



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

September 27, 2022

The Government Will Prove The NEA Must Be Enjoined

1. Before the NEA

Competition benefited travelers.

2. The NEA

Cooperation, *not* competition.

3. After the NEA

Consumers pay the price.

4. No Justification for the NEA

Competition was already creating growth.

“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”

The Sherman Act, 15 U.S.C. § 1

American and JetBlue: Competitors for 20 Years

JetBlue: Keeping Legacy Airlines “In Check”

1. Before the NEA

- ✓ JetBlue
Disrupted

2. The NEA

3. After the NEA

4. No Justification

Robin Hayes Speech to
The Aviation Club U.K.
September 18, 2019



jetBlue

Robin Hayes
CEO



“Smaller carriers like JetBlue play a critical role in keeping the commercial aviation industry competitive and keeping the immense power of the legacy airlines in check.”

When JetBlue Competes, Travelers Save Billions

FARE DIFFERENCE AFTER ENTRY INTO MARKET

jetBlue

“JetBlue has saved customers flying to/from Boston ~\$3B dollars over the past 15 years.”

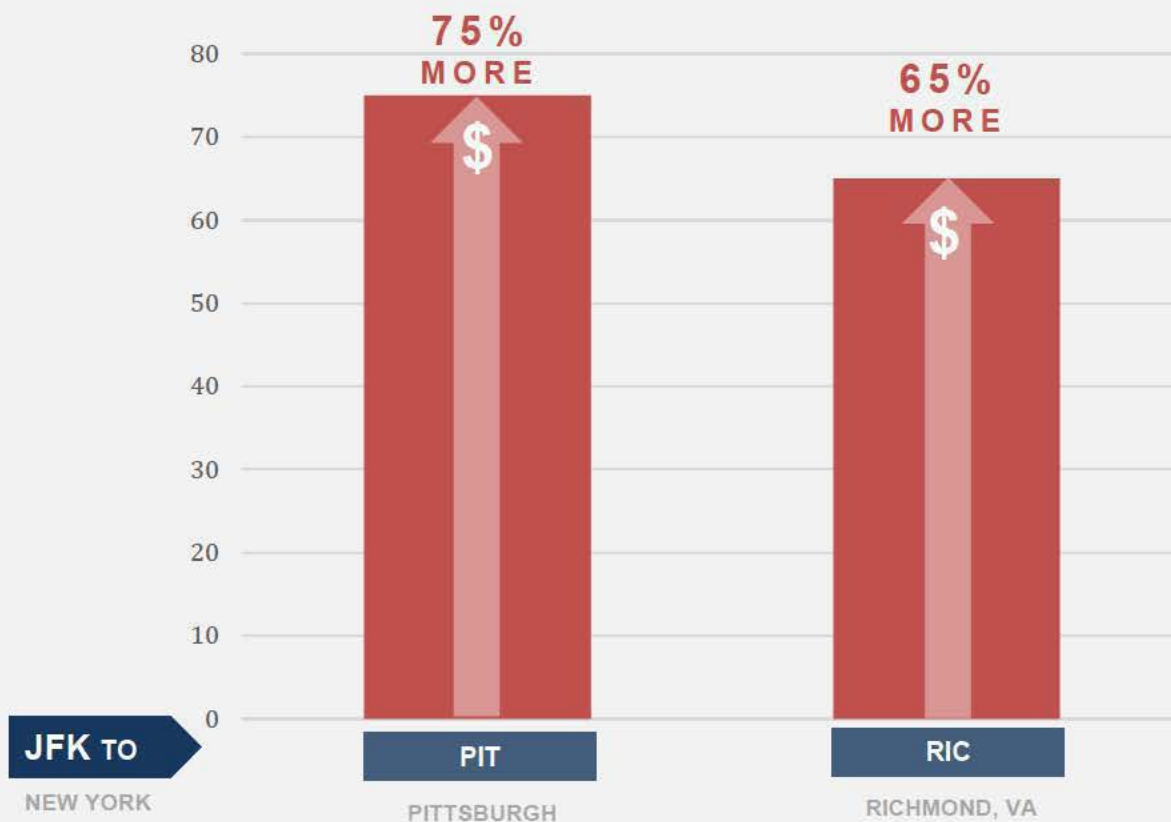


When JetBlue Doesn't Compete, Travelers Pay More

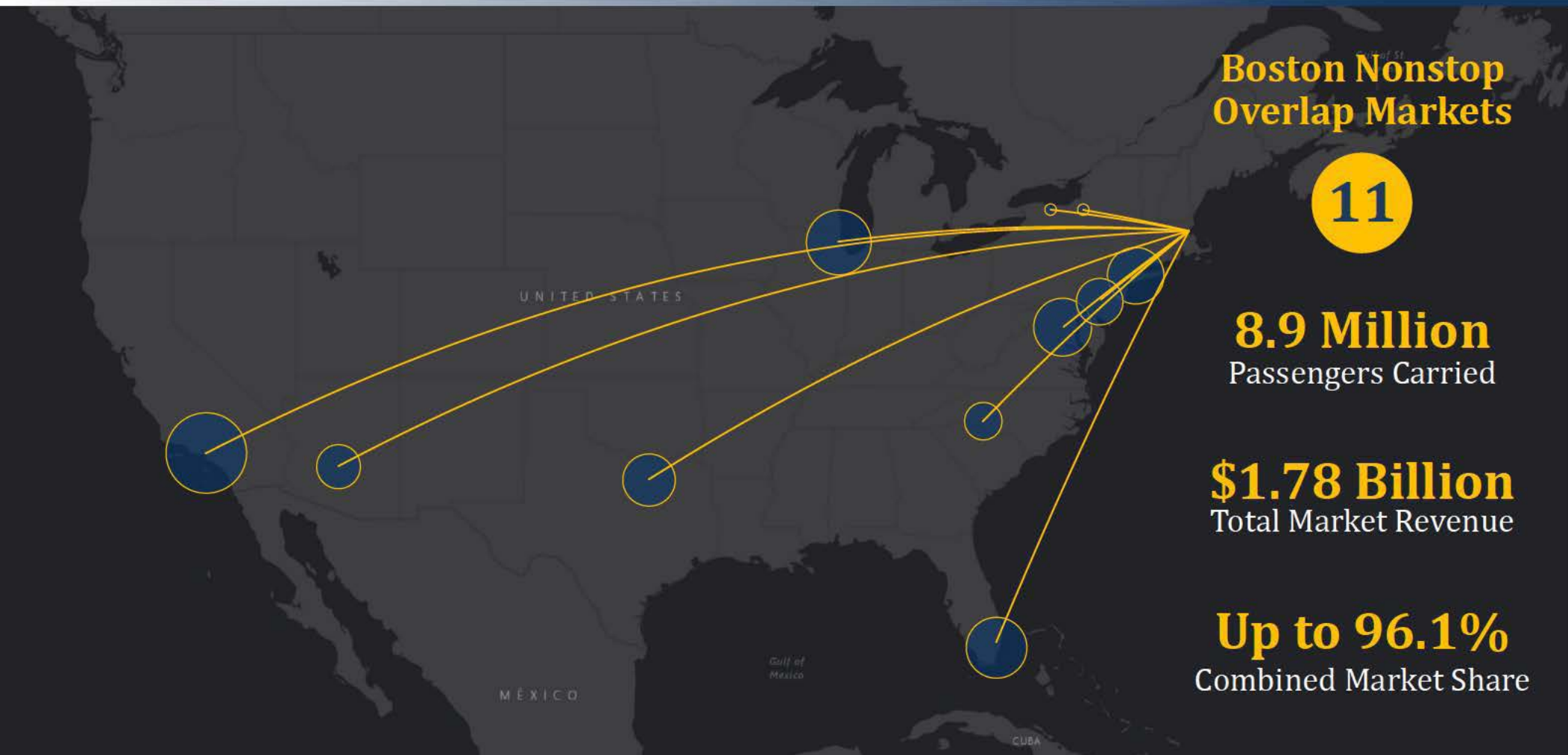
FARE DIFFERENCE AFTER EXIT FROM MARKET

jetBlue

“When a low fare competitor exits a market, [legacy competitors] again raise fares (e.g., NYC-PIT/RIC) and traffic usually drops as a result.”



Boston: A Battleground For Competition



JetBlue Brought Lower Prices To Boston

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City

2. The NEA

3. After the NEA

4. No Justification

JetBlue's Entry into the BOS Shuttle Markets Led to Noticeable Price Decreases



jetBlue

Submission
to the U.K.
Competition
& Markets
Authority

June 3, 2020

JetBlue's Disruption Hurt American Airlines' Wallet ...

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City

2. The NEA

3. After the NEA

4. No Justification

From: Steven Gilman
To: Paul Swartz
Sent: August 10, 2019
Re: BOS

American Airlines 

Paul Swartz
Regional Sales
Manager



“The fact is unfortunately BOS does not perform well from a profitability perspective as other cities, largely due to the fare destruction B6 have wrought.”

... But American Fought Back

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City

2. The NEA

3. After the NEA

4. No Justification

From: Vasu Raja
To: [Redacted]
Sent: Sept. 30, 2019
Re: Boston

From: Vasu Raja
To: Jim Carter
Sent: Jan. 18, 2020
Re: Congrats on Boston

American Airlines 

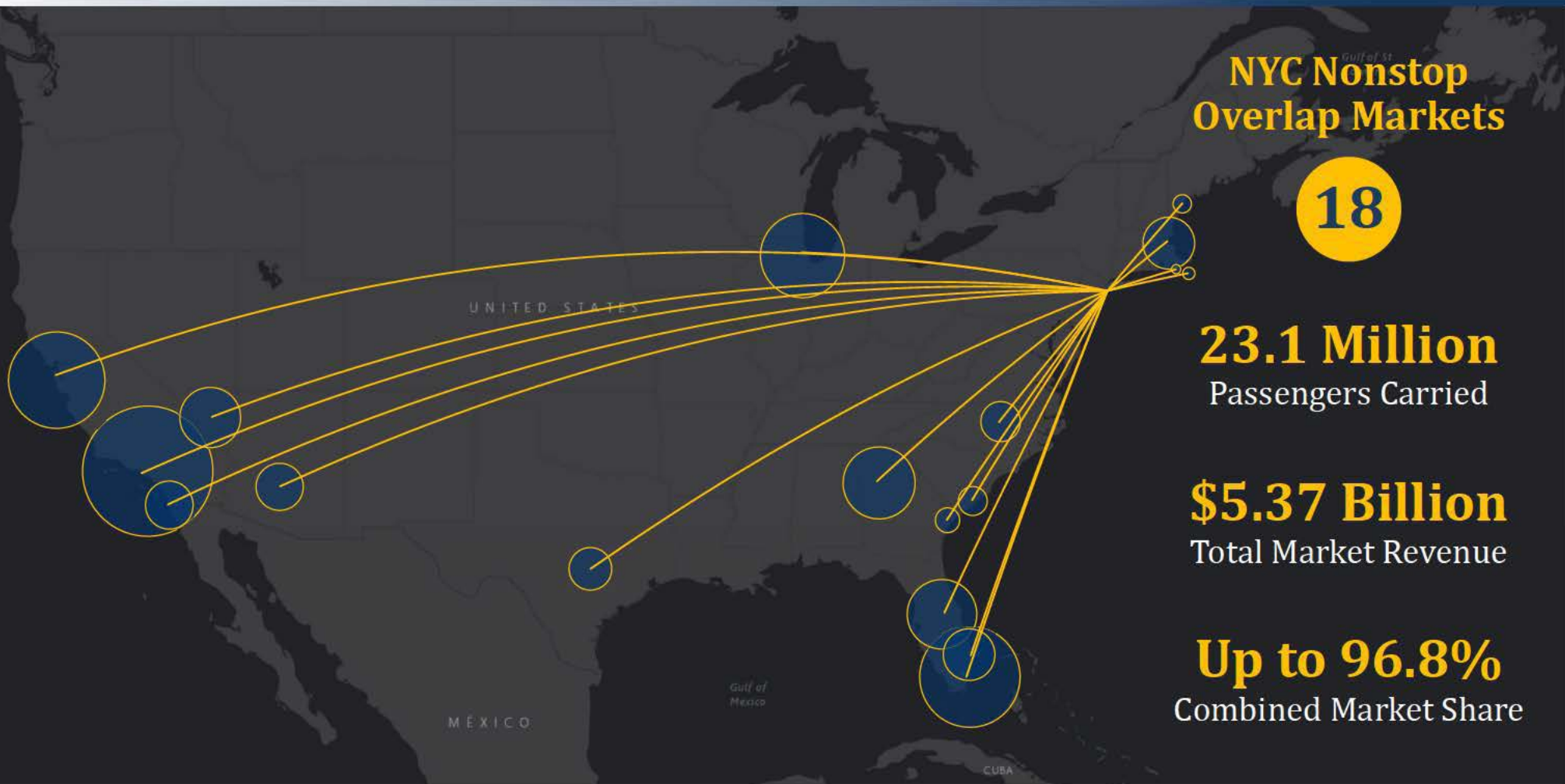
Vasu Raja
Chief Commercial
Officer



“It may take us a bit of time and a lot of change. But we are going to **fight like hell** in BOS if I have anything to do with it.”

“Awesome! Gird your loins. Time to **swing the bat** in Boston.”

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 7.

American Matched JetBlue's Prices in NYC

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City

2. The NEA

3. After the NEA

4. No Justification

From: Dave Clark
To: Andrew Parker; Evan Jarashow
Sent: November 17, 2018
Re: ATPCO Load Report

jetBlue

Dave Clark
Head of Revenue
and Planning



“AA updated match to B6 sale”

“Let’s please be sure we **get competitive** on these routes and travel dates as soon as possible.”

Competition Was Set To Intensify In Boston

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City
- ✓ Escalating Competition

2. The NEA

3. After the NEA

4. No Justification



Just in the last two years, AA has added 7 new destinations from BOS

* * *

Overall AA performance in BOS is good and we will continue to grow



MAKING HISTORY IN BOSTON

WITH THE MOST NONSTOP FLIGHTS OUT OF BOSTON:

- Plans for up to 200 peak daily departures
- 26% increase in flights in the last 3 years
- In 2018, JetBlue carried 11.2M customers- **28.5% of the total airport traffic**
- Most recent route from BOS is to **Minneapolis-St. Paul (MSP)** and seasonal service to **Steamboat Springs (SBS)**



From **BOS** to SAN, LAS, LAX, SFO, SEA, AUA, SXM, UVF & BGI

Locations:

52

Domestic

18

International

Competition In NYC Was Increasing Too

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City
- ✓ Escalating Competition

2. The NEA

3. After the NEA

4. No Justification

American Airlines 

Continue to aggressively pursue 50-seat RJ replacement, to turn LGA and ORD into all two-class operations

jetBlue

We also see the following growth plan:

		2006	2007	2008	2009
		Passengers	Passengers	Passengers	Passengers
Max Dept.	BOS	178	99	145	185
	FLL	112	59	88	103
	MCO	75	45	71	80
	JFK	174	109	182	191
	LAX	23	19	43	45

A New Battleground Was On The Horizon

1. Before the NEA

- ✓ JetBlue Disrupted
- ✓ JetBlue Saved Travelers \$\$\$
- ✓ Battlegrounds in Boston and New York City
- ✓ Escalating Competition

2. The NEA

3. After the NEA

4. No Justification

jetBlue

Looking at London, as I said earlier, there's no reason a walk-up fare in business class from the Northeast should set anyone back \$10,000— or more — roundtrip when a

“[O]ur newly imagined Mint experience is inevitably going to drive down the **high fares** charged by the alliances JVs that dominate 80-90 percent of transatlantic traffic”

announced a return to Boston/Heathrow. Fortunately, we at JetBlue has plenty of experience with these tactics and head-on competition and they are just a fact of life.

American Airlines 

So, it's reasonable to assume 50-60% fare drop in BOSLON once B6 starts non-stop service

The NEA: Cooperation,
not competition.

The NEA: If You Can't Beat Them, Join Them



**Jointly planning
schedules**



**Coordinating on
routes**



**Coordinating on
frequencies**



**Coordinating on
plane size**



**Sharing slots
and gates**



**Sharing
revenues**

Network Planning As A “Single Airline”

1. Before the NEA

2. The NEA

- ✓ A De Facto Merger
- ✓ Capacity Coordination

3. After the NEA

4. No Justification

Coordination:

The agreement between the parties anticipates that they will jointly discuss the best

“In essence, they will engage in network planning as if their Northeast assets were in a single airline”

exclusively by each airline. Neither carrier can veto or stop any capacity decision of the other airline on any route, even within the scope of the partnership.

**Defendants’ response to DOJ
regarding how to characterize the
NEA to third-party market participants**

November 4, 2020

Capacity Coordination Is About The “Best Overall JV Solution”

1. Before the NEA

2. The NEA

- ✓ A De Facto Merger
- ✓ Capacity Coordination

3. After the NEA

4. No Justification

From: David Fintzen

Sent: June 3, 2020

Re: Connie Compare

jetBlue

David Fintzen
VP for the NEA



“On #1, the alternative there is we roll back DCA-BOS to mostly or all B6 metal (the constraint here is our slots in DCA as we don’t have access to Connie’s DCA slots) and put LGA-DCA back on Connie metal. Let’s all kick the tires though and see what is best overall JV solution (as that is what drives the economics). If we roll back, we could then co-locate our full operation at Terminal B – if we want to hold the other incremental flying – or roll back more LGA shifts to stay in MAT.”

On Nonstop Overlaps, Defendants Will Choose To Make More Money – Not Less

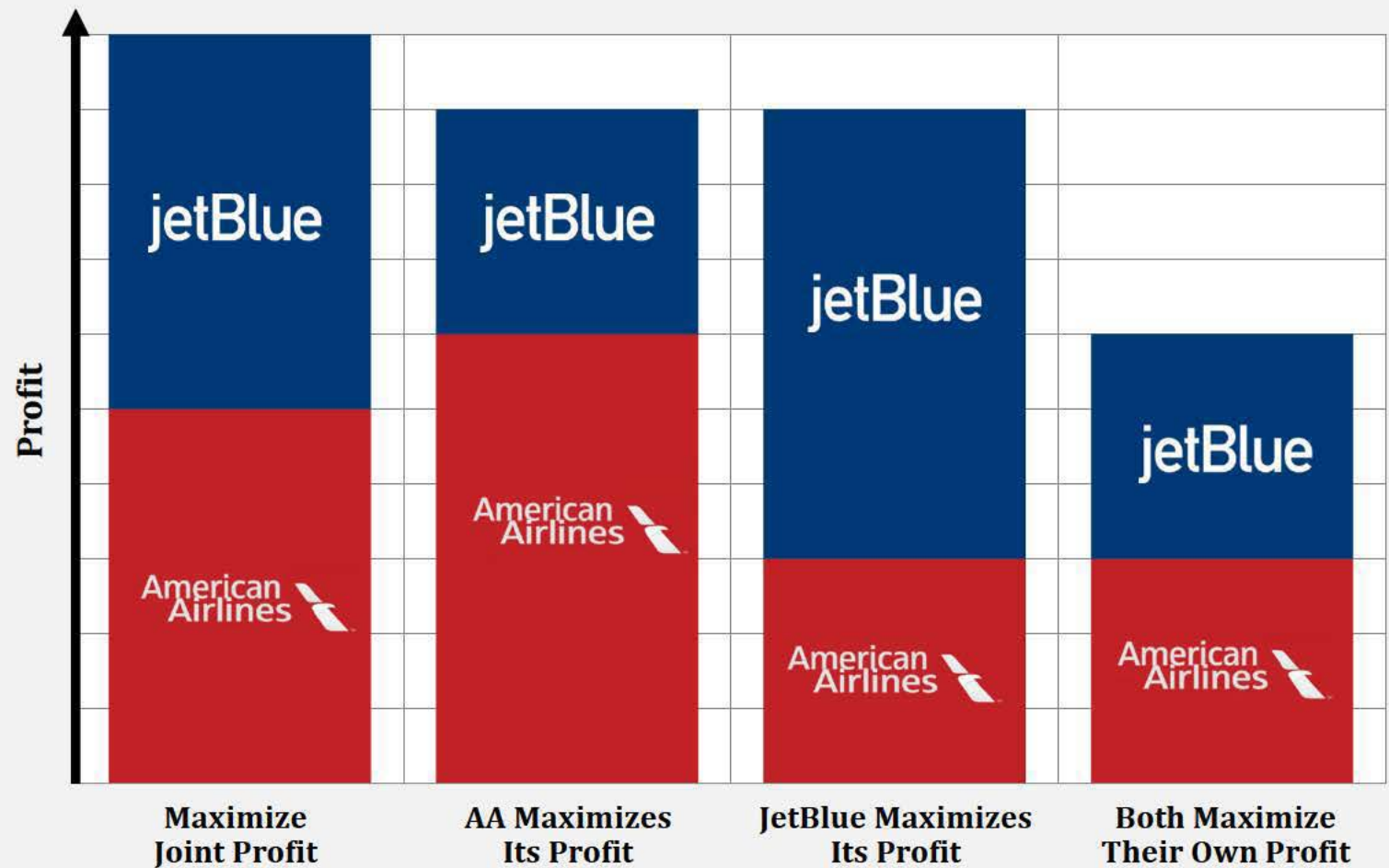
1. Before the NEA

2. The NEA

- ✓ A De Facto Merger
- ✓ Capacity Coordination

3. After the NEA

4. No Justification



Indifference And Neutrality Are The Opposite Of Competition

1. Before the NEA

2. The NEA

- ✓ A De Facto Merger
- ✓ Capacity Coordination
- ✓ Revenue Sharing

3. After the NEA

4. No Justification

Revenue sharing makes “each carrier **indifferent** as to which carrier an incremental NEA passenger flies.”

American Airlines 

- Within the NEA, we are metal neutral with B6 since it is a 100% revenue share
Maximize revenue between the two by evaluating combined market share for high level health
Still manage your flight and respond to drivers and performance metrics
B6 is still a competitor in all other routes

jetBlue

Since we put all this flying through a revenue share model in what is intended to be a metal neutral JV, we need to have route level forecasts to ensure we get the RSA right. I'm actually more interested in how revenue share changes if we

The NEA: Cooperation, *Not* Competition

1. Before the NEA

2. The NEA

- ✓ A De Facto Merger
- ✓ Capacity Coordination
- ✓ Revenue Sharing
- ✓ Cooperate, Not Compete

3. After the NEA

4. No Justification

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.**



jetBlue

Scott Laurence
Head of Revenue
and Planning

The NEA is a
bad deal for travelers.

But Don't Take Our Word For It ...

1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices

4. No Justification

JETBLUE CHIEF EXECUTIVE OFFICER ROBIN HAYES
ADDRESS TO THE AVIATION CLUB OF THE U.K.
LONDON | 11 APRIL 2019



jetBlue

Robin Hayes
CEO

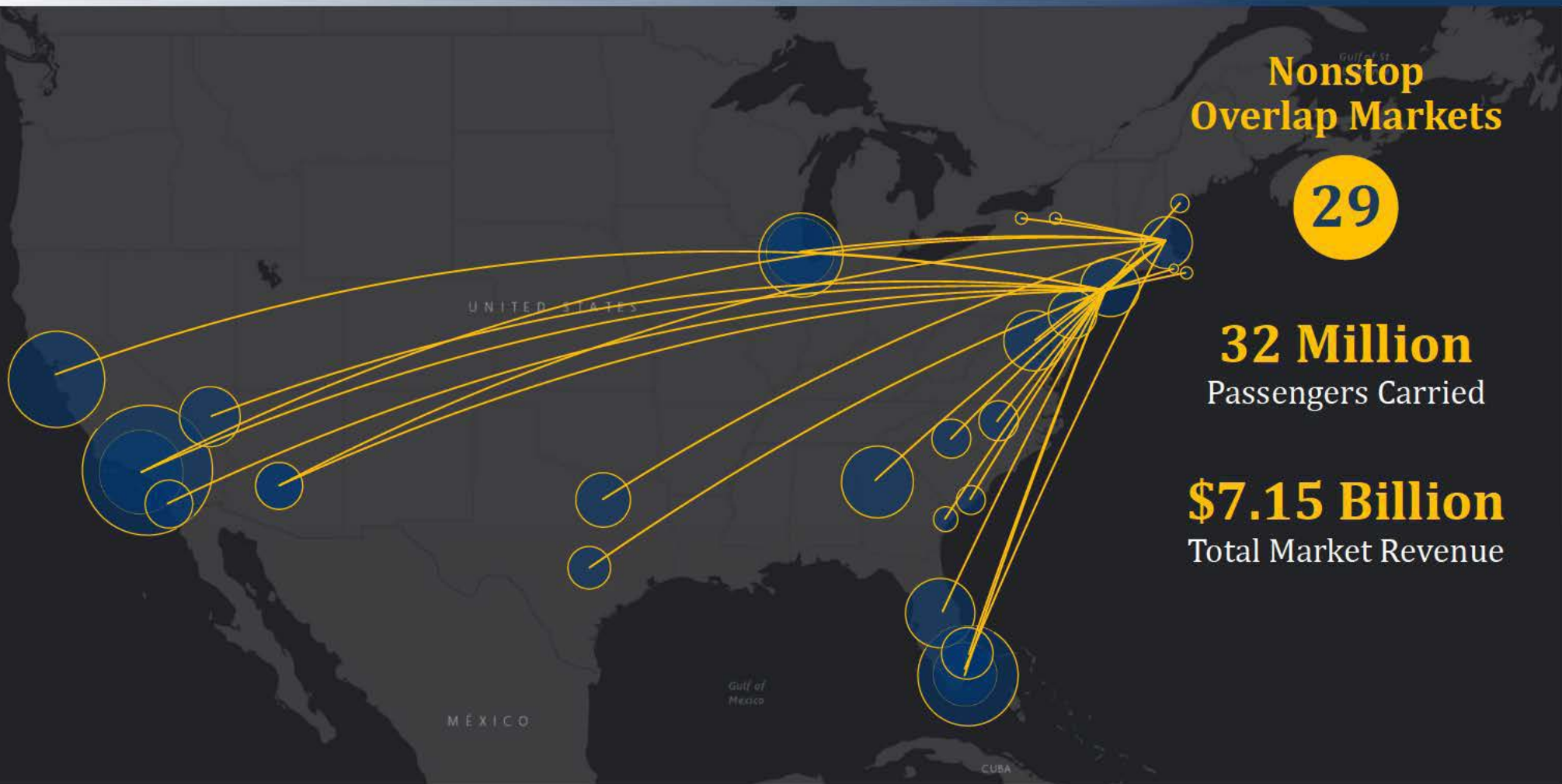


“[T]hese airlines team up in partnerships”

“[W]hat they really do is wipe out a competitor.”

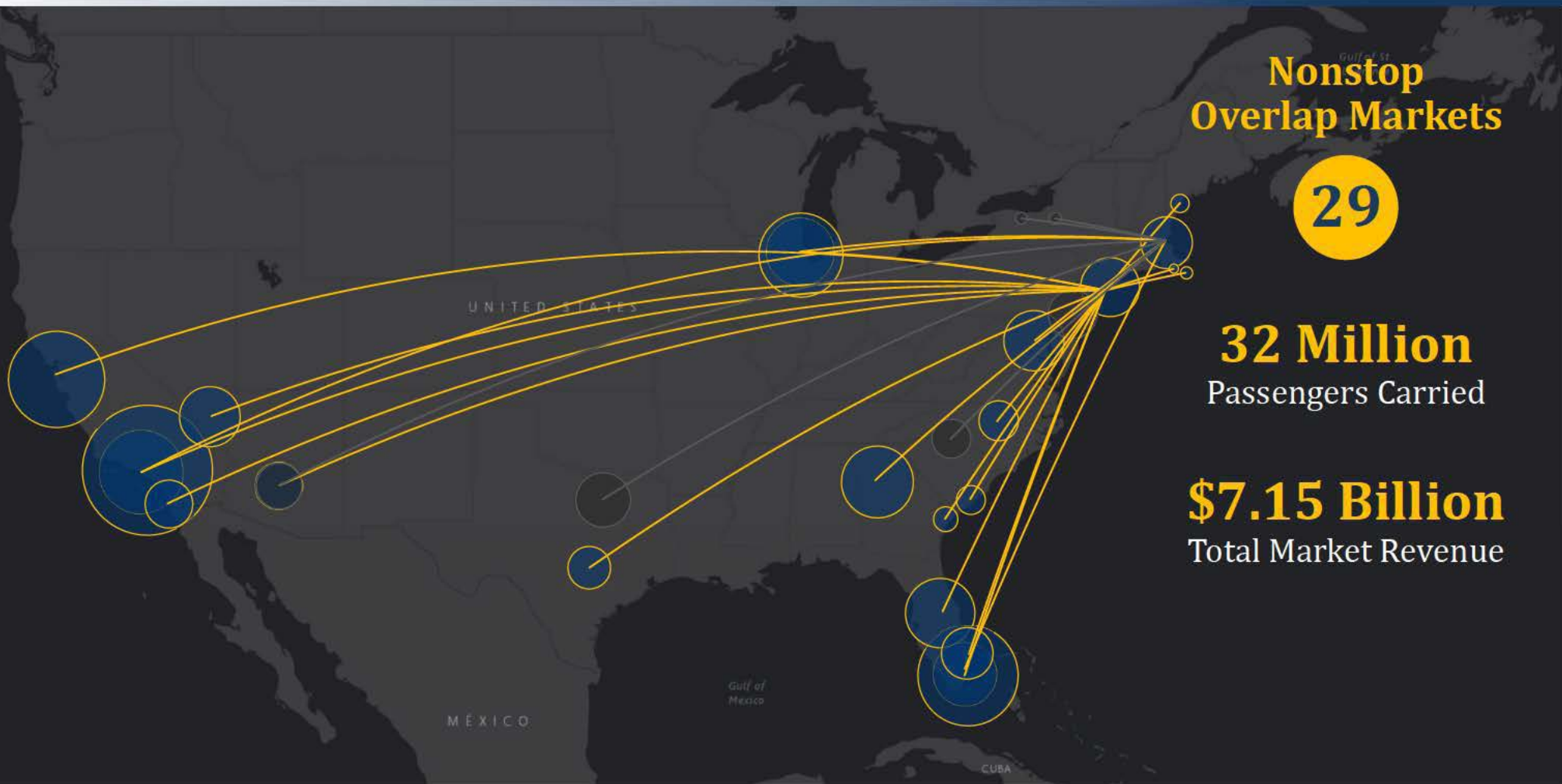
“[F]are growth tends to outpace capacity growth in markets where you have joint venture”

The NEA Will Harm Travelers Across The Country



PX0461 (Miller Report Appendix F). Includes 11 Boston markets, 17 JFK/LGA markets, and 1 EWR market. The BOS-JFK/LGA market is included among the 11 Boston markets.

The NEA Will Harm Travelers Across The Country



PX0461 (Miller Report Appendix F). Includes 11 Boston markets, 17 JFK/LGA markets, and 1 EWR market. The BOS-JFK/LGA market is included among the 11 Boston markets.

The NEA Is Presumptively Anticompetitive Using Merger Guidelines

Boston Overlap Markets	Combined Revenue Share	Presumptively Anticompetitive?
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%	✓

The NEA Is Presumptively Anticompetitive Using Merger Guidelines

NYC Overlap Markets	Combined Revenue Share	Presumptively Anticompetitive?
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	Presumptively Anticompetitive?
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%	✓

Including Newark In NYC Doesn't Change Much

NYC Overlap Markets	Combined Revenue Share	Presumptively Anticompetitive?
JFK/LGA/EWR – Austin	27.2%	✓
JFK/LGA/EWR – Boston	40.3%	✓
JFK/LGA/EWR – Charleston	30.2%	✓
JFK/LGA/EWR – Chicago	31.4%	
JFK/LGA/EWR – Las Vegas	27.9%	✓
JFK/LGA/EWR – Los Angeles	40.7%	✓
JFK/LGA/EWR – Martha's Vineyard	92.5%	✓
JFK/LGA/EWR – Miami	48.3%	✓
JFK/LGA/EWR – Nantucket	84.0%	✓

NYC Overlap Markets	Combined Revenue Share	Presumptively Anticompetitive?
JFK/LGA/EWR – Orlando	45.8%	✓
JFK/LGA/EWR – Phoenix	52.8%	✓
JFK/LGA/EWR – Portland, ME	25.6%	✓
JFK/LGA/EWR – Raleigh-Durham	30.3%	✓
JFK/LGA/EWR – San Diego	27.8%	✓
JFK/LGA/EWR – San Francisco	24.9%	✓
JFK/LGA/EWR – Savannah	32.9%	✓
JFK/LGA/EWR – West Palm Beach	48.4%	

The NEA Will Cost Travelers Millions Each Year

1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm

4. No Justification



The NEA Takes JetBlue Out Of The Fight

1. Before the NEA

2. The NEA

3. After the NEA

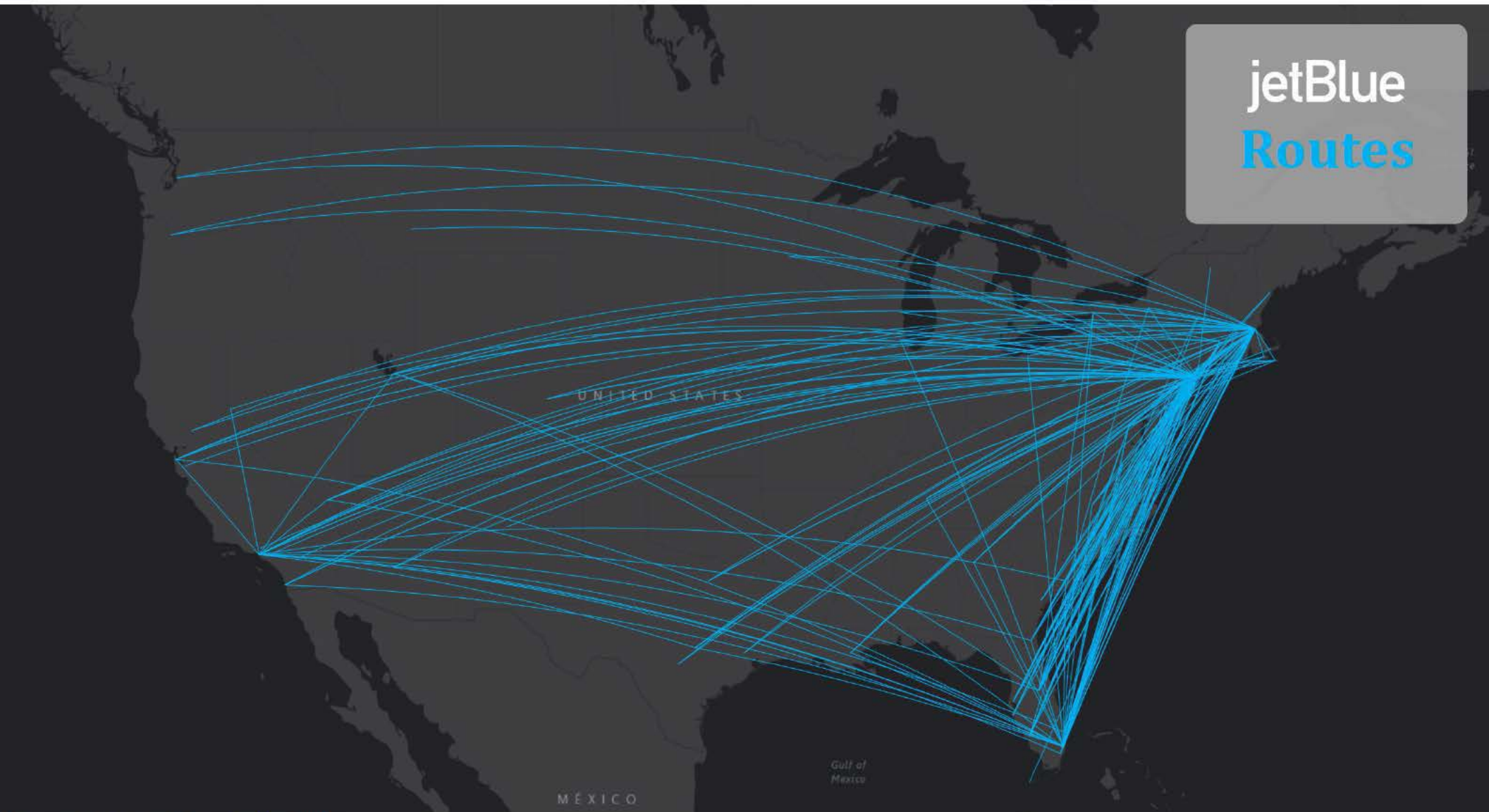
- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement

4. No Justification



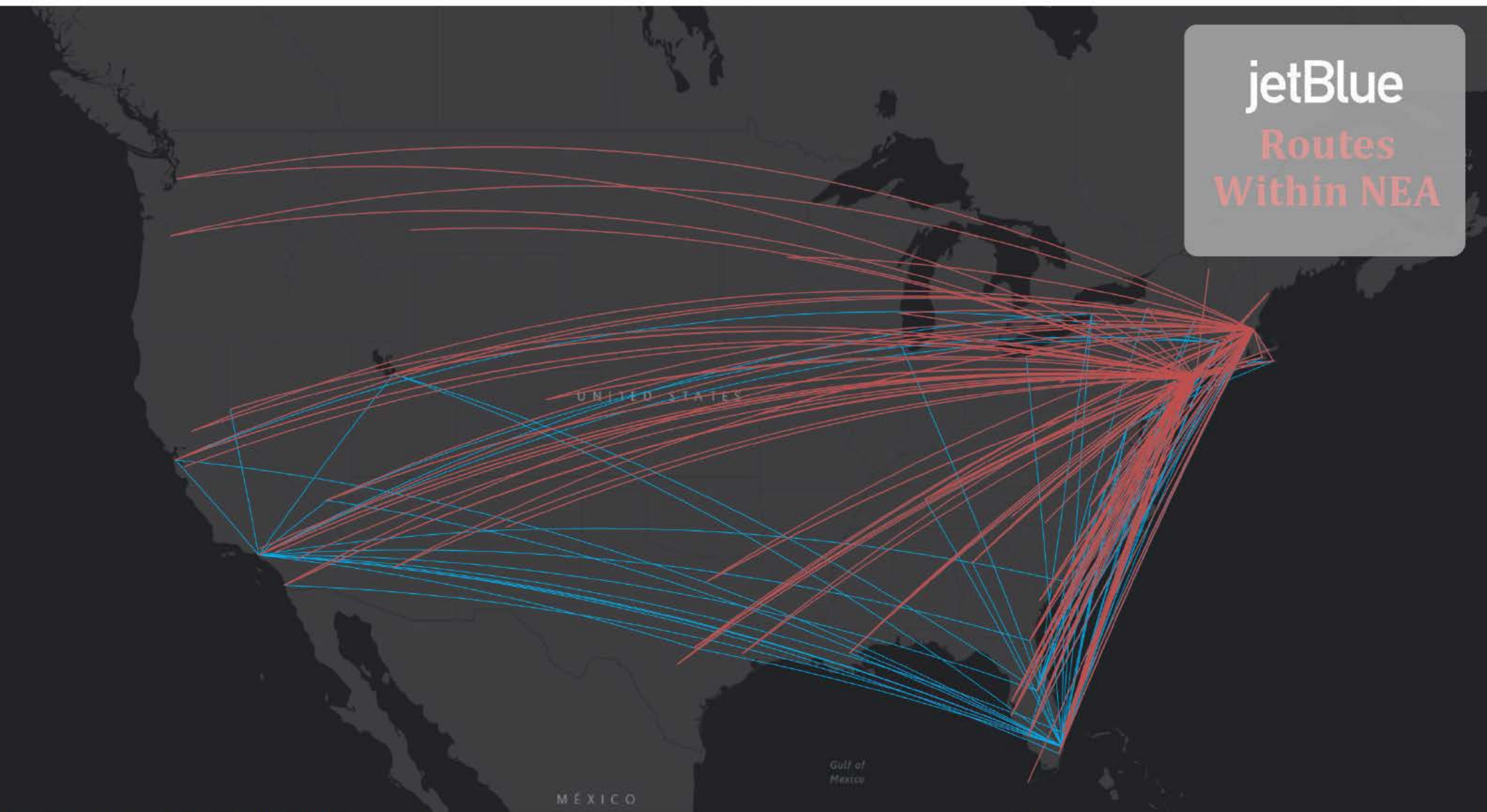
jetBlue
Board Presentation
June 2020

jetBlue Routes



Minimum of one roundtrip per week in 2022.

jetBlue
Routes
Within NEA



Minimum of one roundtrip per week in 2022.

The Airline Industry Is Dominated By Four Players

1. Before the NEA

2. The NEA

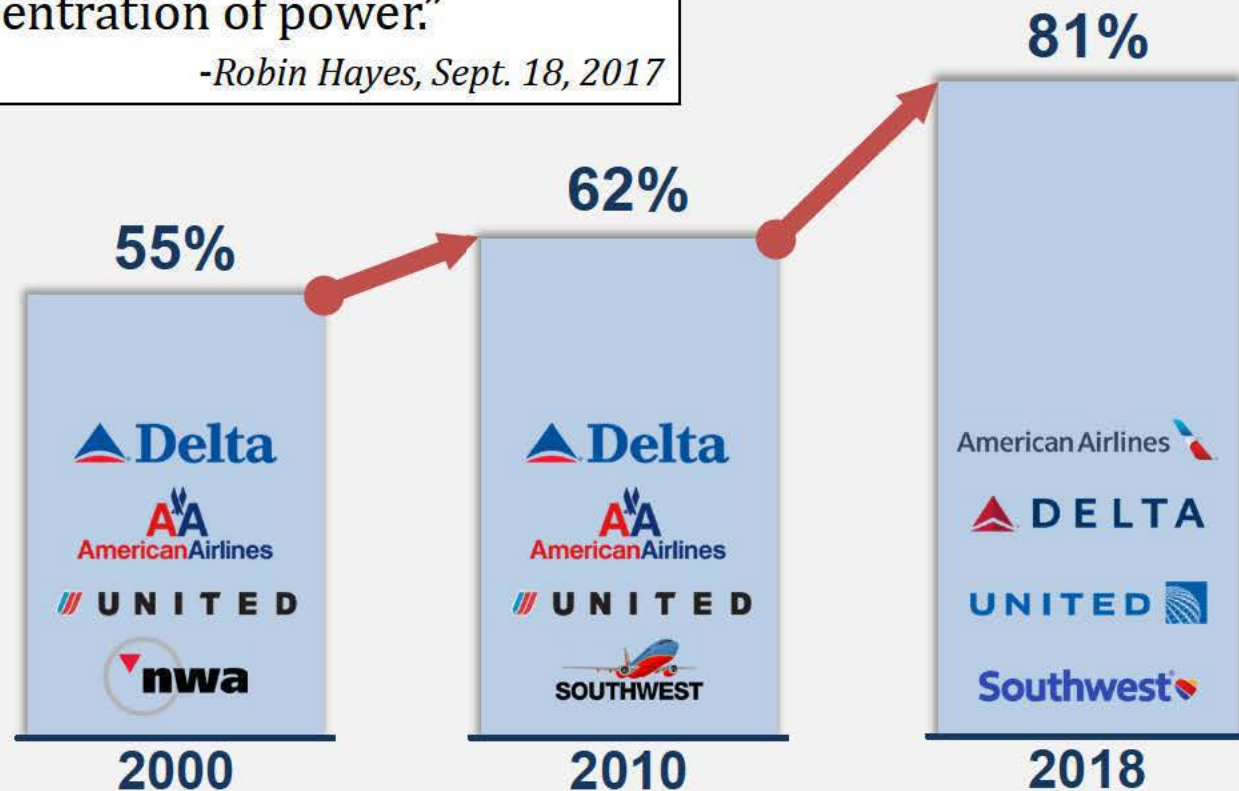
3. After the NEA

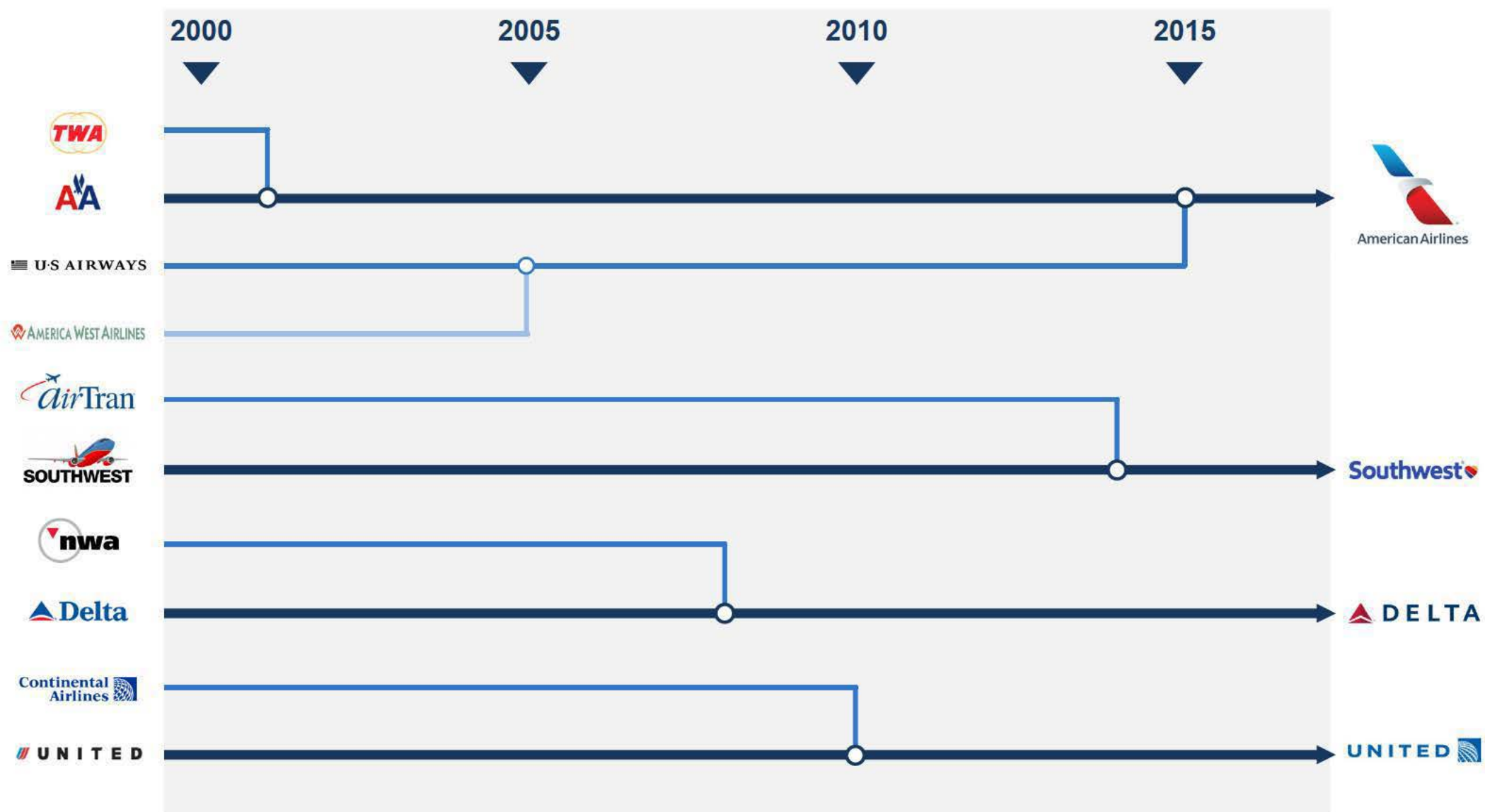
- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement
- ✓ Consolidation

4. No Justification

“[F]our large airlines control 80% of the market – this is a startling concentration of power.”

-Robin Hayes, Sept. 18, 2017





Capacity Discipline Was Key To Building “Sustained Profits”

1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement
- ✓ Consolidation

4. No Justification

Capacity Discipline – The Key to Future Success



- Capacity discipline is the key to building sustained profits for both US Airways and the industry
 - Allows airlines to match supply with passenger demand
- Why is capacity discipline important?
 - Uncertain economic outlook
 - Unstable fuel prices
- Even Southwest has no planned growth for 2012
 - All but Jet Blue and Virgin America are exercising restraint

Strategic Planning
Presentation

September 2011



Prior Consolidation Slowed Capacity Growth

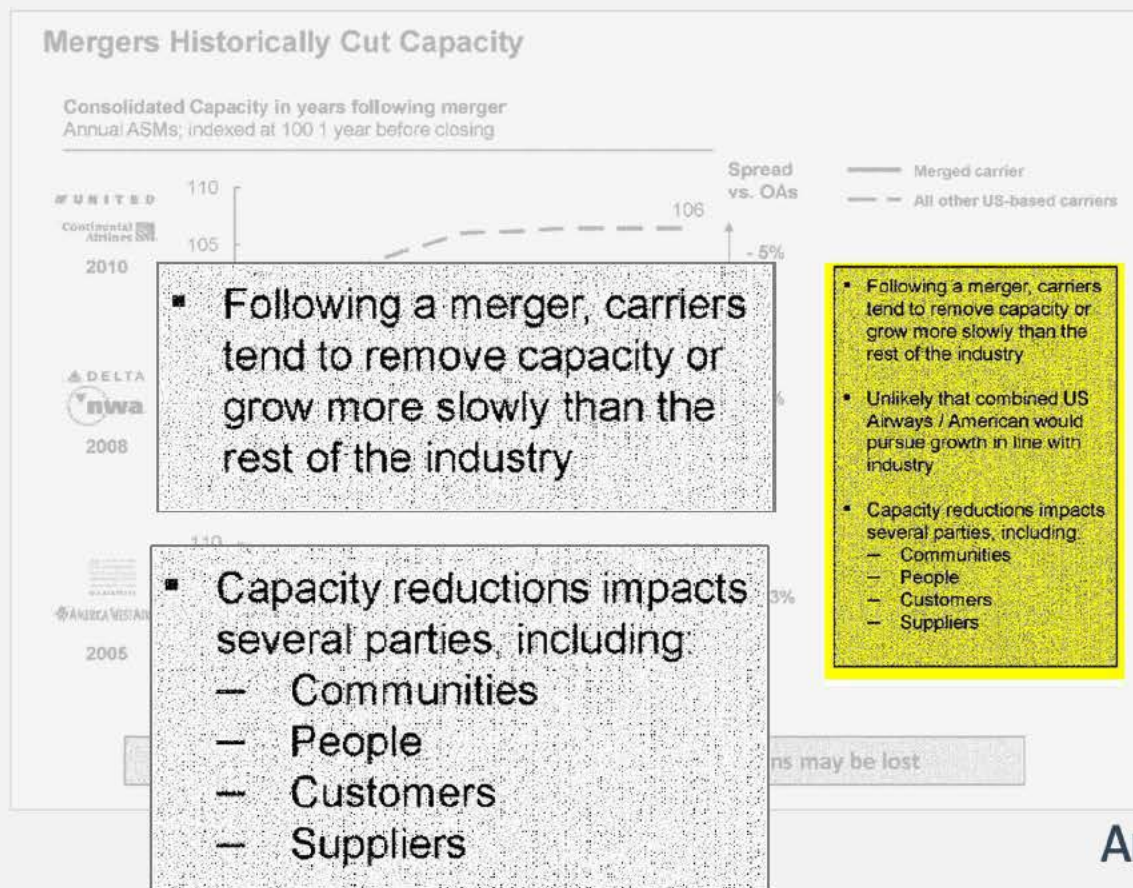
1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement
- ✓ Consolidation

4. No Justification



The NEA Allows American To “Borrow” Rather Than “Build”

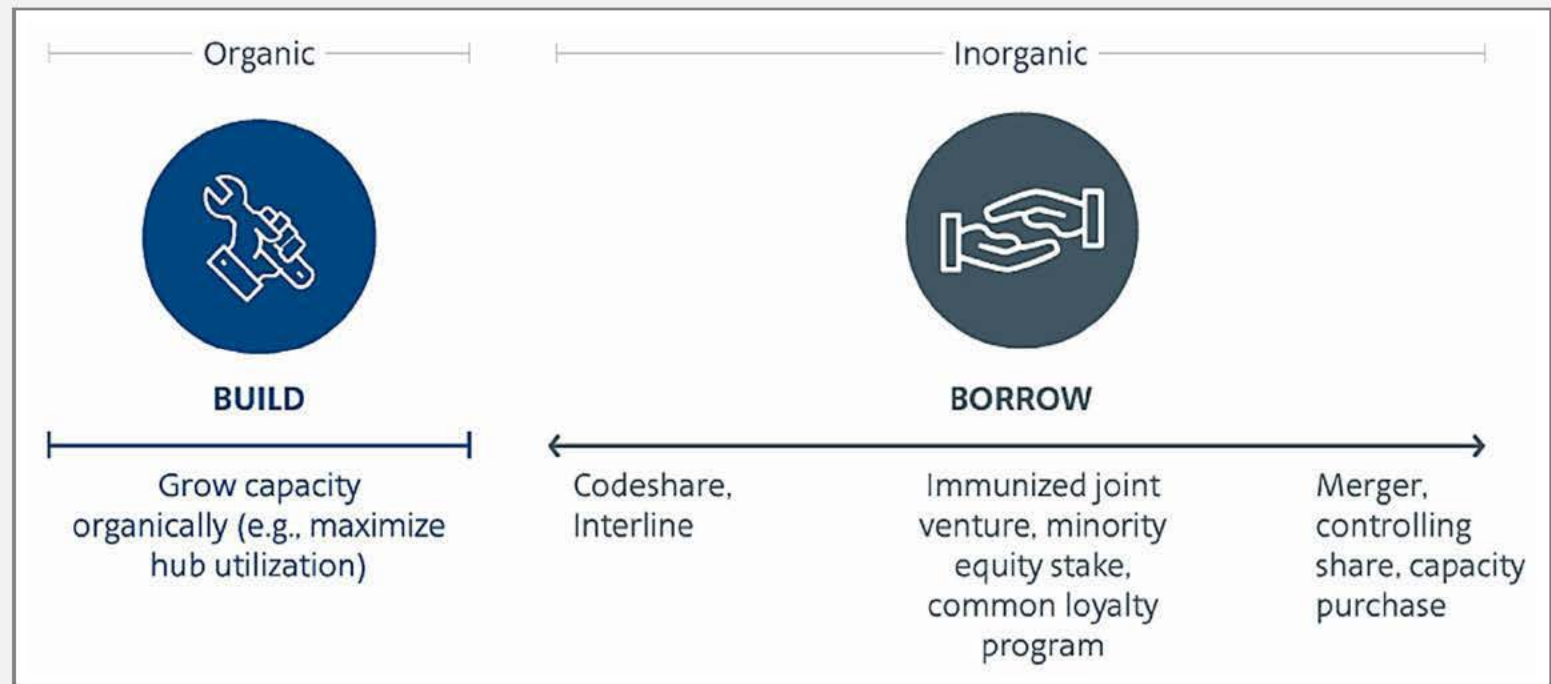
1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement
- ✓ Consolidation

4. No Justification



The NEA Allows American To “Borrow” Rather Than “Build”

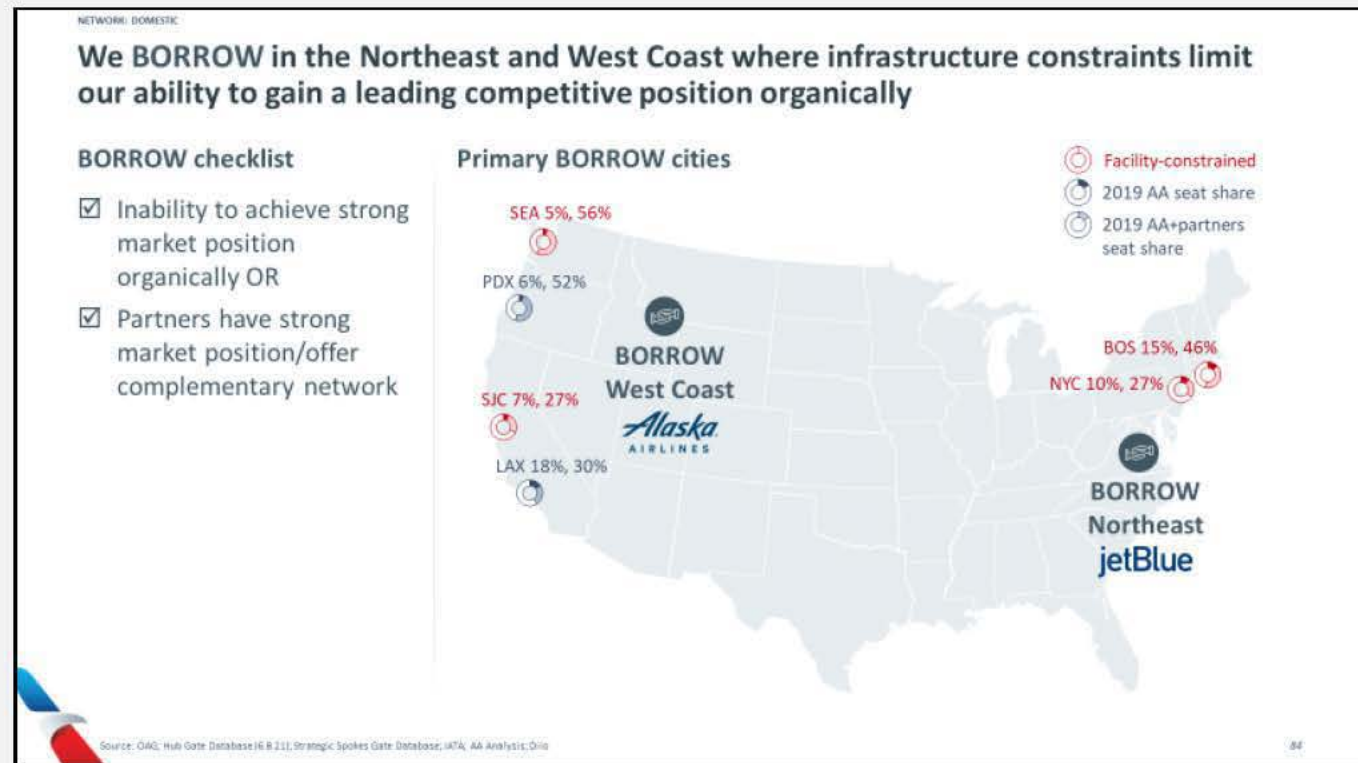
1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement
- ✓ Consolidation

4. No Justification



The NEA “Will Help Facilitate” Capacity Reductions

1. Before the NEA

2. The NEA

3. After the NEA

- ✓ Lower Capacity
- ✓ Higher Prices
- ✓ Market Power
- ✓ Measurable Harm
- ✓ Entanglement
- ✓ Consolidation

4. No Justification

American Airlines



Robert Isom
CEO



American Airlines



Vasu Raja
Chief Commercial Officer



From: Isom, Robert </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=51C2AD9D4A1249BD8A93E54F70E6C768-ISOM, ROBER>
To: Raja, Vasu
Sent: 3/28/2020 10:44:53 AM
Subject: Re: 2021 size
Attachments: image001.png; image002.png

Thanks. And between you and me. Spent a long time on phone last night w Richard Anderson. General agreement, the industry is going to have to shed a tremendous amount of capacity — turning the dial back 5 years as a guide to what 2021 looks like. And might be an 18 month slope to that point once people get traveling. Let's not question, let's go there fast and hard. And your AS/B6 ideas will help facilitate.

Defendants cannot
justify the NEA.

Defendants' Claim:

The NEA unlocks new growth

American and JetBlue
need the NEA

The NEA will enhance competition
with Delta and United

Plaintiffs can't meet their burden
to show adverse effects

Evidence Will Show:

Defendants could have grown
without the NEA

Defendants could have pursued
less restrictive alternatives

Delta and United *have not*
responded to the NEA

Plaintiffs can show the NEA
likely will harm consumers

JetBlue And American Are Not Complementary

1. Before the NEA

2. The NEA

3. After the NEA

4. No Justification

- ✓ NEA Does Not Create Growth

Q. [I]s it fair to say that if you simply put the American and JetBlue networks in September 2019 together by turning on the code share but you don't change capacity at all, the NEA does not produce much benefit, right?

A. **The benefit numbers that we talked about as before . . . I mean, they don't reveal much benefit absent some capacity.** So I think the series of runs we talked about before indicated that capacity increases were a necessary part of unlocking the benefits.



Mark A. Israel
Defense Expert

JetBlue And American Planned To Grow Without The NEA

1. Before the NEA
2. The NEA
3. After the NEA
4. No Justification

✓ NEA Does Not
Create Growth

From: Eric Friedman
To: Andrea Lusso
Sent: June 3, 2020
Re: Follow-ups

jetBlue

Eric Friedman
Director, of Route
Planning



“we are including value here that would have been generated anyway”

“If we’re looking at this from a ‘What does JetBlue look like with Connie vs without’ we’re currently attributing a lot of revenue to Connie that would have already existed.”

JetBlue And American Planned To Grow Without The NEA

1. Before the NEA
2. The NEA
3. After the NEA
4. No Justification

✓ NEA Does Not
Create Growth

From: Brent Alex (AA)
To: Andrea Lusso (B6)
Sent: February 10, 2020
Re: S20 JFK, part 2

From: Brent Alex (AA)
To: Andrea Lusso (B6)
Cc: Vasu Raja (AA);
Scott Laurence (B6)
Sent: February 17, 2020
Re: S20 JFK, part 2

American Airlines 

Vasu Raja
Chief Commercial
Officer



“It now appears there is a joint willingness to look at the additional AA slots for S20 season. These would be beyond the 27 that have already been transferred.”

“After discussing internally, we propose the following:
All 37 slots to B6 for two years”

The NEA Shell Game Limits JetBlue's Growth In Other Markets

1. Before the NEA

2. The NEA

3. After the NEA

4. No Justification

- ✓ NEA Does Not Create Growth



“While opportunities exist, they are limited in size given JetBlue’s multiple growth commitments; more significant funding sources would require de-prioritization of either BOS/FLL/MCO recovery or LAX/EWR/NEA growth – all requiring broader strategic consensus (not recommended today)”

jetBlue

Route Planning Presentation

November 2021

American Knew NEA Network Projections Were “No Bueno”...



**Chad
Schweinzger**

Managing Director,
Partnerships

Chad Schweinzger

Jordan Pack

May 29, 2020, 10:02:34 PM

If we show full network results ... no bueno

May 29, 2020, 10:02:47 PM

Yeah

May 29, 2020, 10:03:18 PM

Based on what I'm hearing here if I was DOJ
I could easily kill any deal... any deal

May 29, 2020, 10:27:22 PM

I think that the regulatory case for this domestic
JV with ATI doesn't exist.

May 29, 2020, 10:29:08 PM

It's going to be a constant uphill battle and we
are not going to convince DOJ.



**Jordan
Pack**

Senior Manager,
Commercial Planning
and Analysis

American Airlines 

American Airlines 

The NEA Harms Consumers More Than Alternative Options

1. Before the NEA

2. The NEA

3. After the NEA

4. No Justification

- ✓ NEA Does Not Create Growth
- ✓ Less Restrictive Alternatives



AA can sell or lease slots to JetBlue



Codesharing arrangement that excludes nonstop overlaps



Excluding Boston and London from the NEA

Delta and United Have Not Responded To The NEA

1. Before the NEA

2. The NEA

3. After the NEA

4. No Justification

- ✓ NEA Does Not Create Growth
- ✓ Less Restrictive Alternatives
- ✓ No Response from Delta or United

Q. What does it mean for United competitively that – that in the Northeast American is – is now competing in part through this alliance with JetBlue rather than 100 percent on its own metal?

A. To date, it hasn't meant much of anything. It's not something we focus on. And I don't think, you know, at least as of now it's having any impact on United Airlines.



UNITED 

Andrew Nocella
EVP and Chief
Commercial
Officer

Antitrust Law Stops Harm To Consumers Before It Occurs

1. Before the NEA

2. The NEA

3. After the NEA

4. No Justification

- ✓ NEA Does Not Create Growth
- ✓ Less Restrictive Alternatives
- ✓ No Response from Delta or United
- ✓ Likely Harm to Consumers

The Supreme Court condemned a joint venture's restraints under Section 1 "without regard to their past effect" because "**[c]ombinations are no less unlawful because they have not as yet resulted in restraint.**"

Associated Press v. United States

326 U.S. 1, 12 (1945)

Consumers Bear The Risk If Defendants' "Good Behavior" Ends

1. Before the NEA

2. The NEA

3. After the NEA

4. No Justification

- ✓ NEA Does Not Create Growth
- ✓ Less Restrictive Alternatives
- ✓ No Response from Delta or United
- ✓ Likely Harm to Consumers

"If a demonstration that no anticompetitive effects had occurred at the time of trial or of judgment constituted a permissible defense to a § 7 divestiture suit, **violators could stave off such actions merely by refraining from aggressive or anticompetitive behavior when such a suit was threatened or pending.**"

United States v. General Dynamics Corp.
415 US 486, 505-06 (1974)

The NEA Comes At Too High A Cost To Consumers

Our industry has never been more concentrated than it is today.

All that power in the hands of a few very deep-pocketed airlines has implications for consumers in the form of reduced options, high fares and often poor service.

JetBlue serves as an important counterbalance.



jetBlue

Robin Hayes
CEO



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

September 27, 2022