



September 17, 2021

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

Dear Secretary Buttigieg:

I write with grave concerns that the recent joint partnership between American Airlines and JetBlue Airways will lead to anticompetitive coordination at key air traffic hubs and result in the long-term inflation of airfares and related costs for airline passengers. I urge the Department of Transportation (DOT) to conduct a full public interest review and investigation of the Northeast Alliance cooperative agreement—consistent with President Biden’s recent Executive Order on Competition—before taking any further action on merits of this venture.

As you know, the President’s Executive Order directs and encourages federal agencies to crack down on anticompetitive practices in all sectors of our economy—including air transportation. The Executive Order unambiguously states that “[a]gencies can influence the conditions of competition through their exercise of regulatory authority” and recognizes the need for a whole-of-government approach to address unfair practices in the marketplace.¹ The DOT must be vigilant in carrying out this directive to ensure that further consolidation of the airline industry does not create a toxic environment for competition and consumers, particularly in the context of affordability and accessibility of air service.

The White House also outlined why the airline market in particular provides cause for concern: “The top four commercial airlines control nearly two-thirds of the domestic market. Reduced competition contributes to increasing fees like baggage and cancellation fees... inadequate competition also reduces incentives to provide good service.”²

This troublesome concentration in the airline industry did not occur suddenly. It is the result of regulatory proceedings that allowed dominant airlines to box out smaller competitors and multiple previously-approved mergers that took place over the course of many years. I am concerned that the Northeast Alliance is exactly the kind of arrangement that has led us to this

¹ Executive Order on Promoting Competition in the American Economy (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

² FACT SHEET: Executive Order on Promoting Competition in the American Economy (July 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.

point and that will lead to even further consolidation in an already overly concentrated industry. Under the circumstances, this arrangement deserves more scrutiny.

The Trump DOT's decision to terminate its informal review of the joint venture between JetBlue and American was pushed through with only ten days remaining in the administration, without adequately airing the competitive issues raised by the agreement not to compete between two major airlines. What is more, in a highly unusual move, the Department did not afford the public and other industry participants any opportunity to comment on the competitive implications of this agreement. As Executive Order 14036 makes clear, agencies can influence the conditions of competition. Antitrust enforcers have traditionally been highly suspicious of agreements that lead rivals to cooperate instead of compete. And they should be especially suspicious when major airlines agree not to compete in an already highly consolidated industry, with major implications for lower-cost carriers. At a minimum, the DOT should seek the input of competition experts and cooperate with antitrust enforcers to investigate any conduct potentially harmful to competition as a result of this alliance between competitors.

When President Biden issued Executive Order 14036 this past July, he stated, "But let me be very clear: Capitalism without competition isn't capitalism; it's exploitation."³ I could not agree more, and I was heartened to see the decades-long concentration in industries like airlines being addressed from the Oval Office. I urge you to follow the guidance of the Executive Order and to seek input from the public and from antitrust regulators on the competitive implications of JetBlue and American's Northeast Alliance agreement to not compete.

Sincerely,

A handwritten signature in blue ink that reads "Richard Blumenthal".

Richard Blumenthal
United States Senate

³ Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy (July 9, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/>.