

# ***United States of America and Plaintiff States v. American Airlines and JetBlue Airways***

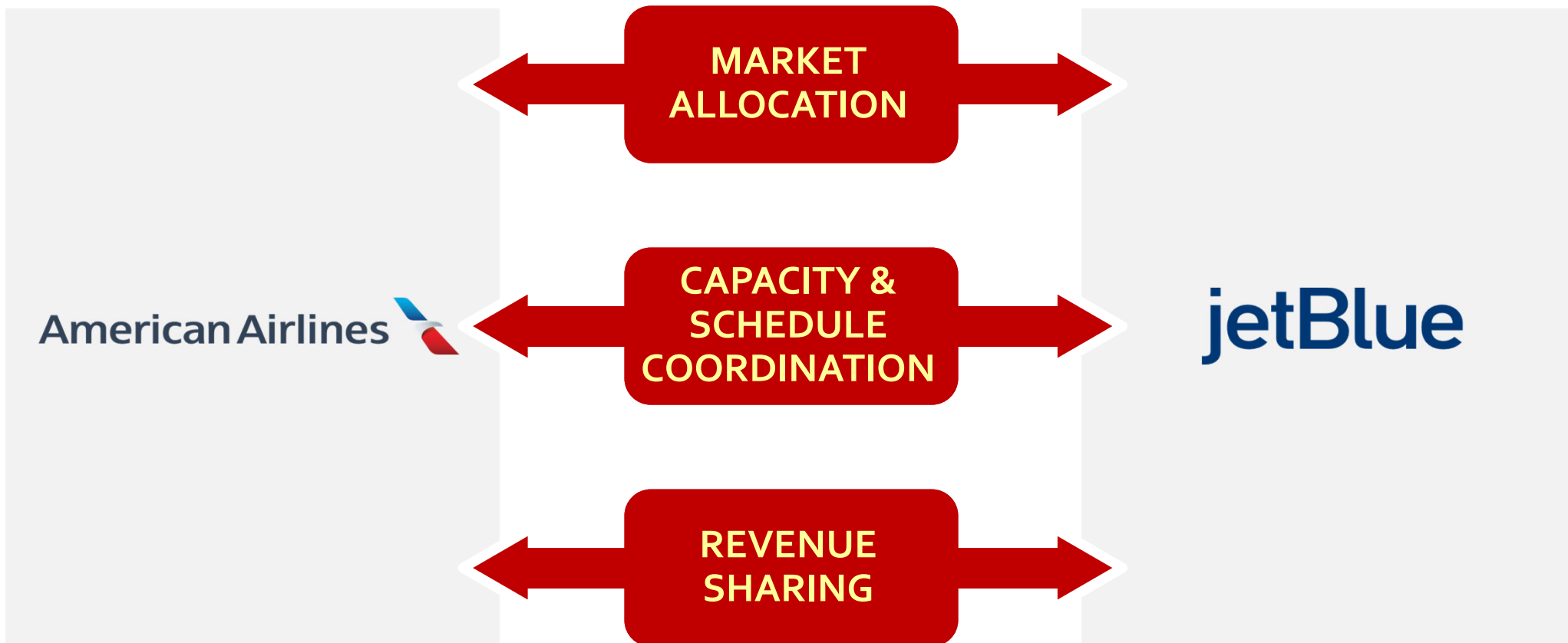
November 18, 2022

# The Rule Of Reason

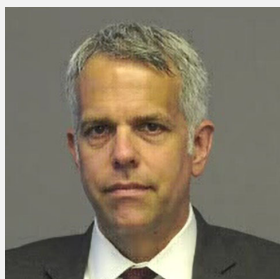
Step	Description	Burden
1	Is substantial anticompetitive harm likely?	Plaintiffs
2	Are there legitimate procompetitive justifications for the restraint(s)?	Defendants
3	Could those justifications be reasonably achieved through less restrictive means?	Plaintiffs
	If no less restrictive alternative, do the anti-competitive harms outweigh any procompetitive justifications?	Plaintiffs

# Step One: The NEA Harms Competition

# NEA Restraints: Elimination Of Competition

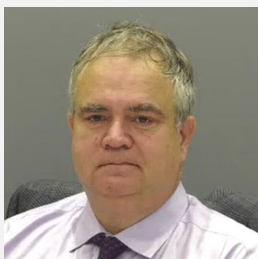


# Defendants Admit That They No Longer Compete Within The NEA



Scott Laurence  
SVP of Partnership  
Strategy

American Airlines 



Robin Hayes  
CEO

jetBlue

**Q.** [W]ith the NEA in place, do you agree that the revenue sharing component means that it makes more sense to **cooperate with American, rather than compete** for NEA routes?

**A.** For NEA routes, **yes.**

**Q.** And would you agree that, within the NEA, where the two airlines are coordinating capacity, JetBlue and American **no longer compete with each other**, correct?

**A.** In terms of the markets in the NEA that are not carved out, **we don't compete with each other directly.**

# Defendants Admit That They No Longer Compete Within The NEA



**Paul Swartz**  
Regional Sales Manager



**Brian Znotins**  
Vice President, Network &  
Schedule Planning

**American Airlines** 

**Q.** So you **no longer compete** with JetBlue?

**A.** On that specific—**yes.**

**Q.** American and JetBlue **do not compete against each other** to take customers away from one another on Northeast Alliance routes; is that right?

**A.** From a network perspective, **no.**

**Q.** So you are **no longer competitors** on those routes from a network perspective?

**A.** **Yes**

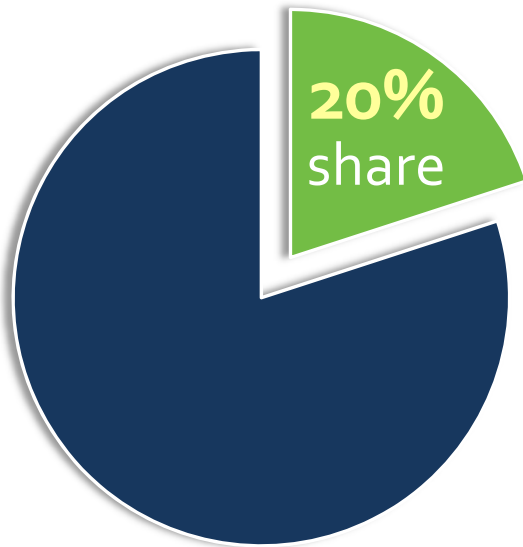
## Evidence of Harm Under The Rule of Reason

- (1) proof of market power** plus
- some evidence that the challenged restraint harms competition

*Ohio v. Am. Express Co.*,  
138 S. Ct. 2274, 2284 (2018)

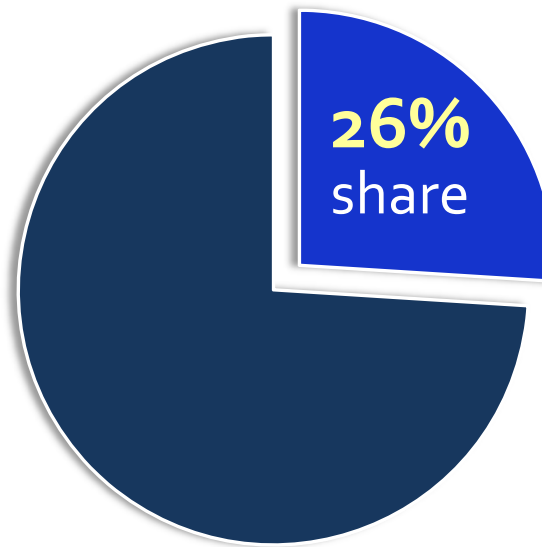


# Market Power Established By Market Share in § 1 Cases



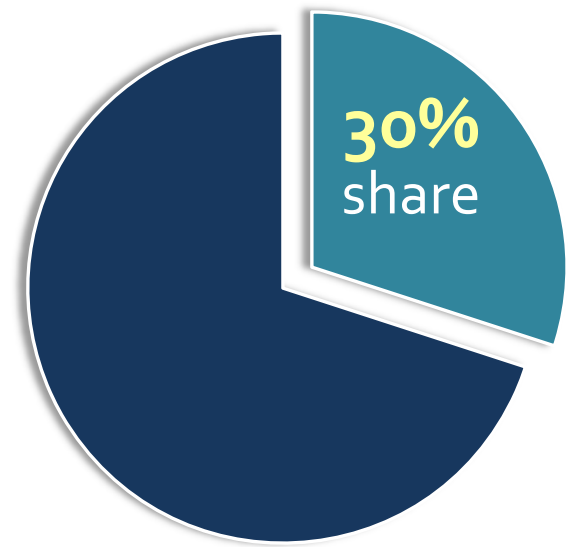
**20%** share sufficient to support finding of market power

*Toys "R" Us, Inc. v. FTC,*  
221 F.3d 928, 937 (7th Cir. 2000)



**26%** share sufficient to support finding of market power

*United States v. Visa U.S.A., Inc.,*  
344 F.3d 229, 239-40 (2d Cir. 2003)



**30%** share sufficient to support finding of market power

*BookLocker.com, Inc. v. Amazon.com, Inc.,*  
650 F. Supp. 2d 89, 103-104 (D. Me. 2009)

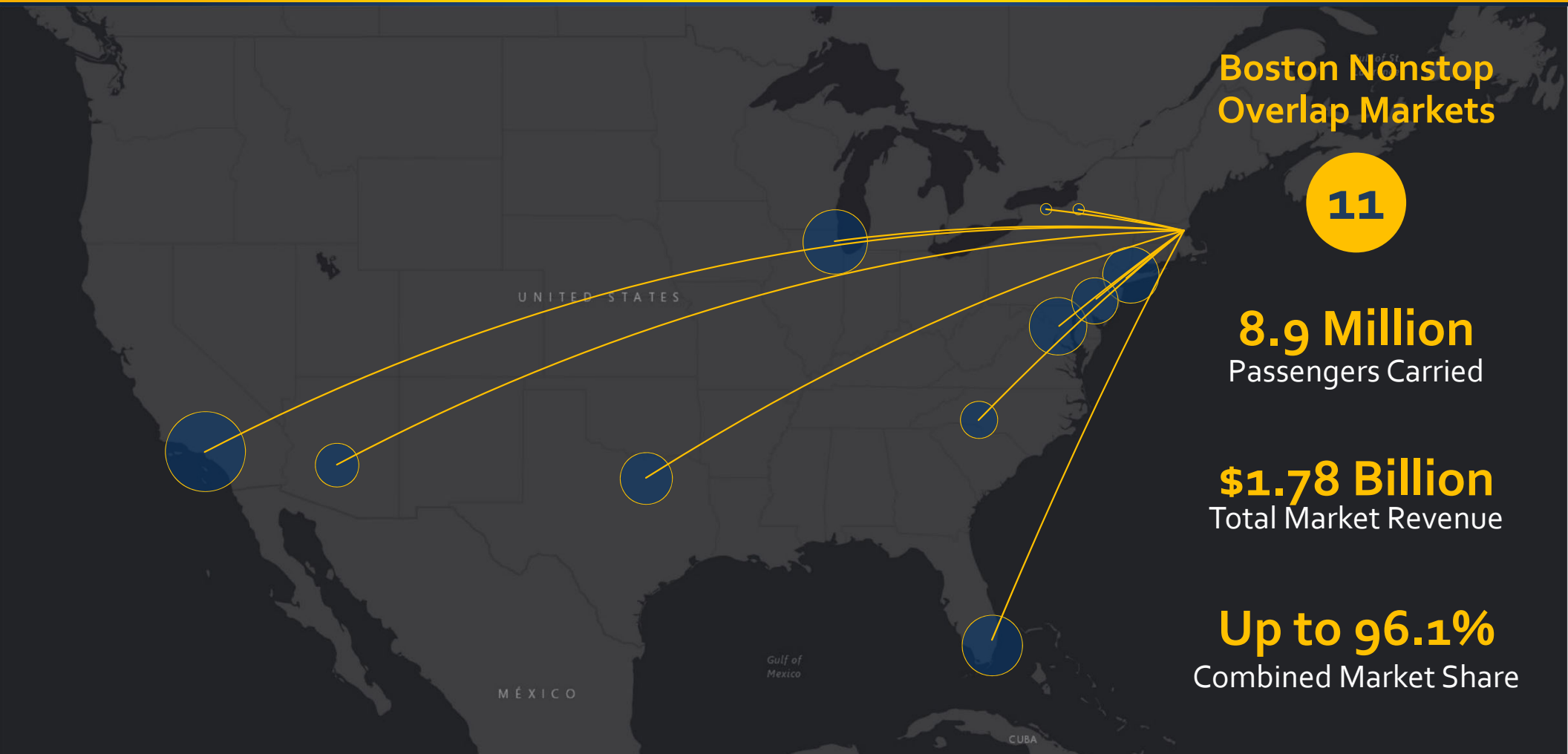




## Market Shares Establish Market Power On Boston Routes

Boston Overlap Markets	Combined Revenue Share (as of 2019)	Anticompetitive by HHI
Boston – Charlotte	96.1%	✓
Boston – Chicago	48.5%	✓
Boston – Dallas/Fort Worth	83.6%	✓
Boston – Los Angeles	62.6%	✓
Boston – Miami	76.5%	✓
Boston – New York City (JFK/LGA)	49.8%	✓
Boston – Philadelphia	86.8%	✓
Boston – Phoenix	85.2%	✓
Boston – Rochester	86.2%	✓
Boston – Syracuse	82.1%	✓
Boston – Washington, D.C. (DCA)	88.0%	✓

# Boston: A Battleground For Competition

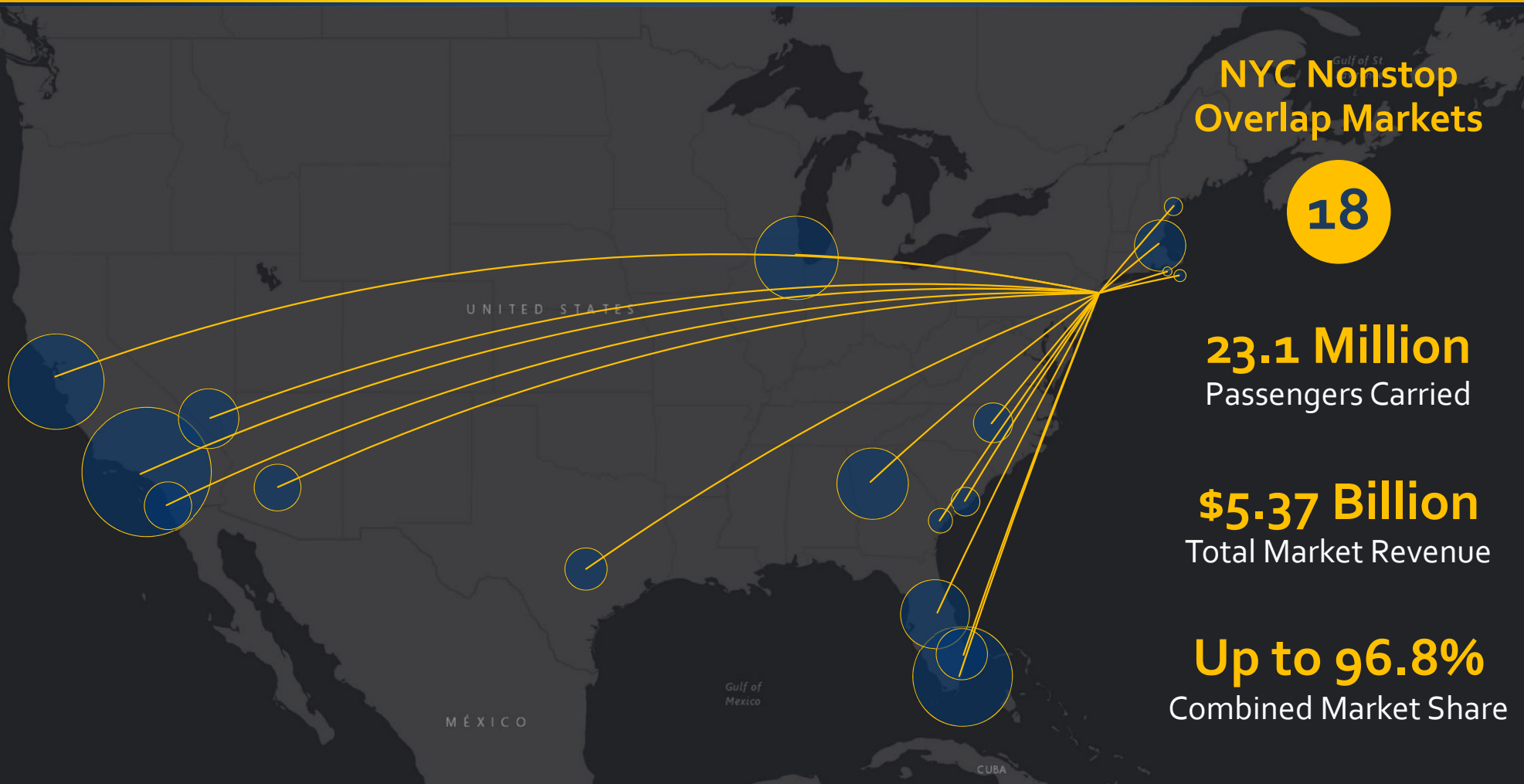


## Market Shares Establish Market Power On New York And Newark Routes

NYC Overlap Markets	Combined Revenue Share (as of 2019)	Anticompetitive by HHI
JFK/LGA – Austin	44.6%	✓
JFK/LGA – Charleston	43.6%	✓
JFK/LGA – Chicago	36.2%	✓
JFK/LGA – Las Vegas	46.5%	✓
JFK/LGA – Los Angeles	57.0%	✓
JFK/LGA – Martha's Vineyard	92.5%	✓
JFK/LGA – Miami	55.9%	✓
EWR – Miami	31.0%	✓
JFK/LGA – Nantucket	96.8%	✓


NYC Overlap Markets	Combined Revenue Share (as of 2019)	Anticompetitive by HHI
JFK/LGA – Orlando	55.3%	✓
JFK/LGA – Phoenix	61.5%	✓
JFK/LGA – Portland, ME	37.4%	✓
JFK/LGA – Raleigh-Durham	47.8%	✓
JFK/LGA – San Diego	44.7%	✓
JFK/LGA – San Francisco	45.7%	✓
JFK/LGA – Savannah	46.5%	✓
JFK/LGA – West Palm Beach	60.0%	✓

# New York City: A Battleground For Competition




PX0461 (Miller Report Appendix E and F). Includes 17 JFK/LGA markets and 1 EWR market. The BOS LGA/JFK market is omitted here and included in the figures on Slide 10

# There Are Undisputed Barriers to Entry and Expansion in New York and Boston




Constraint:




Slots

BOSTON



Constraint:



Gates



Vasu Raja  
Chief Commercial Officer

American Airlines 

“Look, in Boston the critical path is not slots; it’s gates”

“Its gate constraints effectively act as form of slot constraint”

NEW YORK



Dr. Darin Lee

COMPASS  
LEXECON

“There are certain places in New York, in particular, other slot constrained airports, where entry is more difficult for all carriers”

## Evidence of Harm Under The Rule of Reason

- (1) proof of market power plus
- (2) some evidence that the challenged restraint harms competition**

*Ohio v. Am. Express Co.,*  
138 S. Ct. 2274, 2284 (2018)



# Evidence The Restraints Harm Competition

1

**Defendants  
admit they no  
longer compete  
within the NEA**

2

The terms and  
incentives of the  
NEA will result in  
higher prices and  
reduced output  
in overlap  
markets

3

The restriction of  
competition will  
substantially  
harm consumers  
in Boston and  
New York

# Evidence The Restraints Harm Competition

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Defendants admit they no longer compete within the NEA

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The terms and incentives of the NEA will result in higher prices and reduced output in overlap markets

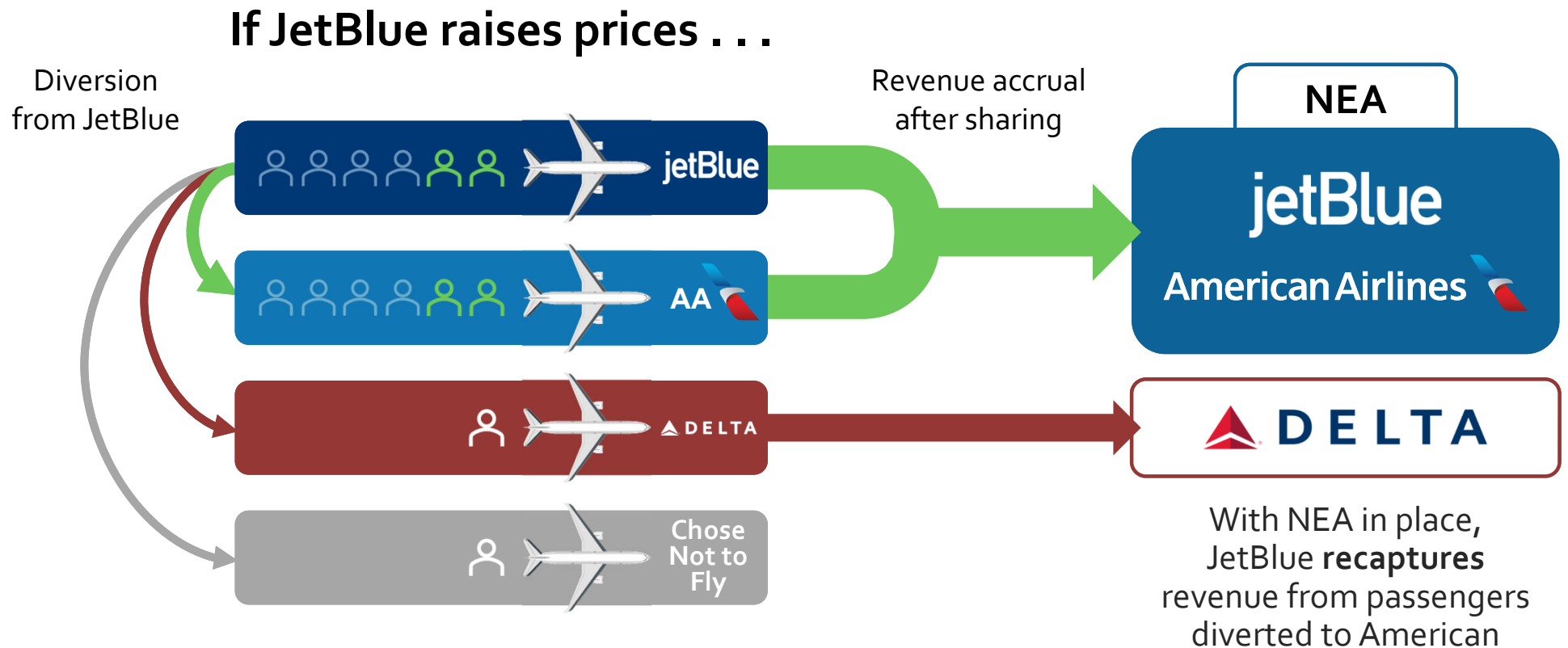
3

The restriction of competition will substantially harm consumers in Boston and New York

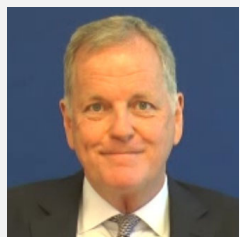


# Revenue Sharing Raises Prices Because of Recapture Incentive

## Illustrative example



## Pricing Is Determined By Capacity

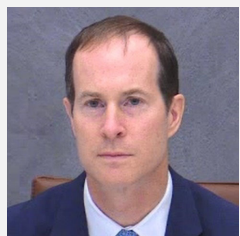


**Doug Parker**  
Board Chairman  
and Former CEO

American Airlines 

**Q.** So Mr. Parker, you would agree that holding everything else constant, as supply goes down, prices go up.

**A.** Holding everything else down, it's a key of that. Yes. **Economics 101.**



**David Clark**  
Head of Revenue  
and Planning

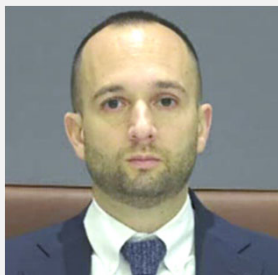
**jetBlue**

**A.** [B]ased on the laws of supply and demand, generally, **constant demand decreasing supply would lead to upward pressure on fares.**

**Q.** And that would happen regardless if you were coordinating your pricing with any other airline, correct?

**A.** Correct. **In a completely independent world, that would still be the natural pressure.**

# When Capacity Goes Down, Prices Will Rise



Evan Jarashow  
Pricing Manager

jetBlue

**From:** Jarashow, Evan  
**Sent:** Thursday, June 6, 2019 4:40 PM  
**To:** Blechman, Jeremy <Jeremy.Blechman@jetblue.com>; Parker, Andrew <Andrew.Parker@jetblue.com>; Alemann, Nicolas <Nicolas.Alemann@jetblue.com>; Coffy, Erwin <Erwin.Coffy@jetblue.com>  
**Subject:** RE: JFK-SAN: Market Summary

Pricing: AA has suspended service in JFKSAN until 8/20 due to the 737-Max groundings. B6 is ignoring AA pricing until it becomes clear they will re-enter the market. WN has also cancelled most of its EWR-SAN RTs for the summer because of the 737-Max groundings. On 4/23, B6 down-bucketed all fares in the structure (except for the lowest P class fare), effectively increasing fares by \$20-\$40. The lowest fare is currently \$150 including taxes. (Anthony Irwin)

**Q.** So, in part, it was the American cancellations that fueled this action, right?

**A.** In part.

# Capacity Coordination Mitigates Unilateral Incentive to Grow

Connie poses various risks that should be mitigated through proper negotiation, said risks can be

**Risks**

- Connie utilized payment model to fund loss-making capacity

## Risks

- Connie utilized payment model to fund loss-making capacity

## Potential alleviations

- Contract calls for concurrence capacity deployment

jetBlue



Vasu Raja  
Chief Commercial Officer

American Airlines

“[W]e call it **‘cheating on the pool,’** which is, like, you don’t want to – we always want to fly at a similar amount. Like, we always want to grow, but **we are going to be really smart in how we think about where we grow. We want to grow in the places that make the most sense for us together** because that’s how you expand the revenue pool, right?”

# Evidence The Restraints Harm Competition

1

Defendants admit they no longer compete within the NEA

2

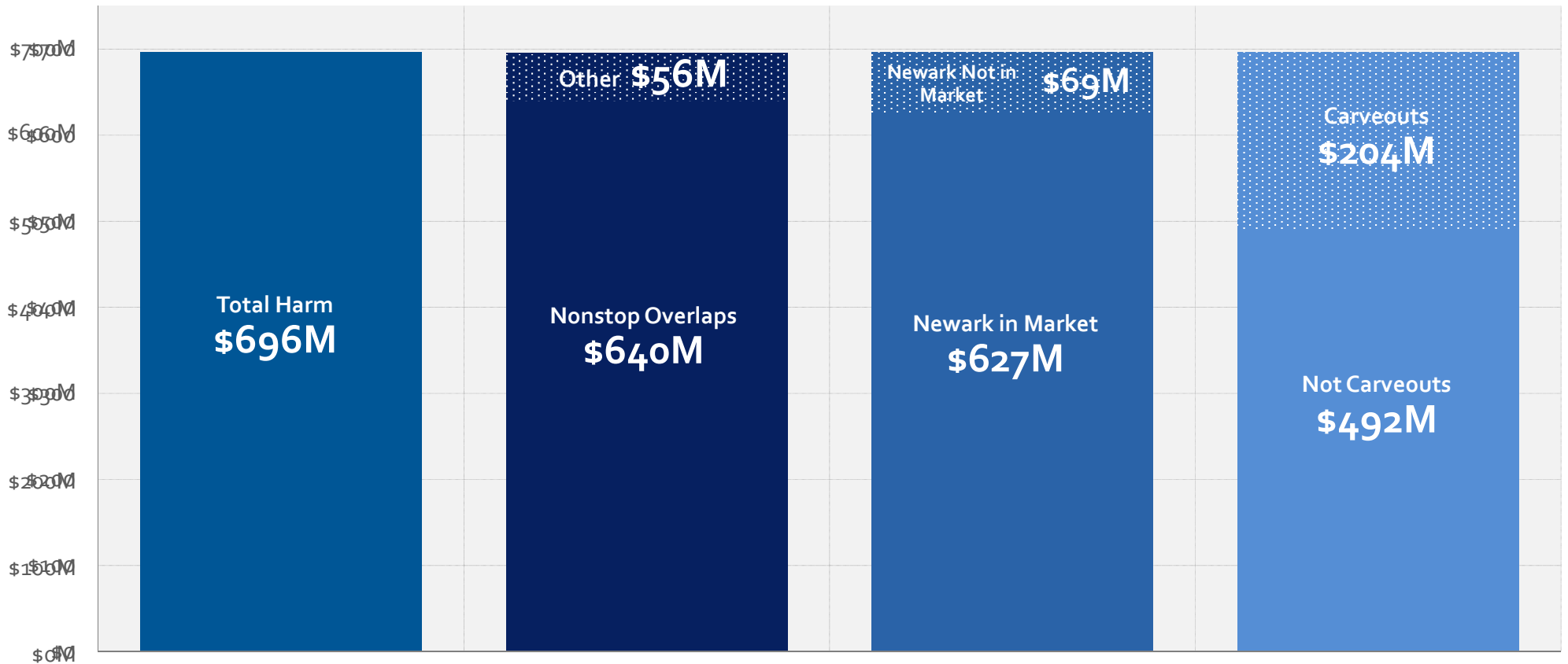
The terms and incentives of the NEA will result in higher prices and reduced output in overlap markets

3

**The restriction of competition will substantially harm consumers in Boston and New York**

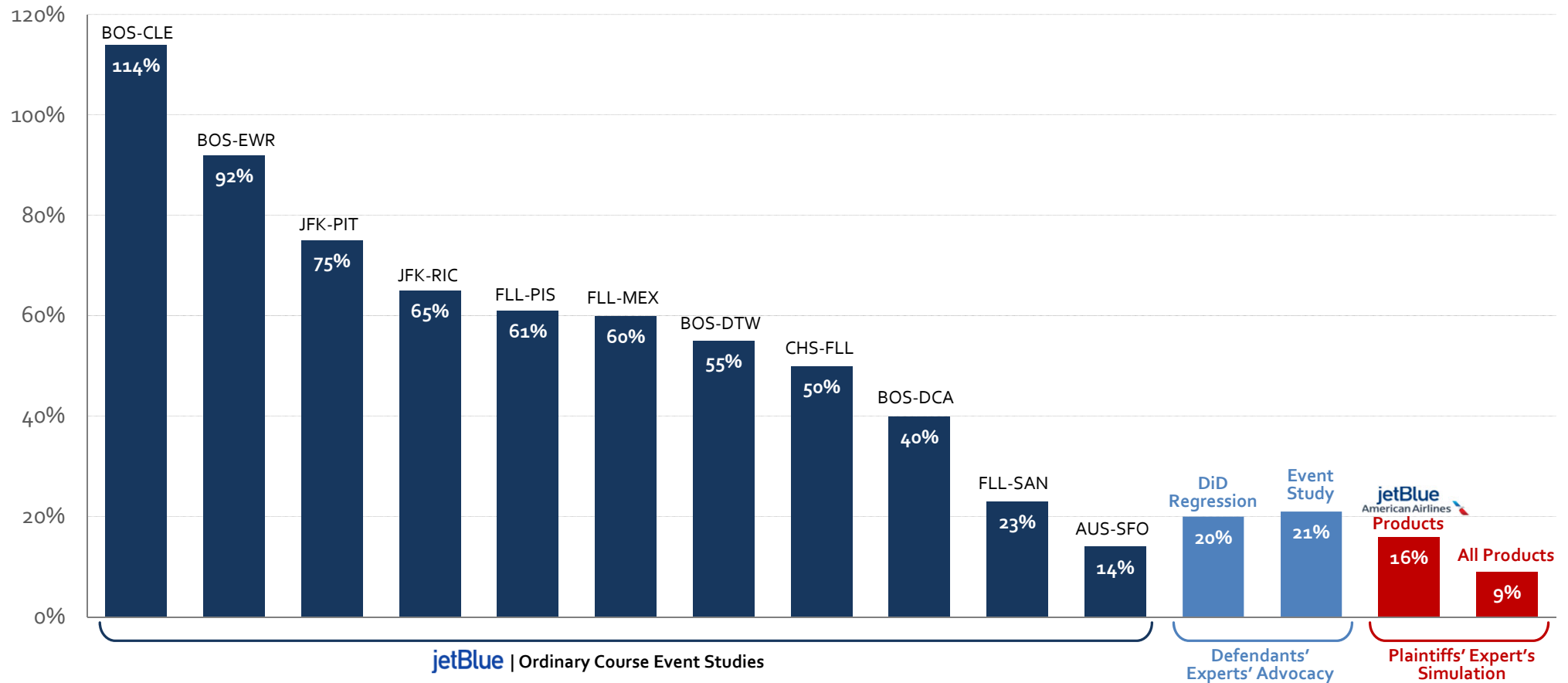
# The NEA Results In \$696 Million Of Harm To Consumers

## Overcharge



# Predicted Harms Consistent With Defendants' Analyses

## Price change from loss of independent JetBlue competition



## Defendants' Focus On Current Fare Effects Is Misplaced

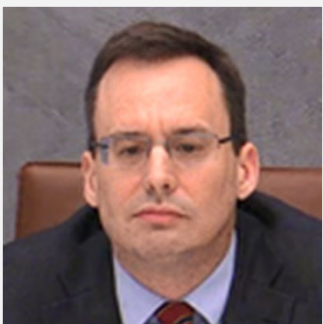
“[Proof] of actual anticompetitive effects . . . is often impossible to make **due to the difficulty of isolating the market effects of challenged conduct**” and so “courts typically allow proof of the defendant’s market power’ . . . [as] a surrogate for detrimental effects”

*United States v. Brown Univ.*, 5 F. 3d 658 (3d Cir. 1993)





## Defendants Do Not View 2021 Data As Representative



David Fintzen  
VP for the NEA

- Q.** Okay. American and JetBlue simply agreed that the actual flying that took place between April 1, 2021 and March 31, 2022, was not reflective of the spirit of the MGIA, correct?
- A.** Correct.

As we have discussed, notwithstanding the provisions of the Mutual Growth Incentive Agreement by and between American and JetBlue, dated July 15, 2020, as amended (the “MGIA”), and given the variability in the currently available data and the continued effects of Covid-19 on revenue performance, which has led to unexpected outputs from the MGIA model, the Parties have mutually agreed to cap the Periodic Mutual Growth Incentive Payments and the Final Mutual Growth Incentive Payment (collectively, the “MGIPs”) at \$27,000,000 for the twelve months ending March 31, 2022. Moreover, the Parties have

jetBlue

# The Rule of Reason

Step	Description	Burden	Met?
1	Is substantial anticompetitive harm likely?	Plaintiffs	<input checked="" type="checkbox"/>
2	Are there legitimate procompetitive justifications for the restraint(s)?	Defendants	<input type="checkbox"/>
3	Could those justifications be reasonably achieved through less restrictive means?	Plaintiffs	<input type="checkbox"/>

**Step Two: Defendants Have  
Failed To Prove Benefits**

# Defendants Have Failed To Prove Benefits

1

**Defendants do not even attempt to show benefits in the nonstop overlap markets**

2

Optimizing the Defendants' networks produces little benefit without additional capacity

3

Dr. Israel wrongly attributes all of his assumed capacity growth to the NEA

4

Defendants' "growth" is illusory

5

Defendants have not grown their fleets as a result of the NEA

## No Quantification Of Benefits In Nonstop Overlap Markets

“If a decision is to be made to sacrifice competition in one portion of the economy for greater competition in another portion this too is a decision that must be made by Congress and not by private forces or by the courts.”

*United States v. Topco Associates, Inc.,*  
405 U.S. 596, 611 (1972)



# Defendants Have Not Substantiated Benefits On Nonstop Overlaps



**Mark A. Israel**  
Defendants' Expert

**Q.** And Dr. Israel, you haven't focused on a route-by-route analysis, though, right? That's fair, right?

**A.** **I haven't done a route-by-route benefits analysis.**



# Defendants Have Failed To Prove Benefits

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## Few Benefits Of Schedule Optimization Without Additional Capacity



Mark A. Israel  
Defendants' Expert



- Q.** Dr. Israel, it is fair to say that simply putting American and JetBlue together, as each existed in 2019, at the NEA airports, doesn't reveal much benefit, right?
- A.** Right . . . . If you just put [the networks] together, you can squeeze out a little bit from the stone.

\* \* \*

**But in general, what I mean by just putting them together would be – could include schedule optimization, and it would get you to the same place. You can't do it unless you have more seats.**



## Defendants Have Failed To Prove Benefits

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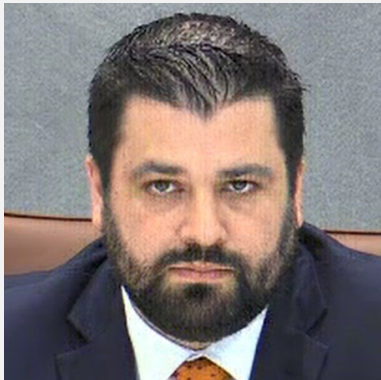
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Defendants' "growth" is illusory

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Defendants have not grown their fleets as a result of the NEA

# JetBlue Would Have Grown Anyway In New York And Boston



Eric Friedman  
Director,  
Route Planning

jetBlue

JETBLUE AIRWAYS CORPORATION

CONFIDENTIAL TREATMENT REQUESTED

**From:** Lusso, Andrea  
**Sent:** Tuesday, June 9, 2020 2:09 PM  
**To:** Friedman, Eric  
**Subject:** RE: Follow Ups

Thanks. I'm good with August for FLL.  
July is a mess and already post final by a long shot

4. SBD work: At first from a revenue perspective, I was worried we were giving credit to new routes we were considering anyway. Now, the five year plan scenarios we sent over kind of confirm it. It's just something to be aware of, but I don't think any action is needed. The plans we sent show that we were planning to enter many markets anyway.

**Sent:** Monday, June 8, 2020 5:26 PM  
**To:** Lusso, Andrea <Andrea.Lusso@jetblue.com>  
**Subject:** Follow Ups

Andrea:

A break out of what my team is working on is below:

**Uri:** LGB/LAX/LA Basin for QNR work. It's in good shape, but a little more work is needed. That said, who should I reach out to for cost estimates of the move and is it necessary? How would you like these cost estimates broken out: Tech ops, rent increases, "moving costs", etc.?  
We need OP&A and IPD to do a study here, but they will need an idea of the new size in LAX. For Tech, let's put it as a placeholder for now, because they have loose lips. I'll handle with Warren. Let's focus on rent and frontline staffing, asking Lisa/Kevin and Jehn/Andy to be discreet with the information. Okay, I will reach out to Andy and CC you and DJ, as well as Lissa/Kevin with you CC'd.

**Tanner:** Working the posturing slides for QNR. In so-so shape as of now, but will get there.  
Thanks. Keep me posted.

**Dan:** Finalizing "the most useful P&L" and is in good shape. Also, will be contributing to "Going on offense in New Turf" outside of project Reach  
Thanks. Will digest tomorrow or this week.

**Working with managers:** Jack will be putting together the first slides of the QNR (like last time) and the project reach slides. Nick and I will continue to work fleet.

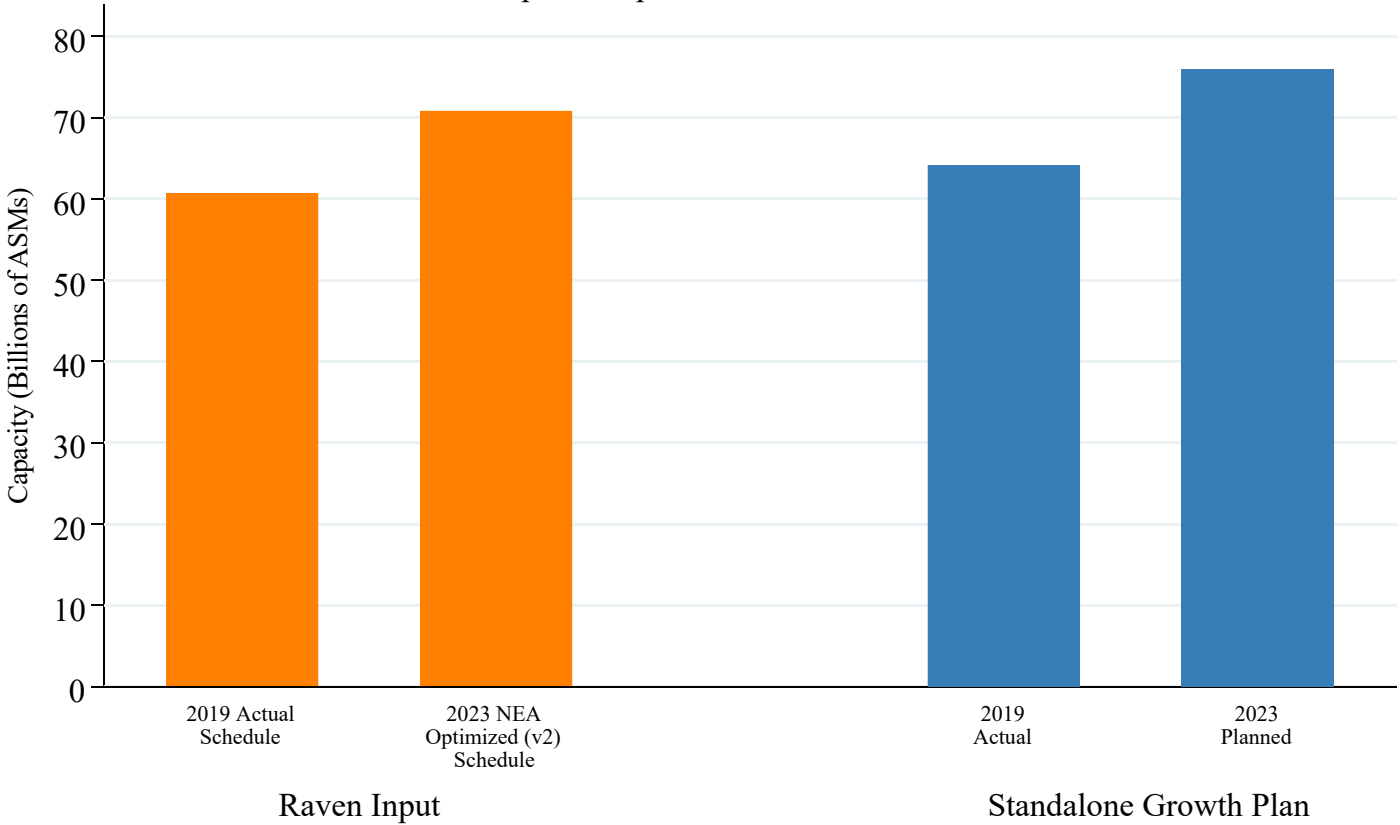
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PLAINTIFFS EXHIBIT  
PX0535  
1:21-CV-11658

JBLU00135667

# Dr. Israel Ignores JetBlue's Standalone Growth Plans

**JetBlue Capacity Across Potential Plans**  
Raven Input Compared to 2020 Growth Plan



**The schedules that Dr. Israel used to calculate consumer benefits assume less growth than JetBlue's standalone plan from July 2020**

# Defendants Have Failed To Prove Benefits

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Defendants do not even attempt to show benefits in the nonstop overlap markets

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Optimizing the Defendants' networks produces little benefit without additional capacity

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Dr. Israel wrongly attributes all of his assumed capacity growth to the NEA

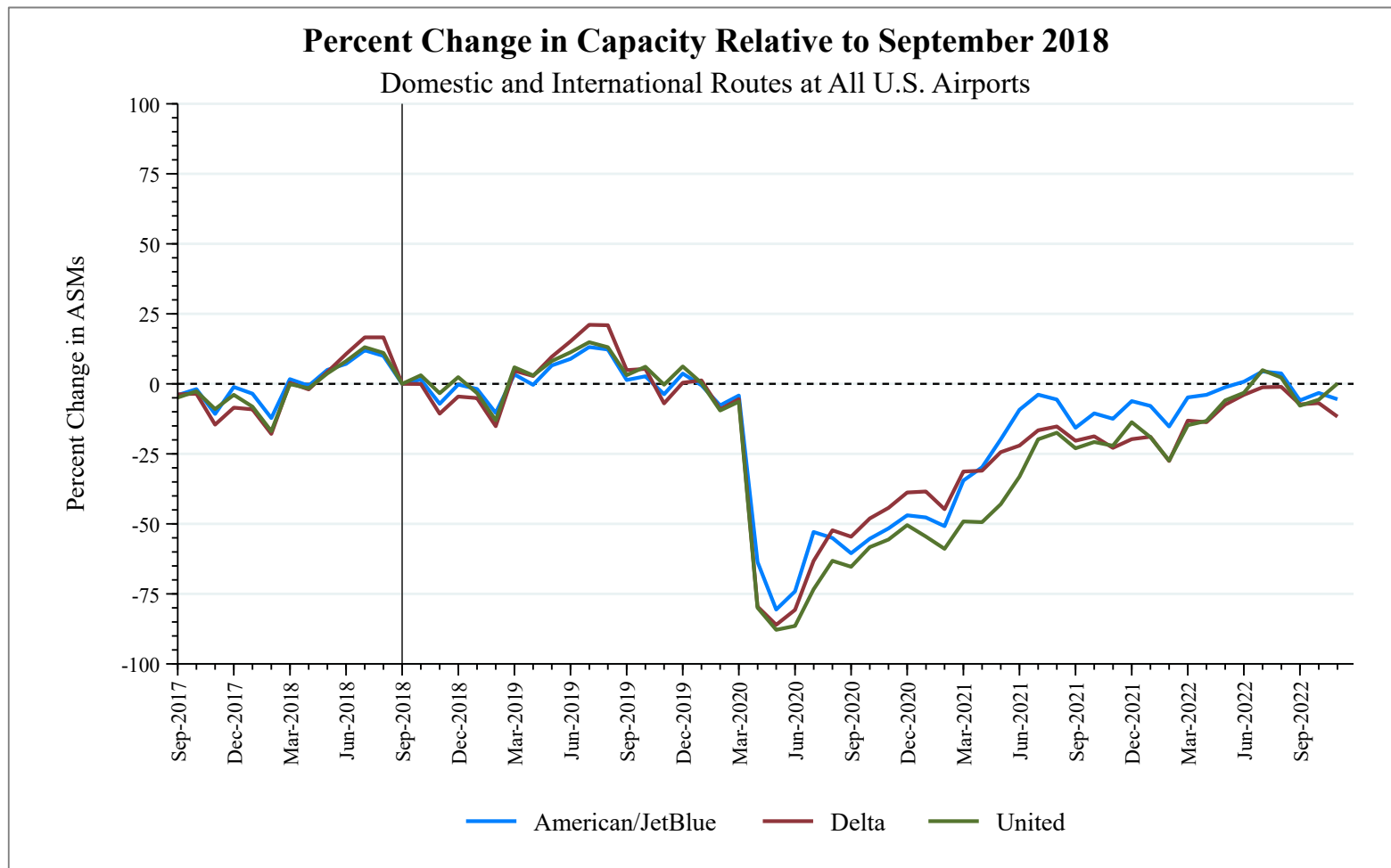
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**Defendants' "growth" is illusory**

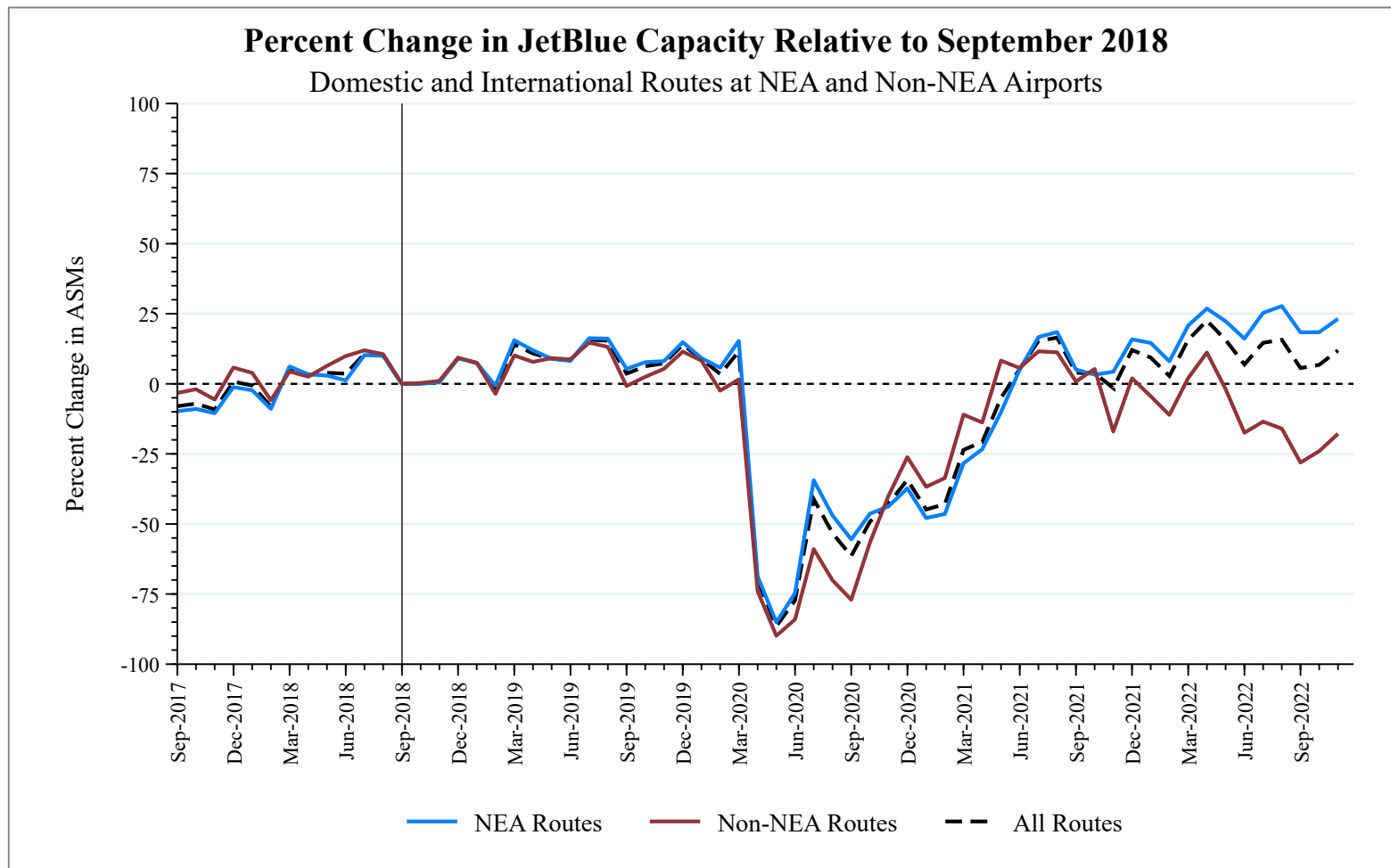
5

Defendants have not grown their fleets as a result of the NEA

# Across Full Networks Defendants Show No Unique Growth



# JetBlue's "Growth" Has Come At The Expense Of Non-NEA Routes



## Defendants Have Failed To Prove Benefits

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**Defendants have not grown their fleets as a result of the NEA**

## American Admits It Is Robbing Peter To Pay Paul

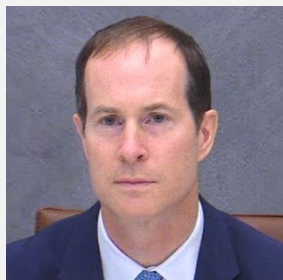


**Brian Znotins**  
Vice President,  
Network & Schedule  
Planning

- Q. Now, sitting here today as American, **robbing Peter to pay Paul** . . . do you have to pull down flying or grow more slowly in other areas in order to fund the NEA?
- A. **In the short term, yes** . . . .

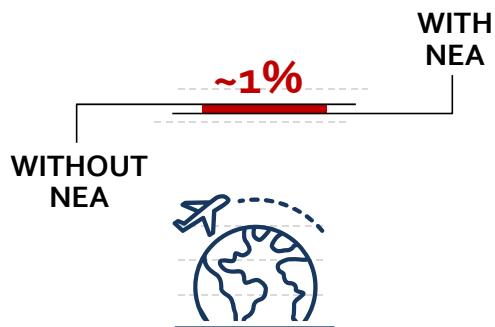


# JetBlue's Fleet—Not The NEA—Determines How Much It Can Fly

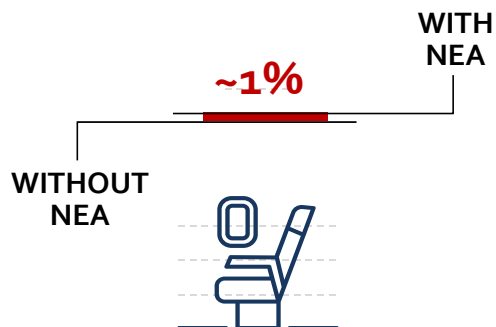


David Clark  
Head of Revenue  
and Planning  
**jetBlue**

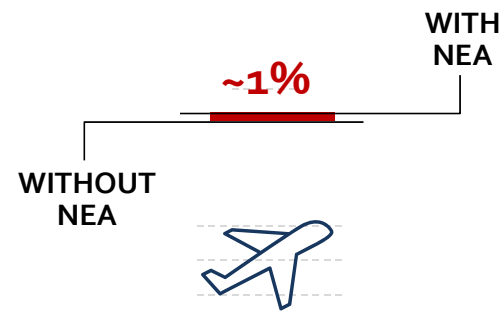
2021: At most **about 1%** projected growth under NEA as compared to without NEA



2022-2026:  
**ASMs**



2022-2026:  
**SEATS**



2022-2026:  
**DEPARTURES**

## Defendants Claim Now JetBlue Never Considered Delaying The Retirement Of The E190s . . .



**David Clark**  
Head of Revenue  
and Planning

**jetBlue**

**THE COURT:** Why wouldn't this scenario been under consideration?

**THE WITNESS:** We had already announced the retirement of the E190s. . . .

**THE COURT:** So it didn't occur to anybody pre-NEA why don't we just grow by keeping the E190s longer.

**THE WITNESS:** Correct. . . .

# ... But JetBlue Considered Delaying The Retirement Of The E190s Regardless Of The NEA



**Eric Friedman**  
Director,  
Route Planning



JETBLUE AIRWAYS CORPORATION CONFIDENTIAL TREATMENT REQUESTED

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**From:** Friedman, Eric  
**Sent:** Wednesday, July 15, 2020 7:48 PM  
**To:** Lusso, Andrea-Han, Nicholas  
**Subject:** 5 Year Plan  
**Attachments:** 5 Year Plan Forecast v10.xlsx

**Conclusion:**  
 This exercise makes extremely clear that, **regardless of Connie**, JetBlue will have to find a way to preserve and likely grow the current order book; whether through new aircraft, old aircraft, **keeping E90s**, purchasing or leasing. As of now we risk BOS and FLL for JFK, LAX, MCO and operational flexibility. If the fleet can't grow, something has to go.

the order book. After 2023, the fleet/network become even more constrained due to A320 retirements which have never been modeled before.

**Methodology:**

- E90s, A320s and HD utilization are set to 95% of 2019 levels (enhancing operability and patterns)
- Mint and (X)LRs keep 2019 (or originally forecasted) utilization
- Network expansion to prioritize "contractual agreements":
  - Cover JFK slots attained through AA deal (not Connie)
  - Cover remaining JFK slots at 80% usage per stricter enforcement
  - Cover MCO commitment most-recently outlined to Robin and team
  - Cover LAWA commitment most-recently outlined to Robin, LAWA and teams
  - Fly 2019 levels on existing routes beginning 2022
  - Add from the original plan with any excess aircraft

**Results:**  
 Following the above methodology, we see the following shell deficits:

2022	2023	2024	2025	2026
(3.9)	(0.3)	(7.4)	(15.0)	(12.0)

We also see the following growth plan:

	2019	2020	2021	2022	2023	2024	2025	2026
BOS	178	99	145	185	186	188	192	192
FLL	112	59	88	103	102	102	102	102
MCO	75	45	71	80	85	89	98	98
JFK	174	109	182	191	191	191	191	191
LAX	23	19	43	45	54	66	71	71

1

**PLAINTIFFS EXHIBIT**  
 PX0625  
 1-21-CV-1158

JBLU00123640

# Keeping The E190s Made More Sense Without the NEA



David Clark  
Head of Revenue  
and Planning

- Q.** Okay. And that reflects that the difference that keeping the E190 fleet aircraft in JetBlue's fleet is making in terms of revenue is larger in a scenario without the Northeast Alliance than with the Northeast Alliance, correct?
- A.** So in this hypothetical scenario that we weren't considering, the revenue difference is higher because we would deploy the fleet differently, hypothetically, without the NEA.

	2018	2019	2020	2021	2022
<b>Base No NEA</b>					
<b>Keep E90 with NEA</b>					
<b>Initiatives</b>					
Cobrand RFP					
ITP					
<b>Initiatives Total</b>					
<b>Loyalty Revenue - Excluding Initiative</b>					
<b>Keep E90 with NEA</b>					
<b>Keep E90 with NEA</b>					
<b>Keep E90 No NEA</b>					
<b>Total NEA Network/Reference Revenue</b>					
<b>Total NEA Related Revenue</b>					
<b>Uncertainty Head-Cut</b>					
<b>Total Revenues</b>					
Base with NEA					
Keep E90 with NEA					
<b>Diff</b>					
Keep E90 with NEA					
Keep E90 No NEA					
<b>ADMs</b>					
Keep E90 with NEA					



PLANNING LIMIT  
PAGE  
NUMBER

# JetBlue Needed More Aircraft to Fulfill Even Its Standalone Growth Plans

Prior crises, competitive order books and planned growth opportunities all suggest JetBlue's order book should be at least 40-60 a/c larger excluding the NEA

**From:** Lusso, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5D628F1839D84B9892A583E7A898458E-LUSSO, ANDREA]  
**Sent:** 2/11/2021 8:40:38 AM  
**To:** Laurence, Scott (Scott.Laurence@jetblue.com) [/O=jetBlue Airways/OU=JETBLUE/cn=Recipients/cn=Scott.Laurence]  
**CC:** 'Friedman, Eric (Eric.Friedman@jetblue.com)' [Eric.Friedman@jetblue.com]  
**Subject:** FW: Industry Capacity Review  
**Attachments:** Industry capacity recovery v9.pdf; Industry capacity recovery v9.pptm  
**Importance:** High

## Executive Summary:

1. After the 2008 financial crisis JetBlue recovered to pre-crisis levels within one year; faster than GDP
2. JetBlue continued to grow more quickly than its competition; on average 4.2pts more quickly per year within "JetBlue Geography"
3. JetBlue rapidly grew in new, high value geography while beating industry-wide PRASM performance; setting a precedent for faster growth while generating similar if not better revenue performance
4. OA order books, including retirements/deferrals, show industry growth within "JetBlue Geography" to be constrained through the next five years; but, still capable of generating ~3% growth
5. JetBlue, given prior history, should be able to grow upward of 7%; however, current fleet plans allow for only ~4%
6. For the first time, JetBlue will grow only slightly above industry, and significantly behind ULCCs

Prior crises, competitive order books and planned growth opportunities all suggest JetBlue's order book should be at least 40-60 a/c larger excluding the NEA

JetBlue  
\*\* JetBlue Geography: US origin to: US, Caribbean, Central America, Mexico, Colombia, Venezuela, Guyana, Suriname, French Guiana, Ecuador, Peru  
Confidential Pursuant to the Court's Default PO

JBLU-LIT-00924658

# Defendants' Intangible Justifications For The NEA Fail

1

**Frequent flyer programs and network breadth do not benefit all customers**

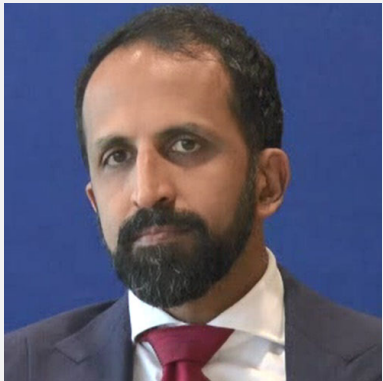
2

American and JetBlue were already "relevant" at NEA airports

3

The NEA has not spurred any competitive response

# Frequent Flyer Programs And Network Breadth Do Not Benefit All Customers

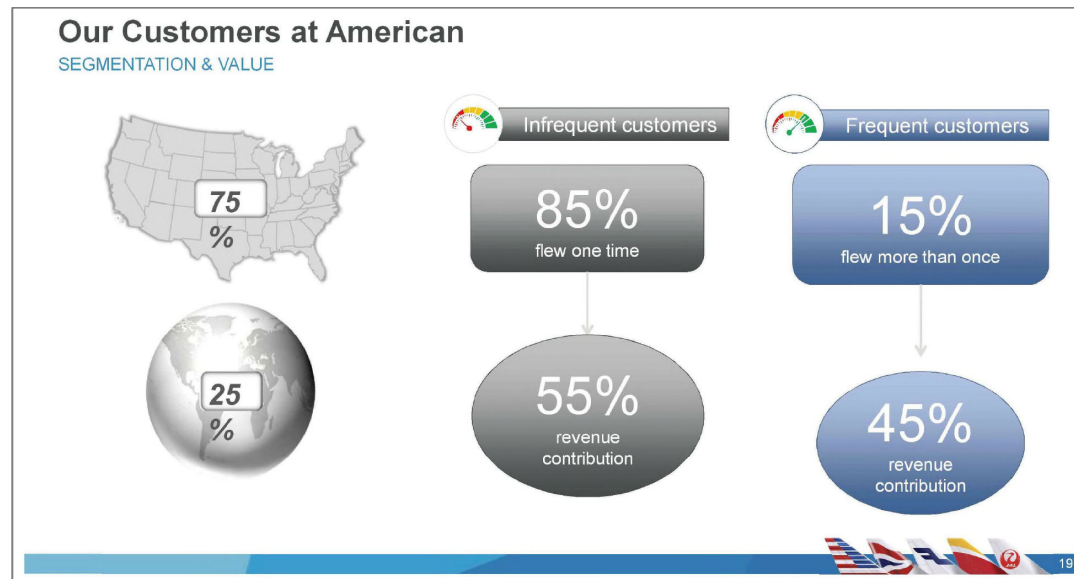


**Vasu Raja**  
Chief Commercial  
Officer



"[T]he **customers whom we're most after** . . . is somebody who is a **power traveler**.

"And for us, like, a huge amount of the success and profitability of our company is attracting the power user of our product, **less so the marginal user** of our product."



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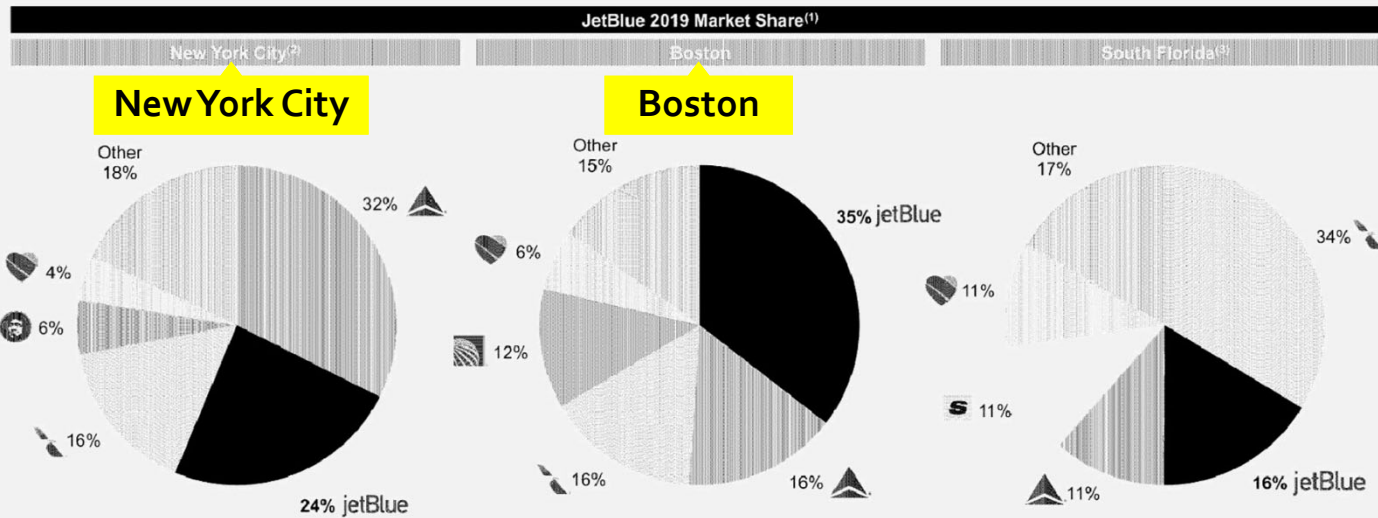
3

The NEA has not spurred any competitive response



# JetBlue Told Lenders It Had "Leading Positions" Before The NEA

## LEADING POSITIONS IN KEY U.S. MARKETS

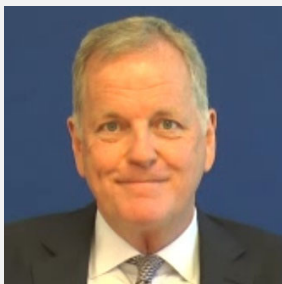


**JetBlue holds significant market share in some of the largest high-value geographies in the United States**

jetBlue 2020

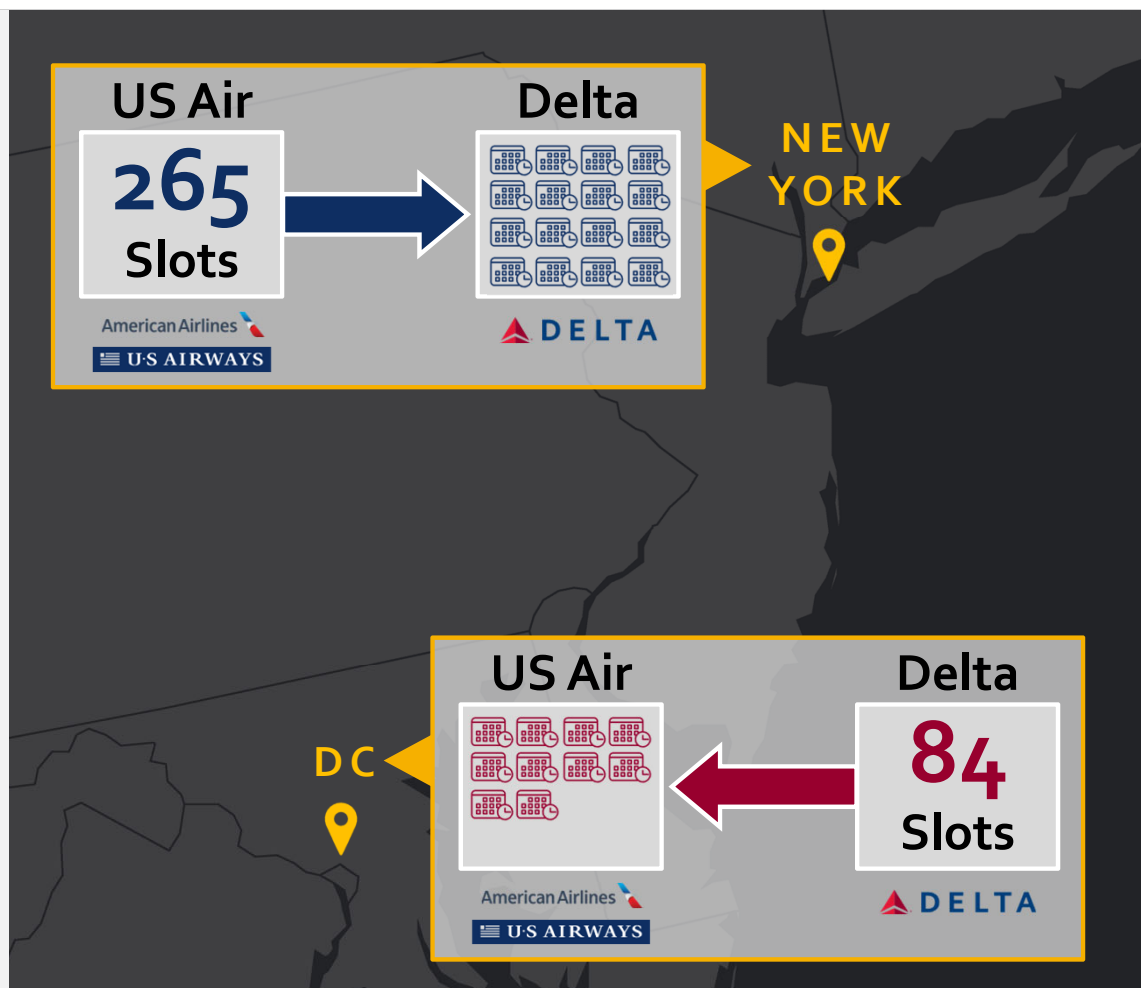
Source: Diio M.  
 Note: Market share based on mainline operations.  
 1. Based on 2019 domestic available seat miles (ASMs).  
 2. Includes JFK and LGA.  
 3. Includes MIA, FLL and PBI.

# American's Presence in New York Was A Choice It Made



**Doug Parker**  
Board Chairman  
and Former CEO

- Q.** Is it fair to say, Mr. Parker, that Delta's enhanced position in New York City . . . is partly the result of US Airways giving Delta those LaGuardia—265 LaGuardia slots?
- A.** Sure. That's a good piece of why Delta has more capacity in New York than in the combined American / US Airways.



# Defendants' Intangible Justifications For The NEA Fail

1

Frequent flyer programs and network breadth do not benefit all customers

2

American and JetBlue were already "relevant" at NEA airports

3

**The NEA has not spurred any competitive response**

## What Delta and United Actually Said:



**Joe Esposito**  
S.V.P. – Network  
Planning



- Q. Has Delta added any routes out of or into Boston because of the NEA?
- A. No, everything that—everything that we’ve been—that we put into Boston was in our long-term plan.**



**Mark Weithofer**  
Director Domestic  
Network Planning



- Q. What’s United’s network response been to the NEA?
- A. Our network strategy has not changed since the NEA has announced – was announced because of the NEA. We have the same strategy that we went into Covid coming out for the New York area and Boston.**

**There Is No Justification For  
The NEA In Boston**

# JetBlue Recognized Boston Was Hard to Justify

## 1 Project Connie: Spectrum of potential antitrust risk



Increasing antitrust risk



3 Codeshare Plus<sup>2</sup> in NYC (but no TATL)

4 Codeshare Plus<sup>2</sup> in NYC (incl. TATL) & / or BOS

- JetBlue much stronger in BOS already
- Partnership could change JetBlue's incentives for entry into / pricing of TATL

3 Codeshare Plus<sup>2</sup> in NYC (but no TATL)

- RSA and capacity optimization may reduce incentives to compete and diminish "JetBlue effect"
- Joint-marketing and FFP terms may diminish incentive to compete
- Joint control of gates / facilities could lead to "hoarding" and/or terminating competitors' use of subleased facilities
- Benefits of joint bids to corporate customers v. potential to diminish competition

• Moderate risk

4 Codeshare Plus<sup>2</sup> in NYC (incl. TATL) & / or BOS

- JetBlue much stronger in BOS already
- Partnership could change JetBlue's incentives for entry into / pricing of TATL
- Since cooperation would involve ~65% of JetBlue network, increases likelihood DOJ investigates network-wide effects of partnership

- High risk due to extent of integration, geographic scope
- Additional investigation from UK's CMA

1) "Plus" includes at least one of: joint control of capacity, schedule, and pricing and incentivized to sell seats on operated flights; 2) "Plus" includes at least one of: joint control of capacity, schedule, and pricing and incentivized to sell seats on operated flights; 2) "Plus" includes at least one of: joint control of capacity, schedule, and pricing and incentivized to sell seats on operated flights

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# JetBlue Became the #1 Carrier in Boston Organically



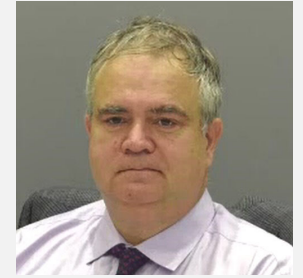
**“And by 2019, before COVID and before the Northeast Alliance, JetBlue had grown to become the largest carrier in Boston, correct?”**



**David Clark**  
Head of Revenue  
and Planning

**jetBlue**

**“Yes.”**



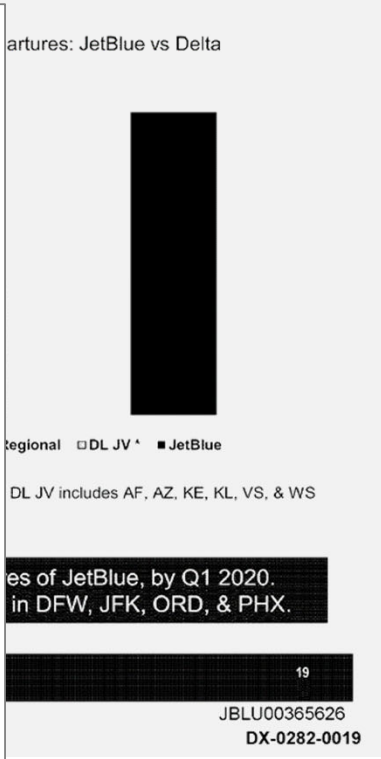
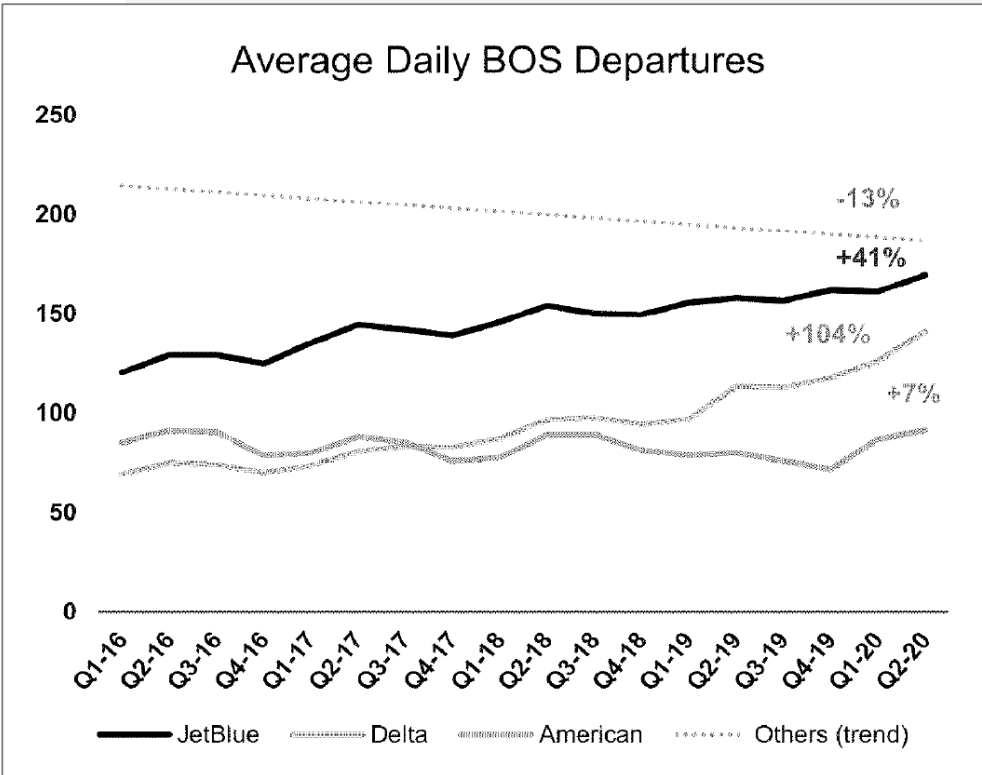
**Robin Hayes**  
CEO

**jetBlue**

**“Yes.”**

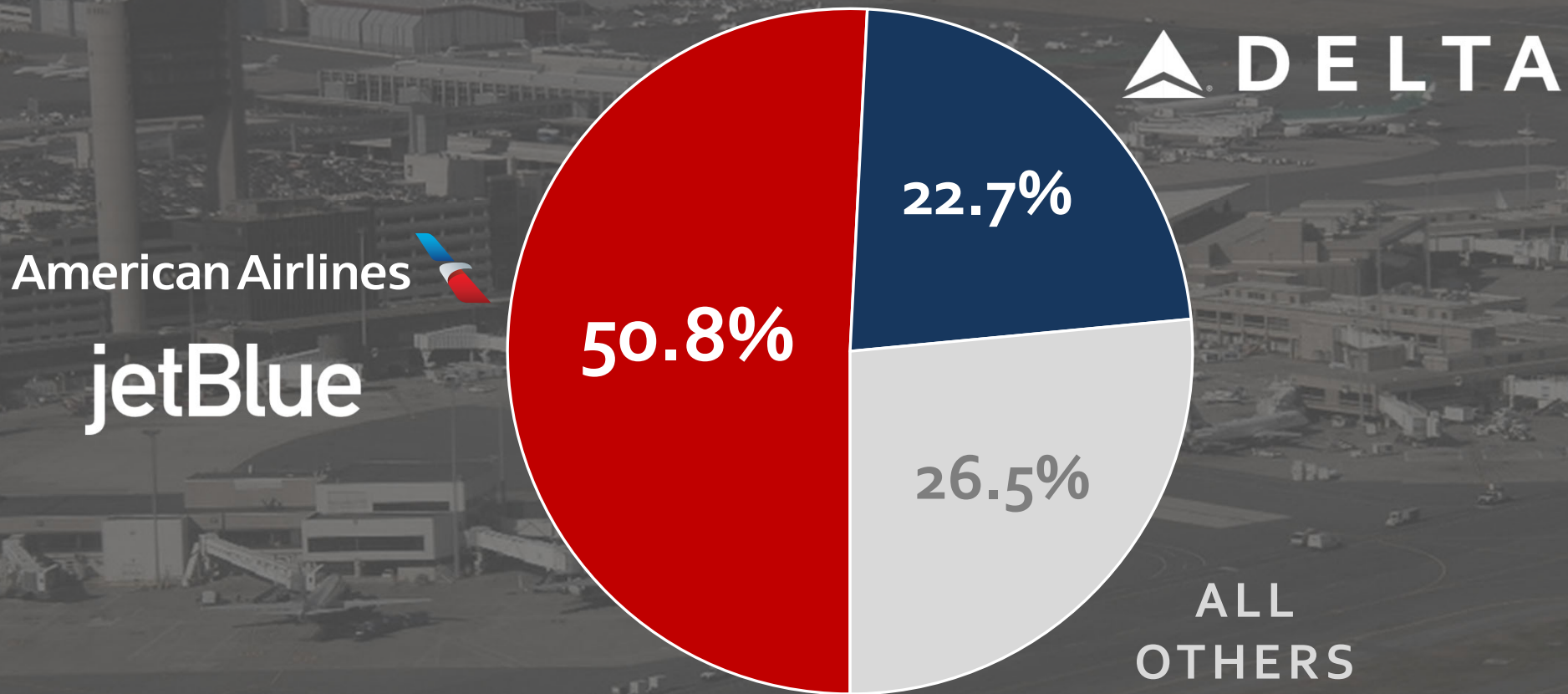
# From Competition Between Three Airlines in Boston . . .

Delta is continuing aggressive growth in BOS while American is increasing growth in 2020, other carriers are falling back








## ... To A Single Dominant Partnership in Boston



# The Rule Of Reason

Step	Description	Burden	Met?
1	Is substantial anticompetitive harm likely?	Plaintiffs	
2	Are there legitimate procompetitive justifications for the restraint(s)?	Defendants	
3	Could those justifications be reasonably achieved through less restrictive means?	Plaintiffs	

**There Is A Reasonable Less  
Restrictive Alternative  
To The NEA**

## Less Restrictive Alternatives

The restraint should be enjoined if  
“the procompetitive efficiencies  
could be **reasonably achieved**  
through less anticompetitive means.”

*National Collegiate Athletic Ass’n v. Alston,*  
141 S.Ct. 2141, 2160 (2021)



# WCIA Model and Slot Lease Is A Reasonable Less Restrictive Alternative

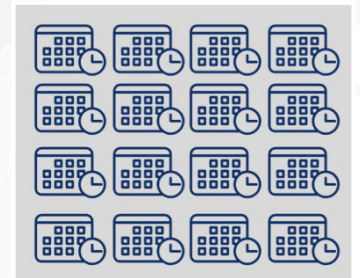
*Alaska*



American Airlines 

**The WCIA + Slot Lease:  
A Less Restrictive Alternative**

**jetBlue**



American Airlines 

# American Considered The WCIA + Slot Lease Scenario



**Jordan Pack**  
Senior Manager,  
Commercial Planning  
and Analysis




*We have outlined and are evaluating three options to improve our East Coast customer proposition*

Scenario	Partnership Structure	Network Scope	Restrictions	Considerations	Initial Value Range
0	<ul style="list-style-type: none"> <li>Combined Carrier JV with</li> </ul>	Geo JFK/LGA + BOS	<ul style="list-style-type: none"> <li>Optimize JFK / LGA / BOS only</li> </ul>	<ul style="list-style-type: none"> <li>JFK / LGA / BOS Market/Slot Optimization with joint scheduling (incremental value)</li> </ul>	Model Range: \$135M - \$190M <\$35M - \$60M
2 East Coast Int'l Alliance (Fall Back)	<ul style="list-style-type: none"> <li>AS structure on East Coast</li> <li>Codeshare (WCIA structure)</li> <li>Growth Incentive (MGIA structure)</li> </ul>	Geo JFK + BOS	<ul style="list-style-type: none"> <li>No Code on Overlapping Non-Stop ODs (LAX-JFK)</li> </ul>	<ul style="list-style-type: none"> <li>JFK / LGA / BOS Slot Swap Possible</li> </ul>	Initial Est. \$120M
		Int'l only	<ul style="list-style-type: none"> <li>Code on Overlapping Non-Stops connecting to International ODs (B6*AA LAX-JFK / B6*AA JFK-LHR)</li> </ul>	<ul style="list-style-type: none"> <li>Does not require Capacity Governance</li> </ul>	\$30M
		jetBlue Domestic only		<ul style="list-style-type: none"> <li>Value range not yet evaluated</li> </ul>	jetBlue \$90M
2 East Coast Int'l Alliance (Fall Back)	<ul style="list-style-type: none"> <li>AS structure on East Coast</li> <li>Codeshare (WCIA structure)</li> <li>Growth Incentive (MGIA structure)</li> </ul>	jetBlue All Domestic + Int'l		<ul style="list-style-type: none"> <li>Value does not include optimized network</li> </ul>	jetBlue \$175M (TBD)
		Geo JFK + BOS	<ul style="list-style-type: none"> <li>No Code on Overlapping Non-Stop ODs (LAX-JFK)</li> </ul>	<ul style="list-style-type: none"> <li>JFK / LGA / BOS Slot Swap Possible</li> </ul>	Initial Est. \$120M
		Int'l only	<ul style="list-style-type: none"> <li>Code on Overlapping Non-Stops connecting to International ODs (B6*AA LAX-JFK / B6*AA JFK-LHR)</li> </ul>	<ul style="list-style-type: none"> <li>Does not require Capacity Governance</li> </ul>	\$30M
		jetBlue Domestic only		<ul style="list-style-type: none"> <li>Value range not yet evaluated</li> </ul>	jetBlue \$90M

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# The Rule Of Reason

Step	Description	Burden	Met?
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## Rule Of Reason Balancing

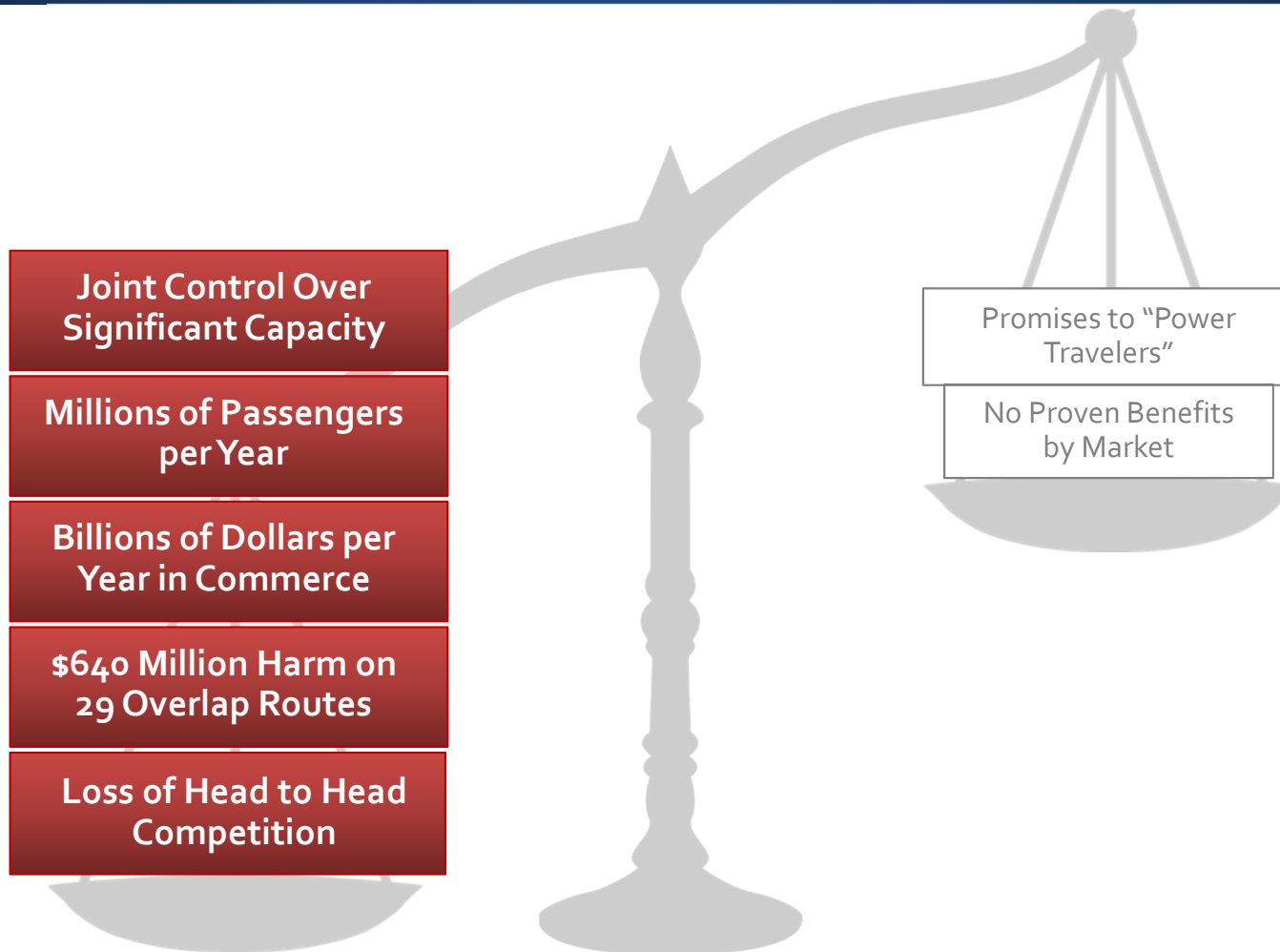
A restraint violates the Sherman Act if its “anticompetitive effects . . . **outweigh** [its] legitimate business justifications.”

*Sullivan v. National Football League,*  
34 F.3d 1091, 1111 (1st Cir. 1994)



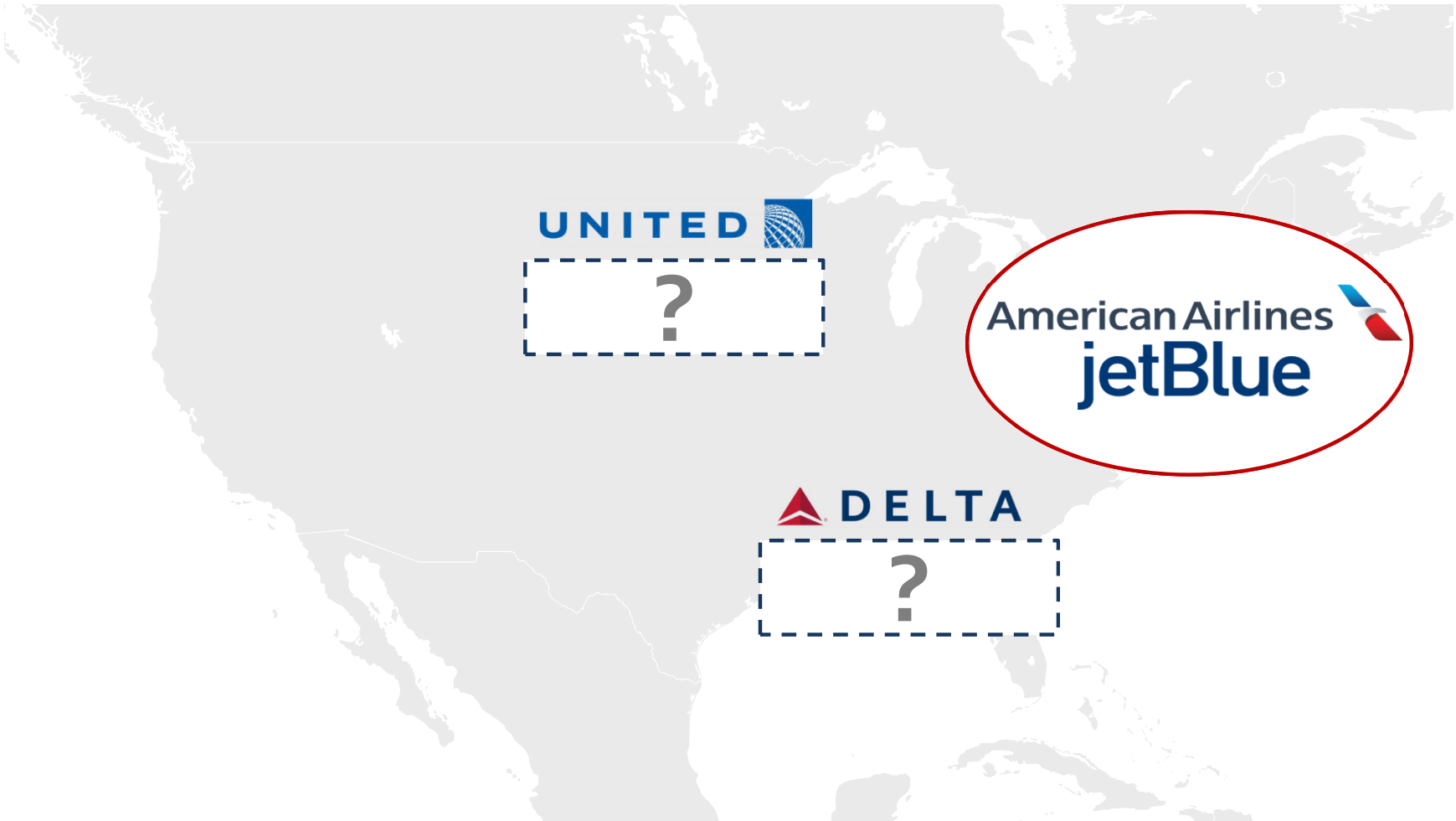


# Weight Of The Evidence

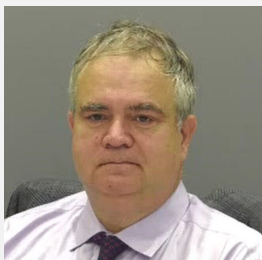


# Conclusion

# Pandora's Box: After The NEA, What Is Next?



# Robin Hayes' Warnings About Joint Ventures Are Accurate



Robin Hayes  
CEO  
jetBlue

Q. So you predicted that the international JVs would argue that their getting bigger actually benefits the consumer because the other international JVs are also getting bigger, right?

A. Yes. That was part of the issue.

And as we know, what that means, is these airlines team up in partnerships to coordinate schedules, coordinate prices, share revenue – it's **legalized collusion**, it's

Consumers effectively **have very little choice in markets where JVs have a stranglehold** – and they also **face higher fares**. This runs afoul of everything JetBlue has stood for during the past 15 years. Which is why we're really standing up and speaking about it.



