

SENATE RESOLUTION 344—EXPRESSING THE SENSE OF THE SENATE THAT THE PROPOSED MERGER OF UNITED AIRLINES AND U.S. AIRWAYS IS INCONSISTENT WITH THE PUBLIC INTEREST AND PUBLIC CONVENIENCE AND NECESSITY POLICY SET FORTH IN SECTION 40101 OF TITLE 49, UNITED STATES CODE

Mr. MCCAIN (for himself and Mr. GORTON) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 344

Whereas, in 1999 the 6 largest hub-and-spoke airlines in the United States accounted for nearly 80 percent of the revenue passenger miles flown by domestic airlines,

Whereas, according to Department of Transportation statistics, a combined United Airlines and US Airways would result in at least 20 airline hub airports in the United States where a single airline and its affiliate air carriers would carry more than 50 percent of the passenger traffic;

Whereas, the Department of Transportation and the General Accounting Office have documented that air fares are relatively higher at those airline hub airports where a single airline carries more than 50 percent of the passenger traffic;

Whereas, a combined United Airlines and US Airways would hold approximately 40 percent of the air carrier takeoff and landing slots at the 4 high density airports, even taking into account the parties' planned divestiture of slots at Ronald Reagan Washington National Airport;

Whereas, most analysts agree that a United Airlines-US Airways merger would lead to other merger in the airline industry, likely resulting in combinations that would reduce the 6 largest domestic hub-and-spoke airlines to 3 airlines;

Whereas, media reports indicate that American Airlines has made a tangible offer to purchase Northwest Airlines and that Delta Air Lines and Continental Airlines have engaged in merger negotiations;

Whereas, it would be difficult for the Department of Transportation and other responsible Federal agencies of jurisdiction to disapprove subsequent airline merger proposals if the government allows the largest domestic airline, in terms of total operating revenue and revenue passenger miles flown in 1999, United Airlines, to merge with the sixth largest airline, US Airways, making United Airlines substantially bigger than its next largest competitor;

Whereas, 3 larger domestic airlines will have substantially increased market power, and would have the ability to use that market power to drive low fare competitors out of direct competition and to thwart new airline entry into the marketplace;

Whereas, the Department of Transportation credits nearly all of the benefits of deregulation (a reported \$6.3 billion in annual savings to airline passengers) to the entry and existence of low fare airline competitors in the marketplace;

Whereas, a combined United Airlines and US Airways, including their commuter airline partners, would be the only carrier offering nonstop flights between at least 26 domestic airports in 12 States;

Whereas, in 1999 United Airlines and US Airways enplaned 22 percent of all revenue passengers flown by domestic airlines;

Whereas, the transition from 6 major airlines to 3 would likely result in less competition and higher fares, giving consumers

fewer choices and decreased customers service;

Whereas, it is the role of the Senate Committee on Commerce, Science, and Transportation and, more specifically the Subcommittee on Aviation, to conduct oversight of the aviation industry and to promote consumers' receiving a basic level of airline customer service;

Whereas, the Air Transport Association member air carriers agreed to an Airline Customer Service Commitment to improve the current level of customer service in the airline industry;

Whereas, in an interim oversight report, the Department of Transportation Inspector General recently concluded that the results are mixed with respect to the effectiveness of the efforts of the major airlines to implement their Airline Customer Service Commitment;

Whereas, the combination of 2 entities as large as United Airlines and US Airways could cause at least short-term disruptions in service;

Whereas, according to the Department of Transportation statistics for the month of May 2000, for the 10 major airlines, a combined United Airlines and US Airways would have had the lowest percentage of ontime flight arrivals, the highest percentage of flight operations canceled, the second highest rate of consumer complaints, and the second highest rate of mishandled baggage: Now, therefore, be it

Resolved, That—

(1) the Senate expresses concern about the proposed United Airlines-US Airways merger because of its potential to leave consumers with fewer travel options, higher fares, and lowered levels of service; and

(2) it is the sense of the Senate that the potential consumer detriments from the proposed United Airlines-US Airways merger outweigh the potential consumer benefits.

Mr. MCCAIN. Mr. President, I am pleased to be joined by the Commerce Committee Aviation Subcommittee Chairman, Senator GORTON, to introduce a Senate resolution expressing our strong reservations about the proposed merger of United Airlines and US Airways.

Through Commerce Committee deliberations, Senator GORTON and I have carefully analyzed the proposed merger, as well as its long-term consumer effects. We conclude that whatever air travelers stand to gain from the merger is outweighed by what they stand to lose.

The public interest would likely be harmed by a United Airlines-US Airways merger. First, almost all analysts agree that the merger would trigger additional consolidation in the airline industry. The six largest hub-and-spoke carriers in the country would likely become the "big three." Everything else being equal, basic economic principles suggest that consumers are better served by having six competitors in a market rather than three.

Even at this preliminary date, our experience bears out the prediction of additional industry consolidation. American Airlines has already made an offer for Northwest Airlines. Delta Air Lines and Continental have reportedly engaged in merger negotiations.

Consolidation among these network carriers poses additional problems for the flying public. The likely result of

fewer carriers is more single-carrier concentration at hub airports across the country. Studies by the Department of Transportation, the General Accounting Office, and others consistently conclude that air fares are relatively higher at hub airports "dominated" by a single carrier.

Important new entry in the airline industry would be hurt by consolidation among the major airlines. The mega-carriers would have additional resources to engage in fierce and prolonged behavior designed to drive new competitors out of the market, and to single potential entrants that they dare not compete with the incumbent.

Today, many new entrants simply choose not to enter the major airlines' hub markets because they fear they cannot survive a sustained head-to-head battle. A United-US Airways merger, and the consolidation that would ensue, would further entrench the incumbent air carriers' positions.

I admit that there are benefits associated with the proposed United-US Airways merger. The carriers, for instance, tout "seamless" connections to international destinations, an expanded frequent flyer program, and similar benefits that should appeal to travelers on the United-US Airways system.

United and US Airways also applaud new service to a multitude of destinations as a consequence of the merger. It is important to note, however, that what is new to United is not exactly new to the flying public, since United's "new" service is made up of flights that are now offered by US Airways.

Again, the point is that the anti-competitive harm posed by the proposed United-US Airways merger outweighs its benefits. And that conclusion does not even take into account the customer service problems associated with integrating the work forces of two or more major airlines.

I want to underscore that this resolution is designed to express our concerns about the proposed United-US Airways merger. It does not seek to force any federal agency or department to take any specific action with respect to the proposed merger. However, our concerns for the consumer are of such a significant nature that we are compelled to introduce this resolution.

I ask unanimous consent to have printed in the RECORD a letter from the father of airline deregulation, Prof. Alfred Kahn. His letter outlines his preliminary concerns with the proposed United-US Airways merger.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ALFRED E. KAHN,
Ithaca, New York, June 9, 2000.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: I'm very sorry that I can't accept your invitation to testify before your Committee on June 20th, and hope that you will regard the arrival that day of

my son and his family from Australia, for a brief visit, as a sufficient reason. I particularly regret my inability to take advantage of that opportunity to renew our acquaintance.

Your Ann Choiniere has asked me to offer, as a substitute, a statement of my—as yet only provisional—opinions about the proposed merger of United Airlines and US Airways. I am happy to do so, even though, to repeat, I have by no means a settled final opinion about whether or not it should be approved.

I do urge you to give careful consideration to its possible anticompetitive effects, however. The central premise of deregulation was that competition would best serve and protect consumers; that meant vigorous enforcement of the antitrust laws rather than direct regulation would become critical in the new regime.

Primary responsibility for making this investigation rests, of course, with the antitrust agencies. It is my understanding, however, that the Antitrust Division's resources are severely strained by their other obligations, including other proceedings specifically involving the airlines; if they lack the resources to look at this latest proposed merger with great care, it seems to me that would be a case of the government being penny-wise and pound-foolish. Partly because of the possible direct effects of this merger and, perhaps even more, because of its threatening to set off a series of imitative mergers that would substantially increase the concentration of the domestic industry, there is a possible jeopardy here to the many billions of dollars that consumers have been saving each year because off the competition set off by deregulation.

It seems to me there are several levels at which to assess these possible anticompetitive effects.

1. The first goes to the question of whether there are any substantial number of particular routes on which United and US Airways are already direct competitors. In the case of the proposed merger of Continental/Northwest, the Antitrust Division identified several very important routes between their respective hubs (for example, Houston/Minneapolis-St. Paul, Houston/Detroit, Cleveland/Minneapolis-St. Paul, Cleveland/Memphis, Newark/Twin Cities) on which it appeared those airlines were the two main if not only competitors, and their merger would simply eliminate that competition. I do not know to what extent there are similar overlaps between US Airways and United.

2. In deregulating the airlines we relied very heavily on the threat of potential as well as actual competition to prevent exploitation of consumers: an important part of the rationale of deregulation was the contestability of airline markets. It seems to me highly likely that there are many routes in which United or US Airways is a potential competitor of the other. And it is my recollection that while studies of the behavior of airline fares after deregulation (notably one by Winston and Morrison and another by Gloria Hurdle, Andrew Joskow and others) demonstrated that one actual competitor in a market is worth two or three potential contesters in the bush, they nevertheless also found that the presence of a potential conteste—identified as a carrier already present at one or the other end of a route—did constrain the fares incumbents could charge.

3. The likelihood that a United/US Airways merger would indeed result in suppression of this potential competition would seem to be enhanced by what I take it would be United's explanation and justification—namely, its need for a strong hub in the Northeast (commented on widely in the literature, along

with attributions of a similar need to American Airlines). But if United really does feel the need for a big hub in the Northeast, this suggests that it is indeed an important potential competitor of US Airways, and that, denied the ability to acquire the hub in the easiest, noncompetitive fashion, by acquisition, it might instead feel impelled to construct a hub of its own in direct competition with US Airways; if some place within a couple of hundred miles of Pittsburgh is the needed location—observe the hubs of Continental at Cleveland and Delta at Cincinnati—then why not, say, Buffalo for United? And while I have the impression that the suppression of potential competition has not played a major role in most merger litigation, it might properly be definitive in this case, if only because, either explicitly or implicitly, United is in effect conceding the potentiality of that competition in its rationalizations of the merger itself. The stronger its argument that it does indeed require a big hub in the Northeast, the more that signifies that the alternative, if it were denied the opportunity to acquire US Airways, would be to construct a major competitive hub of its own.

4. In addition, if indeed United's acquisition of a competitive advantage by this acquisition—giving it the first claim on traffic feed from US Airways' extensive network—does increase the pressure on other carriers, particularly American to merge similarly, then it seems to me that is a possible competitive consequence of this particular merger that should additionally be taken into account in deciding whether it should be permitted.

I do hope you will undertake this important inquiry: we may be confronting a very radical consolidation of the industry, which cannot be a matter of indifference to people like you and me, who have regarded deregulation as a striking success thus far.

With warm personal regards,

Sincerely,

ALFRED E. KAHN,

Robert Julius Thorne Professor of Political Economy, Emeritus, Cornell University; Chairman, Civil Aeronautics Board 1977-78.

Mr. MCCAIN. Mr. President, I want to highlight one point Professor Kahn makes. He asserts that United's main justification for the merger is the need for a hub in the northeast. He goes on to question, however, why United doesn't create a hub in the northeast, rather than follow the path of "least competitive resistance" by trying to acquire on its competitors' hubs. Mr. President, I ask the same question, and urge my colleagues to join Senator GORTON and me in supporting this Senate resolution expressing our strong concerns about a United-US Airways merger.

Mr. President, I thank my friend and colleague, the distinguished chairman of the Aviation Subcommittee of the Commerce Committee who joined me in this resolution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, it is my purpose to join with the Senator from Arizona today in introducing this sense-of-the-Senate resolution. Each of us has thought long and hard about this proposed measure, as it goes to the heart of our air transport system in the United States. I believe I speak for the

Senator from Arizona as well as for myself in saying this merger seems quite obviously to be beneficial both to United Airlines and to U.S. Airways. Public policy, however, does not concern itself primarily with the benefits to the companies involved in the competitive field. Public policy should concern itself with consumer interests and with the interests of the millions of Americans who use these airlines to fly from one place to another across the United States and for that matter overseas.

A merger of these two airlines would create by far the largest single airline in the United States. Inevitably, it seems to me that would lead to two more mergers, at the very least involving the other four of the largest six airlines in the United States. In fact, it would be almost impossible to mount a logical and rational defense against such mergers as those airlines would complain with real justification that they were no longer competitive with the giant created by a United-U.S. Airways merger.

From our perspective, we need to consider what the ultimate outcome of this merger would be and the impact it would have on airline passengers all across the United States. There would be a significant increase in the number of hubs overwhelmingly dominated by a single airline. There would be, in my view, a sharp decrease in the competition for airline travel in many cities across the United States. There would certainly be the legitimate desire on the part of the remaining airlines to maximize their profits. That exists at the present time. But these three mergers would vastly increase the ability of the airlines to do so in what would be distinctly a less competitive market.

I have attended hearings on this subject. I have had meetings with the CEOs of both airlines seeking to merge and with some of those who have apprehensions about that merger. I may say there are a number of ways in which my mind was changed by those meetings. My first reaction to the proposal was that the creation of one new entrant—D.C. Airlines—was little more than a sham. The hearings and my meetings indicated to me that I was almost certainly wrong in that respect, and that the proposed new owner and manager of D.C. Airlines did intend to be a real airline to provide real service. But even if we grant the potential success of that airline, the net effect on competition overall would be highly negative on the part of this merger.

I join with the chairman of the Commerce Committee in this resolution. I do not think in the ultimate analysis that this merger is in the public interest. I believe it would lessen competition among domestic airlines. I think it would not improve the way in which the airline passengers are treated, and probably, at least in the short term and perhaps in the long term, would exacerbate an already troublesome situation.

I believe we would end up with three major airlines flying roughly 80 percent of all the passengers on domestic flights in the United States, and that the net result, by a significant margin from such a merger, would not be in the public interest.

I hope this resolution becomes more formalized than it is just by the introduction by these two Members. I suspect the chairman of the Commerce Committee will bring it up in the Commerce Committee. I hope it is here for consideration by the entire Senate promptly, and it will be considered by the regulatory authorities that are dealing with the proposed merger at the present time.

AMENDMENTS SUBMITTED

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2001

LEAHY AMENDMENT NO. 4016

(Ordered to lie on the table.)

Mr. LEAHY submitted the following amendment intended to be proposed by him to the bill (H.R. 4871) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2001, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Not later than 90 days after the date of the enactment of this Act, the Inspector General of each agency funded under this Act shall submit to the Congress a report that discloses—

(1) any agency activity related to the collection or review of singular data, or the creation of aggregate lists that include personally identifiable information, about individuals who access any Internet site of the agency; and

(2) any agency activity related to entering into agreements with third parties, including other government agencies, to collect, review, or obtain aggregate lists or singular data containing personally identifiable information relating to any individual's access or viewing habits to nongovernmental Internet sites.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2001

ALLARD AMENDMENT NO. 4017

(Ordered to lie on the table.)

Mr. ALLARD submitted an amendment intended to be proposed by him to the bill (H.R. 4733) making appropriations for energy and water development for the fiscal year ending September 30, 2001, and for other purposes; as follows:

On page 66, between lines 11 and 12, insert the following:

SEC. 2. USE OF COLORADO-BIG THOMPSON PROJECT FACILITIES FOR NON-PROJECT WATER.

The Secretary of the Interior may enter into contracts with the city of Loveland,

Colorado, or its Water and Power Department or any other agency, public utility, or enterprise of the city, providing for the use of facilities of the Colorado-Big Thompson Project, Colorado, under the Act of February 21, 1911 (43 U.S.C. 523), for—

(1) the impounding, storage, and carriage of nonproject water originating on the eastern slope of the Rocky Mountains for domestic, municipal, industrial, and other beneficial purposes; and

(2) the exchange of water originating on the eastern slope of the Rocky Mountains for the purposes specified in paragraph (1), using facilities associated with the Colorado-Big Thompson Project, Colorado.

WORLD BANK AIDS PREVENTION TRUST FUND ACT

HELMS (AND OTHERS) AMENDMENT NO. 4018

Mr. HELMS (for himself, Mr. BIDEN, Mr. FRIST, Mr. KERRY, Mr. SMITH of Oregon, Mrs. BOXER, and Mr. FEINGOLD) proposed an amendment to the bill (H.R. 3519) to provide for negotiations for the creation of a trust fund to be administered by the International Bank for Reconstruction and Development Association to combat the AIDS epidemic; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Global AIDS and Tuberculosis Relief Act of 2000".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—ASSISTANCE TO COUNTRIES WITH LARGE POPULATIONS HAVING HIV/AIDS

Sec. 101. Short title.

Sec. 102. Definitions.

Sec. 103. Findings and purposes.

Subtitle A—United States Assistance

Sec. 111. Additional assistance authorities to combat HIV and AIDS.

Sec. 112. Voluntary contribution to Global Alliance for Vaccines and Immunizations and International AIDS Vaccine Initiative.

Sec. 113. Coordinated donor strategy for support and education of orphans in sub-Saharan Africa.

Sec. 114. African Crisis Response Initiative and HIV/AIDS training.

Subtitle B—World Bank AIDS Trust Fund

CHAPTER 1—ESTABLISHMENT OF THE FUND

Sec. 121. Establishment.

Sec. 122. Grant authorities.

Sec. 123. Administration.

Sec. 124. Advisory Board.

CHAPTER 2—REPORTS

Sec. 131. Reports to Congress.

CHAPTER 3—UNITED STATES FINANCIAL PARTICIPATION

Sec. 141. Authorization of appropriations.

Sec. 142. Certification requirement.

TITLE II—INTERNATIONAL TUBERCULOSIS CONTROL

Sec. 201. Short title.

Sec. 202. Findings.

Sec. 203. Assistance for tuberculosis prevention, treatment, control, and elimination.

TITLE III—ADMINISTRATIVE AUTHORITIES

Sec. 301. Effective program oversight.

Sec. 302. Termination expenses.

TITLE I—ASSISTANCE TO COUNTRIES WITH LARGE POPULATIONS HAVING HIV/AIDS

SEC. 101. SHORT TITLE.

This title may be cited as the "Global AIDS Research and Relief Act of 2000".

SEC. 102. DEFINITIONS.

In this title:

(1) AIDS.—The term "AIDS" means the acquired immune deficiency syndrome.

(2) ASSOCIATION.—The term "Association" means the International Development Association.

(3) BANK.—The term "Bank" or "World Bank" means the International Bank for Reconstruction and Development.

(4) HIV.—The term "HIV" means the human immunodeficiency virus, the pathogen which causes AIDS.

(5) HIV/AIDS.—The term "HIV/AIDS" means, with respect to an individual, an individual who is infected with HIV or living with AIDS.

SEC. 103. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) According to the Surgeon General of the United States, the epidemic of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) will soon become the worst epidemic of infectious disease in recorded history, eclipsing both the bubonic plague of the 1300's and the influenza epidemic of 1918-1919 which killed more than 20,000,000 people worldwide.

(2) According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), more than 34,300,000 people in the world today are living with HIV/AIDS, of which approximately 95 percent live in the developing world.

(3) UNAIDS data shows that among children age 14 and under worldwide, more than 3,800,000 have died from AIDS, more than 1,300,000 are living with the disease; and in one year alone—1999—an estimated 620,000 became infected, of which over 90 percent were babies born to HIV-positive women.

(4) Although sub-Saharan Africa has only 10 percent of the world's population, it is home to more than 24,500,000—roughly 70 percent—of the world's HIV/AIDS cases.

(5) Worldwide, there have already been an estimated 18,800,000 deaths because of HIV/AIDS, of which more than 80 percent occurred in sub-Saharan Africa.

(6) The gap between rich and poor countries in terms of transmission of HIV from mother to child has been increasing. Moreover, AIDS threatens to reverse years of steady progress of child survival in developing countries. UNAIDS believes that by the year 2010, AIDS may have increased mortality of children under 5 years of age by more than 100 percent in regions most affected by the virus.

(7) According to UNAIDS, by the end of 1999, 13,200,000 children have lost at least one parent to AIDS, including 12,100,000 children in sub-Saharan Africa, and are thus considered AIDS orphans.

(8) At current infection and growth rates for HIV/AIDS, the National Intelligence Council estimates that the number of AIDS orphans worldwide will increase dramatically, potentially increasing threefold or more in the next 10 years, contributing to economic decay, social fragmentation, and political destabilization in already volatile and strained societies. Children without care or hope are often drawn into prostitution, crime, substance abuse, or child soldiery.