



Department of Justice

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**ASSISTANT ATTORNEY GENERAL BILL BAER DELIVERS REMARKS AT THE
CONFERENCE CALL REGARDING THE JUSTICE DEPARTMENT'S LAWSUIT TO
BLOCK UNITED'S MONOPOLIZATION OF TAKEOFF AND LANDING SLOTS AT
NEWARK AIRPORT**

Remarks as prepared for delivery

WASHINGTON, D.C.

This morning the Department of Justice filed a lawsuit in the U.S. District Court in Newark, New Jersey, to block United Airlines' effort to acquire 24 takeoff and landing slots at Newark Liberty International Airport. Today, United controls over 73 percent of the slots needed to fly in and out of Newark. Our lawsuit charges United with trying to maintain and enhance its monopoly position at Newark, violating Section 2 of the Sherman Act. We are also charging United and Delta Airlines, the seller of the slots, with violating Section 1 of the Sherman Act by entering into an agreement that restrains trade.

We filed this lawsuit because we determined that allowing United to acquire even more slots at Newark would fortify United's monopoly position and weaken the ability of other airlines to compete. That would leave the 35 million air passengers who fly in and out of Newark every year holding the bag. This lawsuit is necessary to protect those passengers from higher fares and fewer choices.

Let me first give you a little background about slots at Newark. To manage congestion at Newark, the FAA allocates takeoff and landing authorizations – called slots – in order to limit the number of flights in and out of Newark. A slot is a scarce resource: an airline cannot fly to or from Newark without them, but they are limited in number. Airlines seeking to initiate or expand service at Newark face significant challenges obtaining slots in order to support new service.

United has the lion's share of the slots at Newark. There are 1,233 slots allocated at Newark. United holds 902 of them. That's 73 percent. United controls over 10 times more slots than its closest competitor. No other airline has more than 70 slots. A chart in the complaint at page 2 shows how United dominates Newark.

United inherited most of its Newark slots from Continental Airlines when those two merged in 2010. At the time, Continental had 894 and United held 36. We were concerned then that the merged airline would control too many slots. United agreed to divest all 36 of its slots to Southwest to allay the Department’s competitive concerns. As I will discuss in a minute, that divestiture to Southwest paid big dividends for consumers.

United understood our concern at the time. United’s then-CEO, Jeff Smisek, acknowledged the importance of introducing competition at Newark. He said: “We think this would be a fair solution that would allow Continental and United to create an airline that will provide customers with an unparalleled global network and top-quality products and services, while enhancing domestic competition at Newark.”

He was right. This divestiture allowed Southwest to introduce new low-fare competition to United on five routes, which resulted in substantially lower fares and increased service on these routes into and out of Newark. You can see this on the chart on page 10 of our complaint.

Route	Year-over-year Percentage Decrease in Average Fare	Year-over-year Percentage Increase in Number of Passengers
Newark-St. Louis	-27%	66%
Newark-Houston	-15%	53%
Newark-Phoenix	-14%	57%
Newark-Chicago	-11%	35%
Newark-Denver	-5%	49%

But ever since then United has been trying to acquire additional slots and stifle competition at Newark. This is United’s third attempt in the last year-and-a-half to reverse the benefits of that divestiture by buying up additional slots from its competitors at Newark.

- In July 2014, United tried to reacquire from Southwest the very same 36 slots that United and Continental divested to alleviate competitive concerns arising from their merger. We expressed concerns and the transaction was abandoned.
- Then, in March 2015, United floated a proposal to acquire 18 slots from American Airlines, but when the Department again voiced competitive concerns, the deal went away.
- This proposed transaction with Delta is United’s latest attempt to bolster its dominance at Newark. If permitted to proceed, this transfer would increase United’s slot share to roughly 75 percent and reduce Delta’s share to just 3 percent, dropping it from 64 to 40 slots.

There are 35 million air passengers who fly into and out of Newark every year. And we know that airfares at Newark are among the highest in the country while United’s service at Newark ranks among the worst. This transaction will reduce competition by removing from the hands of a competitor – in this case Delta – a scarce resource that it needs to compete with United at Newark.

United already uses its control over its existing portfolio of 902 Newark slots to raise fares to and from the airport. It is the monopoly nonstop carrier – it faces no nonstop competition – on 139 of the 189 destinations it serves directly from Newark, and is able to charge fares reflecting its dominant position. Indeed, it has long been able to charge a so-called “Newark premium,” on average charging more for its Newark service than for comparable service out of other New York airports.

United is also sitting on many of its slots – deliberately limiting its Newark service. Over the course of a year, it operates only 386 daily roundtrip flights at Newark when its slots would allow it to operate 451. As the chart on page 9 of our complaint shows, its unused slots are greater than the number of slots available to any single competitor. They are sitting on the key asset needed to compete and trying to acquire more. That is why we are charging United with unlawfully seeking to maintain a monopoly.

Now, what would happen if a carrier other than United, particularly a low-cost carrier, got these slots? I just described to you how consumers benefited when Southwest got the 36 slots that United divested when it merged with Continental.

Similarly, when Virgin acquired slots at Newark in 2012, it introduced competing nonstop service to Los Angeles and San Francisco. United responded to Virgin’s entry by increasing capacity and dropping fares by 40 percent. Competition benefits consumers.

The same thing happened after JetBlue entered the route from Newark to Boston in 2010: Average fares were cut in half and passengers nearly doubled. The introduction of competition at other constrained airports provides yet another example. After the slot divestitures we obtained when American and US Airways merged, Reagan National saw the carriers who acquired slots increase service by more than 40 additional departures each day, including flights to 14 new airports. Similarly, slot and gate divestitures at LaGuardia, O’Hare, and Dallas Love Field also triggered new service to more destinations.

We know from experience what happens when competition is allowed to flourish. This transaction will have the opposite effect. That is why we are seeking this injunction.

I want to thank the litigation team from the division’s Transportation, Energy and Agriculture Section, led by Chief Kathy O’Neill and Assistant Chief Caroline Laise, as well as the Economic Analysis Group team led by Bob Majure and Nicholas Hill for their hard work on this.

And with that, I’m happy to take any questions you have.

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