Consumer Travel Alliance
P.O. Box 15286, Washington, DC 20003
www.consumertravelalliance.org
202-716-9596 edcha@consumertraveler.com

February 7, 2014

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

Re: United States v. US Airways Group, Inc. and AMR Corp., No. 1:13-cv-01236 (CKK), Comments of the Consumer Travel Alliance

Dear Mr. Stallings:

The Consumer Travel Alliance (CTA) is a non-profit education and advocacy organization devoted to making travel better for consumers. CTA has been active during the entire merger debate. Its president was invited to testify before the Senate Aviation Subcommittee of the Commerce Committee, members held meetings with staff of the Senate Judiciary Committee and the House Transportation and Infrastructure Committee. Our organization consulted with Department of Justice (DOJ) during the merger process. CTA has also worked closely with DOT regarding consumer protection issues for the past five years.

CTA submits these comments on behalf of itself and its more than 30,000 constituents. Our interest is in preserving competition in the airline marketplace and in maintaining the ability to comparison shop across airlines. CTA has also signed onto comments submitted by the American Antitrust Institute.

The settlement proposed by the DOJ is clearly an attempt to preserve the same competition and comparison-shopping that American consumers should enjoy. However, this settlement alone will not bring about enough of a change in the

competitive landscape to ensure vibrant competition. The airlines have many ways in which they compete that are not affected by divestitures of slots at controlled airports or facilities at crowded airports.

Airlines can hinder competition by making the pricing of their products more difficult to understand and thus more difficult to compare.

Airlines offer code-sharing flights that make airlines appear larger than they actually are thus, confusing consumers. These code-sharing activities also make consumers less likely to know with what airline they have a contract when purchasing airline tickets.

Airlines have also been permitted by the Department of Transportation (DOT) to enjoy antitrust immunity. This immunity has permitted the industry to create de-facto mergers of airlines. These joint ventures, permitted by antitrust immunity agreements, operate as independent carriers and disperse profits according to a revenue-sharing formula.

In other words, while DOJ is attempting to address the loss of airline competition through settlement regarding this merger, the DOT diminishes competition by not requiring truthful disclosure of airfares and ancillary fees, deception created by code-sharing and the de facto mergers spawned by DOT's liberal allowance of antitrust immunity.

If this merger is finalized, DOJ must address these other issues as anti-competitive. These three issues hinder the operation of a free aviation marketplace and mitigate thoughtful remedies proposed by DOJ.

These are three areas where further in-depth examination must follow the remedies proposed by DOJ regarding this merger. Reducing the number of network carriers from four to three will affect competition even with the imposition of divestitures of slots and facilities. Modifying these three areas will inject competition across the airline universe.

1. Airlines must disclose baggage and seat reservation ancillary fees prior to airfare purchase.

As long as airlines have the ability to thwart the consumers' ability to easily compare prices across airlines, passengers are at a disadvantage. Airfares these days are only one facet of the total cost of travel. Baggage fees and seat reservation fees (and

others) can add significantly to airfares. For most airlines, these costs are not disclosed during the airline ticket purchasing process. At a minimum, baggage fees and seat reservation fees (with all of their permutations and exclusions based on elite frequent flier levels, credit card used for purchase and PNR requirements) must be clearly disclosed prior to purchase. All ancillary fees should be available for purchase through every channel airlines choose to sell their tickets.

Only with such full disclosure of pricing data can software developers, GDSs, online travel agencies and others work to create new programs to handle the increasingly complex and growing ancillary fee data. Without the release of this pricing data by the airlines, developers cannot create new systems to make airline ticket purchases more consumer-friendly.

2. Airlines must clearly disclose code-shares and note other contracts of carriage.

Airline passengers are finding it harder to uncover the actual operator of flights within alliance partners who use extensive code-sharing. Yes, there is notice, but it is deceptively difficult to uncover during the booking process. Airlines, though they print "operated by…" on ticket itineraries, paint code-share partner aircraft in the same colors as mainline carriers, distribute the same magazines across their code-share regional network, even used mainline napkins and paper cups for beverage service. No wonder normal consumers are confused. These code-share arrangements are legalized deception.

Worse, when code-share partners operate flights, there is no clear information presented to consumers at the time a fare is quoted:

- Which contract of carriage applies — the marketing carrier with its airline code on the flight number, or the operating carrier? No airline that I know of, advises their passengers that different contracts of carriage apply when transferring from mainline to regional aircraft.

- Which baggage fees and rules apply — those of the marketing carrier with its airline code on the flight number, or the operating carrier? Does carry-on baggage fall under the US marketing carrier's rules or is it governed by the code-share partner's rules and regulations? This issue is most important when traveling internationally on alliance partners.

3. DOJ should take a public stand against antitrust immunity agreements between airlines.

Antitrust immunity agreements are mergers in disguise with no public comments or legal wrangling. Through regulatory slight-of-hand, airlines are permitted to openly collude on prices in marketing and setting schedules. Airline partners with antitrust immunity agreements have set up joint ventures on routes granted such immunity. These joint ventures have their own operational organization, finance systems and executive structure. Delta Air Lines does not operate transatlantic flights. Air France does not operate transatlantic flights. Their joint venture does. The same goes for antitrust immunity agreements between United Airlines and Lufthansa or between American Airlines and British Airlines.

The American public is being deceived. There are not dozens of airlines carrying passengers on international routes. Three giant airline alliances control the international marketplace.

Current antitrust immunity agreements significantly harm consumers by eliminating competition. Just as a merger between American Airlines and British, Delta and Air France/KLM, or United and Lufthansa would stop much transatlantic competition, these misdirected, DOT-approved antitrust alliances have stripped the American and international aviation marketplace of much of its competition, harming consumers worldwide.

The Consumer Travel Alliance urges the Department of Justice to comment on as these issues as they move forward to approve the final merger agreement. The hard and creative work that the DOJ lawyers have done in attempting to transform the domestic airline market in response to this merger between American Airlines and US Airways needs to be complemented by a similar re-examination of anticompetitive issues enabled and permitted by DOT.

The work that DOJ has started needs to be finished by DOT. Consumers will only be able to enjoy full competition across airlines when divestitures directed by DOJ are combined with full disclosure of the total cost of travel across all channels where airline tickets are sold; when code-sharing arrangements are clarified or eliminated as deceptive; and when antitrust immunity agreements are repealed.

There is still a lot of work to be done to protect consumers from the loss of competition. DOJ has takes some good first steps. Now, DOT needs to step up to the

plate, with unambiguous encouragement from DOJ, to re-establish a more competitive airline market that will allow the free market to work effectively in the skies.

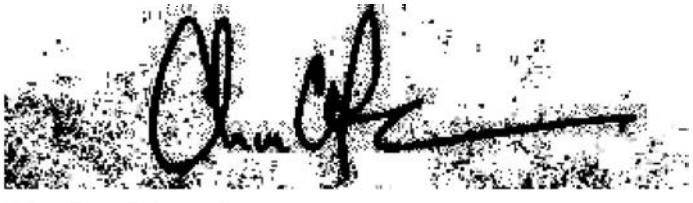
DOJ may not have jurisdictional authority, however, publicly addressing these issues as part of the approval of this merger between American Airlines and US Airways goes hand-in-glove with DOJ's efforts to transform airline competition and insure effective comparison shopping.

This merger has involved DOJ is one of the most extensive and intensive examinations of the aviation marketplace both domestically and internationally. The legal team that worked on this case at DOJ was one of the most seasoned every formed for an antitrust action. Their work was unprecedented and their objections to the merger were strong and clear.

In order for the remedies agreed to in the settlement to produce the effects that the DOJ legal intends, they must add comments about airline competition that are considered jurisdiction of other areas of the government. Protecting competition is the work of the entire government.

The comments surrounding the settlement of this case need to resonate across all departments of government and segments of our economy. Competition must be encouraged and nurtured.

Respectfully submitted,



Charles A Leocha
President