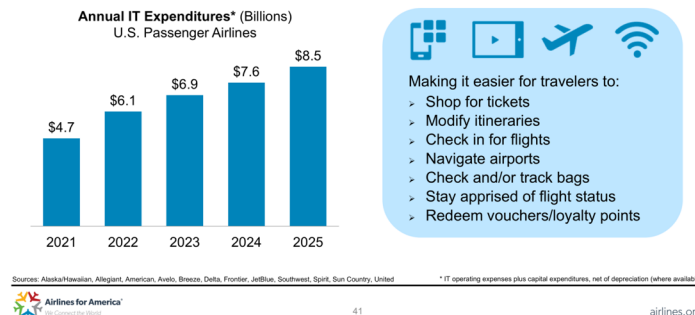
Airlines are Driving Innovation Through Technology Investments, Increasing Customer Satisfaction.

Airlines compete fiercely for customers not only through pricing, but also through differing cabin offerings, routes, airport amenities (including lounges), mobile apps, distribution channels, loyalty programs and in-flight services. This would not be possible if the government still controlled fares and service or if decision-making powers were not in the hands of customers, as they are now.

Airlines know that customers value convenience and believe that technology can improve every stage of the travel process from planning, booking and payment all the way through the end of the journey. In addition, carriers also know that at the airport, customers want to reach their boarding gate quickly with minimum friction. That is why most carrier branded credit cards offer to pay for enrolling in TSA PreCheck and/or Global Entry and many carriers have invested in biometrics for bag drop and the boarding process. And carriers are responsibly utilizing Artificial Intelligence (AI) to buttress safety and efficiency to improve the customer experience.

U.S. Passenger Airlines Have Steadily Increased IT Expenditures, Reaching ~\$8.5B in 2025

Goal: Boost Operational Resiliency/Redundancy/Security and Customer Self-Service Functionality



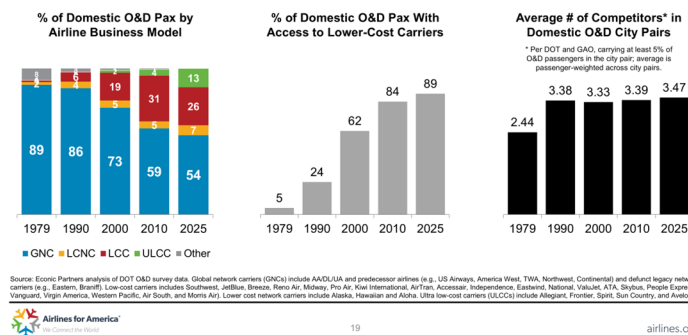
Carriers have also invested in product distribution so that more customers can easily view and choose from among all the travel options that meet their financial and service needs. Carriers have every incentive to be transparent, and the choices they make about who distributes their product through contractual relationships are critical to protecting consumers and ensuring the product is advertised in a way that meets the carriers' standards.

Over the course of the deregulated era of air travel, lower cost carriers have been an engine of growth and taken a significant share of passengers away from the global network carriers (GNCs).



In 1979, at the outset of deregulation, GNCs carried 89% of domestic origin-and-destination (O&D) passengers. By the turn of the century, that share had fallen to 73%, and by last year it had fallen further to just 54%, as lower-cost airlines continued to steal market share. Moreover, the share of domestic U.S. passengers with access to lower-cost carriers has soared from just 5% in 1979 to 62% in 2000 and 89% in 2025. In fact, last year almost half of domestic O&D passengers had access to ultra-low-cost carriers (ULCCs), up from just 8% in 2000, and have benefited from the arrival of two lower-cost startups—Avelo Airlines and Breeze Airways—in spring 2021. As lower-cost carriers grew rapidly, the consolidation of complementary GNC airline networks facilitated their ability to offer competitive connecting service on more O&D city pairs, expand nonstop service into new markets and restore growth. The combination of these developments resulted in more competition and choice than ever for flyers, with the average number of competitors on domestic city pairs rising from 2.44 in 1979 to 3.33 in 2000 to 3.39 in 2010 and 3.47 in 2025.

From 2000-2025, the Number of Competitors per Domestic Air Trip Rose From 3.33 to 3.47
Global Network Carrier Share of Domestic Passengers Fell From 73% in 2000 to 54% in 2025



While the statistics above speak to the average passenger, it is also worth noting that in 2025, 49% of U.S. domestic passengers traveled in city pairs with at least four effective competitors, 30% in markets with three competitors and 16% in markets with two competitors. Only 5.5% of U.S. domestic market passengers were left with just one carrier.

Air Cargo Deregulation Led to Expanded Service, Lower Shipping Costs and Product Innovation.

In the 20 years preceding the deregulation of Air Cargo in 1977, the CAB refused to certify the entry of any new cargo carriers or the expansion of existing ones into new routes and limited the size of aircraft used to transport goods. Under this regime carriers such as FedEx, which was classified as an express (rather than cargo) service, could only use small planes even when larger ones were the more efficient choice. Soon after deregulation, express air services spread across the country, allowing rapid increases in the amount and variety of products shipped.

Under CAB regulation, if a parcel needed extremely rapid transport, it could be shipped "belly hold" over routes for which an airline had passenger authority, thus limiting overnighting to point-to-point routes available under passenger air flight regulations. The 1977 deregulation of air cargo allowed carriers such as FedEx to use larger aircraft for overnight shipping over any route, with prices determined by the market, making it possible for a



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lobsterman in Maine to ship crates of fresh lobster from Bangor to Bismarck or nearly anywhere else. Free from operational restrictions imposed by the CAB and the Interstate Commerce Commission (ICC), shippers increased reliability and provided a multitude of delivery speed, time, and method combinations. Nearly simultaneous deregulation of trucking and railroads allowed parcel carriers to become multimodal and offer intermodal services.

Initially, the revolution of air cargo services unleashed by deregulation led to expansion of lean manufacturing and lean retailing processes, which rely heavily on just-in-time delivery services offered by carriers such as UPS and FedEx. Stocking every possible personal computer (PC) configuration, for example, would require maintaining massive, costly inventories. Instead, many PC makers wait until a customer's order is received and then install the needed components, shipping the finished product to the customer rapidly via delivery systems made possible by a parcel carrier utilizing combinations of air and surface transportation. Another economic development made possible by deregulation of air cargo was rapid repairs. For example, in 2000 SonicAir built a logistics center at the end of the runway at UPS's Louisville hub that made it possible for customers of tech companies with which SonicAir had a contract to ship their printers and scanners for repairs. These repairs were then completed overnight at the airport and returned in working order to the customer in the morning, reducing parts inventory for the manufacturer and improving customer service.

In recent decades, we have seen the proliferation of cargo-deregulation-enabled e-commerce, as typified by online retail giant Amazon.com and online auction house eBay.com, along with countless individual retailers and middlemen. The interaction between online retailers and air cargo deregulation is important: the rise of parcel shippers able to support the complex supply chains makes possible the rapid 1-2-day shipping of goods and tracking of shipments characteristic of modern e-commerce. When ordering online, consumers can often choose between slower shipping times or 24-48-hour shipping options—a choice not widely available before deregulation. For instance, the 1975 Sears Catalog (the pre-Internet equivalent of Amazon) lists only surface transport rates; 1-2-day shipping was not an option. Although it is impossible to guess what would have happened had air cargo not been deregulated, it is difficult to imagine e-retailing being anywhere near as successful in a world without parcel shippers such as FedEx and UPS.

In short, deregulation of air cargo was a key element in the emergence of modern, secure supply chain management and allowed wider access to goods supplied by domestic and international sources. It also facilitated American trade to foreign markets. Efficiencies in widespread use of hub-and-spoke models for air cargo, by reducing total costs, enable more American products to reach foreign markets.

Competition Has Spurred Diverse Business Models and Greater Consumer Choice.

The growth in the competitiveness of the airline industry since the ADA speaks for itself. Post-deregulation, the U.S. has experienced a plethora of differing business models from global network carriers and lower cost network carriers to low-cost carriers and even ultra-low-cost carriers. The invention of the hub-and-spoke system is what allowed some carriers to serve more communities with about the same number of planes. Other carriers have pursued a point-to-point approach. And in a post-pandemic world, demand is still evolving. One ULCC recently decided to offer first class. The government should not micromanage or otherwise interfere with the competitive marketplace; rather it should allow the marketplace to respond to evolving consumer preferences.

As shown below, lower-cost carriers serve more U.S. airports than ever. Among these are two new airlines that entered the market in spring 2021. Unlike some failed entrants of the past, these airlines were well capitalized and founded by seasoned executives with well thought-out business plans. Breeze Airways is focused on linking secondary markets with new A220 aircraft using a point-to-point model. Avelo Airlines operates 737s from bases across the country, catering to business and leisure customers on shorter routes.

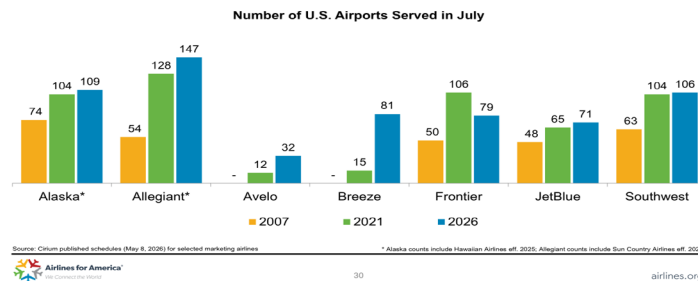


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Lower-Cost U.S. Carriers Have Significantly Expanded Their U.S. Footprint
They Have Established a Multimarket, Nationwide Competitive Presence



International Aviation Deregulation Has Also Yielded Consumer and Economic Benefits.

The success of domestic airline deregulation is precisely what led industry and the U.S. government to pursue deregulation of international markets through its "Open Skies" template for bilateral air services agreements. As former President Bill Clinton said in an October 1995 speech to the White House Conference on Travel and Tourism "The second thing we've worked to do is to sign open-skies agreements with more countries to facilitate air travel here. Earlier this year I signed an open-skies agreement with Canada, deregulating the world's largest aviation market: more flights, lower fares. Last month we concluded an open-skies pact with nine European countries. We've expanded air service around the world to Great Britain, Brazil, Ukraine, the Philippines." He added, ""We've worked hard to give you a healthy airline industry. They were in deep trouble when I came into office. Every airline in America but one was losing money. Three were in bankruptcy. From 1988 to 1992, the industry lost \$12 billion, more money lost in 4 years than it had made in its entire history. I appointed a special commission headed by the former Governor of Virginia, Gerry Baliles, to revive the industry. Secretary Pena has now carried out the vast majority of its recommendations. Today the airlines are healthy, the fares are down, the passengers are up, and they are turning a profit. We are moving in the right direction."

Indeed, beyond Open Skies, airlines have pursued different types of international cooperative agreements to provide even more robust travel choices for their passengers, and numerous studies, including by DOT, outline the benefits from integrating complementary networks. In 1998, DOJ's antitrust division chief Joel Klein remarked, "[B]y linking largely end-to-end route networks, international code-share agreements can inject additional competition into city-pair markets currently served by competitors' on-line connecting flights. If neither of the code-share partners currently serves that city-pair, the new combined code-share service might be an effective competitive alternative to other carriers' existing on-line services, and constrain prices in that market... Potential public interest benefits occur when an airline extends the reach of its route network by code-sharing on flights operated by an airline that operates a route network in another geographic region -- i.e., an end-to-end network combination."

Today, U.S. airlines employ more than one million people across the globe and offer passenger service to and from 85 countries and cargo service to and from more than 220 countries. Dedicated freighter service is complemented by plentiful belly cargo capacity offered by passenger carriers, keeping rates lower for shippers. Thanks to deregulation of most international markets, route entry is unlimited, and U.S. airlines compete



vigorously with foreign-flag carriers. This vigorous competition among airlines has in turn fueled demand for the most cost-efficient, range-capable, customer-friendly (and often cargo-capable) aircraft to connect not only the largest hubs but also secondary U.S. and foreign markets with nonstop service.

Airport Access, Development, and Funding Support Competition.

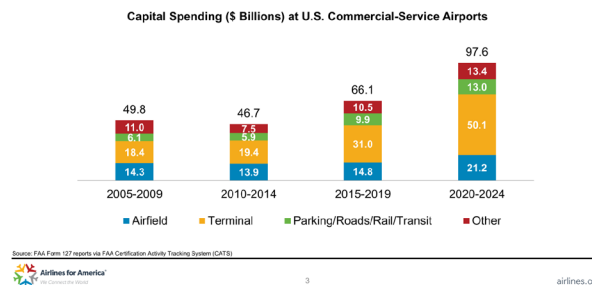
Federal law, grant assurances, and airport lease practices provide strong protections for airport access and airline competition, while giving airports and carriers flexibility to manage facilities based on local operational and financial needs. Large and medium hub airports must maintain competition plans to receive federal support, airports must provide access on reasonable and non-discriminatory terms, and exclusive rights are generally prohibited. In practice, lease agreements have also evolved to include shorter terms, preferential and common-use arrangements, and gate accommodation and recapture provisions that help airports make gates available to more carriers. These protections are reinforced by substantial airport investment. Airports and airlines have worked together to deliver major terminal and infrastructure projects nationwide, and airport funding is at historic levels through federal grants, higher AIP authorizations, strong PFC collections, record operating revenues, and continued access to capital markets. As a result, airports are well positioned to expand and modernize facilities, and consumers continue to benefit from robust competition and improved service.

Airport Funding is at Historic Levels.

Airport funding is now at historic levels. After infusing airports with \$20 billion of COVID relief grants, Congress provided another \$20 billion of Bipartisan Infrastructure Law (BIL) grants for airport infrastructure. To date, FAA has made available nearly \$14.5 billion of airport infrastructure and terminal development grants across the nation. In addition, the 2024 FAA Reauthorization Act increased the AIP authorized funding level from \$3.35 billion to \$4.0 billion annually. PFC revenues reached a record \$3.85 billion in 2025 and are projected to reach \$4.0 billion in 2026. At the same time, airport operating revenues reached \$32 billion in 2024, and unrestricted cash exceeded \$31 billion (over 550 days of liquidity), both record levels. Along with investment-grade ratings and ease of access to capital markets at preferred interest rates, U.S. airports and airlines are well positioned to fund and deliver infrastructure improvements across the nation.

Consumers are reaping the benefits of competition as airport development booms to meet record demand and modernize the travel experience.

From 2020-2024, U.S. Airports Collectively Experienced ~\$98 Billion in Capital Improvements
More Than Half of That Sum Was Invested in Terminal Renovation and Expansion



**Conclusion.**

We appreciate the opportunity to testify, and we believe the facts and data clearly show that passengers greatly benefit from vigorous airline competition, which creates greater choice and service options. Congress recognized the benefits to consumers when they acted on a bipartisan, bicameral basis to deregulate the airline industry in 1978. The federal government already has broad authority to prevent unfair, deceptive, predatory or anticompetitive practices and routinely uses it. With those protections in place, we should be placing a maximum reliance on competitive market forces to maintain an air transportation system that relies on healthy competition to provide efficiency, innovation and low prices, and to determine the variety, quality, and price of air transportation services. Deregulation has clearly been a success for consumers.

Mr. FITZGERALD. Thank you, Governor. Mr. Ravich, we now go to you for your five minutes.

STATEMENT OF TIMOTHY M. RAVICH

Mr. RAVICH. Good morning, Chair Fitzgerald, Ranking Member Balint, and the Members of the Subcommittee. Thank you for the invitation and the privilege to speak with you today.

As you heard from the kind introduction, my name is Tim Ravich. I'm a Florida bar, board-certified lawyer working currently with Tressler, LLP, which is a law firm in Chicago.

President Reagan once said that the nine most terrifying words in the English language are "I'm from the government, and I'm here to help." Yet, one of the most important deregulatory reforms in American history was championed by Senator Edward Kennedy during the Ford Administration and signed into law by President Jimmy Carter.

Airline deregulation was a bipartisan effort. That spirit remains relevant today. We might agree that not every market shortcoming requires a regulatory intervention. Regulation provides benefits. It also carries costs. Aviation depends on both competition and regulation. The title of today's hearing, "The 30,000 Foot View: Competition and Regulation in the U.S. Airline Industry," makes this point well. Every day, millions of passengers and tons of cargo travel around the United States safely and efficiently.

The overwhelming majority of trips occur without incident. The success is easy to overlook. In the nearly 50 years since enactment of the Airline Deregulation Act, passenger traffic has increased exponentially. Airfares has declined. Air travel is available to far more Americans than it was before deregulation.

During the Senate hearings on airline deregulation decades ago, Senator Kennedy recalled an East Boston constituent who asked why he was holding the hearings about airlines when he had never been able to afford to fly. Kennedy replied, quote, "That's why I'm holding the hearings."

I often think of that story when I teach aviation law. At the start of each semester, I ask my students whether they have ever flown on a commercial airline. Every hand goes up. In fact, it may be the only time all semester that happens, but many seem surprised by the question itself. Of course they have flown. That reaction says a great deal about how much aviation has changed over the last half-century and how competition has expanded access to air transportation for millions of Americans.

As titled, this hearing focuses on the right issue: When is regulation necessary versus when markets should work freely. The competition questions today are different from those Congress confronted in 1978. Competition today is often shaped less by fares and routes than by access, capacity, market concentration, and mergers. These issues deserve attention. Many competition decisions in commercial aviation occur not in the air, but on the ground at airports. A carrier cannot compete without access. Access to gates matters, access to terminal matters and infrastructure matters. Competition also requires capacity. No airline can compete with a flight it cannot schedule, and no new entrant can compete without access to gates, terminals, and airport infrastructure.

The same is true in the National Airspace System. Airlines can only compete through flights they are able to schedule and operate. Discussions about air traffic control modernization and capacity are, therefore, also discussions about competition. Recent litigation involving the proposed acquisition of Spirit Airlines by JetBlue Airways illustrates another challenge: Competition policy often requires regulators and courts to predict future markets and future competitors. Those predictions are not always easy. As we approach the 50th anniversary of the Airline Deregulation Act, the central question before this body is whether and how regulatory law can best encourage competition, innovation, and new entry.

That question extends beyond today's airline industry. Drones are here. Flying taxis, referred to as advanced air mobility, are on the horizon. Commercial space transportation is a reality. The issues we will discuss today—access, competition, infrastructure, resource allocation, and yes, regulation—will influence and are precedential as our Nation explores the next frontiers in transportation. I look forward to discussing these matters and answering the Subcommittee's questions. Thank you.

[The prepared statement of Mr. Ravich follows:]

Prepared Statement of

Timothy M. Ravich
Senior Counsel
Tressler, LLP

Before the

United States House of Representatives Committee on the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

**Hearing on The 30,000 Foot View:
Competition and Regulation in the U.S. Airline Industry**

Washington, D.C.
June 24, 2026

Chairman Fitzgerald, Ranking Member Nadler, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you.

My name is Timothy M. Ravich. I am Senior Counsel with Tressler LLP, resident in Chicago, Illinois, where my law practice focuses on aviation, aerospace, airport, and commercial litigation matters. Earlier in my career, I served as General Counsel for an international unmanned aircraft systems company and helped lead the Federal Aviation Administration approval process that secured one of the earliest authorizations for commercial drone operations in North America. I am Board Certified in Aviation Law by The Florida Bar, one of a small number of attorneys in the United States to hold that certification.

For more than two decades, I have taught aviation and space law at the University of Miami School of Law and Florida International University College of Law, as well as at the University of Central Florida, where I chaired the Department of Legal Studies and created a law and technology concentration. I am the author of *INTRODUCTION TO AVIATION LAW*, now in its second edition, which is used in law schools and university aviation programs throughout the United States. I have also authored numerous law review articles and scholarly publications addressing aviation law, airport governance, emerging technologies, and transportation policy.

My practical work has focused extensively on airport governance and emerging aviation technologies. I served as Principal Investigator for the National Science Foundation investigating advanced air mobility and the integration of emerging transportation systems. I also served as Principal Investigator for the Airport Cooperative Research Program of the National Academies of Sciences, Engineering, and Medicine on research involving airport governance, federal grant assurances, and the legal framework governing publicly funded airports.

Last December, I completed my first solo flight and am presently completing the requirements for a private pilot certificate.

My testimony today is informed by these professional, academic, research, and practical experiences. The views expressed are my own.

I. AVIATION POLICY: COMPETITION AND REGULATION

The title of today's hearing, "The 30,000 Foot View: Competition and Regulation in the U.S. Airline Industry," aptly frames the central issues before the Subcommittee. Commercial aviation depends upon *both* competitive markets *and* public institutions. Airlines compete for passengers, routes, and market opportunities, but they do so within a system supported by public infrastructure, safety oversight, air traffic control services, international agreements, and substantial governmental investment.

The strength of the commercial aviation system in the United States is predicated upon complex public and private elements working together. An enduring question, and the one before this Subcommittee, is, first, whether, and then how, to design and implement laws and regulations that protect safety, consumers, and the public interest without unnecessarily impeding competition.

Numerous features of the commercial aviation ecosystem—from airspace management to privatization of air traffic control and airport security to gate access and slot allocation—present lawmakers, and specifically this Subcommittee, with both an opportunity and a need to assess and calibrate regulatory intervention against the benefits of free-market competition.

To be sure, competitive markets have encouraged entrepreneurship, investment, and the development of new business models. Regulation—and more specifically, *deregulation*—has provided the legal, operational, and institutional foundation upon which those markets function.

The Airline Deregulation Act of 1978 is one of the most significant developments in that evolution. Congress concluded that competitive markets were better positioned to determine airline routes, service levels, and fares. Deregulation transformed the structure of economic regulation, while preserving essential governmental responsibilities relating to safety, airport oversight, antitrust enforcement, international aviation, and the national airspace system. Nearly five decades later, the Airline Deregulation Act remains the foundation of modern commercial.

Competition questions confronting policymakers today arise within a very different aviation environment than the one Congress considered in 1978. Passenger volumes have increased dramatically. Airline networks have evolved. Airport infrastructure is increasingly constrained. Emerging technologies are creating new transportation opportunities. As a result, competition policy now extends well beyond questions of fares and routes. Specifically, much of the contemporary debate surrounding airline competition focuses on mergers, concentration levels, and market share. Also at issue are the legal and institutional structures that determine whether competitors can enter markets, expand service, and challenge incumbent firms. Access to airport infrastructure, gate availability, slot allocations, airspace capacity, and the regulatory treatment of emerging technologies increasingly shape the competitive landscape of aviation.

The central competition question in aviation today is whether the legal and physical infrastructure of the aviation system continues to create opportunities for competition, innovation, and new entry. Competition cannot flourish unless competitors are able to access the facilities, capacity, and regulatory pathways necessary to participate in the marketplace.

This testimony advances three principal observations:

- ***First***, the Airline Deregulation Act remains one of the most consequential legislative reforms in the history of American transportation and continues to provide the foundation for federal aviation policy.
- ***Second***, competition and regulation operate together and the effectiveness of each depends upon the design of the institutions through which they are implemented.
- ***Third***, many of the most significant competitive questions confronting aviation today involve airport access, infrastructure constraints, capacity limitations, and barriers to entry rather than traditional economic regulation of airline prices and routes.

II. THE AIRLINE DEREGULATION ACT OF 1978

The modern debate regarding competition and regulation centers on the legacy of the Airline Deregulation Act of 1978,¹ one of the most consequential transportation reforms in American history.

Prior to airline deregulation,² commercial aviation operated under a system of direct federal economic regulation administered by the Civil Aeronautics Board (“CAB”).³ Created by the Civil Aeronautics Act of 1938,⁴ the CAB exercised extensive authority over airline market entry, routes, fares, mergers, acquisitions, and exits from existing markets. Airlines generally could not initiate service on new routes, abandon existing routes, or substantially alter fares without regulatory approval. The federal government played a significant role in determining where airlines could fly, what prices they could charge, and which carriers could enter particular markets.

This framework reflected the realities of a developing industry. Policymakers sought to promote stability, ensure reliable air service, and encourage investment in a transportation sector that remained in its formative stages. By the 1970s, however, a growing body of scholarship and policy analysis concluded that consumers would benefit from greater competition and reduced economic regulation. The movement toward deregulation drew support from an unusually diverse coalition of political leaders, academics, and regulators.⁵ Among its most influential advocates was Alfred E. Kahn, who chaired the CAB during the Carter Administration and became a leading proponent of competitive market forces. U.S. Senator Edward Kennedy used a series of influential Judiciary Committee hearings to focus attention on the costs and inefficiencies associated with airline regulation. Then-Senate Judiciary Committee Special Counsel Stephen Breyer contributed influential scholarship and policy analysis examining whether traditional regulatory structures continued to justify their costs.

Congress ultimately concluded that competitive markets were better positioned than lawmakers and regulators in Washington, D.C. to determine airline routes, service levels, and fares. The Airline Deregulation Act reflected a belief that competition, innovation, and consumer choice would produce better outcomes than continued governmental control of prices and market entry.

¹ Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705. The law was passed by the Senate by a vote of 83-9, and by the U.S. House of Representatives by a vote of 363-8; President Jimmy Carter signed it into law on October 24, 1978.

² Congress did not begin deregulation with passenger airlines. Rather, it first liberalized the air cargo market through the Air Cargo Deregulation Act of 1977, which relaxed entry and rate controls for freight carriers and served as an early test of market-oriented aviation policy. *See* Air Cargo Deregulation Act of 1977, Pub. L. No. 95-163, 91 Stat. 1278. Following passenger-airline deregulation, policymakers increasingly focused on airline-controlled computer reservation systems (“CRSs”), which had become the primary distribution channel through which airlines communicated fares, schedules, and seat availability to consumers. Concerns arose that airline-owned CRSs could be used to disadvantage rival carriers through display bias, preferential access, and control over booking information. *See* Timothy M. Ravich, *Deregulation of the Airline Computer Reservation Systems (CRS) Industry*, 69 J. AIR L. & COM. 387, 392-94 (2004).

³ *E.g.*, Frederick A. Ballard, *Federal Regulation of Aviation*, 60 HARV. L. REV. 1235, 1245-48 (1947).

⁴ Civil Aeronautics Act of 1938, Pub. L. No. 75-706, 52 Stat. 973 (1938).

⁵ *See, e.g.*, TIMOTHY M. RAVICH, INTRODUCTION TO AVIATION LAW 285-300 (WEST ACADEMIC 2020).

Nearly fifty years on, the record is mixed.⁶

Deregulation expanded access to air transportation on a scale that would have been difficult to imagine in 1978. Annual passenger traffic increased to more than 850 million before the COVID-19 pandemic from approximately 275 million enplanements in 1978. Real fares declined, and air travel became accessible to a far broader segment of the American public. New business models emerged, including low-cost and ultra-low-cost carriers that expanded travel opportunities for millions of consumers and placed downward pressure on fares throughout the industry.

Deregulation also transformed the competitive landscape. Market competition replaced administrative decision-making and allowed airlines to compete through different business models, operational strategies, and service offerings⁷. Southwest Airlines expanded a low-fare, high-frequency model that fundamentally altered domestic air transportation. JetBlue Airways combined lower fares with service offerings that challenged conventional assumptions regarding budget travel. Spirit Airlines pioneered the ultra-low-cost model, generating substantial debate while exerting significant competitive pressure on fares. New entrants challenged established carriers. Some succeeded. Others failed. Braniff and People Express disappeared as did the iconic Eastern, Pan American, and TWA. The post-deregulation environment exposed carriers to competitive pressures that had been muted under the prior regulatory regime.

⁶ Compare Stephen G. Breyer, *Airline Deregulation, Revisited*, Bloomberg Business (Jan. 20, 2011) (“What does the industry’s history tell us? Was the effort worthwhile? Certainly it shows that every major reform brings about new, sometimes unforeseen problems.... [b]ut how many now will vote to go back to the ‘good old days’ of paying high, regulated prices for better service?”) with Hobart Rowan, *Airline Deregulation: A Bankrupt Policy*, WASH. POST, June 28, 1987, at H1 (“Transportation is not just an old business. Basically, it’s a public utility, which has to be regulated in the public interest. It’s time to re-regulate the airlines.”).

Debates about the merits and drawbacks of regulation and deregulation are extensive, spanning back decades. See, e.g., GEORGE WILLIAMS, *AIRLINE COMPETITION: DEREGULATION’S MIXED LEGACY* (ASHGATE 2002); KENNETH BUTTON & ROGER STOUGH, *AIR TRANSPORT NETWORKS* (2000); GEORGE WILLIAMS, *THE AIRLINE INDUSTRY AND THE IMPACT OF DEREGULATION* (1993); PAUL STEPHEN DEMPSEY & ANDREW R. GOETZ, *AIRLINE DEREGULATION AND LAISSEZ-FAIRE MYTHOLOGY* (1992); Laurence E. Gesell & Martin T. Farris, *Airline Deregulation: An Evaluation of Goals and Objectives*, 21 TRANSP. L.J. 105 (1992); Theodore P. Harris, *The Disaster of Deregulation*, 20 TRANSP. L.J. 87 (1991); Alfred E. Kahn, *Deregulation: Looking Backward and Looking Forward*, 7 YALE J. REG. 325 (1990); Andrew R. Goetz & Paul Stephen Dempsey, *Airline Deregulation Ten Years After: Something Foul in the Air*, 54 J. AIR L. & COM. 927 (1989); Melvin A. Brenner, *Airline Deregulation - A Case Study in Public Policy Failure*, 16 TRANSP. L.J. 179 (1988); Alfred E. Kahn, *Airline Deregulation - A Mixed Bag, But a Clear Success Nevertheless*, 16 TRANSP. L.J. 229 (1988); Thomas G. Moore, *U.S. Airline Deregulation: Its Effects on Passengers, Capital and Labor*, 29 J.L. & ECON. 1 (1986); Edward A. Morash, *Airline Deregulation: Another Look*, 50 J. AIR L. & COM. 253 (1985); Michael E. Levine, *Revisionism Revised? Airline Deregulation and the Public Interest*, 44 L. & CONTEMP. PROBS. 179 (1981); C. Vincent Olson & John M. Trapani, III, *Who Has Benefited from Regulation of the Airline Industry?*, 24 J.L. & ECON. 75 (1981); Symposium, *The Impact of Government Regulation on Air Transportation*, 9 AKRON L. REV. 629 (1976); Richard D. Gritta, *Profitability and Risk in Air Transport: A Case for Deregulation*, 7 TRANSP. L.J. 197 (1975); WILLIAM A. JORDAN, *AIRLINE REGULATION IN AMERICA: EFFECTS AND IMPERFECTIONS* (THE JOHNS HOPKINS PRESS 1970).

⁷ *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992) (Scalia, J.) (recounting that Congress determined that “maximum reliance on competitive market forces” would best further “efficiency, innovation and low prices as well as variety and quality of air transportation services.”)

Deregulation also produced new policy challenges. Intense competition, economic downturns, fuel-price volatility, and recurring financial distress contributed to a series of mergers and acquisitions that reshaped the industry. Delta merged with Northwest. United merged with Continental. Southwest acquired AirTran. American merged with US Airways. Competition policy increasingly focused on concentration, market power, and merger enforcement.

These developments collectively define the modern aviation marketplace. The airline industry today is more accessible, more innovative, more competitive, and more consolidated than the industry Congress deregulated in 1978.

The challenge for policymakers is to support opportunities for meaningful competition among existing market participants while maintaining the legal and institutional conditions that permit future competitors to emerge.

III. COMPETITION, ACCESS, AND INFRASTRUCTURE

As a practical matter, many of the most consequential competition decisions in aviation now occur at the airport level where competition is a function of access and infrastructure.

Decisions regarding gate assignments, lease structures, common-use facilities, terminal development, capital investment, and airport expansion directly influence whether new entrants can establish service and whether existing competitors can expand. Carriers cannot add flights without gates.⁸ Nor can carriers establish services without terminal access. New entrants especially cannot effectively challenge incumbent competitors if the infrastructure necessary to support competition is unavailable.

These issues are especially important because competition in aviation depends upon infrastructure that is capital intensive, heavily regulated, physically constrained, and often developed over decades. Airport capacity is shaped by environmental requirements, airspace constraints, financing limitations, local land-use considerations, and long-term planning decisions. New capacity frequently requires substantial public investment and years of regulatory review.

⁸ See, e.g., *United States v. Am. Airlines Grp. Inc.*, 675 F. Supp. 65, 74 (D. Mass. 2023):

American and JetBlue are two of the four largest carriers operating in New York, and two of the largest three in Boston. Delta Air Lines is the only other carrier with a large presence in Boston. Besides Delta and United Airlines, no other carrier matches or approaches in size the defendants' respective positions in New York. Challengers seeking to enter or expand in New York would first need to secure gates from which to operate, as well as schedule authorizations from federal regulators who control air traffic in one of the most congested markets in the world. Both the gates and the authorizations are exceedingly difficult to acquire. Challengers seeking to enter or expand in Boston would need to secure gates, which also are in scarce supply. Because of these significant barriers, the defendants' positions at or near the top of these constrained markets had proven relatively robust and durable over the decade or so preceding the onset of the COVID-19 pandemic.

Federal law has long recognized the relationship between airport access and competition. Airports receiving federal assistance are subject to “grant assurances” requiring that airport facilities be made available on reasonable terms and without unjust discrimination.⁹ Federal law likewise prohibits the grant of exclusive rights and seeks to preserve opportunities for aeronautical access. These obligations reflect a longstanding federal policy that publicly funded airports should remain available to competing users.

Airports, however, must also operate as complex firms. They must honor existing lease commitments, maintain safe and efficient operations, finance capital improvements, manage scarce infrastructure, and remain financially self-sustaining.¹⁰

Airport operators therefore balance access considerations against operational, financial, and capacity constraints that are often substantial.

The takeaway for policymakers is that airport governance decisions determine whether competition can emerge, whether existing competitors can grow, and whether consumers ultimately benefit from additional service options. Airport access is therefore one of the central competition issues confronting the aviation industry today. Stated otherwise, while the focus of today’s hearing is “The 30,000 Foot View,” ironically, many of the most consequential competition decisions in commercial aviation occur on the ground not in the air.

IV. CONCENTRATION AND COMPETITION

Recent merger litigation involving a potential acquisition of Spirit Airlines by JetBlue Airways illustrates the challenges associated with measuring competition in the modern airline industry.¹¹ The case presented competing views regarding how to evaluate and protect competition. One view emphasized Spirit’s role as an ultra-low-cost carrier whose presence exerted downward pressure on fares and expanded access to air transportation. Another emphasized the potential for a combined JetBlue-Spirit airline to compete more effectively against larger network carriers in an increasingly concentrated industry.

The federal district court deciding the case recognized both considerations. It observed that a combined airline would likely “place stronger competitive pressure on the larger airlines in the country,” while also concluding that the transaction would eliminate an important source of low-cost competition. The court ultimately determined that preserving Spirit as an independent competitor better served competition and consumer welfare.

⁹ See 49 U.S.C. § 47104; 14 C.F.R. Pts. 13, 16. See also Fed. Aviation Admin. Order 5190.6C, Airport Compliance Manual (2026), https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/order-5190-6c-compliance-complete.

¹⁰ *Southwest Airlines Co. v. City of San Antonio, Tx.*, 797 F. Supp.3d 709 (W.D. Tex. 2025) (evaluating challenge to allocation of new terminal gates and concluding that City’s gate-allocation decision was a proprietary airport-management function not preempted by the Airline Deregulation Act).

¹¹ *United States v. JetBlue Airways Corp.*, 713 F.Supp. 3d 109, 124 (D. Mass. 2024) (“At the same time, however, the consumers that rely on Spirit’s unique, low-price model would likely be harmed ... While it is understandable that JetBlue seeks inorganic growth through acquisition ... the proposed acquisition, in this Court’s attempt to predict the future in murky times, does violence to the core principle of antitrust law: to protect the United States’ markets – and market participants – from anticompetitive harm.”).

The litigation highlights a broader challenge confronting courts, regulators, and policymakers. Competition policy frequently requires predictions regarding future market conditions, future competitors, and future consumer welfare. As the court in *United States v. JetBlue Airways, Corp.* cautioned at the outset of its written decision, it is “tough to make predictions, especially about the future.”¹² The subsequent financial difficulties experienced by Spirit underscore the uncertainty that often accompanies efforts to forecast competitive conditions years into the future.

Although the Spirit-JetBlue case speaks to the importance of market concentration, concentration alone does not fully answer questions about the competitiveness of the commercial airline industry.

The airline industry today is unquestionably more concentrated than it was immediately following deregulation. That reality warrants continued attention by antitrust regulators and policymakers. Competition, however, is ultimately reflected in the ability of firms to challenge one another and provide meaningful alternatives to consumers.

Competition in aviation is reflected in market share, but also in entry, expansion, innovation, consumer choice, and the ability of competitors to discipline incumbent firms. Four carriers may compete intensely in one market while six carriers compete weakly in another. A low-cost carrier may exert greater competitive pressure than several larger rivals combined. Market structure matters, but so do the conditions that permit competitors to enter markets, expand service, attract customers, and challenge established firms.

The experience of the past fifty years demonstrates that aviation competition is dynamic. Airlines grow, contract, merge, enter new markets, and exit others. New business models emerge. Established firms adapt. Consumers benefit when competitors are able to challenge one another through lower fares, improved service, innovation, and operational efficiency.

Consistent with the theme of today’s hearing, in assessing competition and regulation in the U.S. airline industry with respect to market concentration, the central challenge is sustaining competition among existing carriers while preserving the legal, regulatory, and institutional conditions that enable future entrants to compete.

V. COMPETITION REQUIRES CAPACITY

Americans experience the consequences of capacity constraints every day. Delayed flights, congested airspace, crowded airports, and limited scheduling flexibility are often discussed as operational challenges. They are competition issues as well. Airlines cannot expand service, add frequencies, or enter new markets unless the aviation system has sufficient capacity to accommodate growth.

¹² *Id.* at 121.

For decades, policymakers have debated whether the current structure of the American air traffic control system remains the optimal mechanism for financing and managing increasingly complex aviation operations.¹³ These discussions often focus on governance, modernization, and funding. They also influence the ability of the aviation system to accommodate future growth.

Many nations have adopted alternative approaches to air traffic management. Canada operates through NAV CANADA, a private, non-share capital corporation funded through user charges. The United Kingdom and numerous European states utilize corporatized air navigation service providers operating under varying governance models. At the continental level, EUROCONTROL coordinates air traffic management across much of Europe and employs route-based charging systems that allocate costs among users of the airspace system. While these systems differ significantly from the American approach, they reflect a common recognition that air traffic management directly affects system capacity and operational efficiency.

The United States has historically relied upon a combination of aviation excise taxes, trust-fund financing, and congressional appropriations to support air traffic services. Critics contend that this structure complicates long-term planning and modernization efforts. Supporters emphasize public accountability, congressional oversight, and broad access to the national airspace system. Each position raises legitimate considerations for policymakers.

Regardless of governance structure, technological modernization remains essential. Satellite-based navigation, performance-based procedures, digital communications, automation tools, artificial intelligence-assisted traffic management, and data-driven operational planning offer opportunities to improve efficiency and increase capacity throughout the system. The FAA's NextGen initiative represents one example of these efforts, although implementation has often proven more complex and time-consuming than originally anticipated.

Simply put, no carrier can compete with a flight it cannot schedule. Capacity constraints limit opportunities for growth, increase costs, reduce schedule reliability, and restrict the ability of airlines to respond to consumer demand. New entrants face similar challenges when congestion limits operational opportunities at key airports and within the airspace system.

The continued success of the American aviation system depends upon its ability to accommodate future growth. Capacity is as much an operational concern as it is a central component of aviation competition policy, therefore.

VI. CABOTAGE

Few aviation policies present a clearer illustration of the tension between competition and regulation than cabotage.¹⁴ Federal law generally reserves domestic air transportation to U.S. air carriers that satisfy statutory citizenship requirements regarding ownership and control. As a result, airlines that are organized, owned, or controlled outside the United States generally may not transport passengers or cargo solely between two points within the United States.

¹³ *E.g.*, Bart Elias, Cong. Rsch. Serv., R43844, *Considerations Regarding the Corporatization of Air Traffic Control* (2015), <https://www.airlines.org/wp-content/uploads/2016/02/CongResearchServiceReportR43844.pdf>.

¹⁴ *See generally* PABLO MENDES DE LEON, CABOTAGE IN AIR TRANSPORT REGULATION (1992).

To illustrate, Air France may transport passengers from Paris to New York, but it is not permitted to transport passengers solely between Chicago and New York. Domestic airline competition therefore occurs within a marketplace that is limited to U.S. carriers by operation of national law (as well as international law).

Cabotage restrictions long predate airline deregulation and reflect policy objectives extending beyond competition. Aviation has historically been viewed as an industry with strategic, national security, and defense implications. For example, domestic airlines participate in the Civil Reserve Air Fleet (“CRAF”), through which commercial aircraft may be committed to support military airlift requirements during national emergencies. Federal law also caps non-U.S. ownership and control of U.S. airlines. National sovereignty, national security, military readiness, labor interests, and the preservation of a domestic aviation industry have therefore long influenced American aviation policy.

Congress has consequently made a deliberate policy choice regarding the scope of competition permitted within the domestic airline industry.

Cabotage as a means of stimulating competition in the domestic marketplace is attractive on the surface, but it presents a more complicated competitive question than is sometimes acknowledged. The domestic aviation markets being compared are very different in scale and structure. The United States offers access to numerous major metropolitan markets spread across a continental transportation network. A foreign carrier permitted to operate domestically within the United States would gain access to a market far larger than the domestic markets available in many other nations.

The competitive landscape is further complicated by differences in how airlines are financed and supported. Some non-U.S. carriers operate with varying degrees of governmental ownership, state support, preferential financing arrangements, or other forms of public assistance. U.S. airlines compete within a different economic and regulatory framework. These differences have long influenced debates regarding reciprocity, competitive fairness, and the appropriate scope of market access.

Debates regarding cabotage have accompanied virtually every major discussion concerning aviation competition, liberalization, and international aviation policy over the past half-century. Proponents argue that additional competition could expand consumer choice, increase service options, and place downward pressure on fares. Opponents point to concerns involving national security, military readiness, labor standards, reciprocity, and the long-term viability of the domestic airline industry.¹⁵

¹⁵ See generally David P. Agnew, *U.S. Cabotage Policy*, 1298 Transp. Res. Rec. 14 (1991); Marc Scribner, *A Simple Way to Increase Competition and Reduce Airfares in the US*, Reason Found. (Aug. 30, 2022), <https://reason.org/commentary/a-simple-way-to-increase-competition-and-reduce-airfares-in-the-us/>.

Cabotage therefore presents policymakers with a classic tradeoff. Additional market entry may produce consumer benefits in some markets. Existing restrictions advance broader policy objectives that Congress has historically viewed as important to the national interest. Whether those restrictions should be maintained, modified, or reconsidered is ultimately a question for Congress. For present purposes, cabotage highlights the reality that, at least with respect to welcoming non-U.S. capital and competition, federal law imposes one of the most significant restrictions on market entry in the airline industry.

VII. COMPETITION IN THE DRONE AGE: PAST AS PROLOGUE

As policymakers evaluate competition in today's airline industry, the legal and regulatory framework should also anticipate developments that may influence how Americans travel, transport goods, and access aviation services in the decades ahead. Aviation has never been a static industry. New technologies, new aircraft, and new business models have repeatedly reshaped competitive conditions.

Future entrants may do the same.

Advanced Air Mobility ("AAM"), unmanned aircraft systems, autonomous operations, and other emerging aviation technologies have attracted substantial public and private investment.¹⁶ New technologies create new transportation options, new methods of delivering services, and potentially new forms of competition.

The regulatory choices made today will influence whether future competitors can enter the marketplace tomorrow. Certification standards, operational rules, airspace integration, airport access, infrastructure development, and investment incentives all affect the ability of new entrants to develop, scale, and compete.¹⁷

Environmental policy will also play an increasingly important role in shaping the next generation of aviation competition. Noise standards, environmental review requirements, community compatibility concerns, emissions regulation, and local land-use considerations influence where and how new aviation technologies may operate. Thus, while advanced air mobility platforms, drone delivery networks, and other emerging systems promise new transportation opportunities, their deployment will often depend upon successfully addressing environmental and community concerns. Regulatory frameworks that provide clear, predictable pathways for evaluating these issues can facilitate innovation while continuing to protect other legitimate interests.

Importantly, too, institutions beyond those traditionally associated with aviation regulation will shape the next generation of aviation competition. For example, emerging technologies increasingly depend upon communications infrastructure, spectrum availability, data networks, and autonomous systems. As a result, agencies such as the Federal Communications Commission

¹⁶ Timothy M. Ravich (Principal Investigator), National Science Foundation Award No. 2232225, *Conference: Advanced Air Mobility: Will Law Lift or Ground a New Era of Human Transportation?* (2022)

¹⁷ Timothy M. Ravich, *Grounding Innovation: How Ex-Ante Prohibitions and Ex-Post Allowances Impede Commercial Drone Use*, 2018 COLUMBIA BUS. L. REV. 495.

may influence competitive conditions through decisions involving spectrum allocation, communications policy, remote identification requirements, command-and-control systems, and other technologies necessary to support advanced aviation operations. Future competition may therefore be affected by regulatory decisions occurring well beyond the traditional boundaries of aviation law and the authority of bodies like the U.S. Department of Transportation and Federal Aviation Administration.

The United States has long benefited from a regulatory system capable of maintaining extraordinary levels of safety while accommodating technological change. That balance has been one of the great strengths of the American aviation system. Preserving it remains essential. Regulatory rigidity can discourage innovation and investment. Regulatory uncertainty can produce similar effects by increasing costs, delaying deployment, and complicating long-term planning.

The implications of today's hearing extend beyond the stratosphere. Today, commercial space transportation is transitioning from an experimental endeavor to a competitive industry. Private companies are conducting orbital launches with unprecedented frequency, developing reusable launch systems, transporting private citizens into space, constructing commercial space stations, and openly pursuing long-term objectives that include sustained human presence on the Moon and, ultimately, Mars. Without exaggeration, these developments raise the same questions discussed throughout this testimony. Access to infrastructure, allocation of scarce resources, market entry, competition policy, public-private partnerships, safety oversight, national security, and the proper scope of governmental regulation will shape the future of commercial space transportation just as they have shaped the development of commercial aviation nationally and internationally. The legal and institutional choices made today with respect to commercial aviation offer important lessons for the next frontier of transportation.

VIII. CONCLUSION

As we approach the 50-year anniversary of the Airline Deregulation Act, we can celebrate the fact that the United States possesses the most dynamic and safest aviation system in the world. Air travel is more accessible, passenger volumes have increased dramatically, and new business models have expanded opportunities for consumers.

Still, the competition questions confronting policymakers are valid, particularly as to airport access, infrastructure capacity, market concentration, cabotage, and emerging technologies.

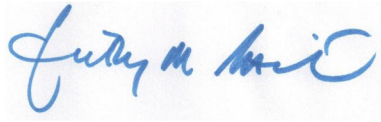
Competitors must be able to access markets, expand service, challenge incumbent firms, and develop new business models. The continued strength of American aviation will depend upon preserving those opportunities while maintaining the safety, efficiency, and reliability upon which the public depends.

As this Subcommittee continues its important work in the area of commercial aviation regulation and competition, it is worth recognizing that not every market shortcoming necessarily requires a new regulatory intervention.

Regulation can provide substantial public benefits, but it also carries costs, and laws designed to address one concern can inadvertently affect competition, innovation, investment, or market entry in other areas. These are precisely the types of tradeoffs that make today's discussion both timely and important.

I look forward to answering the Subcommittee's questions.

Thank you.

A handwritten signature in blue ink, reading "Timothy M. Ravich". The signature is written in a cursive style with a large, stylized "T" and "M".

Timothy M. Ravich

Mr. FITZGERALD. Thank you, Mr. Ravich. Mr. Stout, you may begin.

STATEMENT OF KRISTIAN STOUT

Mr. STOUT. Chair, Ranking Member, and the Members of the Subcommittee, good morning. Thank you for having me. I am the Director of Innovation Policy at the International Center for Law and Economics, and my work focuses on how law and regulation shapes competition.

I have filed a longer written statement, so let me make one central point and give three examples.

My central point is this: Many of the most important barriers to airline competition arise from policy choices, not from the airlines themselves. The most procompetitive things Congress can do is to clear policy bottlenecks, not pile on new ones.

The first example is Spirit. In January 2024, a Federal court blocked the JetBlue–Spirit merger to protect competition. The government won the case, and then it lost the carrier. Spirit went bankrupt twice and shut down this May, a 34-year-old airline gone, and with it, the Spirit effect, the downward pressure its low fares put on every competitor in the market.

I am not here to say the Justice Department killed Spirit by itself. An engine inspection crisis, high-fuel costs, and the big carriers copying Spirit's product all played a part as well. The point is narrower. The legal framework was too static for a visibly fragile firm in a capital-intensive industry, and it failed in two ways that are worth your attention.

First, the court itself found that a stronger JetBlue would have competed harder against the Big Four carriers that fly most Americans, a benefit to the broad flying public. Under the old any-market analysis of cases like Philadelphia National Bank and Topco, harm to the most price-sensitive travelers on a handful of routes control the entire outcome, no matter how large the nationwide benefit. The court blocked a merger it appeared to be regarded as good for competition overall, to preserve route-level rivalry, the market then itself erased.

Second, the failing firm defense asks a yes-or-no question: Is the company about to collapse with no possible buyer? Spirit could not meet that strict test in early 2024, so the court treated it as a healthy, durable competitor that would keep disciplining fares indefinitely. Eighteen months later, it was liquidated. That is the flaw. In a capital-intensive industry, shock-prone, the real question is not whether a carrier has already failed, but how likely it is to still be competing in five or 10 years from now. Merger analysis for network industries needs a probability-weighted view of a firm's durability and consistent credit for out-of-market benefits.

My second example is airport slots. At the most congested airports, the FAA rations every takeoff and landing through slots. Decades ago, those slots were handed to incumbent carriers for free and locked in by grandfather rights. They function as property in a sense; bought, sold, and pledged as collateral worth tens of millions of dollars. Yet, a new airline cannot simply decide to add service, and use-it-or-lose-it rules push carriers to fly near-empty ghost flights just to keep their slots. Where low-fare entry is actually al-

lowed, fares fall about 17 percent. The FAA already waives these rules at times, so it plainly has the power to move toward real slot markets.

My third example is the accumulation of consumer protection mandates. Let me be clear. First, I am not against protecting consumers. Airlines run on operational flexibility; the freedom to cancel, swap aircraft, rebook passengers when weather and mechanical problems hit. Every mandate that turns a judgment call into a legal obligation converts a manageable risk into a fixed cost. A wave of recent rules, like automatic cash refunds and proposed European-style compensation regime, free family seating, new fee disclosure requirements—each of these hits hardest at the unbundled ancillary revenue model that lets budget carriers like Spirit operate flexibly.

For a legacy airline like United or American, any one of these is a friction. For an ultra-low-cost carrier on razor-thin margins, the pileup of these mandates can become fatal. The Fifth Circuit has already held that one of these rules likely exceeds the Department's legal authority, a question squarely within the Subcommittee's jurisdiction.

My recommendations come down to discipline and humility. Modernize merger analysis for network industries, open underused slots to new entrants, and put every operational mandate through rigorous cost-benefit review tied to a real, demonstrated problem. The competition we are missing in industry is mostly foreclosed upstream by runways that the government rations, by capital that it walls off, and by mandates that fall hardest on the carriers least able to bear them. Spirit's empty gates are a reminder that preserving a competitor on paper is no substitute for letting competition work in fact.

Thank you. I look forward to your questions.
[The prepared statement of Mr. Stout follows:]

International
Center for
Law & Economics

**Written Testimony of Kristian Stout
Director of Innovation Policy
International Center for Law & Economics (ICLE)**

*Hearing of the House Judiciary Subcommittee on Administrative State,
Regulatory Reform, and Antitrust*

*“The 30,000-Foot View: Competition and Regulation in the U.S. Airline
Industry”*

JUNE 24, 2026
2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

I. Introduction and Summary

Chairman, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to submit this statement.

This hearing raises two closely related questions: How should policymakers understand competition in the airline industry, and how do government regulations either promote or impede that competition? The answer to both points in the same direction. The current regulatory framework creates both antitrust pressure and regulation-induced scarcity. It makes it difficult for large airlines to earn sustainable returns in a low-margin business and even more difficult for smaller, budget-focused carriers to survive.

Too often, policymakers rely on static snapshots of market structure to identify an ideal number of competitors without fully accounting for the economic realities those firms face. At the same time, government policies place regulators in the role of allocating scarce inputs, including takeoff and landing rights, gate access, airspace capacity, and access to capital. Those inputs are critical in an industry characterized by high fixed costs. When government controls access to them, it can systematically disadvantage smaller competitors and impede the growth of new entrants.

As a high-fixed-cost, low-margin network industry, commercial aviation will not necessarily support a large number of viable competitors.¹ Economies of scale and scope naturally favor firms that can spread substantial fixed costs across extensive networks.² Today, the four largest U.S. airlines account for roughly three-quarters of domestic capacity, while hub dominance, frequent-flyer programs, and corporate-contracting relationships provide additional advantages to incumbent carriers.³

Recognizing concentration, however, is not the same as identifying competitive harm or crafting remedies tailored to that harm. Recent events—most notably the collapse of Spirit Airlines—underscore the fragility of smaller competitors and highlight a broader point: the most significant constraints on airline competition are overwhelmingly governmental in origin. As a result, the most valuable reforms available to Congress involve removing or disciplining those constraints, rather than layering additional interventions on top of them.

This testimony proceeds as follows. Part II places today's debate in the historical context of airline deregulation and explains the importance of matching regulatory tools to genuine market problems. Part III examines the JetBlue-Spirit merger litigation and what Spirit's subsequent liquidation reveals about the limits of contemporary merger doctrine. Part IV addresses airport slots, the clearest

¹ See, e.g., Thomas W. Hazlett & Robert Crandall, *Competitive Effects of T-Mobile/Sprint: Analysis of a "4-to-3" Merger*, TPRC 2024 Paper (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4736059 (explaining how economies of scale and scope in capital-intensive telecommunications networks can produce both relatively high concentration and consumer-welfare gains); see also Eric Fruits, Gus Hurwitz, Geoffrey A. Manne, Julian Morris & Alec Stapp, *A Review of the Empirical Evidence on the Effects of Market Concentration and Mergers in the Wireless Telecommunications Industry*, INT'L CTR. FOR L. & ECON. (Sept. 17, 2019), <https://laweconcenter.org/resources/a-review-of-the-empirical-evidence-on-the-effects-of-market-concentration-and-mergers-in-the-wireless-telecommunications-industry-2>.

² Hazlett & Crandall, *supra* note 1, at 4.

³ Alden Abbott, *The Case of the Vanishing Competitor*, TRUTH ON THE MKT. (May 22, 2026), <https://truthonthemarket.com/2026/05/22/the-case-of-the-vanishing-competitor> (collecting recent antitrust enforcement statements concerning airline concentration).

example of a government-rationed input that entrenches incumbents. Part V discusses cabotage and foreign-ownership restrictions. Part VI examines how environmental-review requirements constrain airport and airspace expansion, contributing to the scarcity often used to justify slot controls. Part VII explains how an expanding body of consumer-protection mandates erodes the operational flexibility on which a high-fixed-cost, low-margin industry depends, and why those burdens fall most heavily on the low-cost carriers that discipline fares. Part VIII offers recommendations.

II. Lessons from Airline Deregulation

Any assessment of airline competition should begin with the Airline Deregulation Act of 1978. It remains the closest thing economics has to a controlled experiment in this industry. For roughly four decades before deregulation, the Civil Aeronautics Board regulated fares and controlled entry through cost-of-service ratemaking and route licensing—tools developed for natural monopolies.⁴ Commercial aviation did not exhibit those characteristics. Entry barriers were relatively low, and nothing inherent to the industry prevented multiple carriers from serving routes profitably.

Stephen Breyer, then a judge and former special counsel to the Senate Judiciary Committee during the deregulation debates, described airline regulation as the paradigmatic case of regulatory "mismatch"—the application of a regulatory tool to a problem it was not designed to solve.⁵ Regulators justified the regime as necessary to prevent "excessive" or "destructive" competition, a rationale Breyer famously characterized as an "empty box" that collapsed under scrutiny.⁶

That justification also sat uneasily alongside federal competition policy. As the Supreme Court has repeatedly recognized, the federal antitrust laws embody the nation's commitment to free enterprise and economic competition.⁷ By suppressing price competition, regulation redirected rivalry into costly non-price dimensions. Airlines competed through the "capacity wars" and "lounge wars" of the regulated era, flying half-empty aircraft and expanding amenities while charging fares above competitive levels. Subsequent research found that deregulation generated billions of dollars in annual consumer savings through lower fares and expanded service.⁸

Three lessons from that experience bear directly on the issues before this Subcommittee.

⁴ Eric Fruits, 'Regulation and Its Reform' by Stephen Breyer and 'Contrived Competition' by Richard Vietor, TRUTH ON THE MKT. (Oct. 28, 2025), <https://truthonthemarket.com/2025/10/28/regulation-and-its-reform-by-stephen-breyer-and-contrived-competition-by-richard-vietor> (summarizing STEPHEN BREYER, REGULATION AND ITS REFORM (1982), and RICHARD H.K. VIETOR, CONTRIVED COMPETITION (1994)); see also Richard H.K. Vietor, *Contrived Competition: Airline Regulation and Deregulation, 1925–1988*, 64 BUS. HIST. REV. 61 (1990); Sam Peltzman, Michael E. Levine & Roger G. Noll, *The Economic Theory of Regulation After a Decade of Deregulation*, BROOKINGS PAPERS ON ECON. ACTIVITY: MICROECONOMICS 1 (1989); Richard A. Posner, *Theories of Economic Regulation*, 5 BELL J. ECON. & MGMT. SCI. 335 (1974).

⁵ Stephen Breyer, *Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reform*, 92 HARV. L. REV. 547 (1979); STEPHEN BREYER, REGULATION AND ITS REFORM (1982) (using airline regulation as the paradigmatic example of a mismatch between regulatory tools and market problems).

⁶ Breyer, *Analyzing Regulatory Failure*, *supra* note 5, at 556.

⁷ *Fed. Trade Comm'n v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 225 (2013) (citing *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992)); see also *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 101, 106 (1980).

⁸ See, e.g., Clifford Winston, *Economic Deregulation: Days of Reckoning for Microeconomists*, 31 J. ECON. LITERATURE 1263 (1993).

First, policymakers should match regulatory interventions to demonstrated market failures or other identifiable consumer harms. Regulation is most defensible when it addresses a specific problem that markets cannot adequately solve on their own.

Second, when intervention is warranted, policymakers should consider less-restrictive alternatives before resorting to prescriptive regulation. Those alternatives include laws of general application, such as the federal antitrust laws, which can address competitive concerns without imposing detailed operational mandates.

Third, regulation often outlives the conditions that originally justified it. As economists have long observed, regulatory regimes frequently create concentrated benefits for organized interests while dispersing costs across consumers.⁹ The beneficiaries therefore have strong incentives to preserve existing rules even after their rationale has disappeared. For that reason, policymakers should regularly review legacy regulations to determine whether they remain fit for purpose and whether they continue to achieve their objectives efficiently.

The history of regulation within the deregulated airline industry illustrates this dynamic. In 1984, after concerns arose about "display bias" in airline-owned computer reservation systems, the Department of Transportation (DOT) adopted prescriptive regulations governing those systems. The rules failed to achieve their principal objective. No new reservation system entered the market, and innovation slowed under mandatory oversight. The regulations ultimately became obsolete and were repealed in 2004, after competition emerged from an unexpected source: the open internet.¹⁰

The broader lesson extends well beyond aviation. Prescriptive rules that entrench existing market structures often prove poorly suited to technological and competitive change. Markets evolve, business models adapt, and new forms of competition emerge. Regulatory frameworks that assume current conditions will persist indefinitely rarely age well.

III. The JetBlue-Spirit Case and the Limits of Static Merger Analysis

No recent episode better illustrates the gap between merger-enforcement theory and market reality than the JetBlue-Spirit litigation.

The chronology is straightforward. Spirit agreed to merge with Frontier in February 2022. JetBlue subsequently made an unsolicited offer and, after increasing its bid, signed a merger agreement with Spirit in July 2022.¹¹ The U.S. Department of Justice (DOJ) sued to block the transaction in March

⁹ See George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3 (1971) (developing the capture theory of regulation); MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1965) (explaining how small, organized groups secure concentrated benefits while dispersing costs across an unorganized public); Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & ECON. 211 (1976); see also Posner, *supra* note 4.

¹⁰ Joshua D. Wright, *Searching for Antitrust Remedies, Part II*, TRUTH ON THE MKT. (July 13, 2011), <https://truthonthemarket.com/2011/07/13/searching-for-antitrust-remedies-part-ii> (describing the history of computerized reservation system regulation, its failure to spur entry, and its repeal in 2004).

¹¹ Addison Schonland, *Spirit, Frontier: Another Merger Attempt*, AIRINSIGHT (Dec. 19, 2025), <https://airinsight.com/spirit-frontier-another-merger-attempt>.

2023, and on Jan. 16, 2024, Judge William G. Young permanently enjoined the merger.¹² The parties terminated the agreement two months later.¹³

Spirit then entered Chapter 11 bankruptcy in November 2024 and emerged in March 2025. It filed for bankruptcy a second time in August 2025 and ceased operations entirely on May 2, 2026. A 34-year-old airline disappeared, taking with it the very low-fare competitor that the enforcement action sought to preserve.¹⁴ The government won the case, but consumers lost the carrier. So, too, disappeared the "Spirit Effect"—the tendency of Spirit's presence to discipline fares across a market.¹⁵

It would be too simplistic, and almost certainly incorrect, to conclude that the DOJ "caused" Spirit's collapse. The airline's failure had multiple causes. A Pratt & Whitney engine-inspection crisis grounded a substantial share of its fleet.¹⁶ Legacy carriers increasingly competed for Spirit's customers through basic-economy offerings.¹⁷ Fuel costs rose.¹⁸ Spirit's effort to reposition itself as a more premium carrier failed to gain traction.¹⁹ The company accumulated roughly \$2 billion in losses after 2020.²⁰

The lesson is not that the merger necessarily should have been approved. Rather, it is that the doctrinal framework applied to the case was too static to evaluate a visibly fragile firm operating in a capital-intensive network industry.

Two features of current merger doctrine deserve the Subcommittee's attention.

The first is the failing-firm defense. As traditionally formulated under *Citizen Publishing Co. v. United States*, the doctrine asks a binary question: Is the firm on the verge of failure, with no alternative

¹² *United States v. JetBlue Airways Corp.*, 712 F. Supp. 3d 109 (D. Mass. 2024).

¹³ Dirk Auer & Ian Adams, *Nonstop to Nowhere: Spirit, JetBlue, and the Limits of Merger Doctrine*, TRUTH ON THE MKT. (May 7, 2026), <https://truthonthemarket.com/2026/05/07/nonstop-to-nowhere-spirit-jetblue-and-the-limits-of-merger-doctrine> (detailing the transaction's chronology and analyzing the district court's opinion).

¹⁴ *Id.*

¹⁵ Abbott, *supra* note 3 (describing Spirit's shutdown and the resulting loss of the "Spirit Effect"). The magnitude of the Spirit Effect remains disputed but consistently substantial. Relying on the airlines' internal documents, the U.S. Department of Justice estimated that Spirit's entry into a market reduced average fares by roughly 17%, while its exit increased fares by roughly 30%. Because those figures come from litigation filings, they warrant comparison with independent academic research. See Steven A. Morrison, *Actual, Adjacent, and Potential Competition: Estimating the Full Effect of Southwest Airlines*, 35 J. TRANSP. ECON. & POL'Y 239 (2001) (finding that low-cost carriers constrain fares well beyond their own routes and estimating approximately \$12.9 billion in passenger savings in 1998, most of which stemmed from competitive spillovers rather than Southwest's own fares).

¹⁶ *Spirit Cuts Aircraft Fleet in Half*, AIRWAYS MAG. (Oct. 4, 2025), <https://www.airwaysmag.com/new-post/spirit-cuts-aircraft-fleet-half>.

¹⁷ Rajesh Kumar Singh & Doyinsola Oladipo, *Spirit's Troubles Expose Limits of Premium Strategy for Low-Cost Carriers*, REUTERS (Oct. 10, 2025), <https://www.reuters.com/legal/litigation/spirits-troubles-expose-limits-premium-strategy-low-cost-carriers-2025-10-10>.

¹⁸ Bureau of Transp. Stat., *Fuel Consumption*, <https://data.bts.gov/stories/s/Fuel-Consumption/bwcv-dxgx>; Robert Silk, *IATA Downwardly Revises Airline Profit Forecast*, TRAVEL WEEKLY (June 8, 2026), <https://www.travelweekly.com/Travel-News/Airline-News/IATA-downwardly-revises-airline-profit-forecast-2026>.

¹⁹ Singh & Oladipo, *supra* note 17.

²⁰ Auer & Adams, *supra* note 13 (cataloguing the causes of Spirit's decline and its cumulative losses since 2020).

purchaser available.²¹ If the answer is no, courts often proceed as though the firm will remain a vigorous competitor indefinitely, regardless of contrary evidence.

That all-or-nothing framework fits poorly in industries characterized by high fixed costs and vulnerability to large external shocks. In such industries, the relevant competitive question is not whether a firm has already crossed the threshold into failure, but the likelihood that it will remain a meaningful competitive constraint over the next 5 to 10 years.

Judge Young acknowledged Spirit's financial distress. Having concluded that the failing-firm defense did not formally apply, however, the court effectively treated Spirit as a durable competitive constraint.²² That assumption was questionable at the time and was later contradicted by events.²³ Importantly, this conclusion does not depend on hindsight. The trial record showed projected losses of \$467 million in 2023, following more than \$1 billion in prior losses, and no annual profit since 2019.²⁴ Within days of the decision, industry analysts warned that liquidation had become a more likely outcome than Spirit's continued operation as a vigorous competitor.²⁵

The second issue is the treatment of out-of-market efficiencies. The court expressly recognized that a combined JetBlue-Spirit carrier likely would have exerted stronger competitive pressure on the four largest airlines, benefiting a broader population of travelers than Spirit's traditional ultra-low-cost customer base:

The Defendant Airlines have demonstrated that an expansion of all aspects of JetBlue's business – including network, fleet, and loyalty program – would allow for more vigorous competition with the Big Four, which carry most passengers in the country ... were JetBlue to become more relevant, it would immediately place more pressure on its greatest competitors, the Big Four. This pressure would benefit consumers [...].²⁶

Under the "in any market" approach associated with *United States v. Philadelphia National Bank* and *United States v. Topco Associates*,²⁷ however, localized harms to the most price-sensitive travelers on particular routes controlled the analysis, regardless of the magnitude of broader competitive benefits.

²¹ *Citizen Publ'g Co. v. United States*, 394 U.S. 131 (1969).

²² *United States v. JetBlue Airways Corp.*, No. 1:23-cv-10511-WGY, ECF No. 461, at 98 (D. Mass. Jan. 16, 2024) ("Numerous Spirit witnesses explained at trial that Spirit is struggling financially—including that Spirit anticipates a \$467,000,000 loss for 2023 (on top of prior losses over \$1,000,000,000) and has not been profitable since 2019. These losses, though significant, do not, on their own, provide an affirmative defense to the Government's prima facie case.")

²³ Auer & Adams, *supra* note 13 (analyzing the binary nature of the failing-firm inquiry and the "durability assumption" embedded in the government's theory of competitive harm).

²⁴ *JetBlue*, *supra* note 22, at 98.

²⁵ See, e.g., Chris Isidore, *Spirit Airlines Could Be Forced Out of Business After JetBlue Deal Is Blocked, Analyst Says*, CNN BUS. (Jan. 18, 2024), <https://www.cnn.com/2024/01/18/business/spirit-airlines-jetblue-ruling-bankruptcy> (reporting that, two days after Judge William Young's ruling, TD Cowen analysts viewed liquidation of Spirit's assets as more likely than a standalone recovery).

²⁶ *JetBlue*, *supra* note 22, at 102-03.

²⁷ *United States v. Topco Assocs., Inc.*, 405 U.S. 596 (1972).

Because each route constituted a separate market, the prospect of harm within any one of those markets outweighed gains elsewhere.²⁸

The result was a merger that the court appeared to regard as beneficial on balance at the national level, but that it nevertheless blocked to preserve route-level competition that the market itself subsequently eliminated.

Empirical evidence from completed airline mergers is consistent with a more dynamic approach. In a retrospective study of five U.S. airline mergers, Jeffrey Prince and Daniel Simon found that merging carriers' on-time performance improved over the long run, suggesting efficiency gains rather than quality degradation.²⁹ Their findings align with a broader body of structural and quasi-experimental research supporting a more dynamic approach to airline merger analysis.³⁰

At the same time, the policy implications should not be overstated. When a properly grounded analysis identifies genuine anticompetitive harm, the antitrust laws can and should address it. Courts routinely evaluate allegations of anticompetitive conduct in the airline industry,³¹ demonstrating that case-specific enforcement remains a viable tool for protecting competition.

The Spirit episode nonetheless highlights the need for a more dynamic merger framework. Rather than forcing courts to choose between the strict failing-firm defense and the assumption that a distressed carrier will remain an effective competitor indefinitely, merger analysis should incorporate a probability-weighted assessment of competitive durability. Courts should likewise give consistent weight to out-of-market efficiencies that benefit consumers, even when those benefits arise outside the narrow markets identified in litigation.

Such an approach would better reflect the realities of competition in a high-fixed-cost, low-margin network industry.

IV. Airport Slots: Government-Created Barriers to Entry

If the DOJ was correct to worry that concentration in the airline industry poses competitive concerns, some of the most durable barriers to reducing that concentration arise not from airline conduct, but from government restrictions on airport capacity.

²⁸ *JetBlue*, *supra* note 22, at 66-67; *United States v. Phila. Nat'l Bank*, 374 U.S. 321 (1963); *id.* at 610-11; see also Abbott, *supra* note 3 (discussing the selective application of the "any-market" principle to out-of-market efficiencies).

²⁹ Jeffrey T. Prince & Daniel H. Simon, *The Impact of Mergers on Quality Provision: Evidence from the Airline Industry*, KELLEY SCH. OF BUS. RSCH. PAPER NO. 201403 (2014), <https://ssrn.com/abstract=2419611>.

³⁰ See Myongjin Kim et al., *When Control Markets Are Treated: Potential Competition and Merger Retrospectives* (2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4275346 (finding that, across four U.S. airline mergers, a 10-percentage-point increase in entry threat reduced average peripheral-route fares by 2.4% to 4.2%); C. Lanier Benkard, Aaron Bodoh-Creed & John Lazarev, *Simulating the Dynamic Effects of Horizontal Mergers* (2010), <https://sticerd.lse.ac.uk/seminarpapers/ei24052010.pdf> (finding that hub mergers tend to induce offsetting entry by rival and low-cost carriers).

³¹ See, e.g., *United States v. AMR Corp.*, 335 F.3d 1109 (10th Cir. 2003); see also *Spirit Airlines, Inc. v. Nw. Airlines, Inc.*, 431 F.3d 917 (6th Cir. 2005).

At the nation's most congested airports, the Federal Aviation Administration (FAA) allocates access through "slots"—reservations for individual takeoffs and landings.³² The system traces its origins to the High Density Rule of 1969. Today, John F. Kennedy International Airport, LaGuardia Airport, and Ronald Reagan Washington National Airport remain formally slot-controlled, while the FAA manages scheduling at other major airports, including O'Hare, Newark, Los Angeles, and San Francisco.³³ Reagan National operates under an additional statutory perimeter rule layered atop a cap of roughly 67 operations per hour.³⁴

In economic terms, slots function as property rights. Airlines lease them, use them as collateral, and buy and sell them in secondary markets. At London Heathrow Airport, a single slot pair has sold for tens of millions of dollars.³⁵ Yet in the United States, regulators originally distributed slots to incumbent carriers at no cost and continue to protect them through grandfather rights and minimum-use requirements.

The Government Accountability Office (GAO) highlighted the tension in this arrangement when it observed that the FAA's own treatment of slots as property effectively suggests that the government has spent decades transferring potentially valuable federal assets without compensation.³⁶

This system creates two significant barriers to competition.

First, it advantages incumbent airlines that already control the scarce combination of slots, gates, and operating positions needed to serve congested airports. Entry therefore depends not merely on a carrier's willingness to add service, but on its ability to acquire access to assets that government policy has made artificially scarce.

Second, minimum-use—or "use-it-or-lose-it"—rules can encourage airlines to operate uneconomic "ghost flights" primarily to preserve their slot holdings. Those flights consume fuel, labor, and airport capacity without corresponding consumer benefits. They exist because airlines possess only conditional rights to use slots, rather than secure ownership interests.³⁷

³² Fed. Aviation Admin., *Slot Administration*, https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration.

³³ 14 C.F.R. pt. 93, subpt. K, <https://www.ecfr.gov/current/title-14/chapter-I/subchapter-F/part-93/subpart-K>.

³⁴ Rachel Y. Tang, *Reagan National Airport Slot and Perimeter Rules and Exemptions Authorized in 2024*, CONG. RSCH. SERV., No. IN12504 (Feb. 6, 2025), <https://www.congress.gov/crs-product/IN12504>.

³⁵ Alex Macheras, *Why London Heathrow Has Some of the Most Expensive Airport Slots on Earth*, THE POINTS GUY (May 15, 2019), <https://thepointsguy.com/news/why-london-heathrow-has-some-of-the-most-expensive-airport-slots-on-earth> (noting that a statutory rule generally limits nonstop flights from Ronald Reagan Washington National Airport to destinations within a 1,250-mile perimeter absent a statutory exemption).

³⁶ Gary L. Kepplinger, Gen. Couns., U.S. Gov't Accountability Off., *Subject: Federal Aviation Administration—Authority to Auction Airport Arrival and Departure Slots and to Retain and Use Auction Proceeds* (Sept. 30, 2008), <https://www.gao.gov/assets/b-316796.pdf>.

³⁷ Brent Skorup, *COVID-19, Ghost Flights, and Emerging Property Rights in Airport Slots*, TRUTH ON THE MKT. (Mar. 25, 2020), <https://truthonthemarket.com/2020/03/25/covid-19-ghost-flights-and-emerging-property-rights-in-airport-slots>.

The competitive stakes are substantial. Research finds that low-fare entry reduces average fares by roughly 17% and increases flight frequencies by roughly 30%.³⁸ Other studies estimate that entry by low-cost carriers reduces fares by approximately 38% to 53%. In many cases, more than half of the fare reduction occurs before the entrant begins service, as the mere threat of entry disciplines incumbent carriers.³⁹

Two facts demonstrate that the current allocation system reflects policy choices, not technological necessity.

First, when the FAA approved a major slot transaction between Delta Air Lines and US Airways in 2011, it required the parties to divest two dozen slots. The agency then auctioned those slots to new entrants. Low-fare carriers collectively bid roughly \$90 million, demonstrating both the economic value of the slots and the demand from challengers seeking access to constrained airports.⁴⁰

Second, in 2025, the FAA extended waivers of minimum-use requirements at Reagan National, John F. Kennedy, and LaGuardia through the summer of 2026. That decision confirms that the agency already treats slot-use requirements as a matter of administrative discretion.⁴¹ If regulators can suspend those rules when circumstances warrant, they can also redesign them to facilitate entry through transparent and predictable criteria.

The more durable solution, as many transportation economists have argued, is to move away from administrative rationing altogether. Transparent slot markets, secondary trading, and congestion pricing would allocate scarce runway capacity through market mechanisms rather than regulatory discretion.⁴² Such reforms would not eliminate airport scarcity, but they would make access to scarce capacity more contestable and reduce one of the most significant government-created barriers to airline competition.

³⁸ See Scott McCartney, *How Sly Travelers Cut Their Airfares in Half*, WALL ST. J. (Dec. 4, 2019), <https://www.wsj.com/articles/how-sly-travelers-cut-their-airfares-in-half-11575455400> (reporting that low-fare entry reduced average fares by roughly 17% and increased flight frequencies by roughly 30%); see also Morrison, *supra* note 15 (estimating that Southwest's actual, adjacent, and potential competitive effects accounted for a substantial share of fare savings following airline deregulation).

³⁹ See Martin Dresner, Jiun-Sheng Chris Lin & Robert Windle, *The Impact of Low-Cost Carriers on Airport and Route Competition*, 30 J. TRANSP. ECON. & POL'Y 309 (1996) (estimating fare reductions of roughly 38% to 53% on routes entered by low-cost carriers); Austan Goolsbee & Chad Syverson, *How Do Incumbents Respond to the Threat of Entry? Evidence from the Major Airlines*, 123 Q.J. ECON. 1611 (2008) (finding that incumbent airlines reduced fares on routes Southwest merely threatened to enter, with more than half of Southwest's total fare effect occurring before service began); see also McCartney, *supra* note 38; Morrison, *supra* note 15.

⁴⁰ Jerry Limone, *JetBlue and WestJet Win Airport Slots at LaGuardia and Reagan National*, TRAVEL WEEKLY (Dec. 1, 2011), <https://www.travelweekly.com/Travel-News/Airline-News/JetBlue-and-WestJet-win-airport-slots-at-LaGuardia-and-Reagan-National>.

⁴¹ Fed. Aviation Admin., *Limited Waiver of the Slot Usage Requirement at DCA, JFK, and LGA* (extending slot-usage waivers from July 2025 through Summer 2026), <https://www.faa.gov/newsroom/limited-waivers-slot-usage-requirement-dca-jfk-and-lga>.

⁴² See Marc Scribner, *Airline Deregulation: Past Experience and Future Reforms*, REASON FOUND. (2023) (recommending that regulators replace administratively allocated historic slots with secondary trading, auctions, or runway-congestion pricing), <https://reason.org/wp-content/uploads/airline-deregulation-past-experience-future-reforms.pdf>; see also Jaap de Wit & Guillaume Burghouwt, *Slot Allocation and Use at Hub Airports: Perspectives for Secondary Trading*, 8 EUR. J. TRANSP. & INFRASTRUCTURE RSCH. 147 (2008).

V. Cabotage and Foreign-Investment Restrictions

Two additional legal regimes suppress competition before any merger occurs by limiting both who may compete and who may provide capital.

The first is the federal cabotage prohibition, which bars foreign airlines from transporting passengers or cargo for hire between two points within the United States.⁴³ As a result, some of the world's most efficient low-cost carriers cannot serve domestic routes that airlines such as Spirit have abandoned, regardless of the benefits their entry might provide to consumers.

The second is the citizenship requirement for U.S. air carriers. Current law limits foreign investors to 25% of voting equity and 49% of total equity, while requiring U.S. citizens to retain actual control of the carrier, including the presidency and two-thirds of the board of directors.⁴⁴ Whatever their original justification, these restrictions operate today as a form of protectionism. They reduce both the pool of potential entrants and the capital available to recapitalize distressed airlines. In Spirit's case, additional access to foreign capital might have supported restructuring rather than liquidation.

This is not a novel or fringe view. In 2003, the DOT proposed increasing the foreign voting-equity limit to 49%, concluding that greater access to capital would benefit consumers and strengthen the industry's financial health.⁴⁵

A further point deserves emphasis because it explains why domestic legislation alone cannot fully address the issue. These ownership restrictions operate through what scholars describe as a "double-bolted lock."⁴⁶

The first lock is domestic law: the statutory citizenship and control requirements. The second is international. The principle that an airline must be "substantially owned and effectively controlled" by nationals of its home country—the so-called nationality rule—appears not only in domestic statutes, but throughout the network of bilateral air-services agreements that governs international aviation.⁴⁷

Those agreements generally permit each country to suspend or revoke a foreign carrier's operating rights if the carrier is no longer substantially owned and effectively controlled by nationals of the country that designated it. The purpose is to prevent "treaty shopping," whereby airlines seek to exploit favorable regulatory regimes while retaining access to international traffic rights.⁴⁸

⁴³ 49 U.S.C. § 41703 (prohibiting air cabotage).

⁴⁴ 49 U.S.C. § 40102(a)(15); see U.S. Gov't Accountability Off., *U.S. Airlines: Information on DOT's Oversight of Foreign Ownership*, No. GAO-19-540R (2019), <https://www.gao.gov/products/gao-19-540r>; see also Jae Woon Lee & Umakanth Varottil, *Against Aviation Orthodoxy: India's Foreign Investment Regime for the Airline Industry*, 44 BROOK. J. INT'L L. 1 (2018) (documenting how incumbent carriers lobby to raise entry barriers and how "substantial ownership and effective control" requirements complicate liberalization).

⁴⁵ U.S. Gov't Accountability Off., *supra* note 44 (recounting the U.S. Department of Transportation's 2003 proposal to raise the foreign voting-equity ceiling to 49%).

⁴⁶ Lee & Varottil, *supra* note 44, at 58.

⁴⁷ *Id.* at 59.

⁴⁸ *Id.*

The result is a form of prisoner's dilemma. A country that unilaterally liberalizes its domestic ownership rules risks having its airlines' access to foreign markets restricted under existing bilateral agreements. For that reason, Congress should pursue ownership and cabotage liberalization on a reciprocal basis, paired with negotiated amendments to relevant air-services agreements, rather than assume that removing domestic restrictions alone will unlock additional competition and investment.

Liberalization in this area is one of the rare procompetitive reforms that requires removing a restriction rather than imposing a new one. The proposal also finds support in the economics of international aviation. Empirical research suggests that inefficiencies in airline pricing arise primarily from private information about passenger demand, rather than from an insufficient number of carriers. That finding points toward facilitating entry and investment, rather than further restricting the firms already operating in the market.⁴⁹

At a minimum, Congress should direct a comprehensive study of phased ownership liberalization and reciprocal cabotage arrangements with trusted aviation partners.

VI. Environmental Review as a Barrier to Capacity Expansion

The scarcity that makes slot rationing appear necessary is, at bottom, a scarcity of runway and airspace capacity. The speed and predictability of capacity expansion therefore matter for competition. New runways, terminals, and airspace redesigns that could relieve congestion typically must undergo review under the National Environmental Policy Act (NEPA). The cost, delay, and litigation risk associated with that process can discourage or postpone the very investments that would expand access for new entrants and reduce the need for administrative rationing. Too often, competition debates treat airport-capacity constraints as a fixed feature of the industry. In reality, many of those constraints reflect policy choices about how quickly new capacity can be approved and brought online.

Recent legal developments have created an opportunity for more durable reform. In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court clarified that courts owe agencies substantial deference in defining the scope of environmental review. The Court further held that NEPA does not require agencies to analyze the effects of separate upstream or downstream projects.⁵⁰ Instead, NEPA requires agencies to prepare a "detailed" environmental impact statement, while leaving substantial discretion to agencies to determine which effects warrant analysis and how that analysis should proceed.⁵¹

⁴⁹ Gaurab Aryal, Charles Murry & Jonathan W. Williams, *Price Discrimination in International Airline Markets*, 91 REV. ECON. STUD. 641 (2024) (finding that prevailing airline pricing captures roughly 77% of first-best welfare, with most remaining inefficiency attributable to private information); see also Joanna Stavins, *Price Discrimination in the Airline Market: The Effect of Market Concentration*, 83 REV. ECON. & STAT. 200 (2001) (finding that price discrimination intensifies as airline markets become more competitive).

⁵⁰ *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168 (2025).

⁵¹ *Seven Cnty. Infrastructure Coal.*, slip op. at 9-10.

The FAA subsequently revised its NEPA procedures through Order 1050.1G. The new framework emphasizes enforceable review deadlines, narrows the range of effects that require analysis, and expands categorical exclusions for certain airport-specific actions.⁵²

Congress should build on these developments. Codifying firm review deadlines, expanding categorical exclusions for capacity-enhancing projects at slot-constrained airports, and limiting the period for judicial challenges would help ensure that capacity expansion can keep pace with demand. Put differently, the cure for congestion should not remain slower than the policies designed to manage congestion's consequences.

VII. Consumer-Protection Regulation and Competitive Viability

A final category of regulation affects competition not by restricting entry, but by imposing recurring costs on carriers already operating in the market. To understand its competitive significance, one must begin with the economics of the airline business.

Airlines are capital-intensive enterprises characterized by high fixed and sunk costs, thin margins, and significant exposure to unexpected disruptions. In that environment, operational flexibility serves as a critical shock absorber. The ability to cancel, consolidate, re-bank schedules, swap aircraft and crews, and re-accommodate passengers allows carriers to respond to weather events, air-traffic-control constraints, mechanical failures, and other disruptions without exhausting their cash reserves.

Each regulatory mandate that converts a discretionary operational decision into a legal obligation reduces that flexibility. In economic terms, such mandates can transform manageable and variable risks into recurring fixed costs.⁵³ In an industry already burdened by substantial fixed costs, those additional obligations matter.

This point is neither novel nor ideological. More than a decade ago, when the DOT required airlines to permit cost-free booking changes within 24 hours of purchase, Spirit Airlines responded by

⁵² FAA Env't Poly & Operations Div. (AEE-400), FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures* (June 30, 2025), https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.current/documentnumber/1050.1; U.S. Dep't of Transp., Order 5610.1D (eff. June 30, 2025), https://www.transportation.gov/sites/dot.gov/files/2025-07/DOJ_Order_5610.1D_OST-P-250627-001_508_Compliant.pdf; see also Kaplan Kirsch LLP, *Significant Changes to NEPA Affecting Airport Projects*, <https://www.kaplankirsch.com/resources-and-news/significant-changes-to-the-national-environmental-policy-act-affecting-airport-projects>.

⁵³ These industry characteristics are well documented. See Severin Borenstein, *On the Persistent Financial Losses of U.S. Airlines: A Preliminary Exploration*, NAT'L BUREAU OF ECON. RSCH., Working Paper No. 16744 (2011) (documenting the chronic difficulty U.S. airlines face in earning stable economic profits across business cycles); Steven Berry & Panle Jia, *Tracing the Woes: An Empirical Analysis of the Airline Industry*, 2 AM. ECON. J.: MICROECONOMICS 1 (2010) (attributing more than 80% of the decline in legacy-carrier variable profits between 1999 and 2006 to increased price sensitivity, stronger consumer preferences for nonstop service, and expansion by low-cost carriers); Jaap H. Abbring & Jeffrey R. Campbell, *Last-In First-Out Oligopoly Dynamics*, NAT'L BUREAU OF ECON. RSCH., Working Paper No. 14674 (2009) (finding that sunk entry costs and demand uncertainty shorten expected survival for newer entrants and can induce the asymmetric exit of otherwise efficient firms following adverse shocks); see also Robert S. Pindyck, *Sunk Costs and Risk-Based Barriers to Entry*, NAT'L BUREAU OF ECON. RSCH., Working Paper No. 14755 (2009) (arguing that irreversibility and uncertainty increase the effective cost of committing capital).

itemizing the cost as a "Department of Transportation Unintended Consequences Fee."⁵⁴ The episode was instructive precisely because the underlying regulation was popular. A no-cost option to change one's mind has value to consumers, but providing that option also imposes a real cost on the carrier, which must reserve inventory that it might otherwise sell.⁵⁵ Recognizing those costs is not hostility to consumers. It is a prerequisite for sound rulemaking.

Several recent regulatory initiatives illustrate how such costs can accumulate.

In April 2024, the DOT adopted a final rule, reinforced by the FAA Reauthorization Act of 2024, requiring automatic cash refunds in the original form of payment whenever a flight is canceled or "significantly changed." The rule defines significant changes through bright-line thresholds, including delays of at least three hours on domestic itineraries and six hours on international itineraries, among other criteria.⁵⁶ Because passengers may reject rebooking or travel credits and instead demand cash refunds, the rule limits carriers' ability to rely on their least costly recovery mechanism: reaccommodating passengers on later flights within their own networks. It therefore requires cash outflows precisely when operations and revenues are already under stress.

The DOT went further in a December 2024 advance notice of proposed rulemaking that contemplated a European-style compensation regime for "controllable" delays and cancellations. The proposal would have required cash payments ranging from approximately \$200 to \$775, depending on the length of the disruption, in addition to meals, lodging, ground transportation, and rebooking obligations.⁵⁷ Such a framework would attach a fixed per-passenger cost to operational disruptions and substantially reduce carriers' flexibility in responding to them. Although the proposal was withdrawn in November 2025, it remains a readily available template for future regulatory action.⁵⁸

⁵⁴ Mark Johanson, *Spirit Airlines' 2 Unintended Consequences Fee*, INT'L BUS. TIMES (Feb. 2, 2012), <https://www.ibtimes.com/spirit-airlines-2-unintended-consequences-fee-404714>.

⁵⁵ The point follows directly from real-options theory: an option has value to its holder and therefore imposes a corresponding cost on its writer. See AVINASH K. DIXIT & ROBERT S. PINDYCK, *INVESTMENT UNDER UNCERTAINTY* ch. 1 (Princeton Univ. Press 1994). On the underlying airline capacity-allocation tradeoff, see James D. Dana, Jr., *Advance-Purchase Discounts and Price Discrimination in Competitive Markets*, 106 J. POL. ECON. 395 (1998); Ian L. Gale & Thomas J. Holmes, *Advance-Purchase Discounts and Monopoly Allocation of Capacity*, 83 AM. ECON. REV. 135 (1993); Michael E. Sykuta, *Options Have Value, Even If DOT Doesn't Get It*, TRUTH ON THE MKT. (Feb. 2, 2012), <https://laweconcenter.org/resources/options-have-value-even-if-dot-doesnt-get-it>; Howard Beales, Richard Craswell & Steven C. Salop, *The Efficient Regulation of Consumer Information*, 24 J.L. & ECON. 491 (1981) (favoring disclosure-based and other less-restrictive alternatives to prescriptive mandates); James Bailey & Diana Thomas, *Regulating Away Competition: The Effect of Regulation on Entrepreneurship and Employment*, MERCATUS CTR., Working Paper (2015) (finding that regulatory-compliance burdens fall disproportionately on smaller firms and deter entry).

⁵⁶ U.S. Dep't of Transp., *Final Rule Requiring Automatic Refunds of Airline Tickets and Ancillary Service Fees* (Apr. 24, 2024); Refunds and Other Consumer Protections, 89 FED. REG. 32,760 (Apr. 26, 2024), <https://www.transportation.gov/briefing-room/biden-harris-administration-announces-final-rule-requiring-automatic-refunds-airline>.

⁵⁷ U.S. Dep't of Transp., *Airline Passenger Rights*, Advance Notice of Proposed Rulemaking, 89 FED. REG. 99,952 (Dec. 11, 2024); see also Eckert Seamans, *DOT Launches Rulemaking on Cash Compensation and Related Consumer Protection Requirements* (Jan. 6, 2025), <https://www.eckertseamans.com/stay-informed/blogs/aviation/dot-launches-rulemaking-on-cash-compensation-and-related-consumer-protection-requirements>.

⁵⁸ U.S. Dep't of Transp., *Airline Passenger Rights: Withdrawal*, 90 FED. REG. 51,230 (Nov. 17, 2025), <https://www.federalregister.gov/documents/2025/11/17/2025-20042/airline-passenger-rights-withdrawal>. The European Union's analogous regime, Regulation (EC) No. 261/2004, illustrates both the tendency of passenger-rights mandates to expand beyond their original scope and the administrative burdens they impose. In *Sturgeon v. Condor*, the Court of Justice of the European Union extended cash-compensation requirements to long delays, not merely cancellations and denied boarding. See *Sturgeon v. Condor Flugdienst GmbH*, Joined Cases C-402/07 & C-432/07 (C.J.E.U. 2009). Subsequent

Two related initiatives would fall particularly heavily on low-cost carriers.

First, the DOT's April 2024 ancillary-fee disclosure rule required airlines to display baggage and change fees at the point of sale. The 5th U.S. Circuit Court of Appeals stayed the rule, finding that the airlines had made "a strong showing that the Rule exceeds DOT's authority" and would suffer irreparable harm, including compliance costs that the industry estimated at between \$5 million and \$10 million. The court later affirmed the agency's authority while remanding the rule for further proceedings.⁵⁹

Second, the DOT proposed in August 2024 to require fee-free adjacent family seating and prohibit airlines from structuring basic-economy products to avoid that requirement.⁶⁰ Like the ancillary-fee initiatives, the proposal would directly affect the unbundled business model that underlies many ultra-low-cost carriers by converting optional paid services into mandatory free services.⁶¹

Viewed individually, any one of these measures may appear modest. Viewed collectively, they impose meaningful costs on the carriers least able to absorb them.

For a large legacy carrier with diversified revenue streams from premium products and loyalty programs, an individual mandate may amount to little more than operational friction. For an ultra-low-cost carrier that relies heavily on ancillary revenue and operates on exceptionally thin margins, mandated refunds, potential compensation payments, mandatory services, and limits on pricing flexibility can erode the economics that make very low base fares possible.

The broader point is cumulative. Layered on top of slot scarcity, equipment shortages, constrained access to capital, and other barriers discussed above, regulatory inflexibility becomes one more factor pushing low-cost carriers from marginal viability toward unprofitability. Spirit's collapse illustrates the broader concern. In a high-fixed-cost, low-margin, shock-prone industry, competitive viability often depends less on any single regulatory burden than on the accumulation of many small burdens

evaluations found wide disparities in enforcement across member states: the share of complaints resolved in passengers' favor ranged from roughly 6% to more than 90%; only 14 of the then-27 member states had imposed sanctions for noncompliance; and nearly half had never imposed a sanction at all. The European Commission further found that many member states had not fully complied with the Regulation's requirement that sanctions be "effective, proportionate and dissuasive," and that in some jurisdictions maximum penalties fell below the costs carriers could avoid through noncompliance. See Eur. Comm'n, *Evaluation of Regulation (EC) No. 261/2004: Final Report* (Steer Davies Gleave 2010).

⁵⁹ *Airlines for Am. v. Dep't of Transp.*, No. 24-60231 (5th Cir. 2024) (granting stay); see also Pete Muntean, *Airlines Sue DOT Over New Rules Requiring Disclosure of Fees*, CNN (May 13, 2024), <https://www.cnn.com/2024/05/13/business/airlines-sue-dot-over-new-rules-requiring-disclosure-of-fees>. The 5th U.S. Circuit Court of Appeals, sitting *en banc*, subsequently vacated the rule. *Airlines for Am. v. Dep't of Transp.*, No. 24-60231 (5th Cir. Feb. 3, 2026).

⁶⁰ U.S. Dep't of Transp., *Notice of Proposed Rulemaking on Family Seating* (Aug. 1, 2024); see also Gregory Speier, *DOT Proposes Rule to Ban Family Seating Fees*, REED SMITH (Aug. 2, 2024), <https://www.reedsmith.com/our-insights/blogs/viewpoints/102jfav/dot-proposes-rule-to-ban-family-seating-fees>.

⁶¹ The importance of ancillary revenue helps explain why these measures fall most heavily on the unbundled-carrier business model. The Government Accountability Office reports that U.S. airline baggage and reservation-change fees—the only optional-service fees reported separately to the Department of Transportation—increased from approximately \$6.3 billion in 2010 to \$7.1 billion in 2016 (in constant 2016 dollars). Those revenues play a significant role in the profitability of ultra-low-cost carriers and help subsidize lower base fares. See U.S. Gov't Accountability Off., *Commercial Aviation: Information on Airline Fees for Optional Services*, No. GAO-17-756 (2017), <https://www.gao.gov/products/gao-17-756>.

over time. The carriers serving the most price-sensitive travelers generally have the least margin for error.

The 5th Circuit's conclusion that one of these rules likely exceeded the DOT's statutory authority also raises a question squarely within this Subcommittee's jurisdiction: how much of this regulatory apparatus Congress has authorized the Department of Transportation to impose in the first place.

VIII. Recommendations and Conclusion

Consistent with the foregoing analysis, I respectfully offer the following recommendations for the Subcommittee's consideration:

- **Modernize merger analysis for network industries.** Encourage courts and enforcement agencies to adopt a probability-weighted assessment of competitive durability for financially distressed firms. Such an approach would provide a middle ground between the strict failing-firm defense and the assumption that a distressed carrier will remain an effective competitor indefinitely. Merger analysis should also give consistent weight to out-of-market efficiencies that benefit consumers.
- **Reform airport-slot allocation.** Direct the FAA to facilitate entry by making chronically underused slots available through transparent, rules-based criteria. Congress should also study market-oriented alternatives to administrative grandfathering, including transparent slot markets and runway-congestion pricing.
- **Liberalize foreign investment and study cabotage reform.** Commission a study of phased liberalization of foreign-ownership restrictions, building on the DOT's 2003 proposal, and evaluate reciprocal cabotage arrangements with countries that maintain comparable aviation-safety and regulatory standards.
- **Codify environmental-review reform for capacity projects.** Enact enforceable NEPA review deadlines, expand categorical exclusions for capacity-enhancing projects at slot-constrained airports, and limit the period for judicial challenges. Such reforms would build on the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County* and the FAA's recent procedural reforms.
- **Subject consumer-protection mandates to rigorous cost-benefit review.** Require agencies to identify a demonstrated market failure before imposing operational mandates, account for the value of operational flexibility and the cumulative burden on low-cost carriers, and adopt the least-restrictive effective alternative. Congress should also clarify the limits of the DOT's statutory authority in this area.

The impulse to address airline concentration primarily through more aggressive merger enforcement is unlikely to produce the competitive outcomes policymakers seek. The most significant constraints on airline competition arise not from a shortage of antitrust enforcement, but from barriers that restrict entry, expansion, and adaptation before competition can occur.

Much of the competition that never materializes in this industry is foreclosed upstream: by airport capacity the government rations, by capital it restricts, by infrastructure expansion it delays, and by operational mandates that fall most heavily on the carriers least able to absorb them. If policymakers are concerned about concentration, those constraints should be the first place they look.

The most procompetitive course available to Congress is not to preserve competitors on paper, but to make competition easier in practice. That requires removing government-created bottlenecks, regularly reassessing legacy regulations, and exercising discipline before imposing new ones. Spirit's empty gates offer a cautionary reminder that protecting a competitor is not the same as protecting competition.

I thank the Subcommittee for its attention and welcome any questions.

Mr. FITZGERALD. Thank you, Mr. Stout. We now recognize Professor Rose.

STATEMENT OF NANCY L. ROSE

Ms. ROSE. Chair, Ranking Members, and the Members of the Subcommittee, thank you for inviting me to testify. I've spent 40 years studying competition, antitrust, and regulation, including in the airline industry, and have served as the Deputy Assistant Attorney General for economic analysis in the antitrust division. I'd like to make three points, drawing from my written testimony today.

First, antitrust did not kill Spirit Airlines. Let me say that again because I think you've heard the opposite alleged. Antitrust did not kill Spirit. Spirit's own leadership, as you've heard, identified the cause as sudden, sustained spike in jet fuel prices due to the Iran war that added hundreds of millions of dollars in costs.

Instead, antitrust kept Spirit flying two years longer than if JetBlue had been allowed to complete its merger and eliminate Spirit's consumer-friendly pricing. That mattered not only to Spirit passengers, but to everyone who flies. Spirit, as you've heard, pioneered the ultra-low-cost carrier model in this country, and its presence on the route forced other airlines to lower their fares, often by 10–20 percent or more, what's been called the Spirit effect.

For many travelers, Spirit was not a preference, it was the only air travel they could afford. As one Spirit customer recently put it, "We don't fly Spirit because we're cheap. We fly Spirit because we're broke." JetBlue never intended to preserve that model. Its own deal modeling removed seats, repainted the planes, and increased fares by 30 percent.

As you've heard, after hearing that evidence, Judge Young found Spirit to be a uniquely disruptive competitor important to a particular segment of cost-conscious customers, and he blocked the deal. That was not overreach. That was the Clayton Act working as Congress intended.

Nor was this a failing firm case. The parties did not mount that defense at trial. Spirit's executives testified that the company had a plan to return to profitability. It's difficult to predict the future, but they had a plan. There had been another bidder, Frontier, that management preferred because it recognized that Frontier would preserve the ultra-low-cost carrier model without the antitrust risk that JetBlue's offer presented.

When people argued that DOJ should have waived the deal through because Spirit was failing or flailing, we need to recognize the danger in that argument. It would encourage stronger rivals to rough up competitors and buy them out, precisely when consumers most need those competitors to survive.

Second, this is not just about airlines. Competition concerns in the airline industry are a window into a much larger problem. Across the economy, consolidation has often left families with fewer choices and higher prices. Four firms dominate cattle buying in the U.S., leaving many ranchers with only a handful of buyers and Fourth of July hosts paying more for the burgers that they're grilling. Three pharmacy benefit managers control nearly 80 percent of U.S. prescriptions. Their integration with insurers and pharmacies

has forced higher prices throughout the system. Hospital systems have merged and then bought up physician practices, and recent research finds that those acquisitions raise physician prices by 15 percent with no clear improvement in quality.

These are pocketbook issues, what families pay for groceries, medicine, or doctors' visit. Strong, evidence-based antitrust enforcement is one of the tools that we have to keep competition and prices affordable, as did the FTC and a bipartisan group of State AGs when they successfully blocked the Kroger-Albertsons supermarket merger.

Third, antitrust must remain vigilant and independent. When I was at the antitrust division, every new employee heard the same message on day one and repeated often: Antitrust is law enforcement. We call balls and strikes based on the evidence, not on personal preferences, political pressure, or who has access in Washington. That principle has been under strain. In the last year, we've seen a very troubling pattern: Senior antitrust officials fired after privately objecting to an inadequate settlement forced from above, the President personally weighing in to support a media merger, a monopolization case against Live Nation secretly settled mid-trial by senior DOJ officials and White House counsel on terms so favorable that Live Nation's share price popped six percent on the announcement.

Fortunately, in that case, Attorney Generals from 33 States and the district leapt in to assume the litigation lead and kept the trial moving forward to a jury that found for the plaintiffs on every claim.

From the outside, it looks like there's a "Justice for Sale" sign hanging on the fifth floor of the RFK building. That should alarm us all, regardless of our party or our ideology. When companies believe that they can buy an outcome in Washington instead of competing on the merits, we all lose. When antitrust becomes a tool of political favor or disfavor, the predictable environment that businesses need to invest in is undermined.

Surely, we can find bipartisan support for rigorous, evidence-based, politically independent antitrust enforcement that protects the American consumer, the American worker, honest businesses, and the competitive process itself.

[The prepared statement of Ms. Rose follows:]

TESTIMONY OF PROFESSOR NANCY L. ROSE

Hearing on “The 30,000 Foot View: Competition and Regulation in the U.S. Airline Industry”

Before the House Subcommittee on the Administrative State, Regulatory Reform, and
Antitrust

Committee on the Judiciary

U.S. House of Representatives

June 24, 2026

Chair Fitzgerald, Ranking Member Nadler, and members of the subcommittee, thank you for inviting me to testify. I have taught competitive strategy, antitrust, and regulation for 40 years, over which time my academic research has focused on competition, regulation, and antitrust, including extensive research on the airline industry. And I previously served as Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the U.S. Department of Justice.

Today, I want to discuss the role of competition and antitrust enforcement in the airline industry as well as our broader economy, and emphasize the vital importance to American consumers, workers, and businesses of independent, evidence-based enforcement of our antitrust laws.

I. The Spirit/JetBlue Merger and Airline Competition

Antitrust did not kill Spirit Airlines. The recent collapse of Spirit Airlines is deeply regrettable. But we must be honest: Effective antitrust enforcement kept Spirit flying for at least two years longer than it would have if JetBlue had been allowed to complete its merger and eliminate Spirit’s budget-focused consumer-friendly pricing. Spirit faced a number of operational and financial challenges to profitability post-pandemic, leading to bankruptcy filings to restructure its debt November 2024, again in August 2025, and apparently further negotiations in early 2026. But by all accounts, the last straw was the unprecedented increase in jet fuel prices caused by the Iran War. In announcing its immediate wind-down of operations on May 2, 2026, Spirit CEO Dave Davis made this clear:

"In March 2026, we reached an agreement with our bondholders on a restructuring plan that would have allowed us to emerge as a go-forward business. However, the sudden and sustained rise in fuel prices in recent weeks ultimately has left us with no alternative but to pursue an orderly wind-down of the Company. Sustaining the

business required *hundreds of millions of additional dollars* [emphasis added] of liquidity that Spirit simply does not have and could not procure.”¹

Spirit’s disappearance matters to everyone who flies. Spirit’s exit is a significant loss—for all air passengers on routes that it served, and most especially for consumers on tight budgets. Spirit was the U.S. pioneer of the ultra-low-cost carrier model in the US, and its relentless focus on low fares consistently put pressure on other airlines to lower prices and innovate. That pushed fares lower on routes that it served, regardless of whether you flew on Spirit.² Indeed, legacy airlines’ introductions of Basic Economy fares were a direct response to the Spirit business model, and positioned to pry the most price-sensitive customers away from Spirit and other ULCCs. As Delta executive Glenn Hauenstein said in a 2019 earnings call: “... our Basic Economy is not something that we want to grow. ...it’s as we’ve outlined before, a defensive product against ULCCs.”³ Over 2003-2025, Spirit served more than 428 million price-sensitive travelers who valued budget-friendly fares, including travelers who might not otherwise have been able to fly.⁴ According to *The Wall Street Journal*, FlixBus North America, which operates the FlixBus and Greyhound lines, said it saw a year over year 30% increase in passengers on its 130 routes that overlapped with Spirit Airlines following Spirit’s flight shutdown.⁵ Liz Myers, a single mother in Illinois, told reporters: “We didn’t fly it because we can afford other things and we’re just being cheap. We fly Spirit because we’re broke.”⁶

Blocking the merger was sound enforcement, not overreach. DOJ’s challenge was not an aberration, a mistake, or an overreach, but rather an application of sound antitrust enforcement principles to the particular facts and circumstances of the JetBlue/Spirit merger. And Federal District Court Judge William G. Young’s decision to enjoin the merger was a response to careful consideration of the evidence presented by both sides over a 17-

¹ [Spirit Press Release](#), May 2, 2026.

² See e.g., Glen Hauenstein, [Delta Airlines Earnings Call Q2 2015](#), July 15, 2015, at 9: “Basic Economy which is our Spirit match fare, if you will...”; and Brad Shrago (2024), “[The Spirit Effect: Ultra-Low Cost Carriers and Fare Dispersion in the U.S. Airline Industry](#),” *Review of Industrial Organization*, 64: 549-579.

³ Glenn Hauenstein, Delta Air Lines, Inc. q3 2019 Earnings Call Corrected Transcript, 10-October 2019, p. 23.

⁴ Passengers- All Carriers, All Airports, [Bureau of Transportation Statistics](#). Downloaded 6/21/2026.

⁵ Jacob Passy, “[They Can’t Fly Spirit Anymore, So They’re Taking the Bus Instead](#),” *The Wall Street Journal*, June 21, 2026.

⁶ Dean Seal, “[Why the Collapse of Spirit Airlines Means Higher Fares for Everyone](#),” *Wall Street Journal*, May 4, 2026.

day bench trial. In his opinion, Judge Young described Spirit as a “uniquely disruptive competitor” that consistently put pressure on other airlines to lower prices and innovate.⁷

That decision gave consumers *years* longer to benefit from Spirit’s ULCC fares. When JetBlue succeeded in its July 2022 bid for Spirit, it had no intention of preserving Spirit as a low-fare competitor. JetBlue documents and testimony at trial made it clear that JetBlue planned to strip out seats and repaint Spirit’s bright yellow planes, to “convert Spirit’s planes to the JetBlue layout and charge JetBlue’s higher average fares to its customers.”⁸ Indeed, JetBlue financial modeling of the deal built in fare increases of 30% after closing the merger and shutting down Spirit.⁹ Spirit would have been gone long before May 2026, and everyone on Spirit routes would have been paying higher fares.

At the time the merger was announced, it would have eliminated head to head competition that existed between JetBlue and Spirit on 54 nonstop overlap routes—many times more than the nonstop overlap in previous airline mergers. It would have eliminated the well-documented “Spirit Effect”—Spirit’s competitive presence on a route constraining the fares of legacy and other carriers—on many more routes. And it would have eliminated a vital low-fare option for the most budget-constrained and price-sensitive Americans.

You do not need to take my word, or the DOJ’s word, for this. Judge Young independently evaluated a full trial record, and concluded that if JetBlue were permitted to “gobble up Spirit,” the transaction would eliminate one of the airline industry’s “few primary competitors” providing “unique innovation and price discipline,” and would further consolidate an oligopoly.¹⁰ He found that the merger’s “elimination of Spirit would harm cost-conscious travelers who rely on Spirit’s low fares.”¹¹ But the harm would have been broader—the court agreed with DOJ that Spirit’s downward pressure on prices benefited not only Spirit passengers, but also consumers flying on JetBlue and other airlines.¹² This is one of the compelling benefits of competition, and a reason antitrust must be vigilant in protecting competitive markets.

⁷ United States et al. v. JetBlue Airways Corp. and Spirit Airlines, Inc., [Findings of Fact and Conclusions of Law, No. 1:23-cv-10511-WGY](#) (D. Mass. Jan. 16, 2024), at 81; hereafter “*JetBlue Findings of Fact*”

⁸ *JetBlue Findings of Fact* at 53.

⁹ Plaintiffs Closing Arguments demonstrative, US et al. v JetBlue Airways Corp and Spirit Airlines, Inc., 1:23-cv-10511-WGY, slide 49 based on Trial Ex 413 at 756; Nov. 9, 2023, Transcript vol 1, 24:15-18.

¹⁰ *JetBlue Findings of Fact* at 8.

¹¹ *JetBlue Findings of Fact* at 53.

¹² *JetBlue Findings of Fact* at 53-55.

Judge Young agreed with DOJ. He concluded with a reminder of who the antitrust laws protect: “Spirit is a small airline. But there are those who love it. To those dedicated customers of Spirit, this one’s for you. Why? Because the Clayton Act, a 109-year old statute requires this result—a statute that continues to deliver for the American people.”¹³ And this is important to remember: the Antitrust Division cannot block a merger on its own. Instead, it must convince a federal district court judge that the preponderance of evidence shows that the merger would violate section 7 of the Clayton Act, a considerable hurdle. If the evidence isn’t there, DOJ will lose in court.¹⁴

This merger did not warrant a “failing firm” defense. After Spirit’s demise, many have jumped on the argument that DOJ should have allowed the merger under a “failing firm” defense. To avoid such arguments being used pretextually to bypass merger law, the Supreme Court has established that such a defense requires proving three elements:¹⁵ (i) The target faced “the grave probability of a business failure.” That is, it was no longer a viable firm and would be forced to exit the market with or without the merger; (ii) “The prospects of reorganization ...are dim or nonexistent”; and (iii) “The company that acquires the failing firm... is the only available purchaser” [that is,]....that the target company has made “unsuccessful good-faith efforts to elicit reasonable alternative offers that pose a less severe danger to competition than does the proposed merger.”¹⁶ There are many challenges to succeeding with such a defense, but in this case, the greatest was that the parties did not make it—likely because it was not true. JetBlue and Spirit had a team of superb antitrust lawyers, and I am confident that if they could have marshaled evidence that validated such a defense, they would have pursued that strategy and succeeded. They did not.

Instead, “multiple Spirit executives testified [at trial] that the airline had a plan to return to profitability,”¹⁷ undermining the first and likely second element. The third had been discredited in the high-profile bidding war between Frontier and JetBlue for Spirit. In a

¹³ *JetBlue Findings of Fact* at 112.

¹⁴ Unfortunately, the same is not true in reverse: Courts cannot compel the FTC and DOJ Antitrust Division to enforce the antitrust laws. If leadership in those agencies decide to allow anticompetitive mergers for reasons of negligence, political favors, or interference in law enforcement, courts cannot protect American consumers and workers.

¹⁵ The following is based on the discussion in the Federal Trade Commission and U.S. Department of Justice, 2023 *Merger Guidelines*, p. 30-31; citing to the Supreme Court in *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969) (building on *International Shoe Co. v. FTC*, 280 U.S. 291 (1930)).

¹⁶ *Id.*, 30.

¹⁷ *JetBlue Findings* at 103.

publicly released May 2, 2022, letter to JetBlue CEO Robin Hayes, Spirit board chair H. McIntyre Gardner foreshadowed the eventual outcome in explaining one of the many reasons the board rejected the JetBlue bid: “Spirit believes DOJ—and a court—will be very concerned that a higher-cost/higher fare airline would be eliminating a lower-cost/lower fare airline in a combination that would remove about half of the ULCC capacity in the United States.”¹⁸ When JetBlue accelerated its hostile takeover bid, Spirit’s proxy filing urged a vote FOR the Frontier bid: “JetBlue’s tender offer has not addressed the core issue of the significant completion risk and insufficient protections for Spirit stockholders. ...Based on our own research and the advice of antitrust and economic experts, our view is that the proposed combination of JetBlue and Spirit lacks any realistic likelihood of obtaining regulatory approval, while our company faces a long and bleak limbo period as we await resolution. In that scenario, a \$1.83 per share reverse break-up fee will not come close to adequately compensating Spirit stockholders for the significant business disruption Spirit will face during what JetBlue acknowledges will be a protracted regulatory process.”¹⁹ It is hard to imagine that a court considering a failing or even “flailing” firm defense would be willing to overlook evidence of an eager buyer who the target board believed posed fewer competitive concerns.

The judge noted that there was some nod at trial to a “flailing firm” defense, what has been called by courts “the Hail-Mary pass of presumptively doomed mergers.”²⁰ But given the lack of robust evidence and the optimism of Spirit executives for the future, the court declined to credit that as an exception for an anticompetitive merger.²¹

¹⁸ “[Spirit Airlines Board of Directors Reiterates Support for Merger with Frontier Airlines](#),” PRNewswire, May 2, 2022.

¹⁹ Spirit Airlines SEC Filing Exhibit(a)(1)(G), “[Spirit Airlines Board of Directors Urges Stockholders to Reject JetBlue Tender Offer](#),” May 19, 2022.

²⁰ Citing to *ProMedica Health System, Inc. v. Federal Trade Commission*, 749 F.3d 559 (6th Cir. 2014) at 572: “This argument is known as a ‘weakened competitor’ one, and is itself ‘probably the weakest ground of all for justifying a merger.’ Courts ‘credit such a defense only in rare cases, when the [acquiring firm] makes a substantial showing that the acquired firm’s weakness, which cannot be resolved by any competitive means, would cause that firm’s market share to reduce to a level that would undermine the government’s prima facie case.’ In other words, this argument is the Hail-Mary pass of presumptively doomed mergers.” (citations in the original omitted).

²¹ Spirit share prices were trading in the \$14-\$17 per share during the trial, and roughly \$8 per share after the decision was announced, suggesting that investors thought the company had ongoing value for shareholders independent of the merger outcome. (<https://www.digrin.com/stocks/detail/SAVE/price>) Some have proposed a weakening of this standard, perhaps even imposing a “weakened competitor” standard that would allow the merger unless the plaintiffs can prove the target firm will continue to be a viable or strong competitor for five or even ten years into the future to block. Given the difficulty of predicting future corporate

JetBlue’s merger attempt likely contributed to Spirit’s financial weakness. While many factors contributed to Spirit’s ongoing financial woes, the 19 months of merger limbo likely did not help—something Spirit’s management foresaw and warned about in its proxy filing. A merger attempt may weaken the target firm whether or not the attempt is successful. When the target firm’s fate remains uncertain for months or years, it may lose management focus, commercial momentum, and talent. That cost is borne by the target and its customers, creating a “heads I win, tails you lose” scenario for the acquiring firm: if the bid succeeds, the acquirer eliminates a competitor or benefits from its assets; if the bid fails, a long period of uncertainty may weaken the target, making it a less effective competitor going forward. Either way, the acquiring firm gets less competition, and customers, workers, and suppliers may pay the price. Spirit’s management knew in 2022 that JetBlue’s bid presented serious antitrust risk, and said so publicly.²² But JetBlue kept increasing its bid over Frontier’s until Spirit’s shareholders decided the gamble was worth it. That mistake likely exacerbated Spirit’s weakening position over time.

Where this fits with other airline mergers. Some critics have argued that because the DOJ allowed previous airline mergers, it should not have drawn the line at Spirit/JetBlue. This argument—a classic false equivalence—reminds me of the strategy my children used when they wanted to do something they knew I objected to: “But all the other kids got to do it!” That didn’t convince me, and shouldn’t convince you.

We should remember this was not the first time DOJ litigated an airline merger or merger equivalent. Just a year earlier, federal district court judge Leo Sorokin in the District of Massachusetts heard DOJ’s and state AG’s Sherman Section 1 challenge to the “Northeast Alliance” (NEA), an attempt by American and JetBlue to reduce competition by an agreement whose effects “resemble those of a merger of the parties’ operations within the northeast.”²³ Judge Sorokin also ruled for DOJ and the states, finding “The question before the Court is whether the NEA suppresses or promotes competition. The record supports only one answer. The NEA, operating as it was designed and intended by American and

fortunes even a few years into the future, that could be a “loophole” large enough to drive most anticompetitive mergers through.

²² See *supra* notes 18 and 19.

²³ US et al. v. American Airlines Group, Inc. and JetBlue Airways Corporation, [Findings of Fact and Conclusions of Law](#), Case 1:21-cv-11558-LTS, May 19, 2023, at 28; hereafter *NEA Findings*.

JetBlue, substantially diminishes competition in the domestic market for air travel.”²⁴ That decision was affirmed on appeal by American to the 1st Circuit in November 2024.²⁵

Importantly, in antitrust, context is everything. The airline sector already had consolidated dramatically. Judge Young noted that the U.S. passenger airline industry is dominated by the “Big Four”—Delta, American, United, and Southwest—which control 80 percent of U.S. airline revenue, with the next-largest carrier, Alaska, accounting for 6 percent.²⁶ That does not mean that all future airline mergers should be blocked. But any proposed mergers should be carefully evaluated for whether they are likely to increase competition—by, say, combining two smaller airlines into a more effective competitor, as a Spirit-Frontier combination might have achieved—or reduce competition—as would likely be the case for an acquisition of one of the smaller carriers by one of the big 4 airlines, let alone the extraordinary proposal United CEO Scott Kirby recently made for a United/American tie-up.²⁷

The courts and antitrust agencies recognize that prospective harm to competition from further consolidation in an already highly concentrated market may be much greater than in a fragmented one.²⁸ That’s the reason the Merger Guidelines and the courts look at both the level and changes in concentration to determine whether a proposed merger is presumptively anticompetitive and hence unlawful. A merger that is not problematic in an unconcentrated market may be dangerous in an already consolidated market: a merger of two pharmacies in a town with fifteen is likely a footnote; a merger of the last two pharmacies in town is a crisis for anyone who needs a prescription to be filled.

Losing a “maverick” is especially dangerous in a concentrated market. A merger is particularly problematic when the firm being eliminated has a specific strategy of disrupting the comfortable equilibrium in an already concentrated industry, a role that the judge recognized Spirit played in airline markets. That comfortable equilibrium is what economists call “tacit collusion,” and what business executives sometimes call the “quiet

²⁴ *NEA Findings* at 92-93.

²⁵ [U.S. v American Airlines Group, Inc. No 23-1802](#) (1st Cir. 2024).

²⁶ *JetBlue Findings* at 8.

²⁷ Leslie Josephs, “[United Airlines EO confirms he approached American Airlines about merger](#),” CNBC, April 27, 2026. One might have thought such a proposal absurd even two years ago, but it is unclear that even a merger that obviously anticompetitive would be rejected by the current DOJ leadership if the right lobbyists were hired.

²⁸ [US Department of Justice and Federal Trade Commission, Merger Guidelines, 2023](#).

life.” In an influential academic study, Nathan Miller and Matthew Weinberg²⁹ demonstrate how a merger can raise prices through increased coordination. They show that the 2008 joint venture of Miller and Coors (effectively a merger of US assets), despite substantial expected and realized distribution and production efficiencies, aligned the interests of Miller/Coors with market leader Anheuser-Busch, making it profitable for the firms to move to and maintain a higher-price coordinated equilibrium.³⁰ Whether a disruptive competitor declines to go along with an industry’s “unwritten rules” because it has a different business model, or because it seeks to grow by taking share from rivals, its acquisition can eliminate an important competitive constraint.

Once such a maverick is extinguished by an acquisition, consumers may have no reprieve from the harmful consequences. Current antitrust law has limited ability to reach this kind of coordination—which occurs without an explicit agreement and may instead take the form of silent accommodation or parallel behavior. Because such coordination generally is easier to sustain when fewer firms remain in the market, strict merger enforcement in already-concentrated markets may be the primary, or only, bulwark against these anticompetitive effects.

II. The Role of Antitrust Enforcement in Today’s Economy

Antitrust matters far beyond the airline industry. While I appreciate the subcommittee’s attention to airline markets—an industry I have studied since the late 1980s—it is far from the only sector in which effective antitrust enforcement is critical. Over the last several decades, we have watched industry after industry consolidate. In some cases, consolidation follows from greater efficiencies by the larger firms in a sector, and quality-adjusted prices to consumer may fall, or at least not rise. There is an emerging body of literature in economics that documents these effects in specific industries or with respect to specific mergers.³¹ But in other sectors—and particularly likely where consolidation is the result of merger activity or exclusionary conduct rather than technological change or efficiencies—consolidation raises serious concerns about higher prices for consumers,

²⁹ Nathan Miller & Matthew Weinberg (2017), “[Understanding the Price Effects of the MillerCoors Joint Venture](#),” *Econometrica*, 85: 1763-1791.

³⁰ *Id.*

³¹ See, e.g., Nathan Miller (2025), “[Industrial Organization and The Rise of Market Power](#),” *International Journal of Industrial Organization*, 98.

lower wages or reduced bargaining power for workers and suppliers, and diminished innovation.

Agriculture: The squeeze on farmers and higher costs for consumers. In agriculture, farmers have been struggling with the effect of rising consolidation for decades—now on top of headwinds created by erratic tariff policy and Iran War-induced increases in the prices of fuel and fertilizer. For example, poultry and meat processing is highly concentrated among a small set of firms. USDA's Economic Research Service reports that by 2019 the four largest beef packers accounted for 81 percent of steer and heifer purchases, and that in many parts of the country ranchers and farmers now have only two to four buyers for their cattle or hogs. A recent paper by USDA economists reports recent evidence of stronger market power in meatpacking, including lower prices paid for cattle and sharply increased spreads between cattle prices and wholesale beef prices, since 2016.³² A study of poultry processing finds that consolidation due to mergers in this sector has facilitated some efficiency gains, but the net effect has been to increase markups and wholesale prices for poultry.³³ As I discussed before, when a small number of firms dominate a market, collusion—tacit or explicit—may become a significant concern. A number of recent antitrust cases have alleged collusion among poultry and meat processing firms, facilitated through exchange of detailed competitive data under the auspices of third party Agri Stats.³⁴ And the FTC filed suit in 2025 against farm equipment manufacturer John Deere, alleging restrictive repair practices that limit farmers' right-to-repair infringe on their ability to control costs and maintain their own equipment.³⁵ As yet, there seem to be no published ex post assessments of the three huge mergers in the

³² James M. MacDonald, "Concentration in U.S. Meatpacking Industry and How It Affects Competition and Cattle Prices," U.S. Department of Agriculture, Economic Research Service, Amber Waves, January 2024, <https://www.ers.usda.gov/amber-waves/2024/january/concentration-in-u-s-meatpacking-industry-and-how-it-affects-competition-and-cattle-prices>

³³ Tina L. Saitone et al. (2025), "Consolidation, productivity, and downstream prices in the US poultry industry," *Agricultural and Resources Economics Review*, 54: 157-178

³⁴ US v Agristats, CASE 0:23-cv-03009, [Complaint](#) filed September 28, 2023; [Proposed Final Judgment](#) filed May 7, 2026. There have been a significant number of private enforcement actions against Agri Stats, with settlements of cases alleging wage suppression and meat and price-fixing in various markets. See e.g., Hagens Berman, "[Settlements Reached with Agri Stats in Broilers, Turkey, Pork Antitrust Suits Over Price-Fixing Allegations](#)," March 13, 2026.

³⁵ Federal Trade Commission, "[FTC, States Sue Deere & Company to Protect Farmers from Unfair Corporate Tactics, High Repair Costs](#)," January 15, 2025. See also [Complaint](#), FTC, State of Illinois, and State of Minnesota v. Deere and Company, Case: 3:25-cv-50017, January 15, 2025.

seed/pesticide space (Dow/Dupont, Bayer/Monsanto, ChemChina/Syngenta), which significantly increased concentration into this space.

Healthcare consolidation and vertical integration in the sector. Concentration in healthcare markets has been a growing concern—within virtually all swaths of the sector,³⁶ including insurers, hospitals and other health care providers, pharmacy benefits managers, pharmaceutical companies—and through vertical integration, across many of these markets. For example, mergers and acquisitions have contributed to the highly concentrated and vertically integrated state of the pharmacy benefit manager market. The FTC reported in 2024 that the top three PBMs processed nearly 80 percent of the approximately 6.6 billion prescriptions dispensed by U.S. pharmacies in 2023, while the top six processed more than 90 percent. The FTC further reported that the largest PBMs are vertically integrated with major health insurers and pharmacy operations, giving them significant influence over Americans' access to medicines and the prices they pay.³⁷ Recent academic work suggests these vertical acquisitions have harmed consumers. Eric Yde concludes that divesting vertically integrated pharmacies from networks would reduce drug prices for Medicare Part D patients by more than 7%, and work by Charles Gray, Abby Alpert, and Neeraj Sood finds that UnitedHealth's 2015 acquisition of Catamaran, the last significant stand-alone PBM, foreclosed access for rival insurers without their own PBM, raising rival insurers' premiums by about \$22/month with no discernible reduction in UnitedHealth premiums.³⁸ While it may be too late to address insurer/PBM integration, integration of hospitals and physician practices is an area of rapid but not yet complete consolidation, where greater antitrust scrutiny might yet preserve some competition. A 2025 GAO report suggests at least 47% of physicians were consolidated with hospital systems in 2024, an increase from less than 30% in 2012.³⁹ In a recent NBER working paper, Cooper et al. (2025) find that hospital acquisitions raised hospital prices by 3.3% and physician prices by 15.1%, with no discernable quality improvement.⁴⁰

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³⁷ Federal Trade Commission, "[Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies](#)," Interim Staff Report, July 2024, 2–4.

³⁸ Eric Yde (2026), "[Vertical Integration and Regulated Profits in Pharmacy Benefits Markets](#)," Working Paper. Charles Gray, Abby Alpert, and Neeraj Sood (2026), "[Disadvantaging Rivals: Vertical Integration in the Pharmaceutical Market](#)," *American Economic Journal: Applied Economics*, 18: 286–304.

³⁹ US General Accounting Office (September 22, 2025), "[Health Care Consolidation: Published Estimates of the Extent and Effects of Physician Consolidation](#)," GAO-25-107450.

⁴⁰ Zack Cooper et al. (2025), "[Are Hospital Acquisitions of Physician Practices Anticompetitive?](#)" National Bureau of Economic Research Working Paper 34039.

A retail win for consumers and workers. In retail, the importance of antitrust enforcement was recently demonstrated when the FTC and a bipartisan group of state attorneys general secured a preliminary injunction blocking Kroger's proposed \$24.6 billion acquisition of Albertsons, which the FTC described as the largest supermarket merger in U.S. history. The case was important not only for preserving competition in grocery prices—a first order pocketbook issue for consumers—but also because supermarkets compete for workers, and the benefits of that wage competition would have been lost by the combination.⁴¹

III. The Rule of Law and the Future of Antitrust

What follows is not a complaint against any single outcome, but a concern about a pattern in how these decisions are now being made. I remind my students that if you like a market-based capitalist economy, and especially if you think government regulation of prices or entry is often costly or flawed, you should love antitrust enforcement. It levels the playing field, keeps the economy dynamic, encourages innovation and productivity, and shares the benefits of growth with consumers, workers, entrepreneurs, and shareholders. Antitrust is not popular with executives who seek to maximize profits, share prices and executive compensation by buying competitors, building moats around profitable businesses, or colluding with their rivals. All the more reason to embrace its enforcement.

When I served in the DOJ Antitrust Division, the first thing any new employee—political or career—was told is that antitrust enforcement is a law enforcement activity. And that mantra was repeated often. Our role was to call balls and strikes based on the evidence. It did not matter which firms had political connections or which sectors might be favored or disfavored by an administration. At briefings for the Attorney General on a recommendation to challenge a high-visibility merger, the questions were crisp and analytical: Will this merger reduce competition? Are consumers going to pay more? Are workers, suppliers, or rivals likely to be harmed? Do we have the evidence to prove our case in court? If the answers were yes, we were told that political fallout was not our concern. We worked on behalf of the American people.

I find myself today in the unusual situation of feeling called to emulate Milton Friedman, who in a 1978 lecture said “about the only people who have any real freedom of speech left are people who are in the fortunate position of myself: tenured professors at major private universities on the verge of retirement!”⁴² So let me use that freedom to acknowledge: I

⁴¹ Federal Trade Commission, “[Statement on FTC Victory Securing Halt to Kroger, Albertsons Grocery Merger](#),” December 10, 2024.

⁴² Milton Friedman, “[The Future of Capitalism](#),” Hoover Institution (original published in *Imprimis*, Feb 1977).

am deeply concerned today by a growing pattern of institutional irregularity that seems to abandon these fundamental principles of justice and threatens to undermine public confidence in antitrust enforcement and government in general. Antitrust *must* be governed by the rule of law, not by the prospect of political gain or the pleasure of delivering favors to friends and pain to others. But I fear that is increasingly not the case.

The first sign of this was the HPE/Juniper merger in 2025. DOJ initially sued to block Hewlett Packard Enterprise's \$14 billion acquisition of Juniper Networks, alleging that the merger would harm competition in wireless networking. DOJ later settled, requiring divestitures and licensing commitments rather than blocking the deal.⁴³ Reuters reported that two senior Antitrust Division officials, Roger Alford and Bill Rinner, were fired amid controversy over how DOJ reached the settlement, and that sources familiar with merger protocol described the way the settlement was signed as unusual.⁴⁴

Irregularities appear to be increasing since Assistant Attorney General Abigail Slater was reportedly forced out of the Antitrust Division in February 2026.⁴⁵ The proposed Nexstar/Tegna merger of the two largest owners of local broadcast television stations attracted public attention in March 2026. As the court wrote in granting a preliminary injunction against combining their assets (citations in the original omitted):

In unusual circumstances — with the FCC's quasi-adjudicatory licensing proceeding still pending — the President himself weighed in publicly in February and urged federal regulators to approve the deal to “knock out the Fake News.” FCC Chairman Brendan Carr publicly signaled his acknowledgement of, and agreement with, the President's endorsement. At a press conference on February 18, 2026, Chairman Carr reiterated, “I support that [Nexstar/TEGNA] transaction. We're going to be moving forward.” On March 19, 2026, the same day U.S. DOJ announced early termination of its antitrust review, the FCC issued a ruling granting Nexstar's requested waivers and green-lighting the acquisition. The FCC approved Defendants' application for broadcast license transfers — not through a full, public Commission vote but through its Media Bureau (which acts under the FCC

⁴³ U.S. Department of Justice, “Justice Department Requires Divestitures and Licensing Commitments in HPE's Acquisition of Juniper Networks,” June 28, 2025, <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-and-licensing-commitments-hpes-acquisition-juniper>

⁴⁴ Jody Godoy and Sarah N. Lynch, “Two US Justice Dept antitrust officials fired over merger controversy, source says,” *Reuters*, July 30, 2025. “HPE/Juniper: As Fight Between DOJ Leadership and Antitrust Division Broils, Tunny Act Proceeding Looms,” *Capital Forum*, July 24, 2025. CITE to roger testimony

⁴⁵ Jennifer Jacobs and Sarah N. Lynch, “Trump Officials oust Abigail Slater as DOJ's antitrust chief, sources say,” *CBS News*, Feb. 12, 2026.

Chairman's discretion). Immediately thereafter, effective March 19, 2026, Nexstar and TEGNA closed the deal (the "Transaction").⁴⁶

DirecTV and a group of state attorneys general have each filed a challenge to the merger. The states complaint alleges that Nexstar and TEGNA overlap in 31 Big Four "Overlap DMAs," where each company owns at least one ABC, CBS, Fox, or NBC affiliate, and that the transaction would create or expand duopolies and triopolies, increasing concentration well above the thresholds the Merger Guidelines treat as presumptively unlawful. The challengers also allege that the merger would increase Nexstar's bargaining leverage in retransmission-consent negotiations with MVPDs such as DirecTV, Comcast, DISH, and Charter, leading to higher retransmission fees that would be passed through to consumers nationwide.

Congress and the American public had long expressed bipartisan alarm at the tactics Live Nation has used since its merger with Ticketmaster in 2010. In May 2024, the DOJ and a coalition of 39 states and the District of Columbia sued Live Nation, alleging monopolization and other anticompetitive conduct in live entertainment markets,⁴⁷ reflecting the broad concern with Live Nation's conduct. Yet, mid-trial in March 2026, DOJ announced a settlement on terms that ensure very little will change; Live Nation stock closed 6.2% higher on the news, reflecting the expected benefit to the company of the settlement and suspension of the litigation.⁴⁸ The settlement reportedly was negotiated without consulting DOJ litigating attorneys or the partner state attorneys general, and DOJ did not inform the presiding judge of a settlement term sheet signed on Thursday, March 5 until the evening of Sunday, March 8. The judge rebuked DOJ and Live Nation executives: "Parties were acting as if we were going into trial on Monday when the leadership of the United States and the leadership of Live Nation were fully aware they had a signed term sheet. Again, this is hard to understand."⁴⁹ Perhaps not so hard to understand given the political machinations reportedly behind this. *The Wall Street Journal* reported:

⁴⁶ Order, In RE: Nexstar-Tegna Merger Litigation, Case 2:26-cv-00976-TLN-CKD, April 17, 2026, at 8.

⁴⁷ U.S. Department of Justice, "Justice Department Sues Live Nation-Ticketmaster for Monopolizing Markets Across the Live Concert Industry," May 23, 2024, <https://www.justice.gov/archives/opa/pr/justice-department-sues-live-nation-ticketmaster-monopolizing-markets-across-live-concert>.

⁴⁸ Ben Sisario, David McCabe, and Olivia Bensimon, "Justice Department and Live Nation Reach Settlement Terms in Antitrust Case," *New York Times*, March 9, 2026.

⁴⁹ Kara Scannell, "Judge scolds Live Nation and Justice Department for secret settlement talks," *CNN Politics*, March 10, 2026.

After the trial began in March, Trump began calling around to ask why it hadn't been settled. *What's the holdup?* he wanted to know, according to people familiar with the matter. It was an extraordinary role for a president to play in a routine antitrust investigation. On March 5, both sides met at the White House to hash things out, according to people familiar with the meeting. Live Nation CEO Michael Rapino and the company counsel joined officials, including Bondi, White House counsel David Warrington and Slater's acting replacement. The settlement was signed that day, said people familiar with the matter.⁵⁰

American concert-goers and performers owe a debt to the 33 state and DC AGs who told the judge they would continue the litigation, scrambling to replace the DOJ leads who had been pulled from the trial given the settlement. And to the jury that evaluated the evidence over four days of deliberation and found for the plaintiffs on all claims.⁵¹ Unfortunately, this extraordinary circumvention of the process appears now to be almost routine.

Most recently, the *Wall Street Journal* reported that "The Justice Department's senior leadership closed an investigation of Paramount's bid for Warner Bros. Discovery before career staffers who had been investigating the transaction had an opportunity even to present their recommendation to object to the merger, according to people familiar with the matter."⁵²

These examples raise an alarming concern that antitrust law enforcement is being turned from an evidence-based process into a political favor factory. To put it bluntly, it looks from the outside as though a "Justice for Sale" sign has been hung on the 5th floor of the RFK Building. That is an alarming message to send to the public, to markets, and to companies deciding whether to compete on the merits or invest in political influence to bypass the competitive process. As Roger Alford, Notre Dame law professor and former twice-

⁵⁰ Dana Mattioli, Rebecca Ballhaus, and Josh Dawsey, "[The Threats and Bare-knuckle Tactics of MAGA's Top Antitrust Fixer](#)," *Wall Street Journal*, March 20, 2026.

⁵¹ Office of the New York State Attorney General, "Attorney General James and Coalition of States Win Trial Against Live Nation and Ticketmaster," April 15, 2026, <https://ag.ny.gov/press-release/2026/attorney-general-james-and-coalition-states-win-trial-against-live-nation-and>

⁵² Dave Michaels, Dana Mattioli, Sadie Gurman, and Jessica Toonkel, "[Justice Department Decision to Allow Paramount Deal Surprised Staff Investigators](#)," *Wall Street Journal*, June 15, 2026.

appointed Antitrust DAAG said recently, “The cost to the country of this new pay-to-play approach to antitrust enforcement is enormous.”⁵³

Antitrust enforcement based on the rule of law is vital to the operation of a market economy. When the public and the markets lose faith that decisions are being made on the merits, that the wealthy or politically connected can buy the outcome they prefer, the entire system suffers. Surely we can find bipartisan support for evidence-based, politically independent enforcement that protects the American consumer, the American worker, and the competitive process itself.

⁵³ In *supra* note 50

Mr. FITZGERALD. Thank you, Professor. We'll now proceed under the five-minute rule with questions. I first recognize the gentleman from California, Mr. Issa, for five minutes.

Mr. ISSA. Thank you, Mr. Chair. Professor Rose, notwithstanding those political comments you made at the end of your opening statement, as a professor, would you say that the No. 1 challenge that creates an antitrust situation is not lack of competition, but is the, in fact, barrier to entry? In other words, if someone begins to assert some benefit from a monopoly or near monopoly, it is, in fact, the barrier to entry that keeps others from coming in, whatever that barrier is. Is that a basic principle of economics and anti-trust?

Ms. ROSE. I teach my students that there are three—

Mr. ISSA. Ma'am, that was a yes or no, if you don't mind.

Ms. ROSE. Oh. Then no.

Mr. ISSA. Oh. OK.

Mr. Stout, I'm going to go for a differing opinion. The fact that Spirit's gates are all being sold off to competitors is that, in fact, by definition, as great or greater a barrier to entry than, in fact, the consolidation under the previously asked for one or the other mergers would have been? Meaning that the gates that were not shared, the gates that were expanded, the ability of—we'll just take JetBlue as the example. Those gates were a major factor—not the aircraft, not the pilots, all of which are important, but ultimately, access to routes, bases, and operations, in fact, are sometimes the hardest to get at the most desirable airports. Isn't that true?

Mr. STOUT. From my understanding, that's correct.

Mr. ISSA. As we're looking at antitrust relative to aviation, and I'm going to go to the Governor in a moment, we are looking at whether the opportunity for competition is there, every bit as much as the professor's narrow theory that an entity that was losing money because they said we'd like to turn around, we hope to turn around, we have a plan to turn around, somehow was a perfectly good reason to take a money-losing airline and not sell it to an airline that might, in the combination, make money.

Mr. STOUT. Your question is allowing competitors to enter, would that have helped offset some of the concerns about that transaction? Is that correct?

Mr. ISSA. Correct.

Mr. STOUT. I believe that's correct.

Mr. ISSA. Second, in your opening statement, you said something that was very profound. Everytime we in Washington or our agencies create new rules, new nice-to-have, socially interesting, and responsible rules, we do not disfavor the large airlines. We, in fact, hurt the very entities like Spirit that want to offer a low budget and do not necessarily have the means of a United or American. Is that correct?

Mr. STOUT. Yes. I believe that is correct.

Mr. ISSA. Thank you. Governor, welcome. For more than 12 years, you led a State successfully. You're now looking at a myriad of companies that are struggling against international competition. Now, this is an antitrust hearing, and we will focus on that more than anything else today. If, in fact, the relevant market are the domestic airlines, the four plus a plethora of smaller airlines, and

we ignore global giants, including ones backed by their governments, do we, in fact, almost guarantee the demise of the U.S.-based airline industry as we know it?

Mr. SUNUNU. Absolutely have to keep in mind that when you look at the worldwide market, you have so many actors out there that are State sponsored, they're State supported, State subsidized, and they aren't free markets. Again, to ignore that fact on a competitive basis would definitely be to our demise. We are competing against entire governments—as individual airlines, we are effectively competing against the financial wherewithal of entire governments.

Mr. ISSA. Now, I'm going to touch on the same subject that I didn't get the answer I wanted from the professor on. If we, the Federal Government, use our ability to lean into expanding routes, modernization, and places to put the aircraft when they're on the ground, if we modernize that and make more of them available, will we inherently give an ability for entrants to new and competitive airlines?

Mr. SUNUNU. Absolutely. I think Breeze is a good example. I don't represent Breeze, but Breeze is a fairly new airline opening up at gates that might not be traditional airports. Gate access and slot access and competition there is very important.

Mr. ISSA. Thank you. Mr. Stout, with the remaining time, should this Committee look at referring to the other Committees of jurisdiction the idea that we do lean into that, and we also look at the barriers created by overregulation, maybe even a two-tier system to allow smaller airlines to waive those large mandates?

Mr. STOUT. I think that's right. If we find ways to introduce markets into slot access, that we could have a lot of procompetitive benefits.

Mr. ISSA. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the Ranking Member of the Full Committee, Mr. Raskin again, for five minutes.

Mr. RASKIN. Mr. Chair, thanks much. Professor Rose, as a professor, you give grades, right?

Ms. ROSE. I do.

Mr. RASKIN. What grade would you give the antitrust enforcers in the Trump Administration today?

Ms. ROSE. I would have to fail them.

Mr. RASKIN. What letter grade would that be?

Ms. ROSE. "F."

Mr. RASKIN. Give them an "F"?

Ms. ROSE. I do. I don't give that very often at MIT, but in this case, I think it's fully merited.

Mr. RASKIN. What's your justification for that?

Ms. ROSE. That we no longer have an antitrust enforcement agency at the Department of Justice that's based on principles of evidence. It seems, instead, to be based on principles of either who has the Administration's ear or their willingness to pay.

Mr. RASKIN. It's a game of political influence rather than objective economic factors.

Ms. ROSE. As an outsider, it appears to be the case.

Mr. RASKIN. I saw an article a couple days ago in *The Wall Street Journal* titled, "They can't fly Spirit anymore so they're taking the bus instead." It reported that Greyhound and other bus services saw passenger traffic increase 30 percent on the 130 routes that they had shared with Spirit. What does that surge in bus travel say about the importance that Spirit Airlines had for air travel?

Ms. ROSE. That's exactly what I alluded to in my testimony, that Spirit was really focused in this model of stripping down fares to be the lowest possible. Other airlines, while they're making inroads into that, do not have the same impact. Many passengers who flew on Spirit could not afford the higher fares at other airlines. As a consequence, they're either not flying or not making the trip.

Mr. RASKIN. Are you basically saying that the combination of terribly foolish policy decisions, like the unilateral illegal tariff war against the world and the unilateral illegal war in Iran, with the consequent jump in oil and gasoline prices, combined with weak antitrust enforcement, is causing this massive consolidation within the business economy?

Ms. ROSE. It's definitely contributing to it.

Mr. RASKIN. What are some of the problems associated with high levels of concentration and consolidation?

Ms. ROSE. Particularly, when consolidation or concentration happens because you're buying up your competitors, you tend to see higher prices, lower quality, less choice for consumers, and I think that follows right through to pocketbook issues that households are facing.

At the same time, you may see also workers have less ability to compete for their services with employers. You can also see wages going down and workers—

Mr. RASKIN. Can you explain that a little bit further? People understand why the diminished competition is terrible for consumers, but how do workers in the industry suffer from that kind of economic concentration?

Ms. ROSE. Let's say we've got three employers right now that are possible options for someone with my particular skill set. If we allow a merger between two of those, now I've only got two choices. The employers recognize that reduced competition. They don't have to compete as hard to get me to work for them. They don't have to pay me as much.

Mr. RASKIN. The parties justified the merger is needed to allow them to compete better with the Big Four airlines. Some written testimony argues for antitrust giving these cross-market efficiencies weight in making antitrust decisions. Can you explain, in simple terms, what this is and whether or not you support that analysis?

Ms. ROSE. Yes. It's a backdoor way to reintroduce the Borkian argument, the arguments Robert Bork made, which was to try and broaden the spectrum so large, so wide, that you couldn't really enforce the antitrust laws effectively.

What it's saying is, we might have some consumers who benefit and some who are harmed by the merger. Instead of recognizing that the antitrust laws say a merger is illegal if it substantially reduces competition in any relevant market, we should say, "Well, don't worry about those consumers that are being harmed. They're

not able to pay very much for their airfare anyway. They don't have very much income. They don't have very much demand. Let's instead protect the business travelers who would like to have the kind of expanded JetBlue options."

It's an argument you could make. It's not what our current anti-trust system says, and it would be an enormous mistake to go to that.

Mr. RASKIN. What would you say up until now the major anti-trust decisions have been by the Trump DOJ officials, who you graded "F," and what are the specific effects of those decisions?

Ms. ROSE. Well, we're seeing consolidation in media markets, both—take Paramount—Skydance, which has just been cleared, but also these local broadcast stations. That's going to increase advertising rates. It's going to reduce the diversity of views. It's going to make it more difficult for local broadcasters to sustain newsrooms. That's going to be a cost both in terms of the information that we have and in terms of the people who work in that market, and in terms of people who are looking to that for their news and their information content.

In other markets, like the Ticketmaster—the Live Nation Ticketmaster monopolization case, we're going to see continued abuse of consumers and higher fees.

Mr. FITZGERALD. The gentleman's—

Mr. RASKIN. Thank you, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back. I now recognize the gentleman from North Carolina for five minutes.

Mr. HARRIS. Thank you, Mr. Chair, and I thank all of you on the panel for being here today.

Governor Sununu, thank you for coming to testify today. I want to take just a moment to talk about the past interactions Congress has had with the airline industry. We've already touched on it this morning that Congress passed the Deregulation Act in 1978. The goal was free up the airline industry from the burdensome, inefficient government boards that dictated the fares, routes, and new entry to the market.

I'd really like to know, from your experience, how did the Airline Deregulation Act change the way, in your mind, that the airline industry is regulated? How did that deregulation really benefit customers?

Mr. SUNUNU. Well, again, it opens up a true free market as opposed to having the government decide what the fares are going to be and who can have what routes. Free market competition works, without a doubt. The proof in that is just let's go to pricing. I'm a big believer that nothing shows competition more than the price. In the late 1970s, let's call it what it was. Basically, rich White people could fly on a plane, right? Today, almost any American, through a variety of different ways, can afford to fly from point A to point B. We have ultra-low-cost carriers. We have multiple routes. We have more competition if you want to go to—and that's the other definition of competition that's very important here. It's not just the overall number of carriers. When I go to buy a ticket, oh, I have four, five, or six carriers going from Wichita to Dallas. Now, they're all competing on that exact same route. We have more competition per route than ever before. That is allowed now, right?

Because they can compete freely, and it's not the government saying, "Well, you're going to go here, and you're going to go there."

On pricing alone, it has been a game changer. On low-income and everyday Americans, it's been an absolute game changer. On the ability for the airlines themselves to create their own models, one of the challenges I would say Spirit has—they had a lot of challenges. There's a lot of reasons Spirit went bankrupt. One of the challenges was some of the bigger carriers said, "we're going to compete." We're going to provide a basic economy ticket that we didn't provide before at a very low-cost level, and the government doesn't get involved in the economics of that, to provide more options. It isn't just one carrier for low-income families or folks that don't have the money to spend for the extra frills. More carriers were competing at a lower cost level. That's all because of the deregulation opportunities that came from the late 1970s.

Mr. HARRIS. In that same vein, in what ways would you say—I know part of this hearing is looking at when to regulate and when not to regulate or deregulate. In what ways do you think Congress maybe specifically could further deregulate the airline industry to benefit consumers?

Mr. SUNUNU. One area where the airlines have taken a clear position; first, the airlines do a lot for their customers, right? They put over \$1 billion of their own money into compensation. They already have massive refund policies. Please understand there's a big difference between a refund—your flight didn't take off, you get your money back—and compensation, which is like the punitive penalty. The airlines and some of the regulatory proposals that we've seen in the past basically said, "We're going to penalize you for acts of God. There's a huge weather storm. The plane didn't take off. You now have to write not just a refund but compensation on top of that." Right? An airline wanted to change their tail number for a certain reason. Oh, that's a canceled flight. No, the flight isn't canceled. We're just changing the tail number. Nope. The previous administration said, "No, that's going to count against you as a"—so it's things that are out of our control which then burden us which, ultimately, those costs probably get passed down to the consumer.

That's been the hardest part. We're an industry that has an average profit margin of 4½ percent. Virtually every dollar the airlines make go back into airports and better products and all that sort of thing. Additional regulations—right? Some regulations have value. All regulations have cost. Right? You have to understand that kind of the pros and the cons there, and those costs, ultimately, unfortunately, would probably have to go down a lot to the customers. More regulation can be very burdensome for the customer in terms of cost.

Mr. HARRIS. Thank you, sir. Mr. Ravich, in my final minute here, I want to touch base with you on this topic of cabotage, if I may, and referring to the practice of a foreign air carrier operating between two U.S. airports. Under current law, I'm told the United States only allows for cabotage when authorized by the Secretary of Transportation. How might cabotage increase competition and benefit consumers, Mr. Ravich?

Mr. RAVICH. Congressman, thank you for the question.

Cabotage is a maritime term, the concept being that a foreign carrier can operate domestically. British Airways could fly from Tampa to Toledo or something. You would have competition. You'd have more firms in the marketplace potentially, perhaps an infusion of capital, and all the competition that flows there from.

The issue, of course, is what's already been referred to, which is how those carriers are subsidized or sponsored. There are some national security concerns. It is something worthwhile to at least explore and understand how you might get more firms into the marketplace.

Mr. HARRIS. Very good. Thank you. With that, Mr. Chair, I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the gentlewoman from Vermont for five minutes.

Ms. BALINT. Thank you, Mr. Chair. I thank the witnesses for your time today.

Professor Rose, in April, Transportation Secretary Duffy said, quote, "There is still room for mergers in the aviation industry." I want to get your take on that. Do you agree with that assessment? Still room for mergers?

Ms. ROSE. There may be, but only in a very specific part of the market. I do not anticipate that there is room—if you care about competition—for the Big Four to be acquiring additional carriers.

There could be an argument—the two of the smaller carriers who don't have much overlap, have complementary networks, might be stronger if they merged operations. That would have to be something that you'd look at carefully at the evidence. I wouldn't want to rule it in and out. It's very important that you look at where there's room to merge, and I don't see that at the top.

Ms. BALINT. That's an important distinction. You have touched on this, but just to make it really clear for my constituents back home. From your perspective, what would be the effects of further mergers in an industry that's already incredibly consolidated?

Ms. ROSE. We're just going to see higher prices. I want to make this point that while it is true that airfares in real terms have declined, we've seen dramatic reductions in airfares over time due to some of the benefits of opening up competition. That doesn't mean that the fares we're seeing today are as low as they might have been had we not allowed the industry to consolidate. There is interesting economic work that's been done that suggests that the Big Four, in particular, are behaving in a much more coordinated pricing, live and let live fashion that's raising airfares on routes that they compete on.

Ms. BALINT. I share those concerns. I'm wondering if we could turn for a moment about low-cost and ultra-low-cost carriers, the ULCCs that people have talked about today. There's research that argues that the presence of a ULCC in a market or on a specific route decreases base fares by as much as 20 percent. Earlier this year, there were press reports that two ULCCs, Sun Country and Allegiant, may combine.

What effect do these ULCCs play in the market? How would further consolidation among the ULCCs impact flyers across this country?

Ms. ROSE. Again, it depends on whether they're currently competing or whether they have complimentary networks with not much competition. If it's the latter, they could expand their operations, maybe they operate more efficiently because of that scale, and they could extend that benefit to more markets, that would be great. It's important how they affect markets, they do it two ways.

First, they offer consumers who buy tickets on their flights much, much lower fares.

Second, as we mentioned before, they force incumbent airlines on the routes that they enter to reduce their fares. That's extending the benefits across a wide set of flyers, many of whom would never have purchased a ticket on the—

Ms. BALINT. I agree. I want to touch on how companies are navigating the Trump Administration's antitrust approach as it were. Antitrust defense lawyers are telling their clients they should hire lobbyists and political fixers with close connections to the White House to get their deals past antitrust enforcers. We've heard from whistleblowers, like Roger Alford, who have described a pay-to-play environment in DOJ antitrust.

When you were at DOJ, Professor Rose, especially in your time working on the JetBlue–Spirit case, did the President ever lay in with you or your team?

Ms. ROSE. Absolutely not. In fact, we weren't even allowed to be at meetings with White House officials, not related to antitrust topics, but if it was for a sector where we had an antitrust investigation going on.

Ms. BALINT. From your perspective, this is outrageous. The shift is completely and totally outrageous?

Ms. ROSE. Absolutely.

Ms. BALINT. Why is it so important that this doesn't happen, that you don't have a President interfering?

Ms. ROSE. Because if we have a pay-to-play system, both businesses that want to operate honestly, effectively, and consumers and workers all lose. We're subject to the capricious whims of whoever's willing to pay more to get the outcome that they want.

Ms. BALINT. I agree. We have bipartisan agreement in this room that air travel—maybe we do, maybe we don't, actually, now that I listen to some of my questions from my colleagues.

If you ask regular Americans, they think things aren't working very well for them in the flying public. History has shown us that Congress has policy levelers that we can pull here. Whether it's a return to a pre-1978 regulation model or stronger oversight or passing laws to break up these massive airlines, the traveling public wants change.

We all fly every week. I can tell you, when I'm sitting in that waiting room, I don't hear people saying things are working great here, we feel really great about the state of the airlines today.

I turn to you, Professor Rose, for a final word. What should Congress do to ensure a more competitive industry going forward?

Ms. ROSE. Keep our eye on the ball with respect to antitrust. Some of these arguments about how to expand infrastructure, reducing barriers to entry could be an enormous benefit.

Ms. BALINT. Thank you, Professor Rose. I yield back.

Mr. FITZGERALD. The gentlelady yields back. I now recognize the Chair of the Full Committee, Mr. Jordan, for five minutes.

Chair JORDAN. Thank you, Mr. Chair. Mr. Stout, there are four big players, right, four big airlines?

Mr. STOUT. Yes.

Chair JORDAN. United, Delta, and American. Then, Southwest is big, but not quite as big as the other three. Is that right?

Mr. STOUT. That's correct.

Chair JORDAN. Then, there's a second category, this low-cost carriers, sort of in the middle. That's people like JetBlue and airlines like that. Then, you have the super-low cost, the ultra-low cost: Frontier, Allegiant, and others, right?

Mr. STOUT. Correct.

Chair JORDAN. That's the state of play?

Mr. STOUT. So far, yes.

Chair JORDAN. OK. One of the guys in the middle was going to buy one of the guys in the smaller category. Is that right? JetBlue was going to buy Spirit.

Mr. STOUT. That's right.

Chair JORDAN. OK. By the way, what are the Big Four? What percentage of the airline industry is the Big Four?

Mr. STOUT. The numbers I've seen are about 75 percent, but I've heard 80 or a little bit lower—

Chair JORDAN. Seventy-five to 80 percent. So pretty big. Then, the JetBlue–Spirit was going to be what percentage of the business then?

Mr. STOUT. I don't remember the exact number.

Chair JORDAN. If that merger would have happened—

Mr. STOUT. It was a much smaller percentage.

Chair JORDAN. Yes, but I heard like 10 percent?

Mr. STOUT. It was something like that, yes.

Chair JORDAN. All right. This is proposed a couple of years ago, like three or four years ago. A couple years later, it's like the Justice Department sues; says, no, you can't do it, this is bad; Ms. Rose says it's terrible, and it all falls apart. Is that right?

Mr. STOUT. That's correct.

Chair JORDAN. We've got this famous tweet now from Senator Warren. She said,

I've warned for months that a JetBlue–Spirit Airlines merger would have led to fewer flights and higher rates.

Seems to me now that Spirit's went out of business, we have got fewer flights and higher rates. Is that true?

Mr. STOUT. I believe that is correct.

Chair JORDAN. Yes. Maybe if they'd have merged, we wouldn't have that, right?

Mr. STOUT. That's correct.

Chair JORDAN. Yes. Ms. Rose said, "JetBlue was going to raise prices 30 percent." Would raising prices by 30 percent still be lower than the Big Four?

Mr. STOUT. It would, and it would also still provide airline services where now there's none.

Chair JORDAN. Right. Right. There would still be lots of employees at Spirit probably still working.

Mr. STOUT. Right. Effectively, the price is infinite now because there is no option.

Chair JORDAN. How many Spirit employees lost their job, do you know?

Mr. STOUT. I actually don't have that number, sir.

Chair JORDAN. Seventeen thousand people lost their job because the Biden DOJ said, "no, we don't want a middle-class, lower-cost airline buying a super low-cost airline." Even if they raised prices 30 percent, it's still lower than the Big Four. They would account for 10 percent of the market and be able to compete against the 80 percent. What am I missing in there? Is that accurate?

Mr. STOUT. No, I think that's accurate.

Chair JORDAN. Yes. The Biden Administration said, "no, we can't do that." Elizabeth Warren even said it's going to help consumers, when today, in fact, because Spirit's out of business, there are less flights—less flights, less people working, 17,000 thousand people out of a job.

Mr. STOUT. That's correct, sir.

Chair JORDAN. All they want to do is talk about the Trump Administration antitrust?

Mr. STOUT. Well, part of the problem is that this is an antitrust doctrinal problem. The Biden DOJ was actually pursuing antitrust case law the way it is established. Part of what I've been trying to be here today to convey is that we do, in fact, need to think about out-of-market efficiencies when we're looking at these competition concerns. Because JetBlue providing more extended service was a benefit to consumers that was completely discounted under current antitrust doctrine. This Committee has the jurisdiction to solve that problem.

Chair JORDAN. I think we do too. Mr. Ravich, anything you want to add to that?

Mr. RAVICH. No, I would add something like this, which is Spirit is an example of deregulatory success. They created a completely fresh innovation that actually—

Chair JORDAN. Fresh they named it after them, right?

Mr. RAVICH. Right. Their yellow planes were remarkable.

Chair JORDAN. They were so unique, so new that they actually called it the Spirit effect in the airline industry. Imagine that.

Mr. RAVICH. Yes, sir.

Chair JORDAN. Elizabeth Warren says, "no, no, no, we're going to put them out of business, not let them continue." We can't let JetBlue buy. Oh, we can't have a merger. Because five big people competing would be somehow harmful to consumers when right now it's four big players. That makes no sense to me. I didn't mean to jump in. Keep going.

Mr. RAVICH. No, I have nothing to add. Mic drop on that.

Chair JORDAN. OK. Governor, you get the last minute to hopefully educate the Committee on why we need to do things the right way at the Justice Department versus how it was done before. Anything you want to add?

Mr. SUNUNU. You want me to free form?

Chair JORDAN. Oh, yes.

Mr. SUNUNU. No, well, look, I would just—when we talk about—the one thing I've picked up here is, today, 46 percent of all pas-

sengers fly on low-cost or ultra-low-cost carriers. That number was about 25 percent in the year 2000. It was about four percent around the time of deregulation. More people are flying on these other low-cost carriers and low-cost carriers than ever before, which is an opportunity. I would just caution, I know 75–80 percent has been thrown around. You have to be careful. That can be miles traveled, that can be number of flights. When you look at actual number of passengers, they have about 50 percent of—low-cost and ultra-low-cost carriers. That's a great thing.

Chair JORDAN. Yes.

Mr. SUNUNU. Right? That increased competition with low-cost pricing has forced the big guys to create low-cost models that they traditionally didn't have to allow, again, more competition for lower-income families.

Chair JORDAN. Imagine that. Competition in the marketplace.

Mr. SUNUNU. It works.

Chair JORDAN. Imagine that. Mr. Chair, I yield back.

Mr. FITZGERALD. The Chair yields back. I now recognize the gentleman from Illinois.

Mr. GARCIA. Thank you, Mr. Chair. As my Democratic colleagues have laid out, Republican attempts to blame the Biden Administration for the collapse of Spirit is nonsense. It's a distraction from the Iran war, which is illegal, unpopular, and cruel. It was fuel prices that was a major factor in Spirit going under. It's a distraction from the cesspool of corruption in the DOJ Antitrust Division and what it's become. It's a distraction from the real competition issues facing commercial aviation today.

Despite the rosy picture that Governor Sununu paints, only 31 percent of Americans have a positive view of the airline industry, and consolidation has fueled anticompetitive practices that are ripping off constituents like mine and hurting the aviation system.

We're seeing these practices, for example, at Chicago O'Hare, which is the only dual-hub airport in the country. That competition seems to bother United CEO Scott Kirby. Mr. Kirby has said that his long-term plan is for United to take over American's gates and threaten to add, quote, "as many flights as are required," crowd out American.

After United tried to flood O'Hare with unprofitable flights, the FAA imposed a flight cap to address congestion that would have overstressed the system and jeopardized safety. This turf war and the flight cap likely influenced Southwest's decision to leave O'Hare and the decisions of low-cost carriers to reduce capacity there as well.

Professor Rose, how has airline consolidation and the rise of fortress hubs led to more anticompetitive practices like what we're seeing at O'Hare?

Ms. ROSE. I want to first note that, as you did, how the airlines can confer benefits for local travelers by offering frequent nonstop service to many destinations. The economics literature shows that hub airlines can cement their market power and high fares by tactics to keep their rivals small or to force them out, as you've alluded to.

Chicago has long benefited from competition between two hub airlines at O'Hare, giving them the benefits of that intense set of

offerings but constraining the anticompetitive effects. The evidence shows that United seems to be working to reduce those competitive constraints. Unchecked, it could have enormous adverse consequences for Illinois travelers.

Mr. GARCIA. Thank you. I want to discuss another anticonsumer practice: surveillance pricing. Last year, Ranking Member Nadler and I demanded answers after Delta executives indicated that they were partnering with an Israeli AI pricing company to adopt surveillance-based pricing.

Governor Sununu, let me ask you, do any of your members charge individualized prices to consumers based on personal information, like purchase history, web browsing behavior, geolocation, social media activity, or financial status?

Mr. SUNUNU. One hundred percent absolutely not. Surveillance pricing is different than dynamic pricing. Dynamic pricing, virtually every industry uses surveillance pricing, as you've pointed out, looks at personal information. We absolutely do not participate in that.

Mr. GARCIA. Well, since these companies claim that they're not engaged in surveillance pricing, would Airlines for America support legislation banning this practice?

Mr. SUNUNU. Banning surveillance pricing?

Mr. GARCIA. Yes.

Mr. SUNUNU. A hundred percent. Yes, it's terrible.

Mr. GARCIA. If you're not going to adopt surveillance pricing, then you should have no objection to banning it. From an antitrust enforcement to reforming gate and slot allocations, there are many other policy solutions that would increase competition, lower prices, and protect workers. Congress should be enacting them, not covering up Trump's corruption and criminality.

Before I yield back, I would ask for unanimous consent to submit for the record my letter with Ranking Member Nadler to Delta about surveillance pricing. I also ask unanimous consent to submit this January 2024 report titled, "How to Fix Flying: A New Approach to Regulating the Airline Industry."

Thank you, and I yield back.

Mr. FITZGERALD. Without objection. We now recognize the gentlelady from Vermont for a UC request.

Ms. BALINT. Mr. Chair, I have some UCs. Thank you, Mr. Chair.

First, from *Reuters*, "Spirit Airlines shuts down, industry's first Iran war casualty."

Second, from the *BBC*, "Trump says, quote, 'I love the inflation' as U.S. prices rise at fastest rate in 3 years."

Third, from *Frommer's*, "U.S. Airlines Try to Abandon Passenger Rights and Performance Reports—to Secretly Police Themselves." Airline lobbyists are pressuring regulators to abandon your protections.

Fourth, from the Travel Technology Association, a prepared statement for the record.

Mr. FITZGERALD. Without objection.

Ms. BALINT. Thank you.

Mr. FITZGERALD. I now recognize the gentlewoman from Wyoming for five minutes.

Ms. HAGEMAN. Thank you. I do want to remind everyone that the Spirit–JetBlue merger failed because of the Biden Administration’s outright hostility to mergers during those four years when they were in office.

Lina Khan took the position that no merger would be allowed unless the parties ended up worse off than before, which I think is incredibly, stunningly stupid. That was the position that they took, and now we are where we are. That Mr. Stout and Mr. Ravich and Governor Sununu, you have described the economic consequences of those kinds of decisions.

One of the frustrations that I have had being in Congress is that I have not found many people in Washington, DC, who understand the concept of opportunity costs. I would love it if we had a requirement—maybe we can pass a constitutional amendment that before you can become a Member of Congress, you actually have to take an economics class to learn something that basic.

I come from Wyoming, and despite being one of America’s most rural States, Wyoming’s air service is a significant economic contributor. Wyoming’s 39 public-use airports collectively contribute approximately 3.5 billion in annual economic impact, while nine commercial service airports support over 20,000 jobs each year. Over 875,000 passengers boarded flights departing from Wyoming’s airports in 2025, with my State ranking seventh nationally in passenger growth since 2019.

Wyoming has the second-highest average fare in the country. It is 53 percent more than the national average. With new industries moving into Wyoming each year and tourism being one of our largest business sectors in terms of economic impact, maintaining accessible, reliable air service is critical for economic growth and development. In many rural markets, there’s effectively only one network carrier providing meaningful connectivity.

Mr. Ravich, what metric should Congress use to determine whether competition is improving for rural consumers?

Mr. RAVICH. Congresswoman, thank you for the question. Some of the metrics you gave are compelling for Wyoming for example, right. You can look at those things and see that there’s a magnetism to Wyoming, Cheyenne, et cetera.

We don’t want to disconnect certain communities. That was always a concern of deregulation. At the same time, government subsidization of airlines, making them go to places that aren’t necessarily compelling business cases, I think is a fair thing to say. We just have to sort of balance those opportunities—economic opportunities for firms to reasonably decide what business model they want, while also giving Americans and emerging places and dynamic places the opportunity to travel where they want and can.

Ms. HAGEMAN. OK. Governor Sununu, in your written testimony, you cite that 5.5 percent of U.S. domestic market passengers traveling in city pairs were left with just one carrier. With limited exceptions, this statistic is broadly applicable to Wyoming, as most of our communities solely rely on United Airlines for commercial air service.

What responsibility do major airlines have to maintain access to the national air transportation system for rural communities?

Mr. SUNUNU. Let me, if I may, begin by saying, I think you're absolutely correct, Wyoming especially is disproportionately—even as you're talking rural areas—really disproportionately challenged when it comes to access, specifically in Cheyenne and Jackson. I know the airlines have looked at different opportunities there.

A couple of things. Rural access is absolutely critical, right? That's about choice. That's about competition. What we find is that consumers are making interesting choices. They're not just looking at their smaller airports. They're willing to travel further because smaller airports are typically more expensive, unfortunately. That's why EAS, the essential air service (EAS) program, is vital. We're huge supporters of it. Frankly, it should probably be expanded to make sure that these connectivity points are really there.

To your point, this is where—in some markets you do have five, six, seven, and eight different competitors flying from point to point; not in Wyoming.

Ms. HAGEMAN. Not in Wyoming.

Mr. SUNUNU. Not in Wyoming. It's really, really tough. Again, anything we can do to make sure that with—on a deregulatory basis, making sure that the financial opportunities flow to the customer, not to the government or—to the customer, those opportunities will flow there, so that competition can thrive reducing the cost on airports, making sure that infrastructure is done, making sure that—again, I go back to even looking at our national airspace, right.

Right now, we manage—every little pocket manages its own little part of the national airspace, as opposed to this new modernized system that where Bryan Bedford and the FAA are bringing into play, which will allow more efficiency, especially in rural areas that right now you could have small airports that could have unmanned towers right now, right. A major carrier isn't going to fly there necessarily. By having a more comprehensive air control system as well you are going to have more opportunity in rural areas.

Ms. HAGEMAN. I am out of time, but if you have an opportunity, I would love for each of you during the course of this hearing to give one example of what you think Congress should do to improve this situation. Thank you. I yield back.

Mr. FITZGERALD. The gentlelady yields back. I now recognize the gentleman from Georgia for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair. It's been years since the Biden Administration challenged the acquisition of Spirit by JetBlue. It's been years.

Isn't it a fact that Spirit collapsed because Trump's unconstitutional war of choice with Iran caused fuel prices to surge uncontrollably? Isn't that a fact, Professor Rose?

Ms. ROSE. That's what the Spirit CEO said.

Mr. JOHNSON. We have all felt the pain at the pump with our cars, and the price of jet fuel went up even more steeply than the price of gasoline. Once Trump went to war with Iran, the price of jet fuel became more than double the cost that was contemplated in Spirit's restructuring projections, costing Spirit nearly \$100 million more than they were expecting in March and April alone. In fact, as you note, Professor Rose, their bankruptcy filings admit that it was untenable fuel costs that led to their downfall.

The impact of Trump's reckless war extends beyond Spirit. The Bureau of Transportation Statistics reported that airlines paid nearly \$6.5 billion in fuel costs in April 2026, which is 78 percent higher than what they paid a year before the war began. Isn't that right, Mr. Sununu?

Mr. SUNUNU. No, it's not right.

Mr. JOHNSON. OK. Well, isn't it correct that airlines could not absorb the added cost of the Iran war and the price of jet fuel, and so that's why they had to raise prices over 30 percent—

Mr. SUNUNU. Oh, the airlines as a whole, yes, sir. Sorry. Spirit Airlines was in major financial distress years before the issue in Iran, though.

Mr. JOHNSON. Iran pushed them over the brink, though.

Mr. SUNUNU. Two months of increased fuel costs did not sink Spirit. That's not what sunk Spirit.

Mr. JOHNSON. Well, it certainly wasn't the denial of the merger that did it. Let me move on.

Even people who are not flying are hurting because of Trump's war of choice. The diesel prices are skyrocketing. Trucks that deliver goods to grocery stores use diesel, so they need to pass those expenses on to consumers. In just the first few months of this unconstitutional war, American households paid an extra \$450 on average. Wholesale prices are rising, hiring plans are delayed, and farmers cannot get their fertilizer for their crops.

Trump went in without a plan, and who knows how long this war is actually going to last. American businesses and consumers were finally free from Trump's tariffs just in time to be slapped down again by a price increase from this war of choice.

Professor Rose, one of the phrases in your written testimony really struck me. You said that you were concerned that under the Trump Administration, antitrust enforcement is turning into, quote, "a political favor factory." I don't think it could be put any better than that.

Can you talk a little bit more about why the entire system suffers when the wealthy and the politically connected can buy the outcome that they prefer?

Ms. ROSE. Yes. I always thought of antitrust as being the domain that preserved a consumer- and worker-facing interest in competition. Honestly, for other small businesses or businesses that want to grow preserved their ability to expand. When you don't have that protection, then you empower companies, particularly stronger companies or companies who are seeking competitive advantage and monopoly rent, to raise prices, to create barriers to entry to competition, and to restrict others from coming into the market.

As I mentioned before, you can have workers getting paid less because you're reducing competition for their employment, and all of that has tremendous cost for the American people.

Mr. JOHNSON. Thank you. Mr. Sununu, I find it curious, I'm curious about your disagreement with the Chair of Spirit admitting that it was untenable fuel cost that was the cause of their demise. You take issue with that. I don't understand why.

Let me ask Professor Rose. Do you think that concentrated, unchecked economic power poses a threat to freedom?

Ms. ROSE. Yes, sir, although I'm not sure that's accessible through the antitrust laws, at least as currently written.

Mr. JOHNSON. All right. Thank you. I'm out of time. I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the gentleman from Kansas for five minutes.

Mr. SCHMIDT. Thank you, Mr. Chair. I want to thank all our witnesses for being here.

Listening carefully to the questioning, the back-and-forth, as always, it's been informative, and listening to our friends on the other side who've talked a great deal about fuel cost. I'd like to take up that line of discussion, Governor, perhaps with you, knowing that you most directly reflect—your folks have used the industry.

I would hope the answer to this question is no, but, Governor, would it surprise you—

Mr. SUNUNU. No.

Mr. SCHMIDT. Thank you very much. That's the best witness I've had all day. That's good. Would it surprise you to know that jet fuel prices on average at the height of the war in Iran were the same as they were in April 2022?

Mr. SUNUNU. No.

Mr. SCHMIDT. Of course, in April 2022, we were about two months after the Russian invasion of Ukraine. Isn't that right?

Mr. SUNUNU. There was a brief spike there, yes.

Mr. SCHMIDT. It was only three months after April 2022, in July 2022, that the merger of JetBlue–Spirit was publicly proposed. Isn't that right?

Mr. SUNUNU. I believe that's right.

Mr. SCHMIDT. At the time the antitrust reviewers in the prior administration began their consideration and ultimately review of the merger, didn't they know or shouldn't they have known that fuel price spikes were not only a possibility but a recent reality?

Mr. SUNUNU. I would imagine so, yes.

Mr. SCHMIDT. Would they have taken that into account in their review?

Mr. SUNUNU. I would have hoped so, yes.

Mr. SCHMIDT. Would airline managers, leadership, have taken that into account in their planning for the future survivability of their firms?

Mr. SUNUNU. Yes. I would just say each of the airlines hedges against fuel in very different ways, and some of them don't hedge at all. They used to hedge; they don't quite anymore in terms of how they manage the risk. They all manage that risk profile differently.

Mr. SCHMIDT. Let me talk a little bit about fuel prices, Governor, because it's been so central to today's discussion, I think it's very relevant. Going forward, there are going to be future fuel spike—high spikes through international events, through other market factors. It is going to happen, as it happened in April 2022, and it happened again within the last six months or so. Something will happen down the road.

As airline leadership, managers, whether they're from the Big Four or from the midsize or from the small planes, they all pay the same fuel prices. Don't they, Governor?

Mr. SUNUNU. Relatively, yes.

Mr. SCHMIDT. They all have to consider planning to hedge against that risk of a spike in prices. Isn't that right?

Mr. SUNUNU. Yes, they have to plan. That's for sure.

Mr. SCHMIDT. As they're planning, do they take into account ways that they might be able to mitigate the price of jet fuel going forward?

Mr. SUNUNU. Yes, they do, and they all do it a little bit differently.

Mr. SCHMIDT. Would that include a discussion of ultimate forms of jet fuel that might be coming onto the market in ways that are commercially relevant?

Mr. SUNUNU. Of course. They're all big believers in users in SAF, as you know, and that continues to rise.

Mr. SCHMIDT. Let's talk about SAF just a little bit. It's obviously an interest of ours in farm country. We care a lot about it. We care about it not only because it helps our producers and it helps our local economies when it's produced domestically, and the investment comes here, but also because it helps our consumers who are ultimately flying on the aircraft that have the potential.

Can you share with us a little bit about how a mature domestic SAF industry at scale could have an effect on the planning for airlines to be more competitive, including price competitive for consumers?

Mr. SUNUNU. Sure. As the industry matures, the economics get better and better, right? Because, like any fairly new technology—and it is a fairly new introduction into the industry—it starts out fairly costly. Lots of new—I don't want to say barriers to entry but, costs are indeed—all our airlines are investing in various forms of research and development to make SAF more accessible, easier to produce, whatever it may be; trying to get more companies that actually make—giving more time for more companies that actually make SAF to come onto the market. I actually just met with one of the largest SAF manufacturers, and they're building a brand-new plant. They're expanding.

There's no doubt that over time prices should definitely come down, be much more competitive with standard jet fuels, and provide more options, potentially, as you may see severe spikes in the future.

Mr. SCHMIDT. Are there ways that Congress could better partner with the industry to help that transition to scale occur?

Mr. SUNUNU. Look, any sort of infrastructure investment. I would say, for airlines in particular, some of the investments we look at are the transportation, right? You have your own transportation system for SAF because you're not mixing it with other traditional jet fuels.

Permitting. Permitting reforms to make sure that we can build and develop, whether it's folks that want to develop SAF, or the pipelines to move SAF from point A to point B, or getting storage tanks approved at various airports. That's one of the bigger barriers because you need a whole separate system for it, so that requires a lot more infrastructure. Permitting and investment in that infrastructure would be very helpful.

Mr. SCHMIDT. These are discussions that will involve everybody in the industry, except Spirit, right? Is it not relevant to them anymore?

Mr. SUNUNU. Not anymore, unfortunately, yes.

Mr. SCHMIDT. Mr. Chair, I yield back.

Mr. FITZGERALD. The gentleman yields back. I think we've gone through just about all the Members that are available today. I was just going to utilize my five minutes to ask two more questions.

Governor Sununu, this is a topic that came up a couple of times, just to dig into this a little bit more. At the slot-controlled airports, the incumbent carriers benefit by a use-it-or-lose-it system, right?

Mr. SUNUNU. That's right.

Mr. FITZGERALD. Do you think the slot system harms competition because of the way it's kind of designed?

Mr. SUNUNU. No. Well, a couple things. When a smaller carrier wants a slot, that's worked out between the carrier and the airport itself. If the carrier isn't happy or feels like they're being unfairly treated, there is an appeals process up to the FAA that they can use, but that's really a carrier-airport-type decision.

I would argue and let you know that more slots are allocated to low-cost carriers today than ever before, right. They have and continue to grow capacity.

Yes, the slots not—and by the way, not every airport is slotted. That's another thing to be aware of. Some airports are, some airports aren't.

One of the things I've learned in this industry is there's a saying, "if you've seen one airport, you've seen one airport." That's in terms of its structure, their management, their slot system, how they allocate, the infrastructure, and the airlines coming into it. Everyone is truly taken unique. Again, we want that broad variety. I represent a lot of airlines, right. I want everybody to have a fair shot at that pie.

Mr. FITZGERALD. Very good. Thank you. Mr. Ravich, what's your take on the slot system and the impact it has on overall operations nationwide?

Mr. RAVICH. Chair, I do think you've identified an issue that's worth the attention of this Committee. As Governor Sununu rightly points out, A4A even has a diverse constituency, right. There's no sort of monolithic airline industry. They even compete with one another, and they don't agree necessarily. Some of these airlines want the other airline slots, even with United and American are big airlines.

There is some anticompetitive pressure or tendencies in slots and gates that does need evaluation. I should refer to pending legislation, right, in the Senate with the gateway access law, which does have some merit to it.

Mr. FITZGERALD. Well, very good. That concludes today's hearing. I want to thank the witnesses for appearing before the Subcommittee today.

Without objection, all Members will have five legislative days to submit additional written questions to the witnesses or additional materials for the record.

Mr. RASKIN. Mr. Chair.

Mr. FITZGERALD. The gentleman is recognized.

Mr. RASKIN. I just want to add a couple of UC requests, if that's all right, Mr. Chair.

Mr. FITZGERALD. Yes.

Mr. RASKIN. First, the decision of the Reagan appointee, Judge Young, in *U.S. v. JetBlue Airways Corporation*, January 16, 2024.

Second, an article from *Law360* titled, "Biden-Era M&A Data Shows Continuity, Not Revolution."

Finally, this was an article February 21, 2025, "Spirit Airlines to exit Chapter 11 'within weeks' as court backs recovery plan." That, of course, was just a few days before the war started in Iran.

Mr. FITZGERALD. Without objection. With that, this hearing is adjourned.

[Whereupon, at 11:36 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=119409>.

