

United States Senate

COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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January 8, 2014

William H. Stallings
Chief, Transportation, Energy & Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530

Dear Mr. Stallings:

On November 21, 2013, my colleagues and I wrote to Attorney General Holder to express our concerns about the proposed Final Judgment in the matter of the *United States of America v. US Airways Group, Inc. and AMR Corporation* (Case No. 1:13-cv-01236 (CKK)). Specifically, we raised concerns about whether the proposed Final Judgment would negatively impact competition for airline service to small communities and rural areas. In a December 20, 2013 letter to you, my colleagues on the relevant oversight committees in Congress and I requested that our correspondence be included in the official comments to be filed with the Court before it rules on whether the proposed Final Judgment is in the public interest.

As reflected in this earlier correspondence, my colleagues and I understand the Department's stated commitment (in its December 4, 2013 response) "to protecting competition across the national airspace system, including competition for connecting service to smaller communities and rural states and regions." Nevertheless, we remain highly doubtful that the divestiture of slots and gates at key airports exclusively to low-cost carriers (LCC) will truly enhance competition or protect existing service for commercial air service to smaller communities and rural states and regions.

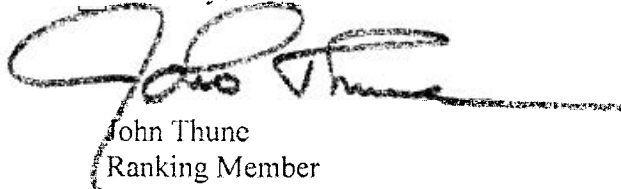
As noted in the November 21 letter, DOJ's Amended Complaint in this litigation highlighted the fact that LCCs have a different business model than legacy carriers – one that does not involve hub-and-spoke networks connecting larger hubs to smaller destinations. At the time of its Amended Complaint, DOJ argued that, because of such differences, "competition from Southwest, JetBlue, or other airlines would not be sufficient to prevent the anticompetitive consequences of the merger." It remains far from clear that providing additional slots and gates to LCCs – though likely to increase competition on certain highly profitable routes – will protect competition for connecting service to smaller communities and rural states and regions.

I am writing separately today because my concerns about the adequacy of DOJ's proposed remedy have been underscored by the decision announced recently by Southwest Airlines to cease service at three smaller airports: Jackson, Mississippi; Branson, Missouri; and Key West, Florida. As one commentator noted, while legacy carriers often hire regional airlines to fly small planes between smaller airports and their hubs, Southwest has opted to fly only larger aircraft – a business model that makes it difficult for the carrier to serve smaller markets. While there may be sound business reasons for Southwest's moves, the same commentator has concluded: "Southwest is pulling out of some of its smallest markets in order to double down on larger, more promising opportunities."¹

As stated in the November 21 letter, it is almost certain that many of the slots and gates to be divested under the proposed Final Judgment would be awarded to LCCs in a process open to all bidders – indeed, at this writing, slots being divested at New York's LaGuardia Airport have already been awarded to two LCCs (Virgin America and Southwest) – but I continue to have reservations about whether the proposed remedy is the best way to ensure that competition, including competition for connecting service and service to smaller communities and rural states and regions, is not diminished by the merger. I therefore write to reiterate my hope that the Department, and the Court, will fully consider the implications for commercial air service to smaller communities and rural states and regions before approving the slot and gate divestitures called for in the Final Judgment. This concern exists notwithstanding the limited protection that DOJ included for certain service via Washington, D.C.'s Reagan National Airport to smaller communities and rural states by the newly merged carrier required by the side agreement with the U.S. Department of Transportation.

In closing, I request that this letter—like the earlier correspondence referenced herein—be considered written comments regarding the proposed Final Judgment for purposes of the Antitrust Procedures and Penalties Act and be filed with the Court

Sincerely,



John Thune
Ranking Member

¹ Adam Levine-Weinberg, "Southwest Airlines Abandons Small Markets," available at: <http://www.fool.com/investing/general/2013/12/09/southwest-airlines-abandons-small-markets.aspx>. See also, Kelly Yamanouchi, "Southwest Airlines cutting more routes," *The Atlanta Constitution*, December 5, 2013 (noting the "move comes as Southwest removes from its fleet AirTran's smaller planes --- Boeing 717s --- which were useful for serving smaller markets"), available at: <http://www.ajc.com/news/business/southwest-airlines-cutting-more-routes/ncChw/>; and Sean Kinney, "Southwest Airlines pulling up stakes from Key West," *Keysinfonet.com*, posted by the *Miami Herald* (noting that Southwest made the decision to discontinue service to Key West despite the fact that the airline had served 30,000 more passengers flying through Key West by October of 2013 than it had in all of 2012), available at: <http://www.miamiherald.com/2013/12/09/3807989/southwest-airlines-pulling-up.html>.