

*United States of America
and Plaintiff States*

v.

*JetBlue Airways Corporation
and Spirit Airlines, Inc.*

Closing Argument

December 5, 2023

Section 7 Is Designed To Prevent Harm

“Section 7 of the [Clayton] Act proscribes mergers whose effect ‘may be substantially to lessen competition, or to tend to create a monopoly.’ It is, as we have observed many times, a prophylactic measure, intended ‘primarily to arrest apprehended consequences of intercorporate relationships before those relationships could work their evil’”

Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 485 (1977)

“We hold that a trend toward concentration in an industry, whatever its causes, is a highly relevant factor in deciding how substantial the anti-competitive effect of a merger may be.”

United States v. Pabst Brewing Co., 384 U.S. 546, 552–53 (1966)
(cited in *United States v. Bertelsmann*, 646 F. Supp. 3d 1 (D.D.C. 2022))



Section 7 Only Requires Proof of ‘Appreciable Dangers’

“Section 7 does not require proof that a merger or other acquisition has caused higher prices in the affected market. **All that is necessary is that the merger create an appreciable danger of such consequences in the future.** A predictive judgment, necessarily probabilistic and judgmental rather than demonstrable is called for.”

Hospital Corp. of America v. FTC, 807 F.2d 1381, 1389 (7th Cir. 1986) (Posner, J.)

“Section 7 forbids mergers and other acquisitions the effect of which ‘may’ be to lessen competition substantially. A certainty, even a high probability, need not be shown. Of course the word ‘may’ should not be taken literally, for if it were, every acquisition would be unlawful. But **the statute requires a prediction, and doubts are to be resolved against the transaction.**”

FTC v. Elders Grain, Inc., 868 F.2d 901, 906 (7th Cir. 1989) (Posner, J.)



Steps of Section 7 Analysis

1	Plaintiffs' Prima Facie Case	Plaintiffs establish a prima facie case, rendering the deal presumptively illegal, via the structural presumption and direct evidence
2	Defendants' Rebuttal	Defendants rebut the prima facie case with “ significant evidence ” that “ mandates the conclusion ” the merger does not threaten a substantial lessening of competition
3	Ultimate Question	At this step, the Court determines whether there is a reasonable probability that the merger threatens competition

What Are the Relevant Markets?



Product Market

("line of commerce")



Geographic Market

("section of the country")



Relevant Market

("area of effective competition")



Brown Shoe Co. v. United States, 370 U.S. 294, 324 (1962)

Airlines Compete and Set Prices at the Route or City-Pair Level



Dave Clark

Head of Revenue and Planning

jetBlue

Q. Mr. Clark, to start, JetBlue sets its fares on a market-by-market basis, correct?

A. I would say a route-by-route basis just to be a bit more precise. But, yes, a “route” is one way to define a market, so.



Matt Klein

EVP and Chief Commercial Officer

spirit

THE COURT:

And the second bullet point there which says, “Should segment the market as much as is practical.” When you use the term, or Spirit uses the term “market” there, what do you mean?

A. We’re talking about city pairs, like the U.S. O&Ds earlier, that’s what we’re talking about when we define market. It’s really sort of a city pair.

The “Relevant Market” Inquiry Is Consumer-Centric

“It is the consumer’s options and the consumer’s choices among them on which relevant market analysis ultimately depends.”

Flovac, Inc. v. Airvac, Inc.,
817 F.3d 849, 854–55
(1st Cir. 2016)



Categories of Relevant Markets

spirit

jetBlue



262+

Routes both JetBlue and Spirit currently fly
(73 nonstop and 189+ connecting)

spirit



115+

Nonstop routes
Spirit currently flies
(but JetBlue does not)

spirit



100
to
200

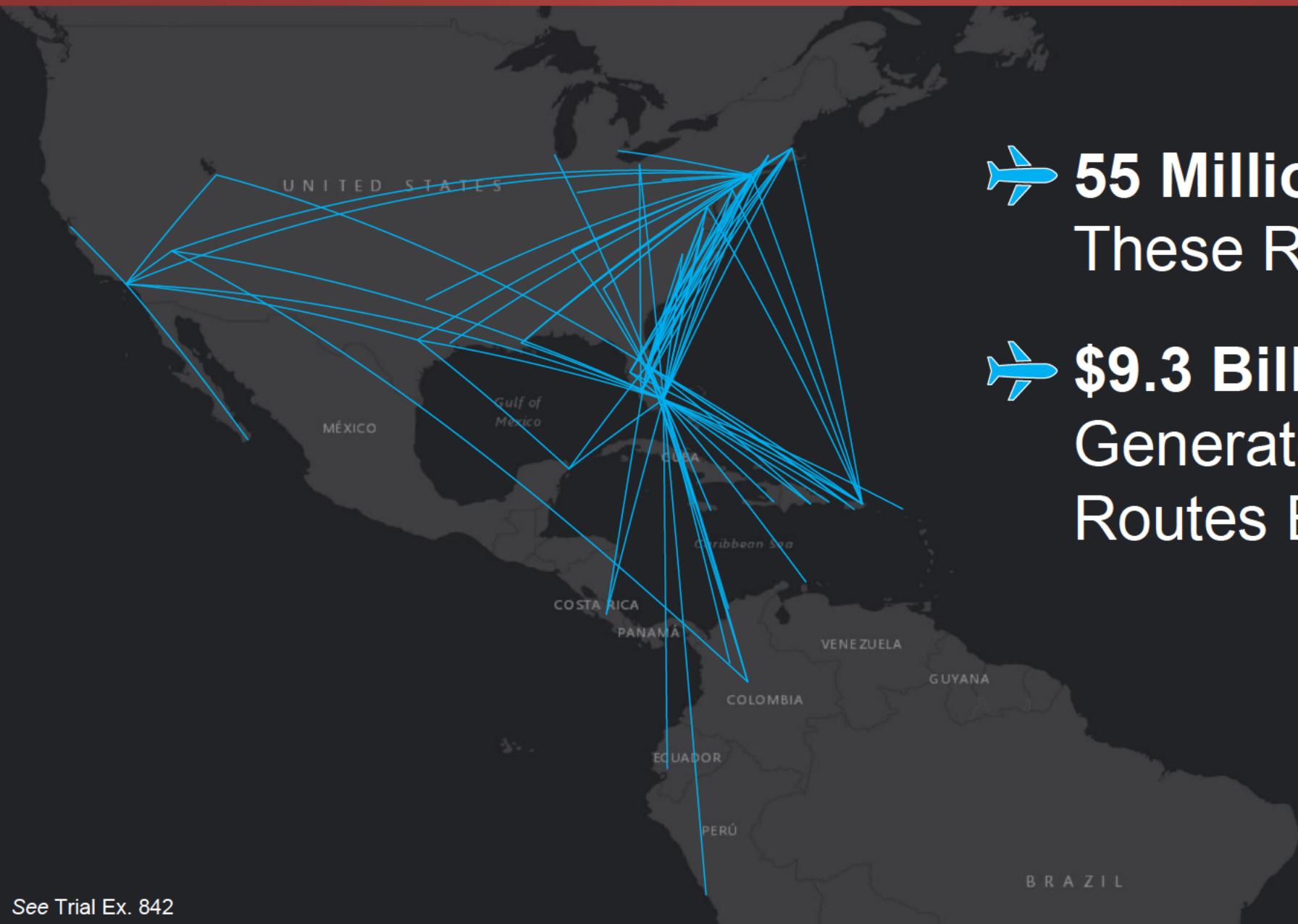
Nonstop routes
Spirit plans to enter
in the foreseeable future

Harm Is Pervasive

Loss of . . .	Overlap Routes	Spirit Only Routes	Future Spirit Routes
Head-to-Head Competition	✓		
The Spirit Effect (on other airlines and its own low fares)	✓	✓	✓
Consumer Choice and Variety	✓	✓	✓
Innovation	✓	✓	✓

Structural Presumption of Harm on Dozens of Overlap Routes

What's at Stake in the Nonstop Overlap Markets?



- ✈ **55 Million** Passengers Fly These Routes Each Year
- ✈ **\$9.3 Billion** in Revenue Generated on These Routes Each Year

This Deal Is Presumptively Illegal in Many Markets



John Kirby

Spirit VP of Network Planning

spirit

Q. But Spirit continues to compete on many of the overlap routes or markets that are listed here; right?

A. We do.

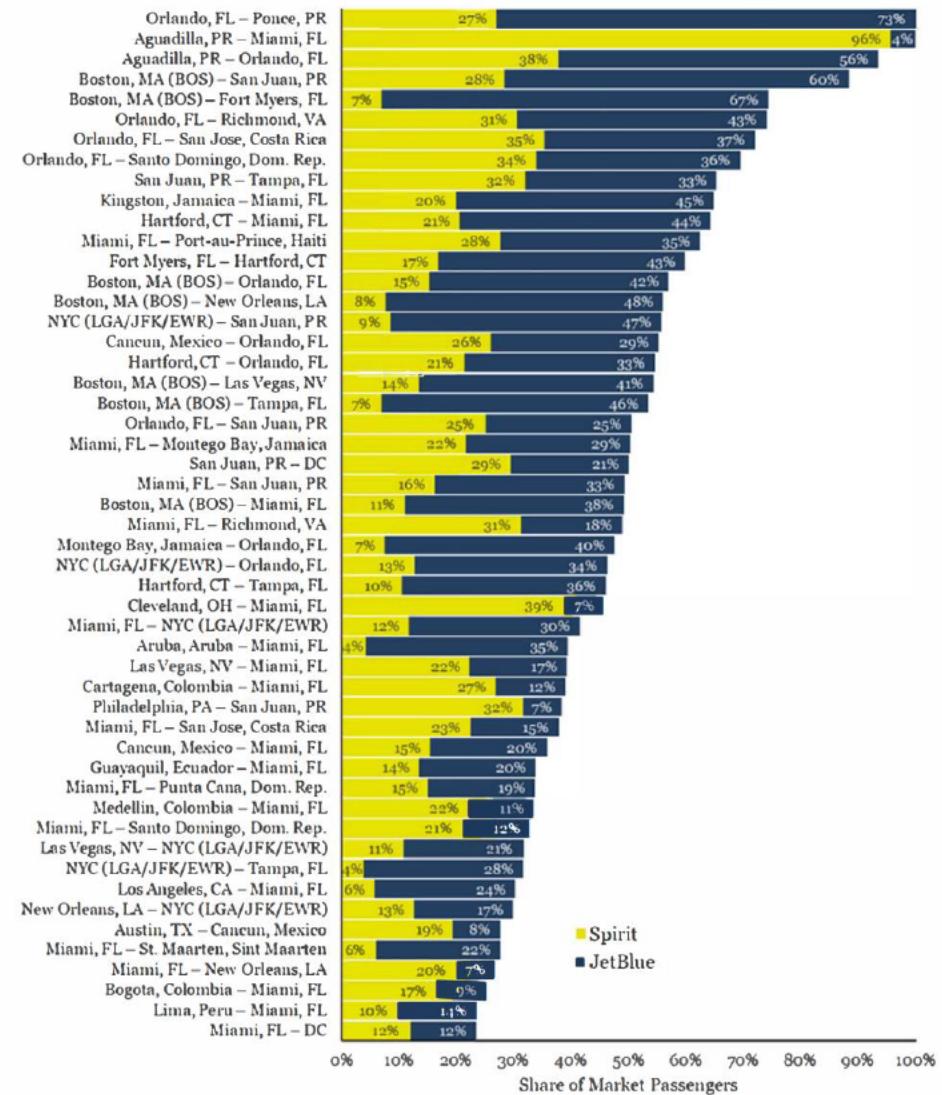
Q. Including many of the largest markets with respect to passengers flown; right?

A. Yeah, some of the larger ones.

Q. And Spirit has been competing in many of these markets since before you joined the airline; right?

A. Yes.

Parties' passenger shares, nonstop overlap markets satisfying the structural presumption, 2021 Q3–2022 Q2



Defendants Still Compete Vigorously in Most Presumption Markets

Changes on Nonstop Presumption Routes – GUPPI Analysis

Market	GUPPI ^[1]	
	Spirit	JetBlue
1. Aguadilla, PR – Miami, FL	52.8%	11.6%
2. Aguadilla, PR – Orlando, FL	43.8%	10.9%
3. Boston, MA (BOS) – San Juan, PR	42.1%	8.8%
4. Orlando, FL – Ponce, PR	41.9%	14.9%
5. Boston, MA (BOS) – Fort Myers, FL	36.6%	2.7%
6. Boston, MA (BOS) – Las Vegas, NV	28.6%	2.4%
7. Orlando, FL – Richmond, VA	31.3%	6.8%
8. Boston, MA (BOS) – Orlando, FL	26.3%	3.4%
9. Orlando, FL – San Jose, Costa Rica	22.6%	8.7%
10. Fort Myers, FL – Hartford, CT	26.2%	3.6%
11. Orlando, FL – Santo Domingo, Dominican Republic	21.9%	8.1%
12. Hartford, CT – Miami, FL	27.1%	4.7%
13. San Juan, PR – Tampa, FL	25.4%	5.9%
14. New York City, NY (LGA/JFK/EWR) – San Juan, PR	25.0%	2.1%
15. Hartford, CT – Orlando, FL	21.6%	3.9%
16. Boston, MA (BOS) – Tampa, FL	23.4%	1.7%
17. Kingston, Jamaica – Miami, FL	21.6%	5.9%
18. Boston, MA (BOS) – New Orleans, LA	22.9%	2.1%
19. Hartford, CT – Tampa, FL	20.8%	1.9%
20. Cancun, Mexico – Orlando, FL	15.4%	5.9%
21. Orlando, FL – San Juan, PR	16.6%	4.3%
22. Montego Bay, Jamaica – Orlando, FL	18.0%	1.9%
23. Boston, MA (BOS) – Miami, FL	19.2%	2.5%
24. Miami, FL – Port-au-Prince, Haiti	18.3%	7.0%
25. New York City, NY (LGA/JFK/EWR) – Orlando, FL	17.5%	0.6%
26. San Juan, PR – Washington, DC	16.6%	4.1%
27. Miami, FL – San Juan, PR	16.8%	3.6%
28. Miami, FL – Montego Bay, Jamaica	13.0%	5.3%
29. Los Angeles, CA – Miami, FL	14.4%	0.9%
30. Miami, FL – New York City, NY (LGA/JFK/EWR)	14.7%	2.4%
31. New York City, NY (LGA/JFK/EWR) – Tampa, FL	13.3%	0.7%
32. Aruba, Aruba – Miami, FL	12.9%	1.2%
33. Las Vegas, NV – New York City, NY (LGA/JFK/EWR)	12.0%	1.7%
34. Miami, FL – Richmond, VA	12.3%	5.0%
35. Las Vegas, NV – Miami, FL	10.2%	3.6%
36. New Orleans, LA – New York City, NY (LGA/JFK/EWR)	9.5%	2.0%
37. Cancun, Mexico – Miami, FL	8.1%	3.6%
38. Miami, FL – San Jose, Costa Rica	7.1%	4.6%
39. Miami, FL – Punta Cana, Dominican Republic	6.9%	3.7%
40. Guayaquil, Ecuador – Miami, FL	7.7%	3.2%
41. Medellin, Colombia – Miami, FL	5.1%	4.5%
42. Cartagena, Colombia – Miami, FL	6.2%	5.1%
43. Miami, FL – St. Maarten, Sint Maarten	8.0%	1.4%
44. Miami, FL – Santo Domingo, Dominican Republic	5.6%	4.0%
45. Miami, FL – Washington, DC	5.5%	2.0%
46. Lima, Peru – Miami, FL	5.1%	2.2%
47. Philadelphia, PA – San Juan, PR	3.7%	5.5%
48. Bogota, Colombia – Miami, FL	3.4%	3.5%
49. Austin, TX – Cancun, Mexico	3.5%	3.9%
50. Cleveland, OH – Miami, FL	4.4%	6.7%
51. Miami, FL – New Orleans, LA	2.9%	3.9%

What the Evidence Shows About the Nonstop Presumption Markets

1 Most of the Nonstop Overlaps Endure

2 Vast Majority of the “Entries” Defendants Identified Were Not, in Fact, Entries

3 No Showing Divestiture Buyers Will Fly Former Spirit Markets

4 Defendants Have No Answer for Significant Harm in Certain Markets

JetBlue and Spirit Compete Fiercely

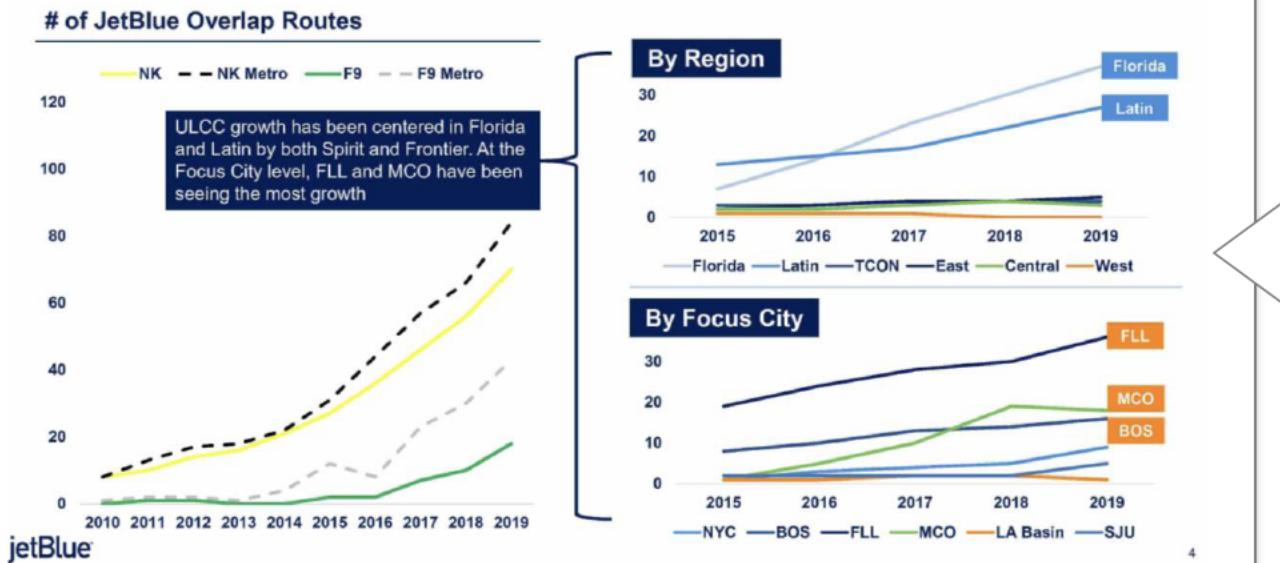


Dave Clark

Head of Revenue and Planning

jetBlue

Historical ULCC overlap with JetBlue



Q. And, Mr. Clark, as this graphic shows, **the number of overlap routes where JetBlue and Spirit compete head-to-head grew significantly between 2010 and 2019**; right?

A. Yes, during that time period.

Enduring Overlaps in 35 Nonstop Routes Meet the Presumption

35 Nonstop Overlap Presumption Markets Where JetBlue and Spirit Compete Today

Miami, FL – New York City, NY	Boston, MA – Tampa, FL	Miami, FL – Punta Cana, Dom. Rep.
New York City, NY – Orlando, FL	Cancun, Mexico – Miami, FL	Miami, FL – San Jose, Costa Rica
Boston, MA – Miami, FL	Hartford, CT – Orlando, FL	Guayaquil, Ecuador – Miami, FL
Los Angeles, CA – Miami, FL	Boston, MA – Fort Myers, FL	Cancun, Mexico – Orlando, FL
New York City, NY – San Juan, PR	Boston, MA – Las Vegas, NV	Miami, FL – Montego Bay, Jamaica
Orlando, FL – San Juan, PR	Miami, FL – New Orleans, LA	Miami, FL – Port-au-Prince, Haiti
Las Vegas, NV – New York City, NY	San Juan, PR – Washington, DC	Kingston, Jamaica – Miami, FL
Boston, MA – Orlando, FL	Boston, MA – San Juan, PR	Orlando, FL – Richmond, VA
Miami, FL – San Juan, PR	Medellin, Colombia – Miami, FL	Miami, FL – Santo Domingo, Dom. Rep.
Las Vegas, NV – Miami, FL	Hartford, CT – Miami, FL	Miami, FL – Richmond, VA
New Orleans, LA – New York City, NY	San Juan, PR – Tampa, FL	Orlando, FL – Santo Domingo, Dom. Rep.
Bogota, Colombia – Miami, FL		Orlando, FL – San Jose, Costa Rica

Network Mobility or Minor Adjustments in Schedule?

Summary Exhibit of Select Competitive Schedule Change Report Activity (July 5, 2022 – May 2, 2023)

EXHIBIT
697 /
FRIEDMAN 1006 SUMMARY F
1:23-cv-10511-WGY

Number	Source Bates Number	Email Subject	Schedule Change	Airport Pair	City Pair
1	JBLU_MERGER_LIT-02240618	Competitive Schedule Changes - May 2, 2023	B6 extended 1x daily FLL-BQN eff. Jul 6 - Sep 5 (New YoY)	FLL-BQN	Aguadilla, PR-Miami, FL
2	JBLU_MERGER_LIT-00097300	Competitive Schedule Changes - November 15, 2022	B6 cancelled 7th weekly FLL-BQN eff. Jan 12 - EOS (New YoY)	FLL-BQN	Aguadilla, PR-Miami, FL
3	JBLU-DOJ-00144391	Competitive Schedule Changes - September 13, 2022	B6 suspended 1x daily FLL-BQN eff. Jan 22 - May 2	FLL-BQN	Aguadilla, PR-Miami, FL
4	JBLU_MERGER_LIT-01727660	Competitive Schedule Changes - April 25, 2023	F9 added 6th-7th weekly MCO-BQN eff. Aug 13 - EOS (New YoY)	MCO-BQN	Aguadilla, PR-Orlando, FL
5	JBLU_MERGER_LIT-01286842	Competitive Schedule Changes - August 30, 2022	F9 added 5th weekly MCO-BQN eff. Nov 6 - Dec 29 (New Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
6	JBLU-DOJ-09108717	Competitive Schedule Changes - August 9th, 2022	F9 added 7th weekly MCO-BQN eff. Oct 11 - Nov 1 (New Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
7	JBLU_MERGER_LIT-00097552	Competitive Schedule Changes - December 13, 2022	F9 cancelled 7th weekly MCO-BQN eff. Feb 11 - Mar 3 (New YoY)	MCO-BQN	Aguadilla, PR-Orlando, FL
8	JBLU_MERGER_LIT-00118784	Competitive Schedule Changes - February 21, 2023	NK extended 2x daily MCO-BQN eff. Aug 9 - EOS (Up 1x Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
9	JBLU-DOJ-00146410	Competitive Schedule Changes - July 12, 2022	F9 added 4th-6th weekly MCO-BQN eff. Sep 4 - Nov 3 (New Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
10	JBLU-DOJ-00145945	Competitive Schedule Changes - July 26, 2022	NK added 2nd daily MCO-BQN eff. Oct 6 - Nov 18 (Up 1x Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
11	JBLU_MERGER_LIT-00011036	Competitive Schedule Changes - March 14, 2023	B6 cancelled 2nd daily MCO-BQN eff. Sep 6 - Oct 28 (Flat Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
12	JBLU_MERGER_LIT-00096272	Competitive Schedule Changes - November 22, 2022	NK extended 2x daily MCO-BQN eff. May 3 - EOS (Up 1x Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
13	JBLU-DOJ-10528903	Competitive Schedule Changes - November 8, 2022	NK added 2nd daily MCO-BQN eff. Mar 9 - May 2 (Up 1x Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
14	JBLU-DOJ-10686137	Competitive Schedule Changes - October 11, 2022	B6 cancelled 2nd daily MCO-BQN eff. Jan 17 - Feb 15 (Down 1x Yo4)	MCO-BQN	Aguadilla, PR-Orlando, FL
15	JBLU-DOJ-00144391	Competitive Schedule Changes - September 13, 2022	B6 cancelled 2nd daily MCO-BQN eff. Nov 18 - Nov 30 (Down 1x Yo3), Feb 16 - May 2 (Flat Yo4)	MCO-BQN	Aguadilla, PR-Orlando, FL
16	JBLU-DOJ-00144391	Competitive Schedule Changes - September 13, 2022	F9 added 6th weekly MCO-BQN eff. Nov 9 - Nov 25 (New Yo3)	MCO-BQN	Aguadilla, PR-Orlando, FL
17	JBLU-DOJ-10377974	Competitive Schedule Changes - September 20, 2022	F9 added 4th-7th weekly MCO-BQN eff. Jan 1 - Feb 18 (New Yo4)	MCO-BQN	Aguadilla, PR-Orlando, FL
18	JBLU-DOJ-00145950	Competitive Schedule Changes - August 16, 2022	B6 indefinitely suspended 1x daily FLL-AUA eff. Jan 3	FLL-AUA	Aruba-Miami, FL
19	JBLU_MERGER_LIT-01244113	Competitive Schedule Changes - December 20, 2022	NK added 2nd weekly FLL-AUA eff. Feb 4 - Feb 25 (Up 1x weekly Yo3)	FLL-AUA	Aruba-Miami, FL
20	JBLU_MERGER_LIT-00227239	Competitive Schedule Changes - December 27, 2022	NK added 2nd weekly FLL-AUA eff. Mar 4 - Apr 29 (Up 1x weekly Yo3)	FLL-AUA	Aruba-Miami, FL



Eric Friedman

Director of Route Planning

jetBlue

Q. Would you be surprised to learn there's **only roughly 50 total across entries and exits** across the entire exhibit?

A. Again I **wouldn't be surprised**, there's a lot of movement that occurs.

Q. So 50 across the 718 entries put together in this exhibit, correct?

A. I think it's 50 across 51 routes. And then of the 718 total activities, it's, um, I suppose 50 would be the, um, or **50 out of 718**.

Defendants Still Compete Vigorously in Most Presumption Markets

9 Nonstop Presumption Markets Where JetBlue and Spirit Compete Today Untouched by Divestiture Airports

Orlando, FL – Richmond, VA

Orlando, FL – San Jose, Costa Rica

Orlando, FL – Santo Domingo, Dom. Rep.

San Juan, PR – Tampa, FL

Hartford, CT – Orlando, FL

Cancun, Mexico – Orlando, FL

Orlando, FL – San Juan, PR

Montego Bay, Jamaica – Orlando, FL

San Juan, PR – Washington DC

**\$44.4 Million Per Year
Estimated Net Harm**

Spirit Is and Will Remain a Strong Competitor



Spirit FQ2 2023
Earnings Call



Spirit Airlines Report:
Third Quarter 2023 Results
October 26, 2023

spirit

... [T]he dynamics of the airline business are constant [T]hings in the airline industry can change quickly and often The current setup is simply not favorable to a domestic-focused airline, especially while still operating with some lack of efficiency and productivity. I believe these things will change in our favor, and we are taking steps now to be positioned to capitalize on.... I strongly believe our expected Q3 performance is an anomaly.

"In addition to a softer-than-expected demand environment, we continue to be challenged by higher fuel prices and NEO engine availability issues and are expecting our margins in the fourth quarter will be lower than we reported for the third quarter 2023. We recognize this financial performance is not acceptable, and we are taking action. In addition to evaluating different strategies to drive higher revenue per departure, we have identified \$100 million of structural cost reductions and are evaluating how best to capture those savings in 2024," said Scott Haralson, Spirit's Chief Financial Officer. "Our team is resilient and nimble, and we are committed to returning Spirit to sustained profitability."

**"Our team is resilient and nimble,
and we are committed to returning
Spirit to sustained profitability."**

The “Flailing Firm” or “Weakened Competitor” Argument

“This argument is known as a ‘**weakened competitor**’ one, and is itself ‘probably the **weakest ground of all for justifying a merger**.’ Courts ‘credit such a defense only in rare cases, when the [acquiring firm] makes a substantial showing that the acquired firm’s weakness, which cannot be resolved by any competitive means, would cause that firm’s market share to reduce to a level that would undermine the government’s *prima facie* case.’ In other words, **this argument is the Hail-Mary pass of presumptively doomed mergers** – in this case thrown from ProMedica’s own end zone.



ProMedica Health Sys., Inc. v. FTC, 749 F.3d 559, 572 (6th Cir. 2014)
(internal citations omitted)

Spirit Effect: More People Travel for Less



Ted Christie
CEO & President



October 2021

spirit

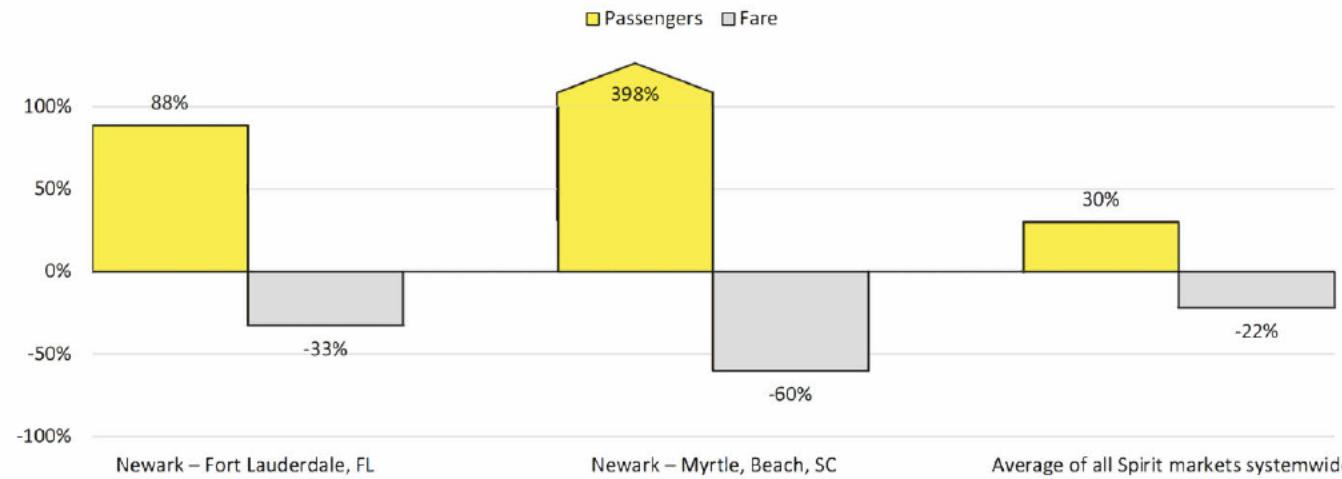
“... And **the Spirit Effect** basically says if you can lower fares, **you're stimulating additional demand** into the marketplace. So **more people travel more frequently with lower fares.**”

135M Passengers Fly Routes Served By Spirit Every Year

(see Trial Ex. 842, Trial Ex. 843)

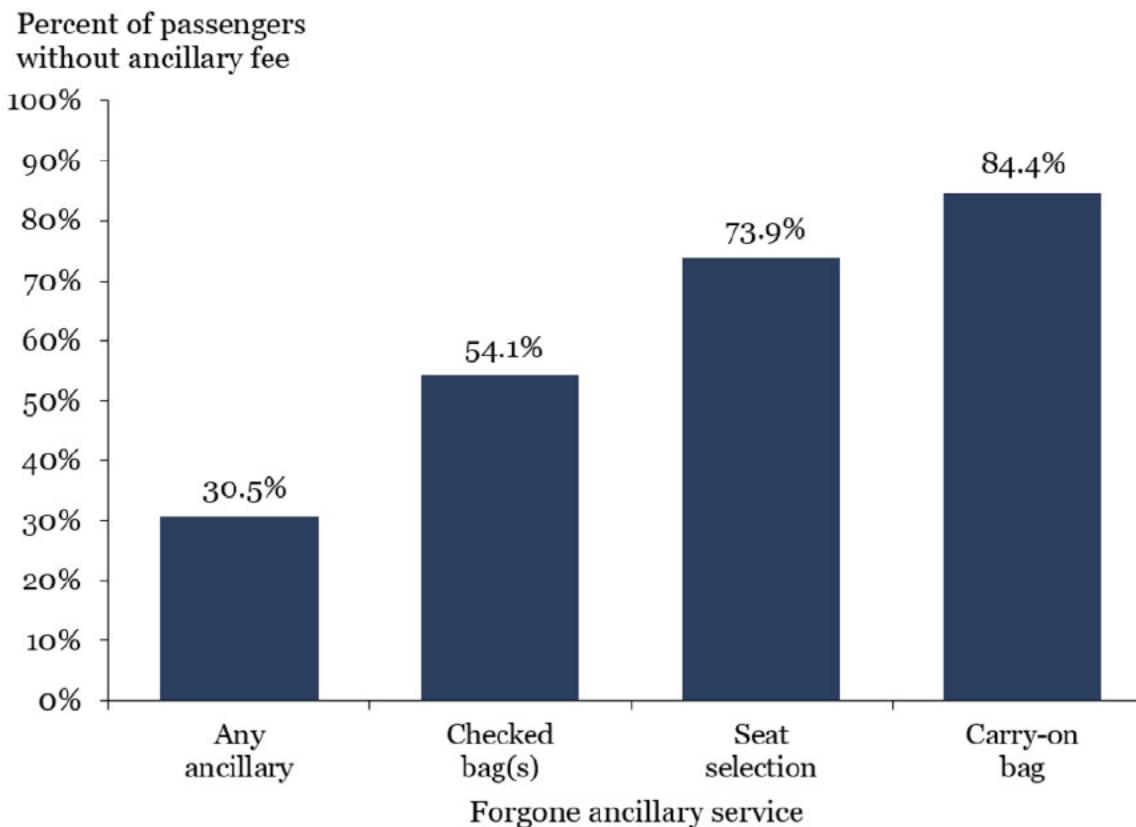
▶▶▶ The “Spirit Effect” Reduces Fares & Stimulates Travel

“Spirit Effect” on passengers and fares in 12-months pre/post entrance



This Deal Harms Cost-Conscious Consumers

Spirit customers tend to be cost conscious

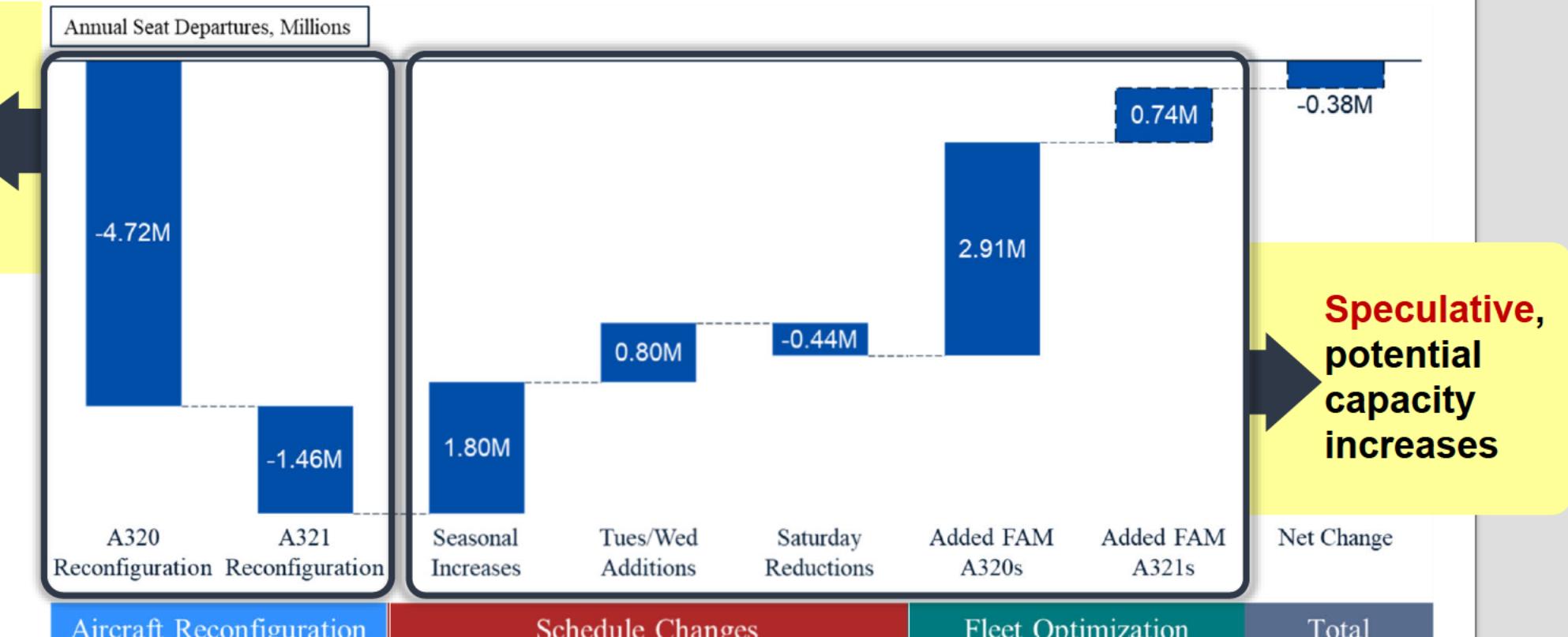


➤➤➤ Spirit Airlines' Target Consumer

Spirit's Target Consumer	
Who is paying for the trip?	Consumer Pays
How important is price?	High
Trip purpose	Leisure / VFR ("Visiting Friends & Relatives") & Small to Mid-Size Business

Figure 18: Seat Departure Changes Due to Reconfiguration and Utilization Changes

6.1 million
fewer seats
per year –
certain to
occur



Source: Estimated totals based on CY 2019 Departures and Production Levels Scaled to 2023 Fleet; Cirium schedule data from Diio Mi; JetBlue and Spirit fleet plan; APGFam Model

Spirit Plans To Grow



May 10, 2023

Spirit Had the Highest Annual Growth Rate of Major U.S. Carriers from 2018-2023



2018-2023
ASM CAGR

-0.2%

0.7%

0.8%

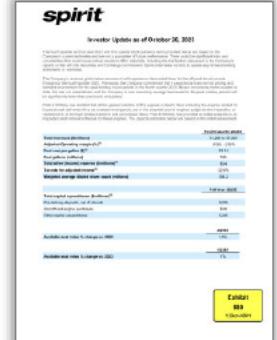
0.5%

5.0%

1.4%

8.2%

7.6%



Oct. 26, 2023

spirit

Spirit Projects Growth: 14% in Q4 2023 and 7% in Q1 2024

Available seat miles % change vs. 2022

4Q23E

14%

1Q24E

7%

Available seat miles % change vs. 2023

The Spirit Effect Lowers JetBlue's Fares

Rejected Proposal from JetBlue is
Illusory and Not Superior

May 5, 2022



Investor Presentation

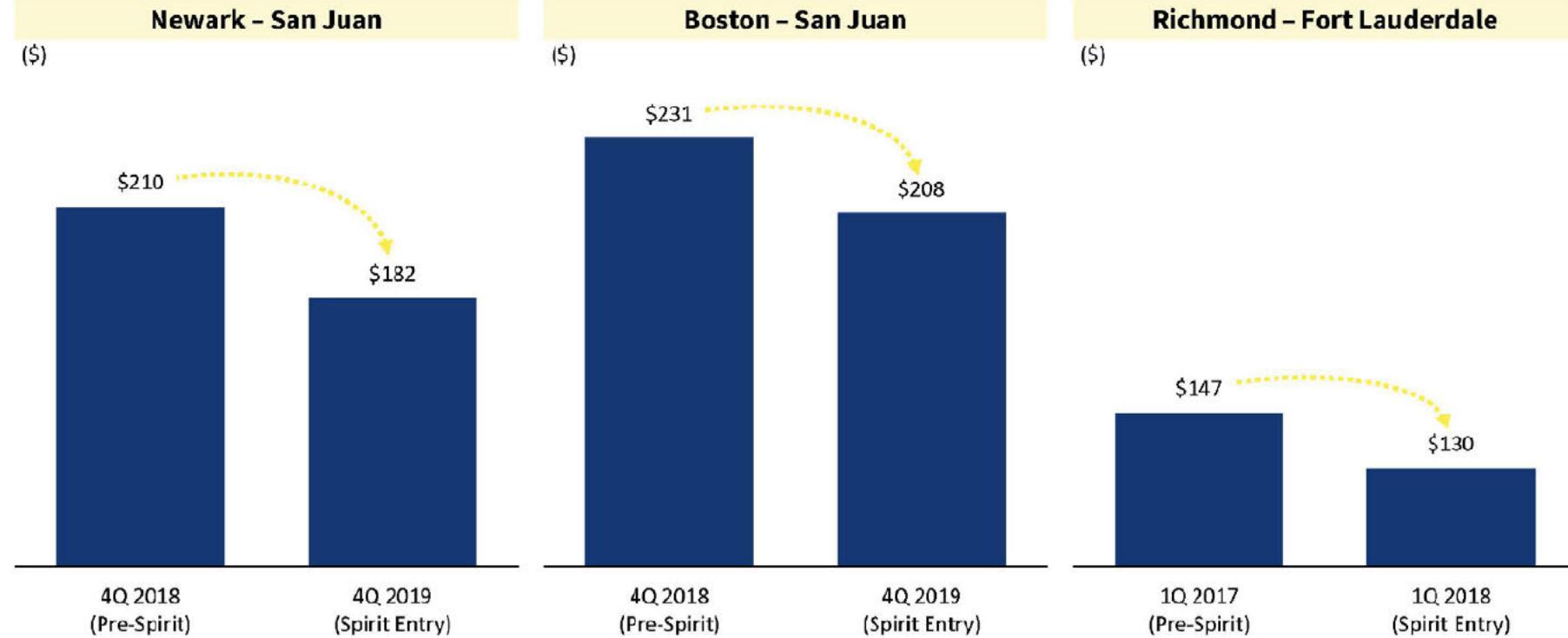
May 5, 2022

spirit



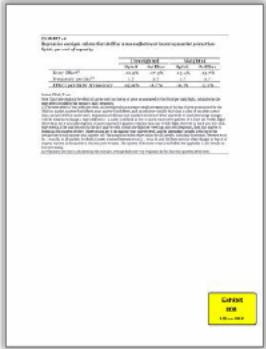
Spirit Continues to Be a Check on JetBlue's Fares

JetBlue's Fares On Select Routes Pre and Post Spirit's Entry



Source: DOT.

Spirit Decreases Fares More Than JetBlue



Gowrisankaran
Expert Report



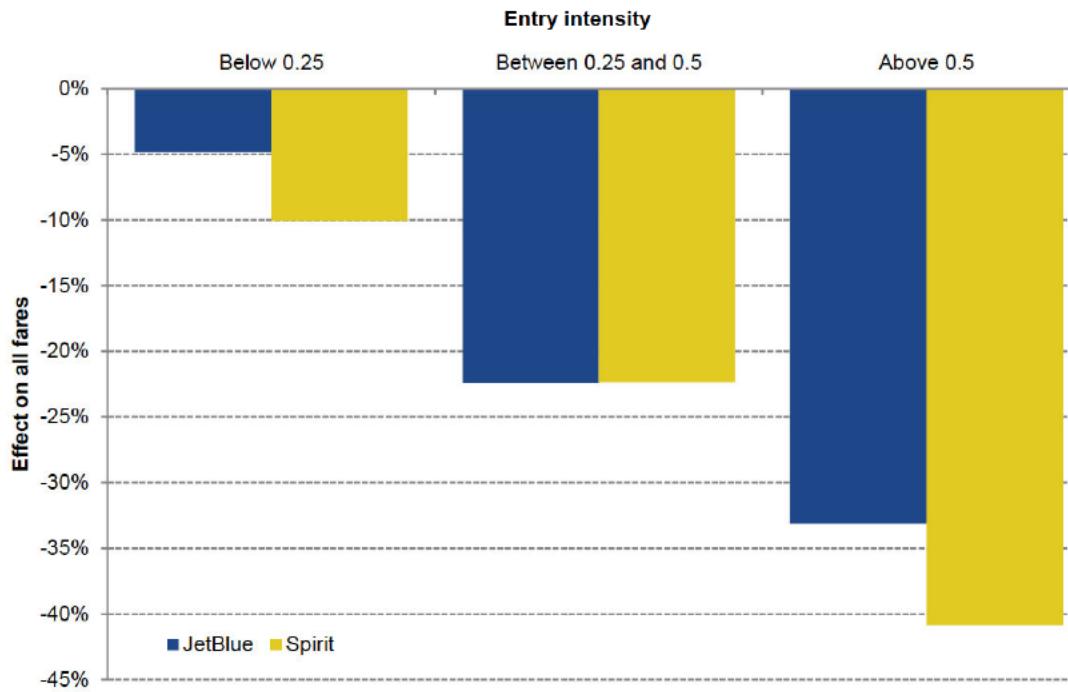
Hill Expert
Report

EXHIBIT 26

Regression analysis refutes that JetBlue is more effective at lowering market prices than Spirit, per unit of capacity

	Unweighted		Weighted	
	Spirit	JetBlue	Spirit	JetBlue
Entry Effect ^[1]	-21.9%	-17.9%	-15.4%	-13.7%
Frequency per day ^[2]	1.7	2.7	1.7	2.7
Effect per daily frequency	-13.0%	-6.7%	-9.1%	-5.2%

Figure 69. Predicted effect of JetBlue and Spirit entry on all fares, entry intensity model



Tacit Coordination Is a Target for Merger Enforcement

“Tacit coordination is feared by antitrust policy even more than express collusion, for tacit coordination, even when observed, cannot easily be controlled directly by the antitrust laws. It is a central object of merger policy to obstruct the creation or reinforcement by merger of such oligopolistic market structures in which tacit coordination can occur.”

FTC v. H.J. Heinz Co., 246 F.3d 708, 725 (D.C. Cir. 2001)
(internal citations omitted)



Conditions that Increase the Risk of Coordination

1

Highly or Moderately Concentrated Markets

2

Industry Susceptibility to Coordination

3

Credible Basis To Believe the Deal Will Increase the Risk of Coordination

Tools Enable Competitor Signaling

ATPCO Fare Basis Codes

A	B	C	D	E	F	G	H
1	2	3	4	5	6	7	8
bucket	ow/rt	dow	ap	type	match	type	type
G	A = ow	A = daily	2 = 21ap	A = regular fares	U = Legacy -UP	B = Basic Eco.	Y = core structure refundable
K	R = rt no min/max	B = 1,2,5,6	4 = 14ap	D = DCA specific	C = F9	E = Main	N = non refundable
L	D = rt 3 day min	C = 1,2,3,4	1 = 10ap	J = same as A type	D = 3M	I = Eco. Plus (Filed in Hubs Only) Cat 4 UA ops only	S = no PTS apply Genr 12CA
T	E = rt min stay Sun	D = 1,2,6	7 = 7ap	G = time verified - general	F = Legacy ?	P = Premium	X = rt fares
S	F = rt min stay Sat	E = 2	3 = 3ap	T = time verified - Headline spec	G = VX	F = First class	R = rt fares (no min/max)
W	X = same as R	F = 6	0 = 0ap	P= same as A type	H = B6	D = Main - same as E	M = refundable
V		G = 1-4, 6		O = UA substructure	K =		Z = ?
Q		H = 5,6,7	6 = 60ap	K =	P = Premium Eco.		
H		I = 1,3,5,6	8 = 28ap	U=	Q = core?		
U	cat12	J = 1,2,3			R = SY		
E	cat12	K = 2,3,6			W = NK		
M	cat12	L = 1,4,7			X = AS /?		
B	cat12	M = 2,3,4			Z = WN		
Y	cat12	N = x6			A -		
A,C,D,Z,P - Bus.	O = Directionality FL/NV				B		
F,J - First	P = x7				L		
	Q = 4-7				J =		
	R = 1-5						
	S = 7						
	U = 2,3						
	V = 3,6						
	W = 6,7						
	X = 1,2,3,4						
	Z = 2,4,7						
	Y = 2,3,4,5						

Flashing

From: Yanez, Catterina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E0215FB830FE444C920736EFS88BE0C6-BELTRAN, CA]
 Sent: 2/10/2020 1:33:02 PM
 To: Blechman, Jeremy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76ce7b2e87ee44b192b023c3ddf0ce51-Blechman, J]; Rosen, Jonah

Hi Jeremy,

Jonah and I have discussed it with Evan and for the 4pm subs I'll do and "ADD/CXL" to try to flash AA and if it doesn't work then we'll discuss further actions.

Thanks and regards,

From: Yanez, Catterina <Catterina.Yanez@jetblue.com>
Sent: Monday, February 3, 2020 10:56 AM
To: Rosen, Jonah <Jonah.Rosen@jetblue.com>
Subject: RE: BOSBWI WN Fares

Hi Jonah,

This is the NK fare match we filed last week. We filed it with FTVL 22APR20 and LTVL 08SEP20, however WN filed it without travel restrictions.

I did an add/cancel on Friday to try to flash the travel dates.

I think we should give them until the 1pm subs, and if they don't add the travel restriction we should discuss the next step.

Let me know what do you think.

Cross Market Initiatives Facilitate Coordination



Leo Lage
Sr. Pricing Manager

spirit

Q. Let me just ask, Mr. Lage, **cross-market initiatives are not something new in the airline industry**; right?

A. No. **They've been in the industry since I've started pricing in early '81, 1981.**

Q. You've observed them throughout your career?

A. I have – I observe them, they happen occasionally, yes. **Once a month maybe I come across these cross-market initiatives.**

Nov. 15, 2023, Tr. Vol. 2, 164:4-11 (Lage/Spirit)



Michael Hillyard
Domestic Pricing Team Manager

jetBlue

Q. In one of those markets a colleague asked you to do a cross-market initiative; right?

A. They didn't put it in those terms, but it is what I came to learn as such, yes.

Q. They asked you to take a fare action and you later realized that what **the action you had taken was a cross-market initiative**; right?

A. **That's right.**

Nov. 8, 2023, Tr. Vol. 2, 151:21-152:3 (Hillyard/Spirit)

JetBlue's Goal: Be More Like the Big Four



Eric Friedman
Director, Route Planning

jetBlue

jetBlue

Will Cater More to High-End Passengers

This Deal gives JetBlue **“better access to high-end leisure customers,” “corporate customers,” and “customer segments that value . . . a robust loyalty program.”**

jetBlue

Network Will Move Toward the Higher Cost “Hub-and-Spoke” Model

Post-Deal, JetBlue plans to create a presence at a mid-continent airport with **“a lot of connectivity potential,”** as well as offer **“incremental connectivity”** to make FLL a **“competitive hub alternative.”**

jetBlue

Will Focus on Creating “Loyal” Customers via “Relevance”

Post-Deal, JetBlue Plans to build **“relevance,”** which its executives call **“a win-win phenomenon for the Customers”** because customers will **“have a company that they can be loyal to”**



Dr. Hill
Defendants' Expert

Q. Dr. Hill, United, Southwest, American and Delta, they all focus a lot on loyalty, competing for corporate contracts, and operating lots of connecting itineraries, wouldn't you agree, sir?

A. I think that's fair.

Spirit Does Not Follow the Herd

Pricing at
Spirit Airlines

07 June 2022

spirit

Spirit Presentation
June 7, 2022

spirit

Pricing Philosophy NK vs OA

- No obligation to “follow the herd” when it comes to large industry initiatives.



**Structural
Presumption
in 51 Nonstop
Overlap Markets**

**Elimination of
the Spirit Effect**

**6.1 Million Fewer
Seats Per Year**

~\$1 Billion Net Harm Per Year

**Direct Evidence of
Fare Increases**

**Enhanced Risk
of Coordination**

**Elimination of
Option for Price-
Sensitive Travelers**

Frontier and Spirit Told the Public This Deal Harms Consumers



Spirit Airlines Board of Directors Reiterates Support for Merger with Frontier Airlines

May 2, 2022

Moreover, in evaluating a JetBlue-Spirit combination, Spirit believes DOJ—and a court—will be very concerned that a higher-cost/higher fare airline would be eliminating a lower-cost/lower fare airline in a combination that would remove about half of the ULCC capacity in the United States.

In addition, the conversion of Spirit aircraft to JetBlue configuration will result in significantly diminished capacity on former Spirit routes, also resulting in higher prices for consumers. Finally, we are skeptical about your claims regarding the so-called "JetBlue Effect." After receiving the summary output of your economic model from your advisers, Spirit's economic consultants identified reasons to doubt that such an effect would significantly exceed any similar "ULCC effect."



Setting the Record Straight on JetBlue's Antitrust Arguments

June 28, 2022

JetBlue has no answer to its first glaring antitrust problem: an admitted, immediate and substantial *output reduction* upon closing of the Spirit acquisition

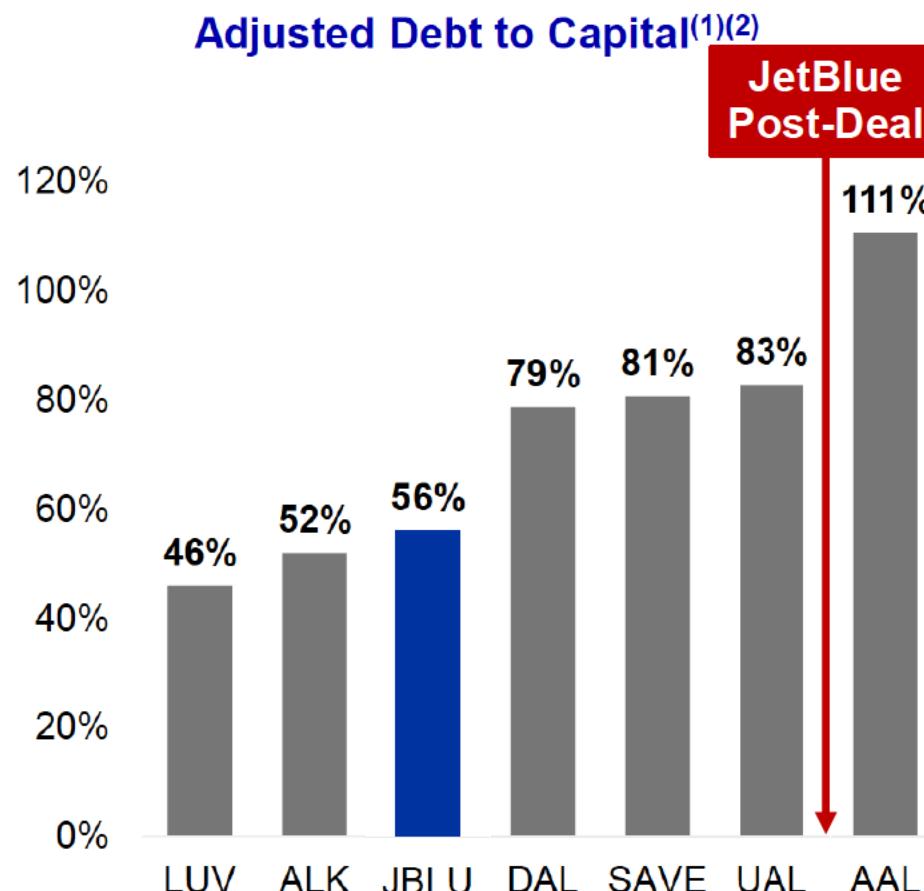
Antitrust law asks whether a merger is likely to substantially lessen competition. Of the key focal points of this analysis, the most prominent are the effects on *output and prices*. A JetBlue/Spirit combination would be doomed from the outset because JetBlue has already admitted that the acquisition would reduce capacity (*output*) and increase fares (*prices*).

JetBlue has no answer to its second glaring antitrust problem: an admitted, immediate and substantial *price increase* upon closing of the Spirit acquisition

This is not surprising: the cost differential between JetBlue and Spirit is so significant that JetBlue would have no option other than a significant increase in fares.

This Deal Changes JetBlue's Cost Structure (and Its Incentives)

Focused on Managing Liquidity and Earnings Risk



Ursula Hurley
Chief Financial Officer



Q. What is JetBlue's projected debt-to-cap ratio for 2027 with the transaction?

A. So based on our high-level modeling that we've done to date, when the transaction closes, at financial close, we will be on the higher end of this chart. So we will most likely be between United and American Airlines.

Q. Okay. So between 83 percent and 111 percent?

A. Correct.

Dr. Hill's Model Is Replete with Problems

“Intensity Model” Omits Spirit’s Fares

Q. And so when you were evaluating Spirit entry and only looking at rivals’ fares, that means that you are leaving out the low fares that Spirit offers when it enters a market; fair?

A. So **Spirit’s fares are not included, or JetBlue’s**, for that matter. Yes.

Properly Applied, the “Intensity Model” Shows Consumer Harm

Q. Okay. Well, let me ask you this question: If we were to take the entry intensity model results shown in figure 69 and we applied these – applied your entry intensity model to all fares in your purported increased competition routes, we would find that there would be a benefit not a – excuse me, we would find there would be a harm, not a benefit to consumers in those markets; correct?

A. Yeah, I believe that would be true.

Dr. Hill’s Model Is an Outlier

Q. In fact, **you have never before**, as best you can recall, **built a model for evaluating competitive effects for a horizontal merger such as this one that could not be applied to markets where the two merging parties compete**; right?

A. **That’s fair.**

“In addition, if a Government's prima facie case anticipates and addresses the respondent's rebuttal evidence, as in this case, the prima facie case is very compelling and significantly strengthened. Under these conditions, the **respondent's burden of production on rebuttal is also heightened.**”

Chicago Bridge v. FTC, 534 F.3d 410, 426 (5th Cir. 2008)



Aircraft and Pilot Constraints Hamper Other ULCCs' Ability To Grow



Robin Hayes

jetBlue

Q. . . Mr. Hayes, **it is true that it is not possible, to your understanding, **to purchase an aircraft from Airbus directly until 2029; correct?****

A. Yes. I would say **that is largely, almost largely true.**



Ursula Hurley

jetBlue

Q. And without a transaction would JetBlue be able to continue to grow its fleet?

A. Yes, but not at scale.

Q. And what do you mean by not at scale?

A. Yeah, not in large quantities because **there are constraints in the industry in terms of getting your hands on aircraft. This is a transformational; overnight we have access to 200 more aircraft.**



John Kirby

spirit

A. Yeah, um, we're in very unique times. **We went through a challenging, I would say, **first half of the year with pilot attrition**, really quite the spikes. So we're in this situation where we had aircraft and we didn't have pilots. We're also facing I'd say – you know we haven't been profitable for a number of quarters now and I think that's obviously something we need to get back to. . .**

Defendants Bear the Burden To Show Entry Will Be . . .

Timely



Likely



Sufficient

Entry is “**timely**” when other firms enter quickly enough to offset harms from the merger.

FTC v. Sanford Health,
926 F.3d 959, 965
(8th Cir. 2019)

Entry is “**likely**” only if the evidence in the record could lead to a conclusion that entry is reasonably probable.

Chicago Bridge & Iron Co. v. FTC,
534 F.3d 410 429–30 n.10
(5th Cir. 2008)

Entry is “**sufficient**” where it would be enough to constrain harm from the merger.

FTC v. Penn State Hershey Med. Center, 838 F.3d 327, 351–52
(3d Cir. 2016)

Basic Economy Cannot and Will Not Replace Spirit

“It’s a business decision.”



Andrew Nocella
EVP & CCO



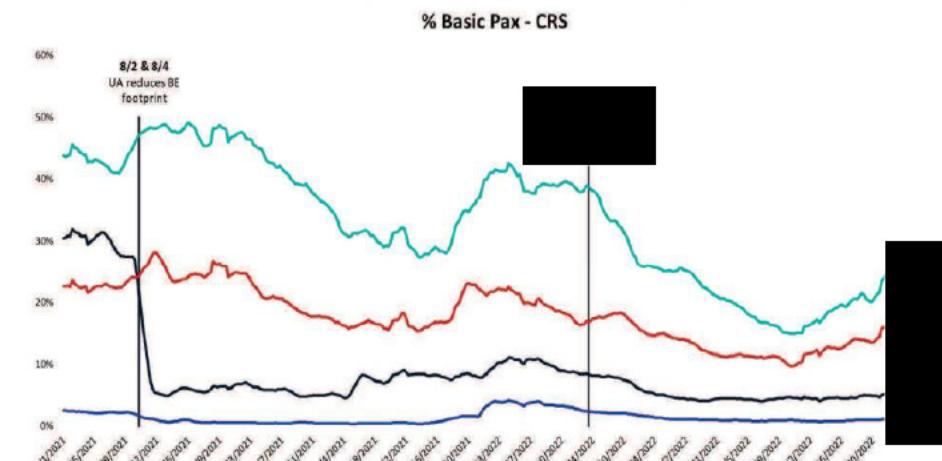
Q. Why – at a very high level, did United introduce Basic?

A. Well, Basic Economy was put in place to compete more effectively with the new-generation ultra-low cost airlines but even at that time my memory would say Delta Airlines also offered a basic product as did American. I believe United may have been last of at least the Big 3 to offer it.

Basic Economy Trends

Current BE ticketing accounts for [REDACTED] of PAX

- AA does not have BE in DOM markets with WN pricing
- Demand environment results in selling fares higher than BE ceiling



Southwest Is Not a Substitute for Spirit



Nicholas Hill
Defendants'
Expert

Q. So, Dr. Hill, **on one hand you were arguing that this transaction will enable JetBlue to better compete against Southwest, while on the other you're also arguing that Southwest is well positioned to remedy potential harm** that is associated with this transaction; correct?

A. Correct.



Barry Biffle
CEO

FRONTIER
AIRLINES

Q. And a similar question. **What distinguishes an ultra-low-cost carrier business model from carriers like JetBlue and Southwest?**

A. Costs alone are typically the biggest difference. **Those two carriers are much more mid cost.**

Frontier Cannot Timely Replace Spirit



Barry Biffle
CEO

FRONTIER
AIRLINES

Q. Does Frontier have **enough planes** to replace Spirit on all of its routes and keep flying its existing schedule?

A. **No.**

Q. Does Frontier have **enough pilots** to replace Spirit on all of its routes and keep flying its current schedule?

A. **No.**

Q. How **many years would it take Frontier to get enough planes, engines, and pilots**, to replace Spirit on all of its routes and keep flying its current schedule?

A. **You want every route, every seat replaced. It would take, um, 7 years. 8 years.** I mean it's hard to answer that question though. If they didn't exist, I guess I could actually probably get the planes faster and probably do it much faster. I'd have to look on a plane. But, yeah, **you could do it inside of 5 years, I guess.** If it didn't exist and we had the appetite, we could grow 30, 40 percent, sure, we could do it much faster.

Frontier Lacks the Competitive Intensity of Spirit



Barry Biffle
CEO

FRONTIER
AIRLINES

Q. Does the **presence of the Big 4 route have any impact** on the amount of frequencies that Frontier might put on a route?

A. **Yeah, absolutely.**

Q. What is that impact?

A. So we've learned that, um, you know the Big 4 are always trying to push us around, so **we've learned not to overexpose ourselves**. So **we try to conduct asymmetric warfare and ensure that we don't have too much capacity relative to their capacity**. So if they decide to match us, it will cost them more than it would cost me, on a relative basis.

Frontier Lacks the Stickiness of Spirit



Barry Biffle
CEO

FRONTIER
AIRLINES

Q. And in that time of growth of 300 percent, do you know **how many [routes] just didn't work out**, approximately?

A. Probably half.

Q. Is **Newark** an example of [Frontier exiting an entire airport]?

A. Yes.

Q. Um, is **Los Angeles International Airport** another instance where Frontier exited?

A. Yes, we did.

Frontier Will Not Replace Spirit



Barry Biffle
CEO

FRONTIER
AIRLINES

A. No, I – **we have our own standalone plan**, no, it does not contemplate that. If – but these things don’t happen in a vacuum, right? So every time that you change a variable, it changes what you would consider. Right? It’s the same dialogue we had this morning, why **we don’t have firm plans for La Guardia slots**, because I have no idea when I would get the slots.

And so I would look at it contemporaneously at that moment and what the market opportunity looks like at that time. Right? So the same thing here. You would do it for the best and highest use, right? I mean the airline market is very efficient. We would go after the highest fares, the highest-priced options.

So you wouldn’t necessarily – **I wouldn’t go on a quest to replace every Spirit [route]** if I thought I was going to lose money somewhere. If that makes sense.

Allegiant Also Will Not Replace Spirit



Built to be different

Leisure customer

Underserved markets

Little competition

Low cost aircraft

Low frequency/variable capacity

Unbundled pricing

Closed distribution

Bundled packages

Highly profitable

Would focus on the pillars, "built to be different" pieces that we've used in presentations since the beginning and how growth and commercial approach still mirror the elements that are most core to the model.



Drew Wells

Allegiant SVP and CRO

Q. So, again, trying to do the math here, that would mean **about 75 percent of the routes that Allegiant serves do not have competition?**

A. Correct.

Avelo, Breeze, and Sun Country Cannot Replace Spirit



- Q.** But you do believe it's still the case that **Breeze and Avelo don't have proven track records for competing against legacy carriers**, right?
- A.** I think that's fair.
- Q.** And you believe it's still accurate that the **business models of Breeze and Avelo are designed to avoid head-to-head competition**, is that fair?
- A.** Yeah, I think that's relatively correct stuff.



John Kirby
VP of Network Planning



Nov. 8, 2023, Tr. Vol. 1, 45:9-16 (Kirby/Spirit)



“[Sun Country] is a ULCC based in Minneapolis” that “significantly over-indexes on the percent of customers originating in Minneapolis because that’s where it’s based and that’s where it’s known.”



Eric Friedman
Director, Route Planning



Nov. 9, 2023, Tr. Vol. 2, 116:5-9 (Friedman/JetBlue)

Defendants' Assumption:	Reality:
Other ULCCs will step into Spirit's shoes	Other ULCCs would have to massively accelerate their growth to replace Spirit even on a partial basis
Other ULCCs will find enough planes to serve their existing networks and also replace Spirit	Airbus deliveries are unlikely before 2030 and the leasing market is tight
Basic Economy products will help backfill lost Spirit capacity	Legacy carriers' incentive to offer Basic Economy at affordable rates and in reasonable quantities depends on ULCC competition

JetBlue: 30% Fare Increase Is on the Way



March 6, 2022



Eric Friedman
Director of Route
Planning

jetBlue

2) Model that shows how we got to original “Customer Premium Synergy”

- Note the RASM premium we apply on going from Shop metal to JetBlue was calculated as the average between 1) The difference in RASM premium between the two models (bottom up analysis) and 2) The average a bottom up analysis modelling the exit of a shop (elasticity) and how it would translate to JetBlue **RASM premium of 1.24**
- The bottom up method suggested a **RASM premium of 1.24**...the comparison of our SLA TRASM vs Shop's is 1.41 so we're using a 1.33
- Note The bottom up assumes: Shop exits the market and **average fare increases 30%** (based on history of Shop leaving markets)...market size then shrinks at **average fare increases 30%** is observed)...JetBlue then enters the market and take it **average fare increases 30%** is results in a JetBlue TRASM 1.24x Shop's...

Q. Understood. But to get to the 24 percent, you have to calculate them from **30 percent higher fares** from Spirit's exit, right?

A. That was one input into the model, yes.

Divestitures Must Replace the “Competition Lost by the Merger”

“The relief in an antitrust case must be ‘effective to redress the violations’ and ‘to restore competition.’”

Ford Motor Co. v. United States, 405 U.S. 562, 573 (1972)
(quoting *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961))

In evaluating a remedy, courts require that the remedy must “restore the competition lost by the merger,” including the “competitive intensity lost as a result of the merger.”



United States v. Aetna Inc., 240 F. Supp. 3d 1, 60 (D.D.C. 2017)
(quoting *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 72 (D.D.C. 2015))

JetBlue's Divestiture Proposal: Uncertain, Incomplete, and Ineffective



Robin Hayes
CEO

jetBlue

Q. Okay. And there are no aspects of the divestitures that would allow Allegiant or Frontier to obtain access to pilots or aircraft; right?

A. That is correct.

Nov. 6, 2023, Tr. Vol. 2, 127:18-21 (Hayes/JetBlue)

?

Boston Logan

?

?

LaGuardia

Newark

?

Ft. Lauderdale

MÉXICO

Gulf of
Mexico

JetBlue Committed to “Synergies” That Harm Consumers



Goldman Sachs
Fairness Opinion
Supporting Materials
July 26, 2022

jetBlue

Overview of Transaction Synergies
(US\$ in millions)

INVESTMENT BANKING DIVISION

Sources	2024E	2025E	2026E	2027E	2028E / Run-Rate
Network optimization	\$ 34	\$ 141	\$ 247	\$ 354	\$ 460
Customer experience premium	\$ 0	\$ 100	\$ 200	\$ 300	\$ 400
Increased relevance	\$ 0	\$ 35	\$ 70	\$ 105	\$ 140
Revenue					
Increased JTP penetration	\$ 42	\$ 60	\$ 60	\$ 60	\$ 60
Increased Loyalty penetration	\$ 64	\$ 90	\$ 90	\$ 90	\$ 90
Total revenue synergies	\$ 140	\$ 426	\$ 667	\$ 909	\$ 1,150
Cost					
Labor dis-synergy (e.g., new Flight Ops, Inflight contracts)	-	\$(440)	\$(440)	\$(440)	\$(440)
Other dis-synergy (e.g., Onboard product, landing fees, distribution)	\$(10)	\$(30)	\$(185)	\$(285)	\$(325)
Fixed cost removal	\$ 65	\$ 170	\$ 275	\$ 325	\$ 325
Net Cost Dis-synergies	\$ 55	\$(300)	\$(350)	\$(400)	\$(440)
Total Net Synergies	\$ 195	\$ 126	\$ 317	\$ 509	\$ 710

What Defendants Say Versus What They Mean

“Increased Relevance”

MEANS

JetBlue Has Increased Pricing Power

“Network Optimization”

MEANS

Abandoning Current Spirit Customers

“Customer Service Premium”

MEANS

Customers Pay Higher Prices

Defendants’ “Synergies”: Increased Pricing Power

“Increased Relevance”

MEANS

JetBlue Has Increased Pricing Power

“Network Optimization”

MEANS

Abandoning Current Spirit Customers

“Customer Service Premium”

MEANS

Customers Pay Higher Prices

- **Increased Relevance**
 - Synergy refers to the S-Curve: as an airline's presence increases, it becomes a carrier of choice for higher value/higher-propensity-to-travel customers, thus creating revenue upside; valued at \$140M
 - Think becoming more competitive for corporate travelers who buy closer in or becoming more attractive of a carrier to commit to given breadth and depth of travel needs

Q. So you agree **having a larger presence at an airport enables the airline with that larger presence to increase its pricing power; right?**

A. It allows you to capture more business travelers, and so that does help **bring your average fares up**.



Robin Hayes

CEO

jetBlue

Defendants’ “Synergies”: Current Spirit Customers Will Be Stranded

“Increased Relevance”

MEANS

JetBlue Has Increased Pricing Power

“Network Optimization”

MEANS

Abandoning Current Spirit Customers

“Customer Service Premium”

MEANS

Customers Pay Higher Prices

Q. Nevertheless the model shows that **JetBlue would stop service on 1/6th of the Spirit network, correct?**

A. **We would redeploy 1/6th of their network** and we assumed, um, during this modeling phase, that it would come in at the 25th percentile revenue per shell, having not specifically reallocated it because of the, um, the mathematical nature of the modeling.



Eric Friedman

Director, Route Planning

jetBlue

Defendants' "Synergies": Higher Prices

"Increased Relevance"

MEANS

JetBlue Has Increased Pricing Power

"Network Optimization"

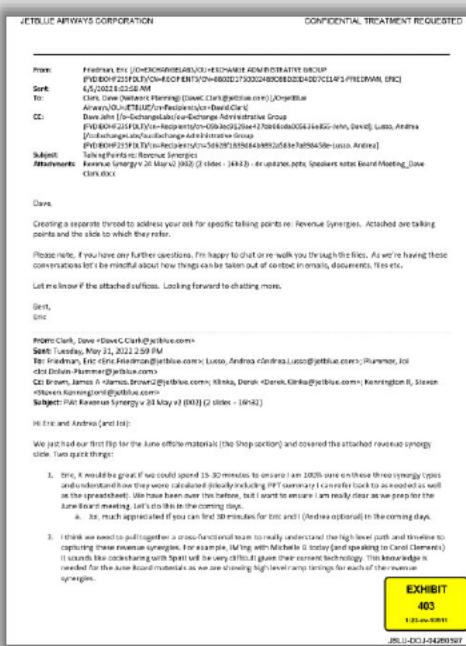
MEANS

Abandoning Current Spirit Customers

"Customer Service Premium"

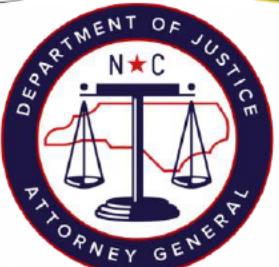
MEANS

Customers Pay Higher Prices



- **Customer Service Premium**

- Synergy refers to RASM change generated by converting Shop customer experience to JetBlue's; valued at \$450-500M
- Generated over ~5/6ths of the network that remain part of the proposed network strategy
 - Synergy includes above aircraft counts scaled up to 2025 fleet counts
- Synergy in full force after all retrofits are complete; should ramp accordingly with retrofits
- Synergy calculated by assuming customers see value of better product and experience; and are glad to adjust by 24%



*United States of America
and Plaintiff States*

v.

*JetBlue Airways Corporation
and Spirit Airlines, Inc.*

Closing Argument

December 5, 2023

