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107TH CONGRESS
1ST SESSION

S. 415

[Report No. 107-130]

To amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2001

Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. DORGAN, Mr. GRASSLEY, Mr. REID, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 19 (legislative day, DECEMBER 18), 2001

Reported by Mr. HOLLINGS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Aviation Competition
3 Restoration Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

6 (1) The airline industry continues to evolve into
7 a system dominated by a few large air carriers and
8 a handful of smaller, niche air carriers. Absent Con-
9 gressional action, access to critical markets is likely
10 to be foreclosed.

11 (2) In testimony before the Commerce Com-
12 mittee in 1978, the then-President of Eastern Air-
13 lines testified that the top 5 air carriers had 68.6
14 percent of the domestic market. If the mergers and
15 acquisitions proposed in 2000 and 2001 are con-
16 summated, the 5 largest network airlines in the
17 United States will account for approximately 83 per-
18 cent of the air transportation business (based on
19 revenue passenger miles flown in 1999).

20 (3) According to Department of Transportation
21 statistics, taking into account the proposed mergers
22 of United Airlines and US Airways, and of American
23 Airlines and TWA, there will be at least 20 large
24 hub airports in the United States where a single air-
25 line and its affiliate air carriers would carry more
26 than 50 percent of the passenger traffic.

1 (4) The continued consolidation of the airline
2 industry may inure to the detriment of public con-
3 venience and need, and the further concentration of
4 market power in the hands of even fewer large com-
5 petitors may lead to unfair methods of competition.

6 (5) A more concentrated airline industry would
7 be likely to result in less competition and higher
8 fares, giving consumers fewer choices and decreased
9 customer service.

10 (6) The Department of Transportation has doc-
11 umented that air fares are relatively higher at those
12 main hub airports where a single airline carries
13 more than 50 percent of the passenger traffic, and
14 studies indicate that unfair methods of competition
15 are more likely to occur at such airports, thus inhib-
16 iting competitive responses from other carriers when
17 fares are raised or capacity reduced.

18 (7) The General Accounting Office has con-
19 ducted a number of studies that document the pres-
20 ence of both high fares and problems with competi-
21 tion in the airline industry at dominated hub air-
22 ports.

23 (8) The National Research Council of the
24 Transportation Research Board has recognized that

1 higher fares exist in short haul markets connected to
 2 concentrated hub airports.

3 ~~(9) A Department of Transportation study indi-~~
 4 ~~cates that the entry and existence of low fare airline~~
 5 ~~competitors in the marketplace has resulted in a re-~~
 6 ~~ported \$6.3 billion in annual savings to airline pas-~~
 7 ~~sengers.~~

8 ~~(10) While the antitrust rules generally govern~~
 9 ~~mergers and acquisitions in the air carrier industry,~~
 10 ~~and will continue to do so, the public concern about~~
 11 ~~the importance of air transportation, the impact of~~
 12 ~~over scheduling, increasing flight delays and can-~~
 13 ~~cellations, poor service, and continued hub domina-~~
 14 ~~tion requires the Department of Transportation to~~
 15 ~~assert its authority in analyzing proposed trans-~~
 16 ~~actions among air carriers that affect consumers.~~

17 **SEC. 3. PUBLIC INTEREST REVIEW OF AIR CARRIER ACQUI-**
 18 **SITIONS AND MERGERS.**

19 ~~(a) IN GENERAL.—~~Subchapter I of chapter 417 of
 20 title 49, United States Code, is amended by adding at the
 21 end thereof the following:

22 **“§ 41722. Mergers and acquisitions**

23 ~~“(a) PROTECTION OF PUBLIC INTEREST; COMPETI-~~
 24 ~~TION TEST.—~~

1 “(1) IN GENERAL.—An air carrier may not ac-
2 quire, directly or indirectly, any voting securities or
3 assets of another air carrier if, after the acquisition,
4 the air carrier resulting from the acquisition would
5 have more than 10 percent of the passenger
6 enplanements in the United States (based on projec-
7 tions from the most recent annual data available to
8 the Secretary of Transportation) if the Secretary de-
9 termines that the effect of the acquisition—

10 “(A) would be substantially to lessen com-
11 petition, or

12 “(B) would result in unreasonable industry
13 concentration, excessive market domination,
14 monopoly powers, or other conditions that
15 would tend to allow at least 1 air carrier unrea-
16 sonably to increase prices, reduce services, or
17 exclude competition in air transportation at any
18 large hub airport (as defined in section
19 47134(d)(2)) or in at least 10 percent of the
20 top 500 markets for passenger air transpor-
21 tation in the United States.

22 “(2) EXCEPTION.—Notwithstanding paragraph
23 (1), such an acquisition may proceed if the Secretary
24 finds that—

1 “(A) the anticompetitive effects of the pro-
 2 posed transaction are outweighed in the public
 3 interest by the probable effect of the acquisition
 4 in meeting significant transportation conven-
 5 iences and needs of the public; and

6 “(B) those significant transportation con-
 7 veniences and needs of the public may not be
 8 satisfied by a reasonably available alternative
 9 having materially less anticompetitive effects.

10 ~~“(b) DOMINANT CARRIERS REQUIRED TO RELIN-~~
 11 ~~QUISH SOME GATES, FACILITIES, AND ASSETS AT HUB~~
 12 ~~AIRPORT.—~~

13 ~~“(1) IN GENERAL.—An air carrier may not ac-~~
 14 ~~quire, directly or indirectly, any voting securities or~~
 15 ~~assets of another air carrier if, after the acquisition,~~
 16 ~~the air carrier resulting from the acquisition would~~
 17 ~~be a dominant air carrier at any large hub airport~~
 18 ~~(as defined in section 47134(d)(2)) unless the Sec-~~
 19 ~~retary of Transportation finds that—~~

20 ~~“(A) the air carrier resulting from the ac-~~
 21 ~~quisition will provide gates, facilities, and other~~
 22 ~~assets at that hub airport on a fair, reasonable,~~
 23 ~~and nondiscriminatory basis to another air car-~~
 24 ~~rier that—~~

1 “(i) holds a certificate issued under
2 chapter 411 authorizing it to provide air
3 transportation for passengers;

4 “(ii) has fewer than 15 percent of the
5 average daily passenger enplanements at
6 that airport; and

7 “(iii) is able, or will be able, to utilize
8 the gate, facility, or other asset provided to
9 it at a reasonable level of utilization; or

10 “(B) gates, facilities, and other assets are
11 available, or will be made available in a timely
12 manner, on a fair, reasonable, and nondiscrim-
13 inatory basis to accommodate competitive ac-
14 cess to that airport by other air carriers.

15 “(2) LIMITATION.—Paragraph (1) does not re-
16 quire an air carrier to relinquish control, or other-
17 wise dispose, of more than 10 percent of the gates,
18 facilities, and other assets controlled by that air car-
19 rier at any airport, as determined by the Secretary.

20 “(3) PLAN REQUIRED.—Before the Secretary
21 may make a finding under paragraph (1), the ac-
22 quiring air carrier and the air carrier being acquired
23 shall file a joint plan in writing with the Secretary
24 that states with such specificity as the Secretary
25 may require exactly how the air carrier resulting

1 from the acquisition will comply with the require-
 2 ments of paragraph (1).

3 “(4) ENFORCEMENT OF PLAN.—If the Sec-
 4 retary determines, more than 90 days after the date
 5 on which an acquisition described in paragraph (1)
 6 is completed, that the air carrier has failed substan-
 7 tially to carry out the plan submitted under para-
 8 graph (3), the Secretary may—

9 “(A) withdraw approval of the acquisition;

10 “(B) withdraw authority for the air carrier
 11 to serve international markets; or

12 “(C) take such other action as may be nec-
 13 essary to compel compliance with the plan.

14 “(e) NOTIFICATION; WAITING PERIOD; FINAL
 15 RULE.—

16 “(1) IN GENERAL.—In order for the Secretary
 17 to be able to make the determination required by
 18 subsection (a)—

19 “(A) each air carrier (or in the case of a
 20 tender offer, the acquiring air carrier) shall
 21 submit a notification to the Secretary, in such
 22 form and containing such information as the
 23 Secretary may require; and

1 “(B) wait until the waiting period de-
 2 scribed in paragraph (2) has expired before ef-
 3 fecting the acquisition.

4 “(2) WAITING PERIOD.—

5 “(A) IN GENERAL.—The waiting period
 6 begins on the date of receipt by the Secretary
 7 of a completed notification required by para-
 8 graph (1)(A) and ends on the thirtieth day
 9 after that date, or (in the case of a cash tender
 10 offer) the fifteenth day after that date.

11 “(B) WAIVER; MODIFICATION.—The Sec-
 12 retary may waive the notification requirement,
 13 shorten the waiting period, or extend the wait-
 14 ing period (by not more than 180 days), in
 15 order to coordinate action under this subsection
 16 with the Department of Justice under the anti-
 17 trust laws of the United States.

18 “(3) COORDINATION WITH DOJ.—The Sec-
 19 retary and the Attorney General may enter into a
 20 memorandum of understanding to ensure that the
 21 determination required by subsection (a) is made
 22 within the same time frame as any Department of
 23 Justice review of a proposed acquisition under sec-
 24 tion 7A of the Clayton Act (15 U.S.C. 18a).

1 ~~“(4) FINAL ACTION WITHIN 180 DAYS.—The~~
 2 Secretary shall take final action with respect to any
 3 acquisition requiring a determination under sub-
 4 section (a) within 180 days after the date on which
 5 the Secretary receives the notification required by
 6 paragraph (1)(A).

7 ~~“(d) AIR 21 COMPETITION PLAN REVIEW.—The~~
 8 Secretary shall examine any hub airport affected by a pro-
 9 posed acquisition described in subsection (a) to determine
 10 whether that airport has complied with the competition
 11 plan requirement of sections 47106(f) or 40117(k) of title
 12 49, United States Code, and whether gates and other fa-
 13 cilities are being made available at costs that are fair and
 14 reasonable to air carriers in accordance with the require-
 15 ments of section 41712(c)(3). The sponsor (as defined in
 16 section 47102(19)) of any hub airport shall cooperate fully
 17 with the Secretary in carrying out an examination under
 18 this subsection.

19 ~~“(e) DEFINITIONS.—In this section:~~

20 ~~“(1) DOMINATED HUB AIRPORT.—The term~~
 21 ‘dominated hub airport’ means an airport—

22 ~~“(A) that each year has at least .25 per-~~
 23 cent of the total annual boardings in the United
 24 States; and

1 ~~“(B) at which 1 air carrier accounts for~~
 2 ~~more than 50 percent of the enplaned pas-~~
 3 ~~sengers.~~

4 ~~“(2) DOMINANT AIR CARRIER.—The term ‘dom-~~
 5 ~~inant air carrier’ means an air carrier that accounts~~
 6 ~~for more than 50 percent of the enplaned passengers~~
 7 ~~at an airport.~~

8 ~~“(3) CONTROL.—With respect to whether a cor-~~
 9 ~~poration or other entity is considered to be con-~~
 10 ~~trolled by another corporation or other entity, the~~
 11 ~~term ‘control’ means that more than 10 percent of~~
 12 ~~the ownership, voting rights, capital stock, or other~~
 13 ~~pecuniary interest in that corporation or entity is~~
 14 ~~owned, held, or controlled, directly or indirectly, by~~
 15 ~~such other corporation or entity.~~

16 ~~“(4) ENPLANEMENTS.—The term ‘passenger~~
 17 ~~enplanements’ means the annual number of pas-~~
 18 ~~senger enplanements, as determined by the Sec-~~
 19 ~~retary of Transportation, based on the most recent~~
 20 ~~data available.~~

21 ~~“(5) ASSET.—The term ‘asset’ includes slots~~
 22 ~~(as defined in section 41714(h)(4)) and slot exemp-~~
 23 ~~tions (within the meaning of section 41714(a)(2)).”.~~

24 ~~(b) SPECIAL RULE.—For the purpose of applying~~
 25 ~~section 41722 of title 49, United States Code, to an acqui-~~

1 sition or merger involving major air carriers proposed
 2 after January 1, 2000, that has not been consummated
 3 before February 15, 2001—

4 (1) subsection (c) of that section shall not
 5 apply; but

6 (2) the Secretary of Transportation shall re-
 7 quire such information from the acquiring air carrier
 8 and the acquired air carrier, or the merging air car-
 9 riers, as may be necessary to carry out that section,
 10 and shall complete the review required by that sec-
 11 tion within a reasonable period that is not to exceed
 12 180 days from the date on which the Secretary re-
 13 ceives the requested information from all parties.

14 (c) CONFORMING AMENDMENT.—The chapter anal-
 15 ysis for chapter 417 of title 49, United States Code, is
 16 amended by adding at the end the following;

“41722. Mergers and acquisitions”.

17 **SEC. 4. COMPETITIVE ACCESS TO GATES, FACILITIES, AND**
 18 **OTHER ASSETS.**

19 (a) Subchapter I of chapter 417, as amended by sec-
 20 tion 3, is further amended by adding at the end thereof
 21 the following:

22 **“§ 41723. Competitive access to gates, facilities, and**
 23 **other assets**

24 **“(a) DOT REVIEW OF GATES, FACILITIES, AND AS-**
 25 **SETS.—**Within 90 days after the date of the enactment

1 of Aviation Competition Restoration Act, the Secretary of
 2 Transportation shall investigate the assignment and usage
 3 of gates, facilities, and other assets by major air carriers
 4 at the largest 35 airports in the United States in terms
 5 of air passenger traffic. The investigation shall include an
 6 assessment of—

7 “(1) whether, and to what extent, gates, facili-
 8 ties, and other assets are being fully utilized by
 9 major air carriers at those airports;

10 “(2) whether gates, facilities, and other assets
 11 are available for competitive access to enhance com-
 12 petition; and

13 “(3) whether the reassignment of gates, facili-
 14 ties, and other assets to, or other means of increas-
 15 ing access to gates, facilities, and other assets for,
 16 air carriers (other than dominant air carriers (as de-
 17 fined in section 41722(e)(2)) would improve com-
 18 petition among air carriers at any such airport or
 19 provide other benefits to the flying public without
 20 compromising safety or creating scheduling, effi-
 21 ciency, or other problems at airports providing serv-
 22 ice to or from those airports.

23 “(b) AUTHORITY OF SECRETARY TO MAKE GATES,
 24 ETC., AVAILABLE.—The Secretary shall require a major
 25 air carrier, upon application by another air carrier or on

1 the Secretary's own motion to make gates, facilities, and
 2 other assets available to other air carriers on terms that
 3 are fair, reasonable, and nondiscriminatory to ensure com-
 4 petitive access to those airports if the Secretary deter-
 5 mines, on the basis of the investigation conducted under
 6 subsection (a), that such gates, facilities, and other assets
 7 are not available and that competition would be enhanced
 8 thereby at those airports.

9 “(c) DEFINITIONS.—

10 “(1) MAJOR AIR CARRIER.—In this section the
 11 term ‘major air carrier’ means an air carrier certifi-
 12 cated under section 41102 that accounted for at
 13 least 1 percent of domestic scheduled-passenger rev-
 14 enues in the 12 months ending March 31 of each
 15 year, as reported to the Department of Transpor-
 16 tation pursuant to part 241 of title 14, Code of Fed-
 17 eral Regulations, and identified as a reporting ear-
 18 nier periodically in accounting and reporting direc-
 19 tives issued by the Office of Airline Information.

20 “(2) ASSET.—The term ‘asset’ includes slots
 21 (as defined in section 41714(h)(4)) and slot exemp-
 22 tions (within the meaning of section 41714(a)(2)).”.

23 (b) CONFORMING AMENDMENT.—The chapter anal-
 24 ysis for chapter 417 of title 49, United States Code, is

1 amended by inserting after the item relating to section
2 41722 the following:

“41723. Competitive access to gates, facilities, and other assets”.

3 **SEC. 5. UNFAIR METHODS OF COMPETITION IN AIR TRANS-**
4 **PORTATION.**

5 (a) UNFAIR COMPETITION THROUGH USE OF GATES,
6 FACILITIES, AND OTHER ASSETS.—Section 41712 of title
7 49, United States Code, is amended by adding at the end
8 the following:

9 “(c) UNDERUTILIZATION OF GATES, FACILITIES, OR
10 OTHER ASSETS.—

11 “(1) IN GENERAL.—It is an unfair method of
12 competition in air transportation under subsection
13 (a) for a dominant air carrier at a dominated hub
14 airport—

15 “(A) to fail to utilize gates, facilities, and
16 other assets fully at that airport; and

17 “(B) to refuse, deny, or fail to provide a
18 gate, facility, or other asset at such an airport
19 that is underutilized by it, or that will not be
20 fully utilized by it within 1 year, to another car-
21 rier on fair, reasonable, and nondiscriminatory
22 terms upon request of the airport, the other air
23 carrier, or the Secretary.

24 “(2) REQUESTING CARRIER MUST FILE WITH
25 DOT.—An air carrier making a request for a gate,

1 facility, or other asset under paragraph (1) shall file
 2 a copy of the request with the Secretary when it is
 3 submitted to the dominant air carrier.

4 ~~“(3) AVAILABILITY OF GATES AND OTHER ES-~~
 5 ~~SENTIAL SERVICES.—~~The Secretary shall ensure
 6 that gates and other facilities are made available at
 7 costs that are fair and reasonable to air carriers at
 8 covered airports where a ‘majority-in-interest clause’
 9 of a contract or other agreement or arrangement in-
 10 hibits the ability of the local airport authority to
 11 provide or build new gates or other essential facili-
 12 ties.

13 ~~“(4) DEFINITIONS.—~~In this subsection:

14 ~~“(A) DOMINANT AIR CARRIER.—~~The term
 15 ‘dominant air carrier’ has the meaning given
 16 that term by section 41722(e)(2).

17 ~~“(B) DOMINATED HUB AIRPORT.—~~The
 18 term ‘dominated hub airport’ has the meaning
 19 given that term by section 41722(e)(1).

20 ~~“(C) COVERED AIRPORT.—~~The term ‘cov-
 21 ered airport’ has the meaning given that term
 22 by section 47106(f)(3).

23 ~~“(D) ASSET.—~~The term ‘asset’ includes
 24 slots (as defined in section 41714(h)(4)) and

1 slot exemptions (within the meaning of section
2 41714(a)(2)).”.

3 (b) CONFORMING AMENDMENT.—Section 155 of the
4 Wendell H. Ford Aviation Investment and Reform Act of
5 the 21st Century (49 U.S.C. 47101 nt) is amended by
6 striking subsection (d).

7 **SEC. 6. AIP COMPETITION FUNDING.**

8 (a) IN GENERAL.—Subchapter I of chapter 471 of
9 title 49, United States Code, is amended by adding at the
10 end the following:

11 **“§ 47138. Competition enhancement program**

12 “(a) IN GENERAL.—The Secretary of Transportation
13 shall make project grants under this subchapter from the
14 Airport and Airway Trust Fund for gates, related facili-
15 ties, and other assets to enhance and increase competition
16 among air carriers for passenger air transportation.

17 “(b) SECRETARY MAY INCUR OBLIGATIONS.—The
18 Secretary may incur obligations to make grants under this
19 section.

20 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated from the Airport and
22 Airway Trust Fund \$300,000,000 for fiscal year 2002,
23 such amount to remain available until expended.”.

1 (b) AIP GRANTS.—Section 47107 of title 49, United
 2 States Code, is amended by adding at the end the fol-
 3 lowing:

4 “(q) GATES, FACILITIES, AND OTHER ASSETS.—

5 “(1) In general.—The Secretary of Transpor-
 6 tation may approve an application under this sub-
 7 chapter for an airport development project grant at
 8 a dominated hub airport only if the Secretary—

9 “(A) receives appropriate assurances that
 10 the airport will provide gates, facilities, and
 11 other assets on fair, reasonable, and non-
 12 discriminatory terms to air carriers, other than
 13 a dominant air carrier, to ensure competitive
 14 access to essential facilities; or

15 “(B) determines that gates, facilities, and
 16 other assets are available at that airport on a
 17 fair, reasonable, and nondiscriminatory basis to
 18 air carriers other than a dominant air carrier.

19 “(2) DEFINITIONS.—In this subsection:

20 “(A) DOMINANT AIR CARRIER.—The term
 21 ‘dominant air carrier’ has the meaning given
 22 that term by section 41722(e)(2).

23 “(B) DOMINATED HUB AIRPORT.—The
 24 term ‘dominated hub airport’ has the meaning
 25 given that term by section 41722(e)(1).

1 “(C) ASSET.—The term ‘asset’ includes
 2 slots (as defined in section 41714(h)(4)) and
 3 slot exemptions (within the meaning of section
 4 41714(a)(2)).”.

5 (e) PFC FUNDS.—Section 40117 of title 49, United
 6 States Code, is amended by adding at the end the fol-
 7 lowing:

8 “(1) FACILITIES FOR COMPETITIVE ACCESS.—

9 “(1) IN GENERAL.—The Secretary may approve
 10 an application under subsection (c) for a project at
 11 a dominated hub airport only if the Secretary—

12 “(A) receives appropriate assurances that
 13 the airport will provide gates, facilities, and
 14 other assets on fair, reasonable, and non-
 15 discriminatory terms to air carriers, other than
 16 a dominant air carrier, to ensure competitive
 17 access to essential facilities; or

18 “(B) determines that gates, facilities, and
 19 other assets are available at that airport on a
 20 fair, reasonable, and nondiscriminatory basis to
 21 air carriers other than a dominant air carrier.

22 “(2) DEFINITIONS.—In this subsection:

23 “(A) DOMINANT AIR CARRIER.—The term
 24 ‘dominant air carrier’ has the meaning given
 25 that term by section 41722(e)(2).

1 “(B) DOMINATED HUB AIRPORT.—The
2 term ‘dominated hub airport’ has the meaning
3 given that term by section 41722(e)(1).

4 “(C) ASSET.—The term ‘asset’ includes
5 slots (as defined in section 41714(h)(4)) and
6 slot exemptions (within the meaning of section
7 41714(a)(2)).”.

8 (d) CONFORMING AMENDMENT.—The chapter anal-
9 ysis for subchapter I of chapter 471 of such title is amend-
10 ed by inserting after the item relating to section 47137
11 the following:

 “47138. Competition enhancement program”.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Aviation Competition*
14 *Restoration Act”.*

15 **SEC. 2. FINDINGS.**

16 *The Congress makes the following findings:*

17 (1) *The airline industry continues to evolve into*
18 *a system dominated by a few large air carriers and*
19 *a handful of smaller, niche air carriers. Absent Con-*
20 *gressional action, access to critical markets is likely*
21 *to be foreclosed.*

22 (2) *In testimony before the Commerce Committee*
23 *in 1978, the then-President of Eastern Airlines testi-*
24 *fied that the top 5 air carriers had 68.6 percent of*
25 *the domestic market. If the mergers and acquisitions*

1 *proposed in 2000 and 2001 are consummated, the 5*
2 *largest network airlines in the United States will ac-*
3 *count for approximately 83 percent of the air trans-*
4 *portation business (based on revenue passenger miles*
5 *flown in 1999).*

6 *(3) According to Department of Transportation*
7 *statistics, taking into account the proposed mergers of*
8 *United Airlines and US Airways, and of American*
9 *Airlines and TWA, there will be at least 20 large hub*
10 *airports in the United States where a single airline*
11 *and its affiliate air carriers would carry more than*
12 *50 percent of the passenger traffic.*

13 *(4) The continued consolidation of the airline in-*
14 *dustry may inure to the detriment of public conven-*
15 *ience and need, and the further concentration of mar-*
16 *ket power in the hands of even fewer large competitors*
17 *may lead to unfair methods of competition.*

18 *(5) A more concentrated airline industry would*
19 *be likely to result in less competition and higher fares,*
20 *giving consumers fewer choices and decreased cus-*
21 *tomers service.*

22 *(6) The Department of Transportation has docu-*
23 *mented that air fares are relatively higher at those*
24 *main hub airports where a single airline carries more*
25 *than 50 percent of the passenger traffic, and studies*

1 *indicate that unfair methods of competition are more*
2 *likely to occur at such airports, thus inhibiting com-*
3 *petitive responses from other carriers when fares are*
4 *raised or capacity reduced.*

5 *(7) The General Accounting Office has conducted*
6 *a number of studies that document the presence of*
7 *both high fares and problems with competition in the*
8 *airline industry at dominated hub airports.*

9 *(8) The National Research Council of the Trans-*
10 *portation Research Board has recognized that higher*
11 *fares exist in short haul markets connected to con-*
12 *centrated hub airports.*

13 *(9) A Department of Transportation study indi-*
14 *cates that the entry and existence of low fare airline*
15 *competitors in the marketplace has resulted in a re-*
16 *ported \$6.3 billion in annual savings to airline pas-*
17 *sengers.*

18 *(10) While the antitrust rules generally govern*
19 *mergers and acquisitions in the air carrier industry,*
20 *and will continue to do so, the public concern about*
21 *the importance of air transportation, the impact of*
22 *over scheduling, increasing flight delays and cancella-*
23 *tions, poor service, and continued hub domination re-*
24 *quires the Department of Transportation to assert its*

1 *authority in analyzing proposed transactions among*
 2 *air carriers that affect consumers.*

3 **SEC. 3. COMPETITIVE ACCESS TO GATES, FACILITIES, AND**
 4 **OTHER ASSETS.**

5 *(a) IN GENERAL.—Subchapter I of chapter 417 is*
 6 *amended by adding at the end thereof the following:*

7 **“§ 41722. Competitive access to gates, facilities, and**
 8 **other assets**

9 *“(a) DOT REVIEW OF GATES, FACILITIES, AND AS-*
 10 *SETS.—Within 90 days after the date of the enactment of*
 11 *Aviation Competition Restoration Act, the Secretary of*
 12 *Transportation shall investigate the assignment and usage*
 13 *of gates, facilities, and other assets by major air carriers*
 14 *and their affiliated carriers (other than commuter air car-*
 15 *riers) at the largest 35 airports in the United States in*
 16 *terms of passenger enplanements. The investigation shall*
 17 *include an assessment of—*

18 *“(1) whether, and to what extent, gates, facili-*
 19 *ties, and other assets are being fully utilized by major*
 20 *air carriers and their affiliated carriers at those air-*
 21 *ports;*

22 *“(2) whether gates, facilities, and other assets are*
 23 *available for competitive access to enhance competi-*
 24 *tion; and*

1 “(3) *whether the reassignment of gates, facilities,*
 2 *and other assets to, or other means of increasing ac-*
 3 *cess to gates, facilities, and other assets for, air car-*
 4 *riers (other than dominant air carriers) would im-*
 5 *prove competition among air carriers at any such*
 6 *airport or provide other benefits to the flying public*
 7 *without compromising safety or creating scheduling,*
 8 *efficiency, or other problems at airports providing*
 9 *service to or from those airports.*

10 “(b) *AUTHORITY OF SECRETARY TO MAKE GATES,*
 11 *ETC., AVAILABLE.—*

12 “(1) *IN GENERAL.—The Secretary shall require a*
 13 *major air carrier and its affiliated carrier, upon ap-*
 14 *plication by another air carrier or on the Secretary’s*
 15 *own motion, to relinquish gates, facilities, and other*
 16 *assets available so that those facilities may be leased*
 17 *by the airport sponsor, or, in the case of slots, be re-*
 18 *allocated by the Secretary, to other air carriers on*
 19 *terms that are fair, reasonable, and nondiscrim-*
 20 *inatory to ensure competitive access to those airports*
 21 *if the Secretary determines, on the basis of the inves-*
 22 *tigation conducted under subsection (a), that such*
 23 *gates, facilities, and other assets are not available, or*
 24 *are underutilized, and that competition would be en-*
 25 *hanced thereby at those airports.*

1 “(2) *PROTECTION OF SMALL COMMUNITIES.*—
 2 *Paragraph (1) does not apply to any gate, facility, or*
 3 *asset exclusively used by a commuter air carrier.*

4 “(c) *DEFINITIONS.*—

5 “(1) *MAJOR AIR CARRIER.*—*In this section the*
 6 *term ‘major air carrier’ means an air carrier certifi-*
 7 *cated under section 41102 that accounted for at least*
 8 *1 percent of domestic scheduled-passenger revenues in*
 9 *the 12 months ending March 31 of each year, as re-*
 10 *ported to the Department of Transportation pursuant*
 11 *to part 241 of title 14, Code of Federal Regulations,*
 12 *and identified as a reporting carrier periodically in*
 13 *accounting and reporting directives issued by the Of-*
 14 *fice of Airline Information.*

15 “(2) *DOMINANT AIR CARRIER.*—*The term ‘domi-*
 16 *nant air carrier’ means an air carrier that accounts*
 17 *for more than 50 percent of the enplaned passengers*
 18 *at an airport.*

19 “(3) *COMMUTER AIR CARRIER.*—*The term ‘com-*
 20 *muter air carrier’ has the meaning given it by section*
 21 *41714(h)(1).*

22 “(4) *ASSET.*—*The term ‘asset’ includes slots (as*
 23 *defined in section 41714(h)(4)) and slot exemptions*
 24 *(within the meaning of section 41714(a)(2)).*

1 “(5) *AFFILIATED CARRIER.*—The term ‘affiliated
2 carrier’ has the meaning given it by section 41714(k).

3 “(6) *PASSENGER ENPLANEMENTS.*—The term
4 ‘passenger enplanements’ means the annual number
5 of passenger enplanements, as determined by the Sec-
6 retary of Transportation, based on the most recent
7 data available.”.

8 (b) *CONFORMING AMENDMENT.*—The chapter analysis
9 for chapter 417 of title 49, United States Code, is amended
10 by inserting after the item relating to section 41721 the fol-
11 lowing:

 “41722. Competitive access to gates, facilities, and other assets.”.

12 **SEC. 4. UNFAIR METHODS OF COMPETITION IN AIR TRANS-**
13 **PORTATION.**

14 (a) *UNFAIR COMPETITION THROUGH USE OF GATES,*
15 *FACILITIES, AND OTHER ASSETS.*—Section 41712 of title
16 49, United States Code, is amended by adding at the end
17 the following:

18 “(c) *UNDERUTILIZATION OF GATES, FACILITIES, OR*
19 *OTHER ASSETS.*—

20 “(1) *IN GENERAL.*—It is an unfair method of
21 competition in air transportation under subsection
22 (a) for a dominant air carrier at a dominated hub
23 airport—

24 “(A) to fail to utilize gates, facilities, and
25 other assets fully at that airport; and

1 “(B) to refuse, deny, or fail to provide a
 2 gate, facility, or other asset at such an airport
 3 that is underutilized by it, or that will not be
 4 fully utilized by it within 1 year, to another car-
 5 rier on fair, reasonable, and nondiscriminatory
 6 terms upon request of the airport, the other air
 7 carrier, or the Secretary.

8 “(2) REQUESTING CARRIER MUST FILE WITH
 9 DOT.—An air carrier making a request for a gate, fa-
 10 cility, or other asset under paragraph (1) shall file a
 11 copy of the request with the Secretary when it is sub-
 12 mitted to the dominant air carrier.

13 “(3) AVAILABILITY OF GATES AND OTHER ESSEN-
 14 TIAL SERVICES.—The Secretary shall ensure that
 15 gates and other facilities are made available on terms
 16 that are fair and reasonable to air carriers at covered
 17 airports where a ‘majority-in-interest clause’ of a con-
 18 tract or other agreement or arrangement inhibits the
 19 ability of the local airport authority to provide or
 20 build new gates or other essential facilities.

21 “(4) DEFINITIONS.—In this subsection:

22 “(A) DOMINANT AIR CARRIER.—The term
 23 ‘dominant air carrier’ has the meaning given
 24 that term by section 41722(c)(2).

1 “(B) *DOMINATED HUB AIRPORT*.—The term
2 ‘dominated hub airport’ means an airport—

3 “(i) that each year has at least .25 per-
4 cent of the total annual boardings in the
5 United States; and

6 “(ii) at which 1 air carrier accounts
7 for more than 50 percent of the enplaned
8 passengers.

9 “(C) *COVERED AIRPORT*.—The term ‘cov-
10 ered airport’ has the meaning given that term by
11 section 47106(f)(3).

12 “(D) *ASSET*.—The term ‘asset’ includes
13 slots (as defined in section 41714(h)(4)) and slot
14 exemptions (within the meaning of section
15 41714(a)(2)).”.

16 (b) *CONFORMING AMENDMENT*.—Section 155 of the
17 Wendell H. Ford Aviation Investment and Reform Act of
18 the 21st Century (49 U.S.C. 47101 nt) is amended by strik-
19 ing subsection (d).

20 **SEC. 5. AIP COMPETITION FUNDING.**

21 (a) *IN GENERAL*.—Subchapter I of chapter 471 of title
22 49, United States Code, is amended by adding at the end
23 the following:

1 **“§ 47138. Competition enhancement program**

2 “(a) *IN GENERAL.*—Notwithstanding any provision of
3 *this title to the contrary, the Secretary of Transportation*
4 *may make project grants under this subchapter from the*
5 *Airport and Airway Trust Fund for gates, related facilities,*
6 *and other assets to enhance and increase competition among*
7 *air carriers for passenger air transportation, selected by the*
8 *Secretary on a case-by-case basis, at airports described in*
9 *section 41722(a). In carrying out this subsection, the Sec-*
10 *retary shall give priority to gates that will enhance service*
11 *to small and medium-sized communities.*

12 “(b) *SECRETARY MAY INCUR OBLIGATIONS.*—*The Sec-*
13 *retary may incur obligations to make grants under this sec-*
14 *tion.*

15 “(c) *CONSISTENCY OF REQUIREMENTS.*—

16 “(1) *IN GENERAL.*—*The Secretary shall make*
17 *gates eligible for project funding under chapter 471 at*
18 *any airport described in section 41722(a) where the*
19 *Secretary determines that such funding is necessary*
20 *to ensure competitive access at that airport.*

21 “(2) *PARITY BETWEEN AIP-FINANCED AND PFC-*
22 *FINANCED GATES.*—*The Secretary shall by regulation*
23 *require that projects related to gates described in*
24 *paragraph (1) are subject, to the extent appropriate,*
25 *to the requirements set forth in Appendix A to part*

1 *158 of title 14 of the Code of Federal Regulations*
 2 *for—*

3 “(A) *non-exclusivity of contractual agree-*
 4 *ments;*

5 “(B) *carryover provisions; and*

6 “(C) *competitive access.*

7 “(d) *AUTHORIZATION OF APPROPRIATIONS.—There*
 8 *are authorized to be appropriated from the Airport and*
 9 *Airway Trust Fund \$300,000,000 for fiscal year 2002, such*
 10 *amount to remain available until expended.”.*

11 “(b) *CONFORMING AMENDMENT.—The chapter analysis*
 12 *for subchapter I of chapter 471 of such title is amended*
 13 *by inserting after the item relating to section 47137 the fol-*
 14 *lowing:*

 “47138. *Competition enhancement program.*”.

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107TH CONGRESS
1ST SESSION

S. 415

[Report No. 107-130]

A BILL

To amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes.

DECEMBER 19 (legislative day, DECEMBER 18), 2001

Reported with an amendment